

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William McKinney,

Petitioner,

vs.

No. 07WC007416

City of Chicago,

14IWCC0405

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission pursuant to an order of remand from the Circuit Court of Cook County. In accordance with the order of the circuit court entered on August 21, 2013, the Commission further explains its reasoning for why it chose to adopt the opinions of Dr. Farrell over those of Dr. Raab in its February 4, 2013, Decision and Opinion on Review Under Sections 19(h) And 8(a).

On February 22, 2007, Petitioner filed an Application for Adjustment of Claim, alleging that he sustained repetitive trauma injuries to his left knee, which manifested on September 26, 2005. An Arbitrator held a hearing on February 11, 2009, and issued a decision on March 13, 2009, finding that Petitioner's work duties caused him to sustain a compensable repetitive trauma injury to his left knee, which manifested on September 26, 2005. In addition, the Arbitrator found that Petitioner underwent a left knee arthroscopic debridement on May 1, 2008, and Dr. Farrell released Petitioner to full duty work on July 11, 2008. Lastly, the Arbitrator found that Petitioner's work-related injury caused the loss of use of 20 percent of the left knee.

On January 31, 2011, Petitioner timely filed a Petition for Review under Section 19(h) and 8(a). On February 4, 2013, the Commission issued a Decision and Opinion on Review Under Sections 19(h) And 8(a), and found that "Petitioner's left knee condition ha[d] materially worsened since the entry of the Arbitrator's Decision on March 13, 2009, and Petitioner [wa]s

entitled to additional compensation.” The Commission awarded an additional period of temporary total disability benefits from September 21, 2010, through May 1, 2011, and medical bills in the amount of \$31,941.00. The Commission found that the material increase in Petitioner’s disability caused the loss of use of 17.5 percent of the left leg and 10 percent of the right leg.

In support of its 19(h) decision, the Commission made the following findings of fact. Six months after the February 11, 2009, arbitration hearing, Respondent transferred Petitioner to the construction department where he performed heavy labor installing poles, digging trenches, and stringing wire. As a result of ongoing left knee pain and favoring his left leg, Petitioner developed right knee pain. On September 9, 2010, Petitioner returned to Dr. Farrell with complaints of bilateral knee pain and more severe symptoms in his right knee. On November 19, 2010, Dr. Farrell performed a right knee arthroscopy with “[d]ebridement of chondromalacia in the medial and patellofemoral compartments. Following a course of postoperative physical therapy for his right knee, Petitioner complained of increasing left knee pain. On January 28, 2011, Dr. Farrell performed an arthroscopy of the left knee with “[d]ebridement of patellofemoral and medial compartment chondromalacia” and microfracture of the distal medial femoral condyle. Postoperatively, Petitioner received a series of Orthovisc injections for continued left knee pain. At the hearing on Petitioner’s 19(h) petition, Petitioner testified that he suffered from bilateral knee pain and weakness with more severe symptoms in the left knee. He had difficulty walking and getting up from a chair, and took over-the-counter Tylenol for his pain. Petitioner continued to work full duty for Respondent.

In addition, the Commission found that on November 2, 2011, Dr. Raab performed a section 12 examination at Respondent’s request and diagnosed Petitioner with degenerative arthritis of the knees. Dr. Raab opined that Petitioner’s need for treatment was “secondary to the natural progression of his degenerative arthritis and not secondary to the original work related injury of 2005. The Commission quoted part of Dr. Raab’s section 12 report, stating:

“At the time of my original Independent Medical Evaluation in 2008 this gentleman did not have any right knee complaints whatsoever therefore there is no reason to think that it is related to his September 26, 2005 injury. With regard to the left knee which I evaluated on January 28, 2008 I did state that I do believe it is simply the natural progression of his arthritis in his knee and not causally related to the work related injury. Having stated that, continued treatment as he did appear to be improved and working full duty after the scope of the left knee, certainly I do not see any reason why either of these knees and subsequent treatment is causally related to the work related injury of September 26, 2005. I simply feel that this gentleman unfortunately does have degenerative arthritis in both of his knees. It is clear from the knee arthroscopies, he has quite severe arthritis with areas of Grade 3 to 4 chondromalacia and eburnated bone. He did not have meniscal pathology and treatment should be for the arthritis.”

Lastly, the Commission found that on January 13, 2012, Dr. Farrell generated a narrative report and opined that Petitioner’s bilateral knee condition was causally related to his job duties. The Commission quoted part of Dr. Farrell’s report, stating:

"I have opined in the past that the nature of his job has clearly aggravated his overall situation involving both knees. The left knee has materially worsened since 2009 when the arbitration hearing was apparently undertaken and reviewed. The left knee [is] more involved orthopedically than the right knee, however, both knees continue to exhibit signs and symptoms of progressive joint space narrowing, worsening symptoms of degenerative change, and essentially lack of response to ongoing conservative treatment options. He has been treated extensively to date with both operative and non-operative measures. While he continues to work, the fact is that his left knee has worsened since February and the right knee clearly is in part aggravated from the ongoing problem with his left knee and in part based on the nature of his position as a lineman for the bureau o[f] electricity of the City of Chicago. My opinions are based on a reasonable degree of orthopedic and surgical certainty.

Mr. McKinney continues to remain under my care and has exhibited progression of his disease, not only his left knee but also in his right knee. I attribute the worsening of his right knee condition to an ongoing problem with [his] left knee. Both knees will require further surgical intervention in the future."

In conclusion, the Commission adopted the opinions of Dr. Farrell and found that Petitioner's left knee condition had materially worsened since the entry of the Arbitrator's Decision on March 13, 2009. Respondent appealed to the Circuit Court of Cook County.

On August 21, 2013, the circuit court issued an order on appeal, stating:

"This case coming to be heard on Plaintiff's administrative review, the Court being fully advised in the premises, IT IS HEREBY ORDERED:

- (1) The Commission decision merely recites facts without providing an express analysis of how those facts lead [sic] to the Commission's decision to award compensation.
- (2) The Court needs the Commission's analysis of how and why it chose to adopt the opinions of Dr. Farrell over those of Dr. Raab in order to determine whether the decision is reasonable.
- (3) The decision of the Commission is REVERSED AND REMANDED, and this matter is remanded to the Commission for purposes of evaluating how and why it reached the result that it did."

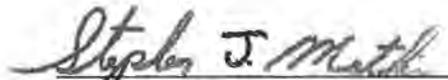
The Commission can only speculate as to the circuit court's intent with respect to its August 21, 2013, order on appeal as it states that the Commission's February 4, 2013, 19(h) decision is reversed, yet specifically remands the matter to the Commission for "analysis of how and why it chose to adopt the opinions of Dr. Farrell over those of Dr. Raab," and "for purposes of evaluating how and why it reached the result that it did." The Commission interprets the circuit court's order to mean that the instant matter is remanded for the sole purpose of

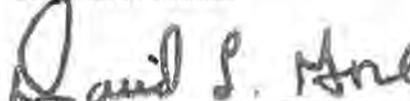
explaining why it found that Petitioner's left knee condition had materially worsened after the Arbitrator's March 13, 2009, decision. The Commission does not interpret the circuit court's order to mean that the Commission's February 4, 2013, 19(h) decision is reversed in its entirety as this would render moot the remaining language of the order.

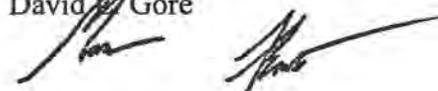
In compliance with the circuit court's order, the Commission explains "how and why it chose to adopt the opinions of Dr. Farrell over those of Dr. Raab." Dr. Farrell's opinion that Petitioner's left knee condition had worsened and his right knee condition developed as a result of his job duties, is more persuasive than Dr. Raab's opinion that Petitioner's need for treatment was secondary to the natural progression of his degenerative arthritis because Dr. Raab's opinion fails to consider Petitioner's job duties. In addition, Dr. Farrell's opinions are consistent with Petitioner's testimony and are supported by the medical records. In his March 13, 2009, decision, the Arbitrator found that Petitioner's job duties consisted of repairing street lights and alley lights, a task that required him to ascend in a bucket. Petitioner entered the bucket in the same fashion each day, stepping in with his right leg first and swinging his left leg over the four foot lip of the bucket. In a typical work day, Petitioner entered the bucket 15 to 20 times. In the Commission's February 4, 2013, decision on review, the Commission found that six months after the February 2009 arbitration hearing, Petitioner began working in Respondent's construction department where he installed poles, dug trenches, and strung wire. About one month later, Petitioner began to experience increased left knee pain and developed right knee pain from favoring his left knee. The Commission finds that Petitioner's heavier and more labor intensive job duties in the construction department have caused his left knee condition to materially worsen and have caused the development of his right knee condition. The Commission notes that Petitioner's left knee symptoms decreased significantly after undergoing surgery in May of 2008 and he was able to perform his job duties despite having arthritis. Petitioner's bilateral knee symptoms only increased after he began working in the construction department.

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 03 2014
SM/db
o-04/17/14
44


Stephen J. Mathis


David S. Gore


Mario Basurto

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

City of Chicago

v.

No. 13 L 050209

Hon. Robert Lopez Capero

Illinois Workers' Compensation Commission and
William McKinney

ORDER

This case coming to be heard on Plaintiff's administrative review, the Court being fully advised in the premises, IT IS HEREBY ORDERED:

- ① The Commission decision merely recites facts without providing an express analysis of how those facts led to the Commission's decision to award compensation.
- ② The Court needs the Commission's analysis of how and why it chose to adopt the opinions of Dr. Farrell over those of Dr. Raab in order to determine whether the decision is reasonable.
- ③ The decision of the Commission is REVERSED AND REMANDED, and this matter is remanded to the Commission for purposes of evaluating how and why it reached the result that it did.

Atty. No.: 90909

Name: Michael Griffiths

Atty. for: City of Chicago

Address: 30 N. LaSalle 8th Floor

City/State/Zip: Chicago, IL 60602

Telephone: 312 744 9686

ENTERED: Judge Robert Lopez Capero

AUG 21 2013

Dated: Circuit Court - 1627

Judge

Judge's No.

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Terry Powell,
Petitioner,

vs.

NO. 12WC 10166

14IWCC0406

Deublin Company, Inc.,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 14, 2013 is hereby affirmed and adopted.

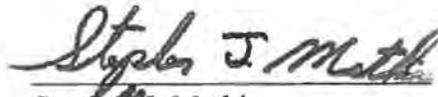
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

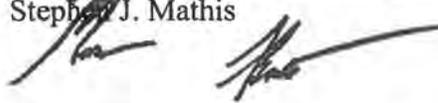
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

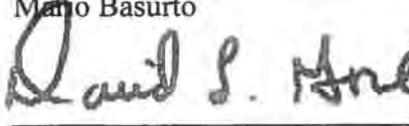
Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00.

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: JUN 03 2014
SM/sj
o-4/17/14
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Stephen J. Mathis


Mario Basurto


David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

POWELL, TERRY L

Employee/Petitioner

Case# 12WC010166

DEUBLIN COMPANY INC

Employer/Respondent

14IWCC0406

On 8/14/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0152 LINN, CAMPE & RIZZO LTD
CRAIG M LINN
215 N MARTIN L KING JR AVE
WAUKEGAN, IL 60085

0532 HOLECEK & ASSOCIATES
MARY A SAVICH
161 N CLARK ST SUITE 800
CHICAGO, IL 60601

STATE OF ILLINOIS)
)SS.
COUNTY OF Lake)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Terry L. Powell
Employee/Petitioner

Case # **12 WC 10166**

v.
Deublin Company, Inc.
Employer/Respondent

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 **Waukegan**, on **June 20, 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 _____

BEFORE THE STATE OF ILLINOIS WORKERS' COMPENSATION COMMISSION

Timothy L. Powell,)	
)	
Petitioner,)	
)	
vs.	)	Case #12WC10166
)	
Deublin Company, Inc.)	
)	
Respondent.)	

RIDER TO ARBITRATION DECISION

In support of the Arbitrator's decision relating to (F) Casual Connection, (L) Nature and Extent of the Injury and (J) Medical, the Arbitrator finds and concludes as follows:

The Petitioner is a 65 year old factory worker who has been employed by the Respondent since 1994. The Petitioner is a lathe machine operator, a job that involves constant lifting, bending and twisting; the parts the Petitioner lifts weigh up to 50 pounds (See PX 1 – Physical Demands section of Petitioner's job description). The Petitioner is a high school graduate and has never had employment that does not involve physical labor.

Accident is not in dispute. It is undisputed that on February 16, 2011, while removing a 40 to 50 pound part from a lathe, the petitioner felt a sharp pain in his low back while twisting his torso to place the part on a skid.

Prior to the Petitioner's undisputed February 16, 2011 work accident, the Petitioner was working without restrictions, was not experiencing back pain, was taking no medication for back pain and had not seen a doctor for back pain since September, 2009; the treatment for back pain which ended in September, 2009 was for a 2009 work injury with the Respondent, resulting from a fall at work for which the Petitioner filed no workers' compensation claim, inasmuch as the 2009 work injury cleared up without further problems.

The Petitioner was referred to and transported to Lake Forest Occupational Health by the Respondent; Lake Forest Occupational Health is where the Respondent's employees are instructed to go when they have work injuries. The Lake Forest Hospital Occupational Health records (See PX 3) reflect a history of a low back injury from turning and twisting while removing a part.

The Petitioner was eventually referred to the care and treatment of Dr. Jonathan Citow, a neurosurgeon, by Lake Forest Occupational Health (See March 2, 2011 LFHOH visit contained in PX 3).

FINDINGS (SEE ATTACHED RIDER)

On February 16, 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 \$73,757.84; the average weekly wage was \$1,418.42.

On the date of accident, Petitioner was 63 years of age, *married* with 0 dependent children.

Petitioner *has not* 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 \$20,398.37 for TTD, \$ for TPD, \$ for maintenance, and \$ for other benefits, for a total credit of \$20,398.37.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$945.61 per week for 21 4/7 weeks, commencing March 3, 2011 through August 1, 2011, as provided in Section 8(b) of the Act. The Respondent shall be given a credit of \$20,398.37 for temporary total disability benefits that have been paid.

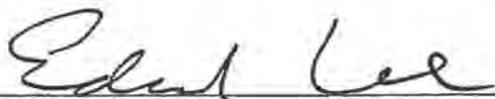
Respondent shall pay Petitioner permanent partial disability benefits of \$669.64 for 150 weeks because the injury sustained caused the 30% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay reasonable and necessary medical services of \$1,600.00 as provided in Section 8(a) of the Act.

Respondent shall pay the Petitioner compensation that has accrued from February 16, 2011 through the present, and shall pay the remainder of the award in weekly payments.

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

8/14/13
Date

AUG 14 2013

When the Petitioner came under the care of the Respondent referred physician, Dr. Jonathan Citow, on March 11, 2011, Dr. Citow prescribed corrective surgery for the Petitioner's February 16, 2011 work-related low back injury (See March 11, 2011 medical report of Dr. Citow contained in PX 5). The prescribed surgery was placed on hold pending an evaluation by Dr. Robert Beatty at the request of Travelers Insurance, the Respondent's workers' compensation insurance carrier. In his April 13, 2011 medical report (See RX 1) Dr. Beatty opined that the Petitioner's need for corrective surgery was casually related to his work injury of February 16, 2011 and further opined that there were no prior injuries or pre-existing conditions causing the "claimant's" current condition.

Dr. Citow performed the following work-related surgery to the Petitioner's injured back on May 18, 2011 at Northwestern Lake Forest Hospital (See PX 4):

Procedure:

1. Right-sided extreme lateral L3-L4 microdiscectomy with intraoperative microscopy. Intraoperative fluoroscopy and intraoperative monitoring with baseline EMG's and continuous EMG monitoring throughout the case as well as bilateral lower extremity somatosensory evoked potentials.
2. Right-sided L3 and L4 hemilaminectomies with bilateral medial facetectomies and foraminotomies with microdissection. Intraoperative fluoroscopy and intraoperative monitoring of baseline EMG's and continuous EMG monitoring throughout the case.
3. Right-sided L4 and L5 hemilaminectomies with bilateral medial facetectomies and foraminotomies with microdissection. Intraoperative fluoroscopy and intraoperative monitoring of baseline EMG's and continuous EMG monitoring throughout the case as well as bilateral lower extremity somatosensory evoked potentials.
4. These are three separate and distinct procedures done through three separate and distinct incisions using the METRx percutaneous dilator set.

The Petitioner was allowed to come back to work on a light duty basis on August 3, 2011 at his request; he was concerned that his group health insurance, which also covered his wife, was going to run out. When he returned to work on a light duty basis between August 3, 2011 and September 18, 2011 he worked solely with small parts which weighed ounces and not pounds, and was also given assistance by co-workers.

The Petitioner saw Dr. Citow on September 16, 2011 and was released to return to work without restrictions as of September 19, 2011; Dr. Citow noting during that visit that the Petitioner was still experiencing mild stiffness in his back, as well as occasionally right thigh dysthesias, Relafen was prescribed (See September 16, 2011 office note of Dr. Citow contained in PX 5). Upon the return to full duty work on September 19, 2011 and throughout the Fall of 2011, while resuming his full duty work, the Petitioner noticed that his back pain was increasing in severity and constancy. This in spite of the fact that upon his return to full duty work in September, 2011 the Petitioner was given a mechanical hoist to use when lifting parts which weighed in excess of 10 pounds, in order to accommodate his continuing back pain.

The Petitioner came back under the care of Dr. Citow in the Spring, 2012 (See April 13, 2012 and May 4, 2012 office notes of Dr. Citow contained in PX 5). Dr. Citow, during the Petitioner's May 4, 2012 office visit, prescribed additional corrective low back surgery for the Petitioner consisting of an L2-5 redo decompression and stabilization. The prescribed surgery was not approved after a re-evaluation of the Petitioner by Dr. Beatty, at the request of Travelers Insurance, which took place on June 13, 2012 (See RX 2); Dr. Beatty suggesting that as an alternative course of treatment to surgery "it is my opinion that considering his general health that he is better off to return to work, and if lighter duty is possible, allow him to finish out his 2 years and then retire" (See page 6 of RX 2).

Dr. Citow, during the Petitioner's July 20, 2012 office visit (See PX 5), noted that the Petitioner was continuing to experience progressive back and leg pain and further noted that the Petitioner was not improving with conservative treatment. Dr. Citow opined, in his July 20, 2012 office note, that as the Petitioner had not improved with conservative means, he would be a good candidate for an L2-5 redo decompression and stabilization; he further opined that the Petitioner's work injury had caused an exacerbation of his pre-existing lumbar spondylosis requiring him to have the prescribed surgical intervention (See PX 5).

The Petitioner most recently saw Dr. Citow on April 26, 2013, Dr. Citow noting in that office note (See PX 5), that the Petitioner was continuing to experience back pain radiating into his buttocks and that he was continuing to take the prescribed Vicodin. Dr. Citow further stating in the aforementioned office note that "he likely will require indefinite pain medications unless surgery is performed".

The Arbitrator notes that the Respondent referred the Petitioner to Lake Forest Hospital Occupational Health for his work-related medical care who in turn referred the Petitioner to the care and treatment of Dr. Jonathan Citow.

The Petitioner, at present, has decided to live with his continuing pain in an effort to avoid the additional work-related back surgery consisting of a L2-5 redo decompression and stabilization, which Dr. Citow has prescribed. The Petitioner is attempting to manage his back pain until he retires with the hope that it will decrease

when his body is no longer subject to the stresses of his work environment. The Petitioner hopes to be in a financial position to retire at the age of 68.

The Petitioner testified that at present he continues to experience a constant dull ache in his back which increases with activity; his back pain also increases with walking or when he sits more than 15 to 20 minutes. The Petitioner, in order to get through the work day, applies liquid HEAT to his back before work and then reapplies it 2 other times during the work day. He also takes extra strength Tylenol for back pain on a daily basis; if the back pain remains extreme, even after taken the extra strength Tylenol, he will then take Vicodin as prescribed by Dr. Citow. The Petitioner did not require the aforementioned pain relief prior to his February 16, 2011 work injury, nor did he experience the aforementioned pain and limitations.

Although the Respondent provided the Petitioner with a hoist when lifting parts in excess of 10 pounds when he returned back to work on a full duty basis in September, 2011, the Petitioner continues to experience severe back pain at work which on occasion increases to the point where he becomes nauseous, causing him to leave work early. The Petitioner did not require the hoist for lifting over 10 pounds prior to his February 16, 2011 work injury nor did he experience back pain so severe that it caused nausea. The Petitioner, subsequent to his February 16, 2011 work injury, has given up throwing the ball with kids, has given up his coy pond because of the bending required to maintain it and no longer walks on the treadmill due to back pain.

The Petitioner is entitled to have and receive from Respondent the sum of \$669.64 per week for a further period of 200 weeks, as provided in 8(d)2 of the Act, because the injury sustained on February 16, 2011 to the Petitioner's lumbar spine caused his physical impairment to the extent of 30% thereof. The Arbitrator further notes that the additional corrective surgery as prescribed by Dr. Citow, consisting of an L2-5 decompression and stabilization, is related to the Petitioner's February 16, 2011 work injury.

These conclusions are based upon the Petitioner's credible testimony regarding his current symptoms and activities, the records and medical reports of Dr. Jonathan Citow (PX 5), the medical records of Dr. Shari Bornstein (PX 6), the Lake Forest Hospital Occupational Health records (PX 3) and the records of Lake Forest Hospital (PX 4).

The Petitioner submitted outstanding medical expenses, in the amount of \$1,600.00 (See PX 2). The Arbitrator finds that the Respondent is liable for the aforementioned charges.

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
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<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Estella Ochoa,
Petitioner,

vs.

NO. 10WC012113
(10WC012114)

The Salvation Army,
Respondent.

14IWCC0407

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 disability, permanent disability, medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 27, 2013 is hereby affirmed and adopted.

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

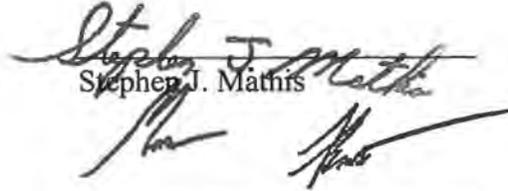
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court by Respondent.

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:
SM/sj
o-5/8/14
44

JUN 03 2014



Stephen J. Mathis

Mario Basurto



David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

OCHOA, ESTELA

Employee/Petitioner

Case# 10WC012113

10WC012114

THE SALVATION ARMY

Employer/Respondent

14IWCC0407

On 6/27/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0226 GOLDSTEIN BENDER & ROMANOFF
DAVID FEUER
ONE N LASALLE ST SUITE 2600
CHICAGO, IL 60602

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
CHRISTINE JAGODZINSKI
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

STATE OF ILLINOIS)
) SS.
 COUNTY OF LAKE)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

ESTELA OCHOA,
 Employee/Petitioner

Case #10 WC 12113

v.

Consolidated cases:10 WC 12114

THE SALVATION ARMY,
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **ANTHONY C. ERBACCI**, Arbitrator of the Commission, in the city of **WAUKEGAN**, on **April 26, 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

FINDINGS

On **December 14, 2009**, 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned \$15,133.97; the average weekly wage was \$291.04.

On the date of accident, Petitioner was 40 years of age, *married* with 3 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 \$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

Petitioner's claim for compensation is denied.

No benefits are awarded herein.

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.



Arbitrator Anthony C. Erbacci

June 18, 2013
Date

JUN 27 2013

141WCC0407

FACTS:

On December 14, 2009, the Petitioner was employed by the Respondent as a "sorter". The Petitioner testified that, on that date, she went on a break and sat in a chair that broke. She testified that she fell with the chair and hurt her hip, leg and back. She testified that she told her supervisor and was sent home. The December 14, 2009 accident and notice thereof were not disputed by the Respondent.

At trial, The Petitioner was asked whether she had any prior treatment for her low back or tailbone, including x-rays, and she denied any treatment to those areas of her body. The medical records of Northwestern Lake Forest Hospital reflect that she was actually seen on an emergent basis on February 19, 2008 following a fall which did not occur at work according to the records. She underwent x-rays of her low back at that time, which revealed a possible fracture of her tailbone that was a chronic finding. She had complaints of neck pain and back pain. She was diagnosed with cervical strain, lumbar sprain and sacral fracture. Vicodin, Naprosyn and Flexeril were prescribed.

The Petitioner sought medical treatment at Northwestern Lake Forest Hospital on December 14, 2009. The Hospital records demonstrate that she complained of pain in the area of her sacrum and low back with some radiation of discomfort into the right thigh after she fell while sitting in a chair that broke at lunch. X-rays of her low back did not reveal any acute abnormality. Dr. Chin diagnosed the Petitioner with a contusion to the sacrum, a lumbosacral strain and a contusion to the right buttock. The doctor recommended ibuprofen and released her to return to work with restrictions of limited bending and no lifting more than 20 pounds.

At a follow-up visit on December 21, 2009, the Petitioner's complaints were noted to include pain in her low back and tailbone. Dr. Chin also examined her again on January 1, 2010, and she reported continued pain in her low back and relief with ibuprofen. Dr. Chin recommended light duty work and instructed the Petitioner to schedule physical therapy.

On February 9, 2010, The Petitioner presented for an initial physical therapy evaluation at Northwestern Lake Forest Hospital. She reported constant pain in the low back, right buttock and thigh. She stated that she performed all of her work duties without restrictions. She did not have a follow-up visit scheduled with the doctor.

On March 17, 2010, the Petitioner underwent lumbar MRI studies at MRI of Arlington Heights. The MRI was reported to demonstrate a tiny left paracentral disc herniation without nerve root impingement or central canal stenosis at L4-5, and a small left foraminal fissure and disc protrusion without any nerve root impingement or foraminal stenosis at L5-S1.

Dr. Chin reexamined the Petitioner on March 29, 2010. She denied improvement with physical therapy and reported pain in her right back with radiation to her right leg. She denied weakness or numbness. She remained on light duty work. Dr. Chin diagnosed the Petitioner with chronic back pain with the etiology unknown. Her motor strength was five out of five, and her sensory exam was grossly intact. He suggested that she follow-up with Dr. Lanoff to determine if any further treatment was indicated.

147WCC0407

At a physical therapy visit on March 29, 2010, the Petitioner reported having had extensive testing nine months earlier regarding her menstruation stopping, and she was cleared of significant pathology. She informed the therapist that Dr. Chin questioned her abdominal symptoms, and she continued to report numbness at her coccyx with greater than one hour sitting. She did not return for physical therapy after that date. She was contacted by the therapist on April 13, 2010 and April 14, 2010, to confirm that she was discharged from therapy. The therapist spoke with her on April 14, 2010 and The Petitioner advised that her new doctor told her to stop physical therapy.

The Petitioner testified that she then presented to Herron Medical Center on April 20, 2010. The medical records from Herron Medical Center reflect that she was first seen on April 5, 2010 and that she presented with complaints of low back pain and radiating pain into the right leg. She reported pain with range of motion of the lumbar spine. She reportedly exhibited an antalgic gait on the left. Ruben Bermudez, D.C., diagnosed her with a herniated disc at L4-5, right lumbar radiculopathy, lumbar sprain/strain, muscle spasms and myofascial trigger points. He fitted her for a lumbar support, and recommended electrical muscle stimulation, hot packs and soft tissue massage. She was also referred to a pain specialist.

Dr. Suneela Harsoor examined the Petitioner on April 6, 2010. The Petitioner complained of low back pain and reported that she was currently working, and her medications included ibuprofen and Glucophage. Upon examination, palpation of the lumbar facets did not reveal any pain. Palpation of the lumbar discs revealed pain and palpation of the bilateral sacroiliac joints did not reveal any pain. Dr. Harsoor reviewed the MRI report of the lumbar spine from March 17, 2010, noting a tiny left paracentral disc protrusion at L4-5, and a tiny left annular fissure and disc protrusion at L5-S1 without impingement. She diagnosed the Petitioner with myofascial pain, and recommended Elavil and epidural injections for her radiculopathy.

Dr. Harsoor saw the Petitioner on April 13, 2010 for a scheduled epidural injection, but it was not performed due to a lack of insurance approval. The Petitioner returned to Ruben Bermudez, D.C. on April 14, 2010 and reported that her low back pain was a seven on a scale of ten. She also reported that she was working with restrictions.

On April 22, 2010, the Petitioner returned to Dr. Harsoor and reported that her pain was now worsening and burning. She was unable to perform heel walking or toe walking. On April 22, 2010, the Petitioner also saw Ruben Bermudez who examined her and noted that she presented to work that morning, but claimed her restrictions were not honored and she had increased low back pain. She was now authorized off work. The Petitioner last saw Ruben Bermudez on June 15, 2010. She subsequently underwent epidural injections with trigger point injections at three levels on July 6, 2010 and an epidural injection at L4-5 on September 7, 2010.

At the request of the Respondent, the Petitioner was examined by Dr. Thomas Gleason on June 8, 2010. The Petitioner informed Dr. Gleason that she did not have any low back complaints or injuries prior to December 14, 2009. She reported no improvement in her low back since her injury in December 2009. Upon examination, Dr. Gleason noted diffuse tenderness, even to gentle palpation, throughout the entire thoracic and lumbar spine, as well as over the right paralumbar area with pain and burning down the right leg to the foot. He did

not document any spasms, tenseness or asymmetry. Her muscle strength was normal bilaterally. X-rays were negative. Dr. Gleason reviewed the MRI scan from March 17, 2010. He also reviewed surveillance reports and video from April 30, 2010, May 1, 2010, May 2, 2010, May 3, 2010, and May 4, 2010. He noted that there were no positive objective findings on physical exam relative to her low back and lower extremities. He did note the incidental findings on the lumbar MRI, and concluded that those findings were not causally related to her claimed work injury on December 14, 2009. Dr. Gleason opined that the Petitioner was capable of working full duty at that time, and was capable of working at least with light duty restrictions as of April 22, 2010. Dr. Gleason opined that the Petitioner's chiropractic treatment was unnecessary and not related to her claimed work injury on December 14, 2009. He also noted that her pain treatment with Dr. Harsoor was not related to her work injury, and she had reached maximum medical improvement. (RX 2).

Dr. Gleason testified at his evidence deposition on February 5, 2013. He noted that he is Board certified in orthopedic surgery. He reviewed his exam of the Petitioner and noted that she exhibited a negative straight leg raising test while sitting, but complained of pain in the right leg in the supine position. Dr. Gleason further testified that she had sensation that was diminished on exam, but this was not related to any specific nerve root, and could not be explained logically or rationally. Dr. Gleason testified that, on examination of the Petitioner, he did not note any physical correlation or findings that were consistent with the incidental findings on the MRI scan of March 17, 2010. He further testified that her current condition of ill-being was not related to her claimed injury on December 14, 2009, and that she had reached maximum medical improvement.

The Petitioner testified that she currently continues to have low back pain with walking, bending and twisting. She also testified that she has pain in her right buttocks and thigh.

CONCLUSIONS:

In Support of the Arbitrator's Decision relating to (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

The Petitioner complained of low back pain, right leg pain and pain in her sacrum after she fell when a chair broke on December 14, 2009. After a course of physical therapy, she denied any improvement and began chiropractic treatment in April 2010. The Petitioner continued to report ongoing complaints with chiropractic treatment and injections. Dr. Gleason, who examined the Petitioner at the Respondent's request on June 8, 2010, noted that there were no objective findings at that time, although he did document subjective complaints that he could not explain. Dr. Gleason also noted that the Petitioner's condition at the time of his examination, which included incidental findings on MRI that did not correlate with any positive findings on exam, were not related to her claimed work injury on December 14, 2009. Specifically, MRI findings revealed a tiny disc protrusion to the left at L4-5, while the Petitioner's subjective complaints were concentrated along the right. The Petitioner also denied any prior problems with her low back or sacrum before her claimed injury on December 14, 2009 when she saw Dr. Gleason and when she was questioned during cross-

examination. The Arbitrator notes that the medical records of Northwestern Lake Forest Hospital reflect that she had a prior sacral fracture and lumbar strain as a result of a slip and fall on February 19, 2008.

Despite significant complaints to medical providers in April, May and June of 2010, surveillance video obtained of the Petitioner's activities on April 30, 2010, May 1, May 2, May 3, and May 4 of 2010, demonstrated that the Petitioner was carrying objects including multiple backpacks and a cardboard box despite her testimony that she was avoiding all of those activities while authorized off work by Ruben Bermudez. She was filmed walking without any apparent limitations on April 30, 2010, while carrying a grocery bag of some objects and holding a child's hand. On May 2, 2010, she was filmed at 12:22 p.m. carrying a cardboard box and mail and using her left leg to prop the box while she spoke with another person to her right. Finally, she was filmed on May 3, 2010, at approximately 4:12 p.m. bending at the waist multiple times while carrying backpacks as she picked up some objects on the ground. She was also filmed while engaged in a full squat at approximately 4:13 p.m. on May 3, 2010, while having one backpack over her left shoulder and another two backpacks in her left hand.

At trial, The Petitioner had minimal complaints and denied the use of any prescription medications for her low back. She stated that she had not had any medical treatment since 2010.

The Arbitrator notes that no objective findings could be attributed to the December 14, 2009 work accident at the time the Petitioner was examined by Dr. Gleason on June 8, 2010. In addition, the Petitioner's complaints and testimony were contradicted by the medical records and her presentation on surveillance video. As a result, the Arbitrator questions the Petitioner's credibility.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner failed to prove that her claimed condition of ill-being at the time of trial is causally related to her injury on December 14, 2009.

In Support of the Arbitrator's Decision relating to (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, the Arbitrator finds and concludes as follows:

The Petitioner submitted multiple unpaid medical bills into the record at trial. She claimed there are unpaid medical bills from Dr. Harsoor (\$9,333.00), from Alevio Physical Therapy/Herron Medical Center (\$2,517.17), from Rogers Park One Day Surgery (\$15,063.92), from Advanced Medical Supplies (\$3,899.08), and from Prescription Partners (\$208.77). (PX 3, 4, 5, 6, & 7).

Dr. Gleason testified that the chiropractic treatment and pain management performed by Dr. Harsoor was not reasonable, necessary or related to her claimed work injury on December 14, 2009. The Arbitrator notes that the Petitioner did not introduce medical records from Rogers Park One Day Surgery.

Based upon the opinions of Dr. Gleason and the evidence at trial, the Arbitrator finds that Respondent has paid for all reasonable, necessary and related medical treatment. The outstanding medical bills pertain to chiropractic treatment with Ruben Bermudez, D.C., pain management treatment with Dr. Suneela Harsoor, injections at Rogers Park One Day Surgery, a TENS unit, and medication. The Arbitrator finds that the Petitioner failed to prove that this treatment was reasonable, necessary or related to her claimed work injury on December 14, 2009 and Respondent is not liable for payment of the outstanding medical bills.

In Support of the Arbitrator's Decision relating to (K.), What temporary benefits are due, the Arbitrator finds and concludes as follows:

The Petitioner claimed that she is entitled to Temporary Total Disability benefits from April 26, 2010 through May 14, 2010, from May 21, 2010 through June 13, 2010, for five hours on June 15, 2010, and from June 18, 2010 through June 29, 2010. The Arbitrator notes that the Petitioner worked with light duty restrictions after her claimed injury on December 14, 2009 and she was released to resume her full duties on June 8, 2010 by Dr. Gleason. Dr. Gleason further testified that light duty work restrictions were appropriate and she could have worked light duty as of April 22, 2010.

At trial, Brenda Sanchez, the Respondent's Human Resources manager, testified that the Petitioner's light duty work restrictions were accommodated at all times. She also testified that the nature of the Petitioner's job was light, and she was required to sort clothes, price things and not lift anything heavy. The Petitioner agreed that her job did not require any heavy lifting.

After reviewing all of the evidence, the Arbitrator finds that Ms. Ochoa is not entitled to any temporary total disability benefits during the claimed periods noted above as she clearly could have at least worked with light duty work restrictions as of April 26, 2010 and Dr. Gleason opined that there was no reason she could not work full duty when he saw her on June 8, 2010.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner failed to prove entitlement to Temporary Total Disability benefits for any period of time.

In Support of the Arbitrator's Decision relating to (L.), What is the nature and extent of the injury, the Arbitrator finds and concludes as follows:

At trial, the Petitioner testified that she currently continues to have low back pain with walking, bending and twisting. She also testified that she has pain in her right buttocks and thigh. She testified that she takes ibuprofen for her pain and that she has not sought medical treatment since 2010.

Dr. Gleason testified that all of the findings noted during the March 17, 2010 MRI were not corroborated by any physical findings during his exam on June 8, 2010, and that the Petitioner's condition at that time was not related to her claimed work injury on December 14, 2009. Additionally, the Arbitrator notes that the Petitioner's testimony was contradicted by the surveillance video admitted into the record which shows her walking, bending, squatting and lifting without any apparent difficulty or discomfort.

Based upon the foregoing, having considered the totality of the credible evidence adduced at hearing, and noting that the Petitioner failed to prove that her condition of ill-being at the time of trial is causally related to her injury on December 14, 2009, the Arbitrator finds that the Petitioner failed to prove entitlement to any permanent partial disability benefits.

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Estella Ochoa,
Petitioner,

vs.

NO. 10WC012114
(10WC012113)

The Salvation Army,
Respondent.

14IWCC0408

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, permanent disability, temporary 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 27, 2013 is hereby affirmed and adopted.

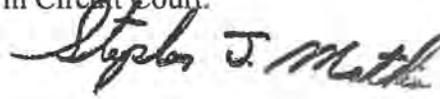
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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.

No bond is required for removal of this cause to the Circuit Court by Respondent.

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

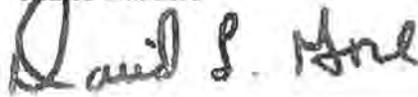
DATED: JUN 03 2014
SM/sj
o-5/8/14
44



Stephen J. Mathis



Mario Basurto



David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

OCHOA, ESTELA

Employee/Petitioner

Case# **10WC012114**

10WC012113

THE SALVATION ARMY

Employer/Respondent

14IWCC0408

On 6/27/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0226 GOLDSTEIN BENDER & ROMANOFF
DAVID Z FEUER
ONE N LASALLE ST SUITE 2600
CHICAGO, IL 60602

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
CHRISTINE JAGODZINSKI
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

STATE OF ILLINOIS)
) SS.
 COUNTY OF LAKE)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

ESTELA OCHOA,
 Employee/Petitioner

Case #10 WC 12114

v.

Consolidated cases: 10 WC 12113

THE SALVATION ARMY,
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **ANTHONY C. ERBACCI**, Arbitrator of the Commission, in the city of **WAUKEGAN**, on **April 26, 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

FINDINGS

On **January 26, 2010**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned \$15,246.20; the average weekly wage was \$293.20.

On the date of accident, Petitioner was 40 years of age, *single* with 3 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 \$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

Petitioner's claim for compensation is denied.

No benefits are awarded herein.

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.



Arbitrator Anthony C. Erbacci

June 18, 2013
Date

JUN 27 2013

14IWCC0408

FACTS:

The Petitioner testified that she injured her left shoulder at work on January 26, 2010. She stated that somebody hurt her from behind on her shoulder. The Petitioner could not state who injured her shoulder. She further testified that she did not know what that person was doing at the time, but she was hit with a cable with two frames. She did not believe the person struck her intentionally.

The Petitioner claimed that she reported this incident right away, and sought treatment with Dr. Lisa Fields. No medical records were introduced into evidence to document treatment for an injury to her left shoulder or arm.

Brenda Sanchez, Human Resources manager, testified on behalf of the Salvation Army. Ms. Sanchez noted that The Petitioner eventually claimed an injury to her arm in the beginning of February 2010, but she could not specially state what happened. The Petitioner claimed she was hit with an object, but there were no witnesses noted and no medical treatment requested.

CONCLUSIONS:

In Support of the Arbitrator's Decision relating to (C.), Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds and concludes as follows:

The Petitioner testified that something hit her in the left shoulder at work on January 26, 2010. She claimed that another employee hit her shoulder with an object, but upon further questioning, she could not explain exactly what happened. She speculated that she had been struck by an object in her upper left shoulder, but she was unable to state with certainty whether someone accidentally threw the object at her or if the object fell on her.

After reviewing the facts and testimony, the Arbitrator finds that The Petitioner failed to prove that she sustained an accidental injury to her left shoulder which arose out of and occurred in the course of her employment on January 26, 2010.

As the Arbitrator has found that the Petitioner failed to prove that she sustained an accidental injury which arose out of and occurred in the course of her employment on January 26, 2010, determination of the remaining disputed issues is moot.

Petitioner's claim for compensation is denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Maxcine Harvey
Petitioner,

vs.

NO. 10WC047936
104IWCC0409

City of Chicago,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, temporary 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 9, 2013 is hereby affirmed and adopted.

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

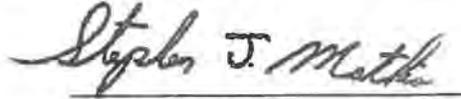
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court by Respondent.

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.

JUN 03 2014

DATED:
SM/sj
o-5/8/14
44



Stephen J. Mathis



Mario Basurto



David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HARVEY, MAXCINE

Employee/Petitioner

Case# 10WC047936

10WC047936

CITY OF CHICAGO

Employer/Respondent

On 8/9/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

1936 LAW OFFICES OF RAPAPORT & HERZBERG
STEVEN I RAPAPORT
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0680 QUERREY & HARROW LTD
MATTHEW J DALEY
175 W JACKSON BLVD SUITE 1600
CHICAGO, IL 60604

14IWCC0409

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

Maxcine Harvey

Employee/Petitioner

v.

City of Chicago

Employer/Respondent

Case # 10 WC 47936

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 **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Chicago**, on **May 8, 2013 and June 13, 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 _____

14IWCC0409

FINDINGS

On **November 3, 2010**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment as explained *infra*.

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

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

In the year preceding the injury, Petitioner earned **\$69,478.62** average weekly wage was **\$1,336.13**.

On the date of accident, Petitioner was **53** years of age, *single* with **no** dependent children.

Petitioner *has* received all reasonable and necessary medical services as explained *infra*.

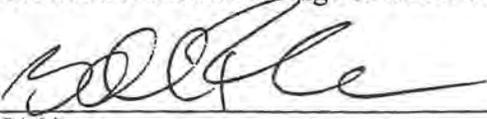
Respondent *has* paid all appropriate charges for all reasonable and necessary medical services as explained *infra*.

ORDER

As explained in the Arbitration Decision Addendum, the Arbitrator finds that Petitioner failed to prove that she sustained a compensable injury arising out of and in the course of her employment with Respondent as claimed. By extension, all other issues are rendered moot and all requested compensation and benefits are denied.

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

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



Signature of Arbitrator

August 8, 2013
Date

AUG 9 - 2013

14IWCC0409

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*

Maxcine Harvey

Employee/Petitioner

v.

City of Chicago

Employer/Respondent

Case # 10 WC 47936

Consolidated cases: N/A

FINDINGS OF FACT

Petitioner testified that she worked for Respondent as a grant specialist. Her job duties included researching various federal, state and local grants for the city. Petitioner worked from 9:00 a.m. to 5:00 p.m. and took two 15 minute breaks each day around the same time as allowed by Respondent's policy. Petitioner testified that she worked for Respondent for 26 years, but no longer works there due to a reduction in the workforce.

Petitioner testified that on November 3, 2010, she arrived at work at approximately 8:50 a.m.-9:00 a.m. and was performing her normal job duties. She took a break and was exiting the building to perform a personal financial transaction and, on her way back to work while walking through an elevator and lobby area she walked about 7-8 paces and her left leg slipped and she fell on the floor. Specifically, Petitioner testified that she walked in and her left leg slipped from under her and she fell on her knee and her right hand/elbow area. Petitioner testified that all of her injuries were to the right side. Petitioner testified that she noticed that the floor was waxed/shiny.

Petitioner testified that she was in a lot of pain and screamed. She testified that a lady came to her assistance, Janice Yarbrough, ("Ms. Yarbrough") and that she got a security guard who came over and asked if she wanted an ambulance to which Petitioner replied, yes. Petitioner testified that no one saw her fall.

The parties submitted a Report of Occupational Injury or Illness ("injury report") dated November 5, 2010 completed by Petitioner's supervisor, Mr. McPhilimy. PX13 at 250; RX1. The injury report reflects that Petitioner fell in the lobby of the building at approximately 10:40 a.m., screamed, and a security guard, Cheryl Lopez ("Ms. Lopez") came to Petitioner's aid. *Id.* According to the injury report, Petitioner reported to Ms. Lopez that she fell. *Id.*

Respondent offered a series of investigative photographs taken on May 16, 2012. RX3. These photographs are of the various tiles, elevator lobbies and entrances/exits to Petitioner's building. *Id.* The investigator did not identify any defects, cracks, hazards or obstructions in/on the floors. *Id.*

The medical records reflect that Petitioner went to the emergency room by ambulance. PX1 at 1-2. The ambulance crew noted in part, "pt found in lobby of building where she works lying on her l side aocx3 co pain in her rt wrist, elbow, and knee due to mechanical fall on slippery floor. pt denies any dizziness or etoh. pt denies any other illnesses or injuries." *Id.*

At the Saints Mary & Elizabeth Medical Center emergency room, Petitioner reported "Mech fall @ home - slipped on floor, landed on right side. c/o pain to [right] wrist [illegible] injury/elbow/knee Ø head/neck/back injury pain." PX4 at 8-19. However, another note reflects that Petitioner reported "pain to [right] wrist, [right] elbow, [right] knee s/p slip and fall @ work." *Id.* On examination, Petitioner had diffuse tenderness to

palpation to the right wrist/elbow/knee. *Id.* Petitioner underwent a right knee x-ray showing a large suprapatellar joint effusion. *Id.* Petitioner's right wrist x-rays showed a comminuted fracture of the distal right radius. *Id.* Petitioner's right elbow x-ray was normal. *Id.* The emergency room physician diagnosed Petitioner with a distal radial fracture, referred to orthopedics for follow up with Dr. Snitovsky, prescribed Vicodin for pain, and released. *Id.* Petitioner testified that she did not know what her injuries were at this time.

On November 5, 2010, Petitioner saw Dr. Heller at Midland Orthopedic Associates for her fractured right wrist. PX7 at 22; PX8 at 251-252. Petitioner reported falling in the lobby of her worksite on a waxed floor sustaining injuries to her right wrist. *Id.* Petitioner is right-hand dominant. *Id.* After an examination, traction, gentle reduction with manipulation, short arm casting, and performing x-rays, Dr. Heller noted some worsening of Petitioner's alignment in the wrist since her initial x-rays at the emergency room. *Id.* He placed Petitioner off work. *Id.*

On November 9, 2010, Petitioner saw Dr. Strugala for her right knee complaints. PX7 at 24; PX8 at 253. Petitioner reported swelling in the knee, great difficulty bearing weight initially, but being able to walk out of the emergency room later, and the greatest amount of pain over the medial knee. *Id.* On examination, Dr. Strugala noted mild effusion, tenderness over the medial knee extending along the course of the medial collateral ligament to the proximal tibia medially, no point tenderness over the patella, ability to extend the knee against resistance and performer straight leg raise, and pain over the medial knee with valgus stress however her ligaments appeared intact. *Id.* X-rays did not reveal any definite fracture. *Id.* Dr. Strugala diagnosed Petitioner with right knee pain status post fall and he ordered an MRI to determine whether Petitioner had an occult tibial plateau injury or medial collateral ligament sprain. *Id.* Petitioner remained off work. *Id.*

On December 10, 2010, Petitioner returned to Dr. Strugala reporting diminished symptoms, but some difficulty with activities such as stair climbing. PX7 at 25; PX8 at 254. On examination, Petitioner's right knee revealed a trace effusion at best, some minimal diffuse tenderness over the anterior knee, good motion, and good alignment. *Id.* He diagnosed Petitioner with right knee pain status post fall with mild underlying degenerative joint disease in the right knee which had improved. *Id.* He ordered physical therapy and kept Petitioner off work. *Id.*

On December 13, 2010, Petitioner returned to Dr. Heller regarding her right wrist fracture at which time her cast was removed and her x-rays showed a fracture healed in acceptable alignment in all planes. PX7 at 26-27; PX8 at 255. Dr. Heller referred Petitioner to physical therapy and released her to return to full duty work effective January 2, 2011. *Id.*

Petitioner began physical therapy on December 14, 2010 with complaints of right knee and right wrist pain and reported that she fell at work on November 3, 2010 when she "slipped on a wet floor, her right knee bent back and she fell on her out stretched right arm." PX11 at 64.

On January 11, 2011, Petitioner saw Dr. Strugala reporting slow steady progress during physical therapy of the right knee, difficulty with stair climbing, and some days with pain free ambulation compared to other days when she still had difficulty. PX7 29; PX8 at 28. On examination, Dr. Strugala noted a trace joint effusion, good motion, no point tenderness, and strength at 4+/5. *Id.* He maintained his diagnosis of right knee pain status post fall with mild underlying degenerative joint disease in the right knee, but recommended a possible injection after completion of physical therapy. *Id.*

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On January 21, 2011, Petitioner reported minimal complaints of pain in the right wrist to Dr. Heller. PX7 at 30, 32; PX8 at 31. After an examination and additional x-rays, Dr. Heller diagnosed Petitioner with a healed right distal radius fracture, noted her return to regular work and continued weakness of grip for which he recommended additional physical therapy, and scheduled a final follow-up visit in six weeks. *Id.*

On January 25, 2011, Petitioner saw Dr. Strugala reporting progress in physical therapy, but achiness with extensive activity. PX7 at 34; PX8 at 33. On examination, Dr. Strugala noted no effusion, minimal diffuse anterior tenderness, and good range of motion and strength with knee extension. *Id.* Dr. Strugala maintained his diagnosis. *Id.* Petitioner declined to undergo an injection and he scheduled a follow ligament in three weeks. *Id.*

On February 15, 2011, Petitioner returned to Dr. Strugala after completing physical therapy and noting improvements, but continued aching in the right knee and some discomfort over the anterior aspect of her left, which typically occurred after ascending from a seated position and loosened up with ambulation. PX7 at 36; PX8 at 35. After an examination and left hip x-rays, Dr. Strugala diagnosed Petitioner with right knee pain status post fall with mild underlying degenerative joint disease in the right knee and subsequent left hip pain probable hip flexor strain. *Id.* Dr. Strugala administered an injection into the knee. *Id.* He also recommended continued physical therapy or simply allowing further time for the need to improve, and Petitioner chose the latter option. *Id.*

Petitioner underwent physical therapy for the right knee which was completed on February 11, 2011 and for the right wrist which was completed on March 1, 2011. PX8 at 50; PX11 at 64-189.

On March 4, 2011, Petitioner saw Dr. Heller who noted that Petitioner's physical therapy note from March 1, 2011 reflect Petitioner reported no pain or swelling and completely normal function in the right wrist. PX7 at 38; PX8 at 37. Petitioner's exam and x-rays showed good alignment, normal range of motion, no tenderness or crepitus, and a normal neurovascular exam. *Id.* He diagnosed Petitioner with a healed right distal radius fracture with excellent outcome and released her from care. *Id.*

On March 15, 2011, Petitioner returned to Dr. Strugala reporting dramatic improvement with reduction in knee pain, improved left hip symptoms, some episodes of left hip pain when ascending from a seated position after prolonged sitting, but no difficulty with ambulation. PX7 at 40; PX8 at 39. He maintained his diagnoses and, given Petitioner's improvement, decided to defer physical therapy for the left hip and noted the possibility of viscosupplementation injections if Petitioner's symptoms returned. *Id.*

On April 14, 2011, Petitioner returned to Dr. Strugala reporting continued improvement in the right knee and left hip and walking regularly without any difficulty. PX7 at 42; PX8 at 41. On examination, Petitioner's right knee revealed good strength with extension and Petitioner reported no pain. *Id.* On examination of the left hip, Dr. Strugala noted good strength with resisted hip flexion without pain. *Id.* Dr. Strugala diagnosed Petitioner with right knee degenerative joint disease, symptoms dramatically improved, and a left hip flexor strain, greatly improved. *Id.* He instructed Petitioner on home exercises and released her from care. *Id.*

Petitioner testified that she missed approximately two months from work and that she did not receive any workers' compensation benefits for that period of time. She also testified that her medical bills were not paid. Petitioner testified that she was never told why she did not receive workers' compensation benefits.

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Harvey v. City of Chicago
10 WC 47936

Petitioner testified that when she was discharged from Midland, her wrist was better although she still has some stiffness in her fingers in the right hand. Petitioner testified that she has no pain in the wrist, just stiffness in the fingers and that her elbow is fine. Regarding her right knee, Petitioner testified that she still has problems walking down stairs, squatting, getting up from a seated position, and walking certain distances. She also testified that her knee gives way sometimes, she has pain if she is sitting too long and she has to flex her leg, and that she still experiences pain and swelling.

Petitioner acknowledged that she is no longer treating for her wrist, but testified that she is still treating for her knee. No treatment records regarding medical care after Petitioner's release from doctors at Midland were proffered at trial. Petitioner also testified that she had no knee problems prior to her date of accident. On cross examination, Petitioner testified that she did have pain in her right knee before her claimed injury at work approximately five months beforehand, but that she did not know that she had any degenerative joint disease in the right knee before November 3, 2010.

14IWCC0409

Harvey v. City of Chicago
10 WC 47936

ISSUES AND CONCLUSIONS

The Arbitrator hereby incorporates by reference the Findings of Fact delineated above and the Arbitrator's and parties' exhibits are made a part of the Commission's file. After reviewing the evidence and due deliberation, the Arbitrator finds on the issues presented at trial as follows:

In support of the Arbitrator's decision relating to Issue (C), whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds the following:

The Arbitrator finds that Petitioner did not sustain an accident that arose out of and in the course of her employment with Respondent on November 3, 2010 as claimed.

A compensable injury must "arise out of" and be sustained "in the course of" a claimant's employment. *Caterpillar Tractor Co. v. Industrial Comm.*, 129 Ill. 2d 52, 57-58, 541 N.E.2d 665 (1989). The phrase "in the course of" refers to the time, place and circumstances under which the accident occurred. *Caterpillar*, 129 Ill. 2d at 57 (citing *Orsini v. Industrial Comm.*, 117 Ill. 2d 38, 44 (1987)). "Arising out of" refers to the causal connection between the employment and the injury and is demonstrated if the claimant establishes that the origin of the injury lies in some risk related to the employment. *Brady v. Industrial Comm.*, 143 Ill. 2d 542, 550, 578 N.E.2d 921 (1991) (citations omitted). An injury arises out of the employment if the conditions or nature of the employment increased the employee's risk of harm beyond that to which the general public is exposed. *Id.*, (citing *Caterpillar Tractor Co. v. Industrial Comm.*, 129 Ill. 2d at 58; *Campbell "66" Express, Inc. v. Industrial Comm.*, 83 Ill. 2d 353 (1980)). The claimant bears the burden of proof in establishing a causal relationship between his employment and the injury. *Caterpillar*, 129 Ill. 2d at 63. The mere fact a claimant is present at the place of injury because of his employment is insufficient to meet his burden of proof. *Brady*, 143 Ill. 2d at 550. He must demonstrate that the risk of the injury sustained was peculiar to his employment or that it is increased as a consequence of the work. *Id.*, (citations omitted).

In this case, Petitioner testified that she slipped on a waxed floor in a lobby entrance/exit that she sometimes used and that was open to the public while returning to work from conducting a personal errand. There is no evidence that Petitioner was performing any work-related functions while on her break, that Respondent required Petitioner to use the entrance/exit in which she fell, that her fall was somehow peculiar to her employment when she used the particular entrance/exit on her way back into work from her personal errand, or that she was otherwise exposed to any risk greater than that of the general public while traversing the floor on which she fell. Based on the foregoing, the Arbitrator finds that Petitioner failed to prove that she sustained a compensable injury arising out of and in the course of her employment with Respondent as claimed. By extension, all other issues are rendered moot and all requested compensation and benefits are denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jesse Avakian,
Petitioner,

vs.

Chicago Testing Techs,
Respondent.

11WC046447
11WCC0410

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of temporary disability, medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 27, 2013 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.

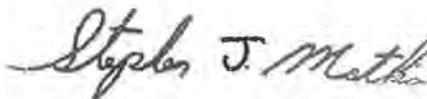
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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.

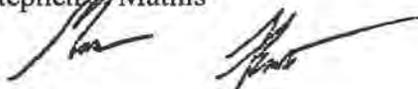
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$46,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

JUN 03 2014

DATED:
SM/sj
o-5/8/14
44



Stephen J. Mathis



Mario Basurto



David L. Gore

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

AVAKIAN, JESSE

Employee/Petitioner

Case# 11WC046447

CHICAGO TESTING TECHS

Employer/Respondent

11WC046447

On 6/27/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

2089 BUDIN LAW OFFICES
JOHN J BUDIN
ONE N LASALLE ST SUITE 2165
CHICAGO, IL 60602

0532 HOLECEK & ASSOCIATES
LAWRENCE A SZYMANSKI
161 N CLARK ST SUITE 800
CHICAGO, IL 60601

14IWCC0410

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jesse Avakian
Employee/Petitioner

Case # 11 WC 46447

v.

Consolidated cases: _____

Chicago Testing Techs
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Carolyn Doherty**, Arbitrator of the Commission, in the city of **Chicago**, on **May 14, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **7/28/11**, 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 **\$58,515.08**; the average weekly wage was **\$1,125.29**.

On the date of accident, Petitioner was **54** years of age, **married** with **3** 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 **\$23,791.53** for TTD, \$ **0** for TPD, \$**0** for maintenance, and \$**0** for other benefits, for a total credit of **\$23,791.53**.

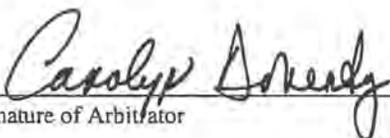
ORDER

- Respondent is to pay the reasonable and necessary medical expenses incurred pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid.
- Respondent is to pay Petitioner TTD of \$750.19 per week for a period of 93-3/7 weeks commencing July 29, 2011 through May 14, 2013. Respondent shall receive credit for amounts paid.
- Respondent shall authorize and pay for the medical treatment, including surgery and the attendant care as prescribed by Petitioner's treating physicians 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

6/26/13
Date

JUN 27 2013

FINDINGS OF FACT

At the time of his injury, Petitioner was 54 years old, married with three dependent children. At the time of his injury, Petitioner worked for Respondent as a field tech engineer and had been so employed for 5 years. His duties included testing concrete foundations. The work was physical and required Petitioner on a daily basis to lift heavy concrete samples weighing up to 100 pounds. Petitioner also tested soil for bearing strength and carried a nuclear gage weighing about 45 pounds. Petitioner credibly testified that he enjoyed his job and took great pride in his position as an engineer.

The parties agree that on July 28, 2011, Petitioner was injured when he fell 3-4 feet off a roof. On 7/28/11, Petitioner was working on the wet roof of a job site and fell off the roof onto a platform. Petitioner landed on his left side. He testified that he immediately noticed pain in his neck and left arm and shooting pain in his right arm. Petitioner testified that his pain worsened overnight and the next day he went to a chiropractor, Dr. Goelz, on a referral from a friend. Petitioner testified that he could not move his neck and had severe headaches and ringing in his head.

In his initial examination/evaluation report, Dr. Goelz noted Petitioner's subjective symptoms of severe neck pain, limited range of motion, pain into his right arm and hand. Objectively, he also noted muscle spasms and stiffness in Petitioner's cervical and upper thoracic spine as well as right shoulder pain. It was also noted that Petitioner developed headaches since the work-related injury. There was no complaint of low back pain. (See Pet. Ex. #1, page 31-36) Petitioner underwent chiropractic care with Dr. Goelz thereafter and was kept off work. Dr. Goelz ordered an MRI of Petitioner's cervical spine, which was performed on August 26, 2011. (See Pet. Ex. #1, page 16) The MRI showed a small central disc protrusion at C3-C4, bulging disc at C5-C6 and a broad-based central disc herniation at C6-C7 resulting in mild to moderate central spinal canal narrowing. (See Pet. Ex. #1, page 16-17). Dr. Goelz records indicate a release to light duty work for the first time on 9/22/11 with significant restrictions and a continued order for chiropractic care. The diagnosis was cervical herniated disc with radicular syndrome and neuralgia. PX 1. Respondent was kept advised of the treatment and recommendations as evidenced by the Work Status Sheets faxed to Pam Nowakowski, nurse case manager from Travelers Insurance. PX 1.

Petitioner testified that direction of his medical treatment was assumed by the nurse case manager, Pam Nowakowski, R.N. Ms. Nowakowski, set up appointments for Petitioner with Edward Forman, D.O at Illinois Bone and Joint Institute beginning on 9/1/11 through 1/10/12. PX 6. Dr. Forman was an orthopedic and sports medicine physician specializing in knee and shoulder arthroscopy. PX 14. Petitioner testified that he saw Dr. Forman from September 1, 2011 through January 10, 2012. On 9/1/11, Dr. Forman reviewed the MRI from August 2011 and noted C5-6 disc space narrowing with bulging and a broad based central disc herniation reported at C6-7. His assessment was cervical strain with C5-6 DJD. He noted while Petitioner's "subjective complaints generally outweigh the objective findings on clinical exam, we will treat him conservatively." Petitioner was started on formal PT and anti-inflammatory medication. Dr. Forman returned Petitioner to light duty work as of 9/2/11. Petitioner returned to Dr. Forman on 10/3/11 and based on continued subjective complaints of pain Dr. Forman ordered an EMG to

rule out radiculopathy. On 11/15/11, Dr. Forman reviewed the EMG and noted findings consistent with a moderate active ongoing bilateral cervical 5 and 6 radiculopathy. PX 8. Dr. Forman continued to diagnose cervical strain with C5-6 DJD and a reported C6-7 central disc herniation while noting that he still had not seen the MRI films. He also diagnosed cephalgia. While finding again that subjective complaints outweighed objective findings, Dr. Forman referred Petitioner to Dr. Glassenberg, a neurologist, for evaluation and continued PT and light duty. PX 6. Petitioner testified that Dr. Glassenberg did not want to see Petitioner due to workers' compensation issues so the nurse case manager arranged for Petitioner to see another neurologist, Jose Medina, M.D.

Petitioner saw Dr. Medina on 10/10/11 and performed the above mentioned EMG. PX 8. Dr. Medina's records from 10/10/11 indicate a diagnosis of C6-7 herniated cervical disc and cervical radiculopathy. PX 8, p. 12. The diagnosis continued at the next visit of 11/21/11 as Petitioner reported a sharp and burning pain in his neck and into the shoulders despite undergoing physical therapy. Dr. Medina ordered injections. PX 8, p. 19.

Petitioner testified that in the interim he did attempt to return to work on a light-duty basis on or about November 5, 2011. Petitioner attempted roofing inspection for Respondent but was not comfortable climbing a ladder to the roof due to his symptoms. Petitioner did not return. Respondent's witness, Matthew Ribordy, verified this failed attempt to return to light duty work.

On 12/13/11, Petitioner followed up with Dr. Forman who reiterated his diagnosis and noted, "I do not feel that there is any orthopedic pathology objectively. His subjective complaints seem to be consistent with his cephalgia more than anything. ... I would recommend that he continue working light duty and have his cephalgia worked up. ... If he still has the persistent symptomatology, I would recommend a functional capacity evaluation as there does not appear to be any orthopedic component to the symptomatology that he is complaining of, mostly being the cephalgia at this time." Petitioner was to follow up in one month. PX 6. On 1/10/12, Dr. Forman last saw Petitioner and noted that he still hadn't reviewed the MRI films and that he did not feel Petitioner's subjective complaints had any objective support based on his observation of Petitioner walking through his office. PX 6, P. 1. He found no orthopedic pathology and no orthopedic basis to keep Petitioner off work. He further noted his opinion that no orthopedic treatment was necessary and gave Petitioner a full duty return to work as of 1/11/12. PX 6.

During his treatment with Dr. Medina, he also saw Jerrel Boyer, D.O., who performed an epidural injection on January 16, 2012. PX 8. Dr. Boyer also ordered an MRI of Petitioner's cervical spine, which showed disk protrusions at "C3-4, C4-5, C5-6 and C6-7. Findings above worse at the levels of C5-6 and C6-7." (See Pet. Ex. #8, page 32, MRI of February 10, 2012) On the same date, Petitioner also had an MRI of his thoracic spine, which also showed positive findings. The MRI of the thoracic spine showed disc protrusions throughout the thoracic spine without significant stenosis. (See Pet. Ex. #8, page 33, MRI of the thoracic spine) On 2/13/12, noted his reading of the cervical MRI to show a disc herniation at C6-7 with "cord compression." Dr. Boyer explained to Petitioner that he would "likely need surgical intervention for his neck." (See Pet. Ex. #8, page 40) but Petitioner elected to try the facet injection first. The injection was performed but provided little relief.

On February 20, 2012, it was Dr. Medina's opinion that Petitioner was "totally disabled for work." (See Pet. Ex. #8, page 49) Dr. Medina also placed Petitioner, and had him remain on various pain medications for his pain. (See Pet. Ex. #8, page 23, 28, 44, 48) It is undisputed that Petitioner was not on any pain medications of any type for any reason prior to his work related injuries of July 28, 2011.

The nurse case manager next directed Petitioner to Wellington Hsu, M.D. for an orthopedic IME consultation on March 19, 2012. (See Resp. Ex. #2) In his narrative report, Dr. Hsu noted that surgery was recommended by Dr. Medina's office on or about February 13, 2012. (See Resp. Ex. #2, page 3) Dr. Hsu did confirmed that Petitioner sustained a cervical strain injury in the accident at work which is consistent with his complaints of neck stiffness and pain followed by reasonable treatment in the form of PT and steroid injection. Dr. Hsu determined that the cervical strain reached MMI 6 months after the accident and no later than 1/28/12. Dr. Hsu determined that Petitioner's "pain with range of motion and limited range of motion of his cervical spine did not seem to be congruent with his neck range of motion while being interviewed ... in fact as he was walking outside of the examining room, he demonstrated significantly more range of motion of his neck than he did in the exam room. As a result, I do believe that there is a psychosocial component to his neck pain." RX 2. Dr. Hsu agrees with Dr. Forman's recommendations in that he has no restrictions from an orthopedic or "spine" standpoint and that Petitioner did not demonstrate any neurologic deficits or signs of myelopathy on exam. Finally, Dr. Hsu determined that the C5-6 and C6-7 DJD was preexisting as was the C6-7 herniation. He commented that these findings were pre-existing conditions and "are in no way related to the claimant's current condition." RX 2.

Petitioner testified that based upon a friend's recommendation, he went to see a neurosurgeon, Wesley Yapor, M.D., at Northwestern Neurosurgical Associates. Petitioner saw Dr. Yapor for a second opinion, as Dr. Boyer had recommended "a two level anterior fusion for disc herniation at the C5-C6 and C6-C7 levels." (See Pet. Ex. #12, May 17, 2012 narrative report of Wesley Yapor, page 1) It was Dr. Yapor's opinion that Petitioner's symptoms were directly related to the July 28, 2011, work-related injury and he agreed that a C5-C7 anterior cervical discectomy and fusion was required as a result of Petitioner's work-related injury of July 28, 2011.

Petitioner has not sought any medical care, reevaluation or any other treatment of any kind since May 17, 2012. Petitioner testified that in the month before trial he applied for and received unemployment compensation benefits. He testified that he "gave the letter from Pamela showing that TTD was terminated" and thereafter received unemployment while looking for work. He has not received any contact or offers from potential employers.

Mr. Ribordy testified that he had a phone conversation with Petitioner in March 2012 calling Petitioner back to work after a seasonal lay off to do his regular job. Mr. Ribordy testified that Petitioner informed him that he was not comfortable coming back to work to do his regular job. The witness did not call Petitioner again to return to work. Petitioner testified that he would like to return to his regular job but not until he is "fixed."

Currently, Petitioner still has pain in his neck which has never resolved. Petitioner continues to have headaches and repetitive movement causes shooting pain in his right arm down thru his

right hand and numbness in his right hand and fingers. He has difficulty sleeping and takes over the counter sleep medication. Petitioner wants the recommended surgery and wants to return to work thereafter. Petitioner testified that he wants to return to his previous level of activity.

CONCLUSIONS OF LAW

The foregoing findings of fact are incorporated into the following conclusions of law.

In support of the arbitrator's decision relating to (F) causal connection and (K) prospective medical care, the arbitrator finds the following facts:

All physicians agree that Petitioner injured his cervical spine as a result of the July 28, 2011, work-related injury. (See, Resp. Ex. #2, Wellington Hsu, M.D. March 19, 2012, narrative report, page 5, 6; Resp. Ex. #1, Edward S. Forman, D.O., January 10, 2012, two-page report, page 1; Pet. Ex. #8, NeuroCenter (Jose Medina, M.D. and Jerrel Boyer, D.O.); Pet. Ex. #13, Wesley Y. Yapor, M.D. narrative report of May 17, 2012) All physicians agree that Petitioner has a disc herniation at C6-C7. Dr. Hsu and Dr. Forman, both orthopedic surgeons, found no "orthopedic pathology" and determined that Petitioner sustained a cervical strain as a result of the accident. Drs. Hsu and Forman opined that Petitioner's disc herniation at C6-7 and his degenerative conditions at C5-7 were preexisting and in no way aggravated or effected by the accident. Both physicians based their opinions in part on observations of Petitioner before, during and after their exams.

Petitioner's treating neurologist and neurosurgeon, Drs. Medina and Yapor, each found disc herniation at C6-7 and each opined that the herniation, although preexisting, became symptomatic as a result of the accident. Petitioner had no symptoms in his neck or arms prior to this accident. His symptoms arose immediately after the accident and his treatment has been consistent since the accident. The neurological pathology was obvious to the neurologist Dr. Medina and neurosurgeon Dr. Yapor, and corroborated by objective testing on Petitioner, including an EMG and MRIs. In fact, Dr. Medina, Respondent's physician, after reviewing the MRI of Petitioner's cervical spine stated, "objective matched subjective". (See Pet. Ex. #8, page 11) Drs. Medina and Yapor each opined that Petitioner needs surgery on his cervical spine so that he may return to work.

The Arbitrator finds that the accident of 7/28/11 aggravated Petitioner's pre-existing C6-7 disc herniation and C5-7 disc degeneration resulting in the need for the treatment he received and the prescribed surgical treatment. The Arbitrator's finding is based on the credible testimony of Petitioner and on the neurological and neurosurgical opinions of Petitioner's treating physicians, Drs. Medina, Boyer and Yapor, placing greater weight on those opinions than the orthopedic opinions of Drs. Forman and Hsu. Based on the finding of causal connection for these conditions, the Arbitrator further finds that Petitioner is entitled to the prescribed surgery pursuant to Section 8(a) of the Act. Respondent is to authorize and pay for that prescribed treatment and the attendant care.

1417600410

In support of the arbitrator's decision relating to (J) medical expenses the arbitrator finds the following facts:

Based on the finding of causal connection, the Arbitrator further finds that Respondent is to pay Petitioner the reasonable and necessary medical expenses incurred by Petitioner in the care and treatment of his injuries pursuant to Sections 8 and 8.2 of the Act. Respondent's objection to the medical bills was based on liability. Respondent is to receive credit for all amounts paid. ARB EX 1.

In support of the arbitrator's decision relating to (L) temporary total disability benefits, the arbitrator finds the following facts:

Based on the finding of causal connection for Petitioner's current condition of ill-being, the Arbitrator further finds Petitioner was temporarily and totally disabled commencing 7/29/11 through 5/14/13. The Arbitrator further notes that Petitioner began treatment the day after his accident and has treated consistently from that date. Pursuant to the recommendation of Dr. Forman, Petitioner tried and failed at a light duty attempt in November 2011. Petitioner continued treating with Dr. Medina per Respondent's nurse case manager and was taken off work by Dr. Medina through March 2012. Petitioner thereafter sought treatment from Dr. Yapor and has been waiting for the recommended surgical authorization since his visit with Dr. Yapor in May 2012. Petitioner was offered a full duty return by Respondent in March 2012 while still in active treatment with his treating neurologists. No physicians released Petitioner, from a neurological standpoint, to return to any type of gainful employment. Respondent made no further offers of light duty or accommodated positions after March 2012.

Accordingly, Respondent is to pay Petitioner TTD from July 29, 2011 through 5/14/13 with credit for TTD paid. ARB EX 1.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Latonya Norwood,
Petitioner,

vs.

NO. 11WC002364

Pathway Victory Center,
Respondent.

14IWCC0411

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 20, 2013 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.

14IWCC0411

11WC002364
Page 2

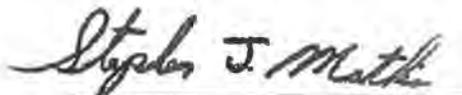
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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 \$14,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
SM/sj
o-5/1/14
44

JUN 03 2014



Stephen J. Mathis



Mario Basurto



David L. Gore

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

NORWOOD, LaTONYA

Employee/Petitioner

Case# 11WC002364

14IWCC0411

PATHWAY VICTORY CENTER

Employer/Respondent

On 3/20/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.11% 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:

0226 GOLDSTEIN BENDER & ROMANOFF
AL PETROCELLI
ONE N LASALLE ST SUITE 2600
CHICAGO, IL 60602

1454 THOMAS & ASSOCIATES
JOSEPH FITZPATRICK
300 S RIVERSIDE PLZ SUITE 2330
CHICAGO, IL 60606

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

STATE OF ILLINOIS)
)
 COUNTY OF COOK)

14IWCC0411

ILLINOIS WORKERS' COMPENSATION COMMISSION

19(b) ARBITRATION DECISION

LATONYA NORWOOD
 Employee/petitioner

Case #11 WC 2364

v.

PATHWAY VICTORY CENTER
 Employer/Respondent

An Application for Adjustment of Claim was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Robert Williams, arbitrator of the Workers' Compensation Commission, in the city of Chicago, on February 26, 2013. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

- A. Was the 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 the petitioner's employment by the respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to the respondent?
- F. Is the petitioner's present condition of ill-being causally related to the injury?
- G. What were the petitioner's earnings?
- H. What was the petitioner's age at the time of the accident?
- I. What was the petitioner's marital status at the time of the accident?
- J. Were the medical services that were provided to petitioner reasonable and necessary?

- K. What temporary benefits are due: TPD Maintenance TTD?
- L. Should penalties or fees be imposed upon the respondent?
- M. Is the respondent due any credit?
- N. Prospective medical care?

FINDINGS

- On January 8, 2011, the respondent was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship existed between the petitioner and respondent.
- On this date, the petitioner sustained injuries that arose out of and in the course of employment.
- Timely notice of this accident was given to the respondent.
- In the year preceding the injury, the petitioner's average weekly wage was \$287.00.
- At the time of injury, the petitioner was 41 years of age, *married* with no children under 18.
- The respondent agreed to pay for all the related medical services provided to the petitioner up to January 9, 2012.
- The parties agreed that the petitioner is entitled to temporary total disability benefits for 56 weeks, from January 10, 2011, through February 5, 2012, and that the respondent paid all the temporary total disability benefits for that period.

ORDER:

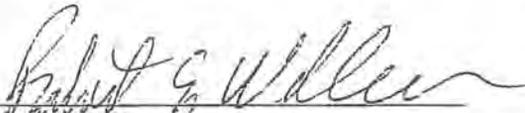
- The respondent shall pay the petitioner temporary total disability benefits of \$253.00/week for 56 weeks, from January 10, 2011, through February 5, 2012, which is the period of temporary total disability for which compensation is payable.
- The medical care rendered the petitioner through January 9, 2012, was reasonable and necessary. The respondent shall pay the medical bills in accordance with the Act and the medical fee schedule. The respondent shall be given credit for any amount it paid toward the medical bills, including any amount paid within the provisions of Section 8(j) of the Act, and any adjustments, and shall hold the petitioner harmless for all the medical bills paid by its group health insurance carrier. The petitioner's request for medical benefits after January 9, 2012, and for her headaches, right hip, right foot, bilateral forearms and carpal tunnel is denied.

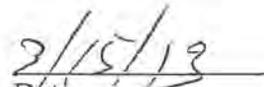
14IWCC0411

- The petitioner's request for prospective benefits is denied.
- In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of temporary total disability, medical benefits, or compensation for a 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.


Robert Williams


Date

MAR 20 2013

FINDINGS OF FACTS:

On January 8, 2011, the petitioner, a nurse's aide at an assisted-living facility, suffered an injury while assisting a resident in a shower. On January 10th, she sought emergency care at Ingalls Hospital for right lower middle back pain and aching in her right neck and arm. The triage notes indicated complaints of right neck, arm, pelvis, low back and thigh. The petitioner reported that she was assisting a resident in the shower and caught her body weight. The physician noted that she was helping a patient and the patient fell on her, and that her symptoms were mildly exacerbated by movement. X-rays of her lumbar spine, thoracic spine and ribs were negative. She was discharged with a diagnosis of back strain.

The petitioner started physical therapy on January 14th and returned frequently for additional therapy through February 29, 2012. She saw Dr. Raza Akbar of Ingalls Occupational Health on the 18th and reported pain primarily in her right neck, shoulder and back. The doctor's description of the incident was that the patient fell with all her weight on top of her. The diagnosis was back sprain/strain and cervical and low back pain. The petitioner saw Dr. Alvin Goldberg of Occupational Medical Center of Chicago on January 19th, and reported that she felt immediate low back pain while attempting to seat a patient in the shower. The doctor's assessment was acute lumbosacral, cervical, thoracic and lumbar sprain, right hip contusion and headaches. On February 15th, the petitioner saw neurologist, Dr. Jagan Mohan, whose impression was cervical sprain, low back pain and right foot pain. He continued the physical therapy and requested an MRI of her cervical and lumbar spine. Dr. Mario Garcia, a chiropractor, at Occupational Medical Center of Chicago performed a functional capacity evaluation of the petitioner on

14IWCC0411

February 25th and assessed light-physical demand ability. A lumbar MRI on March 7th revealed a 3 mm broad-based left neural foraminal/lateral protrusion at L3-4, a 3 mm central protrusion at L4-5, a right neural foraminal tear at L4-5 and a 5 mm posterior central herniation/protrusion at L5-S1.

The petitioner started pain management with Dr. Neema Bayran on March 23rd, who opined that the MRI revealed disc bulges at L3-4, L4-5 and L5-S1. His assessment was cervical strain and lumbar disc bulges at L3-4, L4-5 and L5-S1. On May 17th, the petitioner saw Dr. Sean Salehi and reported neck, low back and bilateral forearm pain. The doctor opined that the lumbar MRI showed grade II disc disease at L3-4 and L4-5, a disc bulge without neural compression at L4-5 and no significant facet arthropathy. His assessment was carpal tunnel syndrome and lumbar spondylosis. Dr. Bayran gave the petitioner lumbar transforaminal epidural steroid injections at L4-5 and L5-S1 on June 11th, which provided her about 60% relief.

A cervical MRI on August 5th revealed diffuse spondylosis with neuroforaminal narrowing at multiple levels, a 3 mm left paracentral broad-based protrusion at C5-C6 with effacement of the left ventral thecal sac, a shallow posterocentral protrusion at C2-C3 and a grade I retrolisthesis of C6 on C7. A second lumbar transforaminal epidural steroid injection by Dr. Bayran at L4-5 and L5-S1 on August 20th provided very minimal relief. On September 12th, Dr. Scott Rubinstein noted that the petitioner received some benefit from an injection into her carpal tunnel.

On October 14th, the petitioner saw Dr. Michael Malek, whose diagnosis was cervical and lumbar sprains with radiculopathy and recommendation was cervical injections and EMG tests of the lumbar spine and upper extremities. The petitioner had

right lumbar medial branch blocks at L3-4, L4-5 and L5-S1 on October 15th. A cervical EMG on October 26th showed poly neuropathy at C4-T1 bilaterally. On November 18th, Dr. Malek gave the petitioner a cervical epidural steroid injection that did not provide her any relief. On December 23rd, Dr. Malek recommended an anterior cervical discectomy and fusion at C5-C6.

On January 9, 2012, at the request of the respondent, the petitioner was evaluated by Dr. Kathleen Weber of Midwest Orthopaedics at Rush. Dr. Weber's diagnosis was nonspecific cervical pain with preexisting multi-level degenerative disc disease and spondylosis, nonspecific right wrist pain, axial back pain with preexisting degenerative disc disease and polyneuropathy. Dr. Weber opined that the objective findings did not match the petitioner's complaints, her inconsistent motor testing, cogwheeling and non-physiologic findings suggested symptom magnification and she could work as a nurse's aide in a full-duty capacity.

The petitioner followed up frequently for chiropractic care with Dr. Garcia through February 15, 2012. The petitioner would like to proceed with the fusion recommended by Dr. Malek.

FINDING REGARDING WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER ARE REASONABLE AND NECESSARY:

The medical care rendered the petitioner through January 9, 2012, was reasonable and necessary. The medical care rendered the petitioner after January 9, 2012, and for her headaches, right hip, right foot, bilateral forearms and carpal tunnel was not reasonable or necessary. The respondent agreed to pay for all the related medical services provided to the petitioner up to January 9, 2012. The petitioner's request for medical benefits after

January 9, 2012, and for her headaches, right hip, right foot, bilateral forearms and carpal tunnel is denied.

FINDING REGARDING WHETHER THE PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY:

Based upon the testimony and the evidence submitted, the petitioner proved that her current condition of ill-being with her right neck and low back is causally related to the work injury. The petitioner failed to prove that her current condition of ill-being with headaches and her right hip, right foot, bilateral forearms and carpal tunnel is causally related to the work injury. Although the petitioner's description of the incident and her injury vary with each medical provider, the preponderance of the evidence establishes that she did not fall nor did anyone fall on her and that she did not sustain a trauma to her right hip, right foot, bilateral forearms or hands.

It is clear from the evidence that as a result of supporting a patient in a shower, the petitioner strained her lumbar spine, and right shoulder and cervical region. As a result of the incident, she had pain in her right lower middle back and aching in her right neck and arm. She received conservative care for a lumbar strain and aching in her shoulder and cervical region.

The evidence is not sufficient to establish that the petitioner sustained more than a cervical sprain or a temporary exacerbation of her pre-existing cervical disease. The strain to petitioner's cervical region and lumbar spine occurred while supporting a patient with her arms wrapped around and underneath the patient's arms. There is no evidence that she sustained a direct trauma to her neck or that she jolted, struck, twisted, rotated, flexed, bent or otherwise moved her neck in such a way that would have resulted in damage or derangement at her C5 and C6 levels. The petitioner is not believable. The

opinions of Dr. Malek are not consistent with the evidence and are not supported by a medical basis. His opinions are conjecture and are not of any probative value.

FINDING REGARDING THE AMOUNT OF COMPENSATION DUE FOR TEMPORARY TOTAL DISABILITY:

The respondent shall pay the petitioner temporary total disability benefits of \$253.00/week for 56 weeks, from January 10, 2011, through February 5, 2012, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner.

FINDING REGARDING PROSPECTIVE MEDICAL:

The petitioner failed to prove that the anterior cervical discectomy and fusion at C5-C6 recommended by Dr. Malek is reasonable medical care necessary to relieve the effects of the work injury. The petitioner had pre-existing multi-level cervical problems. On January 8, 2011, the petitioner strained her cervical region and lumbar spine supporting a patient with her arms; however, the evidence does not support a direct trauma to her neck or an injury worse than a cervical strain. The petitioner's request for prospective benefits is denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Louis E. Jogmen,

Petitioner,

vs.

NO. 11WC 10049

City of Park Ridge Police Department,

Respondent.

14IWCC0412

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of accrual date of 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 2, 2013 is hereby affirmed and adopted.

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

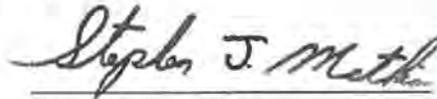
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court by Respondent.

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.

JUN 03 2014

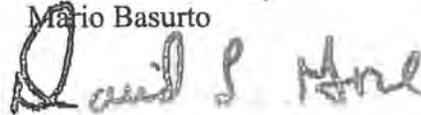
DATED:
SM/sj
o-4/17/14
44



Stephen J. Mathis



Mario Basurto



David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

JOGMEN, LOUIS E

Employee/Petitioner

Case# **11WC010049**

11WC010049

CITY OF PARK RIDGE

Employer/Respondent

On 5/2/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

1836 RAYMOND M SIMARD PC
221 N LASALLE ST
SUITE 1410
CHICAGO, IL 60601

0481 MACIOROWSKI SACKMANN & ULRICH
ROBERT B ULRICH
10 S RIVERSIDE PLZ SUITE 2290
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Louis E. Jogmen
Employee/Petitioner

Case # 11 WC 10049

v.

Consolidated cases: N/A

City of Park Ridge
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Chicago**, on **April 16, 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 Accrual Date

FINDINGS

On **May 26, 2010**, 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 as explained *infra*.

In the year preceding the injury, Petitioner earned **\$103,896.00**; the average weekly wage was **\$1,998.00**.

On the date of accident, Petitioner was **39** years of age, *married* with **3** 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 **Petitioner's Full Salary** for TTD, **Petitioner's Full Salary** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit **as agreed by the parties**. See AX1

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of \$664.72/week for 50.6 weeks, because the injuries sustained caused the 20% loss of the left arm, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$664.72/week for 60 weeks, because the injuries sustained caused the 12% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner the permanent partial disability benefits that have accrued from February 26, 2013 through April 16, 2013, and shall pay the remainder of the award, if any, in weekly payments.

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

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



 Signature of Arbitrator

May 1, 2013
 Date

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*

Louis E. Jogmen
Employee/Petitioner

Case # **11 WC 10049**

v.

Consolidated cases: **N/A**

City of Park Ridge
Employer/Respondent

FINDINGS OF FACT

The only issues in dispute are causal connection and the nature and extent of Petitioner's injury. Arbitrator's Exhibit ("AX") 1. The parties have stipulated to all other issues. AX1.

Background

Petitioner worked as a police commander for Respondent. His duties included overseeing the administrative section of the department and assisting with calls from the field as needed or that involved serious safety threats. Petitioner remains employed by Respondent as a deputy chief and he testified that, while he was promoted in title, his duties remain largely the same as in his prior position as commander.

Petitioner sustained an undisputed accident at work on May 26, 2010. AX1. On this date, Petitioner was working with another police officer to clean out his office during a department reorganization which required relocating 20-30 full filing cabinets of various sizes. Petitioner and the assisting officer used a dolly to move the cabinets and Petitioner testified that, because of his height, he performed the physical task of pulling the filing cabinets up and forward toward his body while his co-worker used a dolly to load the cabinets from underneath. Petitioner testified that this move took approximately three days and that his left shoulder and elbow started hurting, but he continued working. He further testified that, the following weekend, he was in extreme discomfort and experienced very sharp pain in his left shoulder and elbow with shooting pain radiating down his left forearm and including tingling in his fingers.

Petitioner testified that prior to his date of accident he had never injured his left shoulder or elbow and no recommendation for treatment, or actual treatment, was rendered to either before May 26, 2010. Petitioner is left hand dominant.

Medical Treatment

Petitioner testified that he saw his primary care physician, Dr. Ferber, on June 3, 2010. The medical records reflect that Petitioner reported developing left shoulder pain with decreased range of motion, left elbow pain, and difficulty sleeping after moving cabinets at work for several days. Petitioner's Exhibit ("PX") 1. Dr. Ferber examined Petitioner noting decreased range of motion in the joints with pain, and tenderness at the lateral epicondyle. *Id.* Dr. Ferber diagnosed Petitioner with left shoulder joint pain and ordered prescription steroid, muscle relaxant, and pain medication. *Id.*

On June 9, 2010, Petitioner returned reporting limited activity, use of pain medication as needed, and deep pain in the shoulder. *Id.* Petitioner underwent left shoulder x-rays and a physical examination showing continued tenderness at the lateral epicondyle and decreased range of motion in the left shoulder. *Id.* Dr. Ferber diagnosed

Petitioner with left shoulder pain and lateral epicondylitis. *Id.* Petitioner testified that Dr. Ferber administered an injection into his shoulder. *See also* PX1.

Dr. Ferber ordered a left shoulder MRI which Petitioner underwent on June 18, 2010 at Salt Creek Medical Imaging of Hinsdale. PX1. The interpreting radiologist found that the MRI showed mild supraspinatus tendinopathy, no evidence of a rotator cuff tear, and mild degenerative hypertrophy at acromioclavicular joint with resulting slight encroachment on the supraspinatus which could be associated with a clinical impingement syndrome. *Id.* On June 21, 2010, Dr. Ferber reviewed Petitioner's left shoulder MRI noting that it showed tendinitis and impingement. *Id.*

Petitioner testified that Dr. Ferber then referred him to Dr. Bresch. Petitioner had his initial visit with Dr. Bresch on July 7, 2010. PX2. He reported left shoulder and elbow pain over the previous month after moving office furniture at work over a three-day period. *Id.* He also reported continued constant pain and discomfort in the left shoulder and elbow depending on his activities, left shoulder pain localized "deep inside" the shoulder which worsened with sitting and laying down at night on the left shoulder, and stiffness in the left elbow primarily in the morning. *Id.* On examination of the left shoulder, Dr. Bresch noted full active and passive range of motion, tenderness to palpation along the long head of the left biceps tendon, tenderness along the left AC joint, and crepitus with crossover test/full flexion/abduction of the left shoulder. *Id.* On examination of the left elbow, Dr. Bresch noted tenderness to palpation along the lateral epicondylar area. *Id.*

Dr. Bresch reviewed Petitioner's left shoulder x-rays showing no significant joint space narrowing or hypertrophic changes of the AC joint with the exception of mild inferior hypertrophy appreciated along the distal clavicle. *Id.* he also reviewed Petitioner's left shoulder MRI from June 18, 2010 showing mild supraspinatus tendinopathy with no evidence of a rotator cuff tear with AC joint hypertrophic changes with mild degenerative changes. *Id.* Dr. Bresch noted that Petitioner's left shoulder pain was consistent with rotator cuff tendinitis and impingement and AC joint hypertrophic changes causing impingement of the supraspinatus tendon. *Id.* He further noted that Petitioner's left elbow pain was consistent with lateral epicondylitis. *Id.* Dr. Bresch administered injections into Petitioner's left shoulder and left elbow, prescribed various pain and anti-inflammatory medications, and ordered physical therapy for the left shoulder and elbow. *Id.* Petitioner testified that he did not go to the ordered physical therapy immediately because it was not approved by Respondent.

On August 18, 2010, Petitioner returned to Dr. Bresch. *Id.* Petitioner testified that he still had discomfort in the left shoulder radiating down his arm and into the left hand. The medical records reflect that Petitioner reported doing well with regard to the left shoulder and denied difficulty with activities and he reported feeling approximately 95% better with regard to the left elbow although his left elbow pain bothered him after certain activities particularly with grasping throughout the day. *Id.* On examination of the left elbow, Dr. Bresch noted pain and tenderness to palpation along the lateral epicondylar area. Dr. Bresch noted that Petitioner had ongoing left lateral epicondylitis despite a corticosteroid injection. *Id.* He reiterated his recommendation for an exercise program and instructed Petitioner on appropriate exercises to be performed at home. *Id.* He ordered continued anti-inflammatory medication and noted that Petitioner was to return in 4 to 6 weeks time if he had ongoing discomfort. *Id.*

On December 12, 2010, Petitioner returned to Dr. Ferber complaining of continued symptomatology in the left elbow. PX1. On examination, Dr. Ferber noted tenderness at the left lateral epicondyle. *Id.* He maintained his prior diagnosis of lateral epicondylitis. *Id.* Petitioner testified that Dr. Ferber administered an injection into his left elbow. *See also* PX1. Petitioner also testified that this was his last visit with Dr. Ferber.

Petitioner eventually underwent physical therapy between February 24, 2011 and March 17, 2011. PX2.

On May 16, 2011, Petitioner returned to Dr. Bresch. *Id.* Petitioner reported doing well with physical therapy, but ongoing discomfort in the left side of his neck. *Id.* On examination of the left elbow, Dr. Bresch noted no tenderness to palpation along the lateral epicondylar area and no pain elicited with supination or pronation of the left elbow. *Id.* On examination of the left shoulder, Petitioner had no tenderness to palpation along the long head of the biceps tendon, but significant tightness and some tenderness along the left trapezius musculature and decreased range of motion with cervical rotation and lateral flexion to the right greater than the left. *Id.* Dr. Bresch diagnosed Petitioner with left trapezius spasm with left rotator cuff tendinitis which was minimal with physical therapy and subacromial injection. *Id.* He further noted that Petitioner's left lateral epicondylitis was nearly 100% resolved. *Id.* Dr. Bresch administered an injection into the left shoulder, recommended continued elbow exercises at home, ordered physical therapy for trapezius tightness, and prescribed anti-inflammatory and pain medication to be used as needed. *Id.*

On July 13, 2011, Petitioner followed up with Dr. Bresch and reported a lot of pain lately in the left shoulder and ongoing discomfort along the front of his shoulder. *Id.* On examination of the shoulder, Dr. Bresch noted tenderness to palpation along the AC joint, a positive crossover test, and a positive empty can test with pain elicited with supraspinatus testing. *Id.* Dr. Bresch diagnosed Petitioner with left rotator cuff impingement with AC joint capsulitis, administered an injection into Petitioner's left shoulder, and prescribed narcotic pain medication to be taken at night. *Id.* He also instructed Petitioner to return on an as-needed basis. *Id.*

Petitioner testified that he sought a second opinion with Dr. Visotsky on September 2, 2011. PX3. Petitioner reported left shoulder and left elbow pain and provided a history of his medical treatment to date. *Id.* He also reported that he failed to make any progress with respect to his shoulder and that his elbow had improved 20 to 80% depending on the day. *Id.* Dr. Visotsky reviewed Petitioner's left shoulder MRI noting a partial thickness tear, acromioplasty, AC changes, joint space narrowing, and loss of AC joint space. *Id.* Dr. Visotsky examined Petitioner's left shoulder and noted pain with cross body adduction, weakness on forward flexion/abduction, and crepitation in the subacromial space. *Id.* He recommended arthroscopic subacromial decompression and rotator cuff repair with AC resection. *Id.*

Petitioner returned on September 20, 2011 reporting continued symptomatology in the left shoulder. *Id.* on examination, Dr. Visotsky noted pain on forward flexion/abduction/internal rotation, limited range of motion and pain with cross body adduction, and pain at the AC joint. *Id.* Dr. Visotsky administered injections into Petitioner's left shoulder, prescribed anti-inflammatory medication, ordered physical therapy and reiterated his recommendation for surgery. *Id.*

Petitioner underwent the recommended left shoulder surgery on October 27, 2011. *Id.* Pre- and postoperatively, Dr. Visotsky diagnosed Petitioner with the following: (1) left rotator cuff tear; (2) left subacromial decompression; and (3) left acromioclavicular degenerative joint disease with bony spurs. *Id.* Dr. Visotsky performed left arthroscopic rotator cuff repair, arthroscopic subacromial decompression, and an open acromioclavicular resection 1 cm of the distal clavicle. *Id.*

Petitioner followed up with Dr. Visotsky postoperatively on November 2, 2011 and November 9, 2011 during which time he had ongoing prescription pain medication, was placed in a sling, and kept off work. *Id.* At the latter visit, Dr. Visotsky removed Petitioner stitches and ordered physical therapy. *Id.*

Petitioner underwent 44 physical therapy sessions beginning on November 11, 2011 through April 5, 2012. *Id.* Petitioner also followed up with Dr. Visotsky on November 25, 2011 during his course of physical therapy. *Id.*

On January 3, 2012, Petitioner saw Dr. Visotsky who ordered continued physical therapy three times per week, continued anti-inflammatory and pain medications, and recommended a cortisone injection to Petitioner's lateral epicondylar area. *Id.* Petitioner testified that Dr. Visotsky discontinued the use of the sling. Dr. Visotsky's January 11, 2012 progress note reflects that Petitioner had been weaned off of narcotics and that a cortisone injection was administered into the elbow. *Id.*

On February 3, 2012, Dr. Visotsky released Petitioner to light duty work, ordered continued physical therapy three times per week, and discontinued pain medications. *Id.* Petitioner testified that he returned to desk work four hours per day until February 20, 2012 when he began working eight hours per day.

Petitioner submitted to an independent medical examination at Respondent's request on March 5, 2012 with Dr. Heller who opined that Petitioner's then-current condition of ill-being was causally related to his injury at work, that his medical treatment to that date had been reasonable, and that Petitioner was in need of some further medical treatment with regard to the left shoulder and left elbow. PX4.

Petitioner returned to Dr. Visotsky on March 6, 2012. PX3. Petitioner continued to complain of pain in his left elbow although at one point in time he noted complete resolution of his symptoms on May 11, 2011. *Id.* Dr. Visotsky's progress note does not include objective findings or reflect whether a physical examination was conducted. *Id.* Dr. Visotsky administered an injection into Petitioner's left elbow as a result of persistent symptoms, ordered a left elbow MRI to rule out a full thickness tear of the ECRB region, prescribed continued anti-inflammatory medication, and ordered continued physical therapy. *Id.*

Petitioner underwent the recommended left elbow MRI on April 3, 2012, which the interpreting radiologist noted showed a partial tear at the origin of the common extensor tendon. *Id.*

On April 13, 2012, Petitioner saw Dr. Visotsky and reported persistent left elbow symptoms. *Id.* Dr. Visotsky's progress note does not include objective findings or reflect whether a physical examination was conducted. *Id.* Dr. Visotsky reviewed Petitioner's left elbow MRI showing an ECRB tear and recommended left elbow lateral epicondylar repair, debridement, and reattachment given Petitioner's failure to respond to conservative treatment. *Id.*

On July 2, 2012, Petitioner underwent the recommended left elbow surgery with Dr. Visotsky. *Id.* Pre- and postoperatively, Dr. Visotsky diagnosed Petitioner with left lateral epicondylitis and performed a repair of the extensor carpi radialis brevis origin and lateral epicondylectomy. *Id.* Petitioner testified that he was discharged in a left arm cast.

Petitioner followed up with Dr. Visotsky postoperatively on July 6, 2012, July 11, 2012, and July 27, 2012. *Id.* At the last visit, Petitioner was removed from the cast and placed in a long arm splint. *Id.* Dr. Visotsky ordered physical therapy and scheduled a follow-up visit in one month. *Id.* Petitioner underwent five physical therapy sessions from August 6, 2012 through August 23, 2012. *Id.*

Petitioner followed up with Dr. Visotsky on August 31, 2012. *Id.* On examination of the left elbow, Dr. Visotsky noted minimal pain or discomfort, extension/flexion to 70°, and full pronation and supination. *Id.* He recommended continued physical therapy. *Id.* Petitioner testified that he did not undergo the recommended additional physical therapy because it was not approved by Respondent.

On September 25, 2012, Petitioner followed up with Dr. Visotsky exhibiting full extension and flexion as well as good progress in the shoulder. *Id.* Dr. Visotsky ordered continued physical therapy, provided a counterforce elbow brace, and returned Petitioner to full duty work. *Id.*

On December 18, 2012, Petitioner returned to Dr. Visotsky with some pain over the lateral epicondyle area and shoulder. *Id.* Petitioner reported the ability to shoot for qualification at work and perform tasks at work although he had occasional achy pain. *Id.* Dr. Visotsky prescribed continued anti-inflammatory medication and additional physical therapy. *Id.* Petitioner testified that the physical therapy was not approved.

On January 25, 2013, Petitioner returned to Dr. Visotsky reporting left shoulder and left elbow pain, nighttime pain and weakness, difficulty lifting heavy objects, occasional left elbow pain on terminal extension and with intricate duties or while performing repetitive tasks. *Id.* On examination, Petitioner exhibited tenderness in the AC and subacromial area of the left shoulder, some pain on forward flexion, normal elbow and wrist range of motion, some pain over the lateral epicondyle or area, and full extension/flexion. *Id.* Petitioner underwent left shoulder and left elbow x-rays. *Id.* Dr. Visotsky ordered a left shoulder CT arthrogram and continued conservative treatment of the left elbow. *Id.*

Petitioner underwent the recommended CT arthrogram of the left shoulder on February 21, 2013 which the interpreting radiologist noted showing an intact rotator cuff, a focal linear fissure at the junction of the posterior labrum and glenoid articular cartilage measuring approximately 1.5 cm in vertical length, a diminutive anterior labrum which might be sequelae of prior surgery, normal variant, or sequelae of chronic fraying, and a mild lateral down sloping of the acromion. *Id.*

Petitioner last saw Dr. Visotsky on February 26, 2013. *Id.*; Respondent's Exhibit ("RX") 1. He reviewed Petitioner's left shoulder arthrogram which did not reveal any recurrent rotator cuff tear but some labral changes that he believed were postsurgical. *Id.* Petitioner reported some pain and tenderness at the AC joint and some fatigue and achy pain which Dr. Visotsky noted might just be loss of endurance. *Id.* Dr. Visotsky diagnosed Petitioner with a rotator cuff tear, acromioclavicular degenerative joint disease, and lateral epicondylitis. *Id.* He ordered continued anti-inflammatory medication, released Petitioner to full workout activities, and placed Petitioner at maximum medical improvement. *Id.* Petitioner testified that Dr. Visotsky told him to come back as needed and that he was working as a police officer at this time.

Additional Information

Petitioner testified that he remains employed by Respondent as a deputy chief of police. *See also* RX2. Petitioner testified that his responsibilities are largely the same as his duties while acting as a commander, and he continues to oversee the administrative section and works inside an office unless he is required to occasionally respond to a call. Petitioner is required to pass physical condition and firearm shooting testing every year.

Regarding his current condition, Petitioner testified that he still experiences shoulder pain, elbow pain radiating into his left hand, and tingling/numbness into the little and ring fingers of the left hand. He also testified that he compensates because of this pain resulting in neck pain and that he has difficulty reaching overhead and experiences pain with movements, which he did not experience before his accident.

ISSUES AND CONCLUSIONS

The Arbitrator hereby incorporates by reference the Findings of Fact delineated above and the Arbitrator's and parties' exhibits are made a part of the Commission's file. After reviewing the evidence and due deliberation, the Arbitrator finds on the issues presented at trial as follows:

In support of the Arbitrator's decision relating to Issue (F), whether the Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:

The record reflects objective medical evidence that Petitioner's left shoulder and left elbow conditions were solely caused by the injury sustained at work on May 26, 2010 and not any preexisting condition or intervening injury. Petitioner testified that he had no prior condition or injury to the left shoulder or elbow, which is corroborated by the medical records and was uncontroverted at trial. The Arbitrator finds Petitioner's testimony at trial to be credible based on the consistency of Petitioner's testimony with documentary evidence submitted at trial and Petitioner's demeanor at trial. Additionally, Respondent's Section 12 examiner found a causal connection between Petitioner's left shoulder and left elbow conditions and his injury at work and he recommended further medical treatment, which Petitioner underwent thereafter. Based on all of the foregoing, the Arbitrator finds that Petitioner's left shoulder and left elbow conditions of ill-being are causally related to the injury sustained at work on May 26, 2010.

In support of the Arbitrator's decision relating to Issue (L), the nature and extent of Petitioner's injury, the Arbitrator finds the following:

Based on the record as a whole, which reflects conservative medical treatment related to the left elbow followed by surgery including a lateral epicondylectomy and repair of the extensor carpi radialis brevis origin followed by physical therapy and a return to full duty work with minimal, but lingering, symptomatology in Petitioner's dominant arm, the Arbitrator finds that Petitioner has established permanent partial disability to the extent of 20% loss of use of the left arm pursuant to Section 8(e) for the injury sustained to left elbow.

Additionally, the record reflects that Petitioner underwent conservative medical treatment related to the left shoulder followed by arthroscopic surgery including a rotator cuff repair with subacromial decompression and an open acromioclavicular resection followed by physical therapy and a return to full duty work with minimal, but lingering, symptomatology in Petitioner's dominant arm, which the Arbitrator finds establishes Petitioner's permanent partial disability to the extent of 12% loss of use of the person as a whole pursuant to Section 8(d)(2) for the injury sustained to the left shoulder in accordance with *Will County Forest Preserve District v. IWCC*, 2012 Ill. App. LEXIS 109. Should the holdings in *Will County Forest Preserve* pertinent to this case be reversed, modified, or overruled by statutory amendment, or if other applicable law allows an award for loss of use of the arm, then the Arbitrator notes that this award is equivalent to 23.72% loss of use of the left arm pursuant to Section 8(e) of the Act.

In support of the Arbitrator's decision relating to Issue (O), accrual date, the Arbitrator finds the following:

At trial, the parties raised a dispute regarding the accrual date of Petitioner's permanent partial disability benefits. See Arbitration Hearing Transcript. Petitioner argues that the accrual date is when Petitioner's temporary total disability benefits ceased on July 26, 2012. Respondent argues that the accrual date is when Petitioner reached maximum medical improvement on February 26, 2013; the Arbitrator agrees. Respondent cites to *Edmonds v. Continental Tire North America*, 09 IWCC 1249, 2009 WL 4894410 (November 24, 2009)

for the proposition that permanency benefits begin to accrue on the date that a claimant reaches maximum medical improvement rationalizing that permanent disability, if any, can only begin after temporary disability ends.

In this case, the parties stipulated that Petitioner's temporary partial disability benefits and then his temporary total disability benefits ended on July 26, 2012 during which time Petitioner received his full salary. *See* AX1. However, the record reflects that Petitioner continued to undergo physical therapy and that he followed up regularly with his treating physician through February 26, 2013 at which time he placed Petitioner at maximum medical improvement. No physician placed Petitioner at maximum medical improvement before this date and, thus, there is no medical evidence establishing that the permanent nature of Petitioner's left shoulder and left elbow conditions had begun before February 26, 2013 regardless of when Petitioner's temporary total disability benefits ceased. Based on all of the foregoing, the Arbitrator finds that the accrual date of Petitioner's permanency benefits is February 26, 2013.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Arthur Hrvatin, Jr.

Petitioner,

vs.

NO. 07WC 51592

14IWCC0413

Interstate Scaffolding,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 9, 2013 is hereby affirmed and adopted.

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

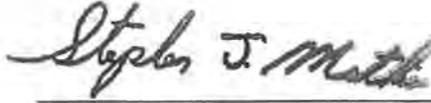
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$55,500.00.

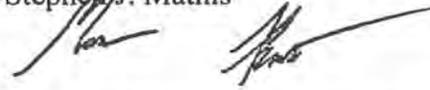
14IWCC0413

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

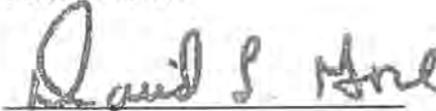
DATED: JUN 03 2014
SM/sj
o-4/24/14
44



Stephen J. Mathis



Mario Basurto



David L. Gore

NOTICE OF ARBITRATOR DECISION

HRVATIN, ARTHUR, JR

Employee/Petitioner

Case# 07WC051592

14IWCC0413

INTERSTATE SCAFFOLDING

Employer/Respondent

On 7/9/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

2122 McNAMARA PHELAN McSTEEN LLC
BRIAN CISHON
3601 McDONOUGH ST
JOLIET, IL 60431

1860 CACCHILLO LAW GROUP LLC
JAMES WEILER
180 N LASALLE ST SUITE 2850
CHICAGO, IL 60601

STATE OF ILLINOIS

COUNTY OF WILL

147th CC0413

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Arthur Hrvatin, Jr.
Employee/Petitioner

Case # 07 WC 51592

v.

Consolidated cases: _____

Interstate Scaffolding
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **Geneva (New Lenox case)**, on **February 1, 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 _____

FINDINGS

14IWCC0413

On **June 9, 2005**, 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 **\$69,992.00**; the average weekly wage was **\$1,346.00**.

On the date of accident, Petitioner was **47** years of age, *married* with **1** 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

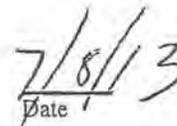
Respondent shall pay Petitioner permanent partial disability benefits of **\$567.87/week** for **75** weeks, because the injuries sustained caused the **15%** loss of the person as a whole, as provided in Section 8(e) of the Act.

Respondent shall pay reasonable and necessary medical services of **\$12,845.28**, as provided in Section 8(a) 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


Date

JUL 9 - 2013

14IWCC0413

FINDINGS OF FACT:

Petitioner testified that on the hearing date he was 55 years old, unmarried with 5 children. On the alleged accident date of June 9, 2005 he was employed by Respondent, working at the Citgo refinery, in Lemont, Illinois. He was employed there as a union carpenter and had been so employed for 31 years. Petitioner provided that on the accident date, he was in good health and he was building scaffold for the purpose of wind and rain protection around the coker unit on drum number 1. Petitioner provided that while building this scaffold he was required to wear a full safety harness that hooked around his chest, waist and each leg. Petitioner testified that while moving from one part of the scaffold to the other, a hook on the back of the harness became caught on a bolt. When the hook became caught, it pulled him in the opposite direction causing him to jar himself. Petitioner stated that he immediately felt lower back pain that he described as a tingling sensation in his lower back and glute – like needles. This pain was unlike any type of back pain that he had ever experienced previously. Petitioner testified that he reported this injury as it happened to his supervisor, Adam Medlin, who was the general foreman/superintendent.

Petitioner testified that he treated his immediate pain complaints by putting some ice on the injured area and finished his work that day. Petitioner testified that he did not seek immediate medical treatment because he initially thought that the pain would go away. Petitioner provided that after a few days it did not subside. As a result, he sought medical treatment with a chiropractor, Dr. Becker, on June 13, 2005. At the time of this visit he described pain complaints to his lower back and glute, as well as his hamstring on his left side. (PX A) Petitioner testified that he had previously seen chiropractors and had sought medical treatment for pain and tightness in his back which included the filing of some previous workers' compensation claims. Petitioner indicated that any pain complaints he had from these prior episodes had been completely resolved at the time of this injury. He had never experienced any type of tingling or radiating pain in his back prior to this accident. At the time of this accident, he was not actively seeing any doctors for back pain and any prior pain complaints had been completely resolved.

Petitioner next sought medical treatment at Will County Medical Associates on June 22, 2005. Petitioner provided a history that “[o]n the 9th of June he was trying to “get through a small opening” between a beam and vessel and he developed some discomfort in his lower back.” His complaints were pain radiating to the left buttocks, posterior aspect of the left thigh and posterior left calf. Petitioner was diagnosed with probable lumbar radiculopathy. A MRI was ordered and it was noted that Petitioner was returned to unrestricted work per his request. (PX B)

Petitioner underwent a MRI on June 25, 2005 which demonstrated 1.) multiple dehydrated and narrowed disc bulges at L2-3 and L3-4; 2.) at L4-5 there was a very prominent disc bulge that was more prominent to the left of midline causing severe central, mild right foraminal, and severe left foraminal stenosis; and 3.) at L5-S1, a broad-based left sided disc herniation was present with what appeared to be a extruded disc fragment with the extruded fragment impinging on the left side of the thecal sac and impinging on L5-S1 nerve root sheath. (PXB)

Petitioner returned to Will County Medical Associates on June 29, 2005. At that time Petitioner was referred to Dr. De Phillips, a neurosurgeon. He was also returned to restricted work. (PX B)

Petitioner first saw Dr. DePhillips on July 8, 2005. The medical records from Dr. DePhillips's initial visit reference a 2002 accident date. Handwritten notes dated July 8, 2005, show that “2002 -Feb.-reaching over skid – went into a diving position on ice. Supervisor – Gary Medlin had him go into trailer – Iced back for 2 weeks – no work. Did not want refinery to find out about injury. Had 2 similar occurrences over last 3 years.” (PX C)

When asked about this entry in Dr. DePhillip's records, Petitioner stated that he went to see Dr. DePhillips for the purpose of treating the injuries he sustained from his June 2005 injury. Petitioner stated that he did pull his back and had a muscle spasm there in 2002. At this visit, Dr. DePhillips recommended an injection. (PX C) Petitioner testified that he did not follow through with this treatment because of the possible headache side effect of the injection as well as the possibility of time off work.

Petitioner's next visit with a medical provider occurred on August 10, 2006 when he sought chiropractic treatment from Becker's Family Chiropractic Center. (PX A) When asked why he didn't seek treatment for over a year, Petitioner stated that his pain would come and go and that he managed it because he couldn't afford to miss work. Petitioner indicated that the character and nature of his pain was consistent and remained in his lower back, glute and hamstring on the left side from his accident date. Petitioner indicated that when the pain became difficult at work, he was allowed to take some time to ice his back in the work trailer. He would follow this course up to three times a month. After problematic work days he would go home and treat his pain complaints with ice. Petitioner provided that at the time of his August 10, 2006 visit, the pain was now radiating into his left calf. He indicated that the character and nature of the pain was the same as the pain he had experienced from his accident date. Petitioner stated that he was put on a work restriction not to climb ladders, which was accommodated by his employer. Petitioner went through a series of appointments from August 10, 2006 to October 23, 2007 with Becker Chiropractic. (PX A)

Petitioner continued to work at the Citgo location until August of 2007. In that time frame Interstate Scaffolding was purchased by another company. Petitioner was then moved to Exxon/Mobile until October of 2007. After this he obtained employment installing tiles at Jewel food stores. Petitioner indicated that this work was very easy and light and described the job as a nice job before he retired. While working at Jewel he experienced the same type of pain, but since it was an easier job than he had worked before it allowed him to handle the pain more effectively.

Petitioner returned to Dr. DePhillips on November 7, 2007. Petitioner testified that he did so because he couldn't stand the pain in the left side of his body anymore and because it had travelled to his left heel. Dr. DePhillips reported that "...[Petitioner] saw me in July 2005 following a re-injury that occurred at work on June 6, 2006. (The Arbitrator notes that the June 6, 2006 reference appears to be a typographical error as handwritten notes show "Reinjury June 6, 2005.") He was sliding between a beam and a coke can when he twisted his lower back. He has developed progressively worsening lower back pain radiating into the left lower extremity primarily left buttock, posterior thigh and calf to the ankle." Dr. DePhillips ordered a MRI and work restrictions. (PX C) Petitioner testified that Dr. DePhillips also recommended injections.

Petitioner testified that he agreed to proceed with the injections. Petitioner indicated that he chose to have the injections performed this time because he was close to retirement and the pain was becoming worse. Since he was going to retire in December of 2007, he was trying to make it through to his retirement date without having to miss work.

Petitioner next saw Dr. DePhillips on June 23, 2008. Dr. DePhillips noted that Petitioner had been symptomatic since a re-injury at work on June 6, 2005. Petitioner's symptoms consisted of pain shooting from the left buttock down the posterolateral thigh to the knee as well as pain and tightness in the left calf. Dr. DePhillips noted the previously prescribed MRI took place on June 19, 2008. When compared to the MRI taken on June 25, 2005, Dr. DePhillips noted the herniated disc at L5-S1 had worsened in terms of size and severity of nerve root compression which the doctor felt correlated with Petitioner's progressively worsening pain. Dr. DePhillips diagnosed herniated L5-S1 left side, left S1 radiculopathy with absent left ankle reflex secondary to work related injury in 2005 which has progressively worsened. The doctor recommended a series of epidural steroid injections. Also noted was a discussion regarding surgery. (PX C)

Petitioner testified that consistent with Dr. DePhillips recommendation, he saw Dr. Sharma for the injections. Records submitted show that on June 25, 2008, Petitioner was seen by Dr. Sharma of the Pain and Spine Institute. Dr. Sharma noted that the event which precipitated Petitioner's complaints of pain was lifting heavy equipment while at work. The doctor also noted that the date of injury occurred early 2005. Dr. Sharma ultimately performed transforaminal epidural injections on July 3, 2008. (PX D.)

Petitioner testified that he sought treatment at Loyola University on July 8, 2008. Petitioner provided that he could not stand the pain any longer and was having difficulties related to his left leg shaking. Records show Petitioner "presents with a month long history of low back pain that had been treated chiropractor up until 2005. In late 2005 patient had an injury to his back where he had pain shoot down his legs bilaterally to his heels. The patient sought conservative care management for intermittent flare-ups including pain medication, rest, and some chiropractor treatments." Petitioner also complained of left hamstring pinching, cramping left calf and parathesias in the left foot. Surgery was recommended. (PX E)

On July 11, 2008, Petitioner underwent a L5/S1 micro diskectomy on the left. The postoperative diagnosis was L5/S1 disk herniation. (PX E)

Petitioner testified that after the surgery, he had an almost immediate relief of his left-sided pain symptoms. Petitioner performed home exercises after the surgery and had no further medical visits.

Petitioner testified that since his accident date of June 5, 2005, he had no other accident involving his back that would have given him back pain. Since his accident date he never felt any type of relief of his initial back pain. Petitioner provided that all of his medical bills were paid by his union insurance plan. Petitioner did not miss any time off work and did not have any out-of-pocket expenses. Presently, Petitioner is retired and he no longer water skis, snow skis or snowboards. Prior to his injury he used to participate in these activities and no longer does them wanting to avoid the pounding on his back.

Petitioner testified that during the entire course of his treatment, he continued to work. He testified to a divorce decree from 1997 that gave him full custody of his 5 children. He was not receiving any support and was entirely responsible for all of his kids' needs and expenses, including putting them all thorough school. Petitioner also maintained a gym membership throughout this time period. He provided that he was able to use certain therapeutic modalities at the gym, such as whirlpools that would ease his pain.

In support of the Arbitrator's decision relating to disputed issue (C) whether an accident arose out of and in the course of petitioner's employment by the respondent, (E) whether timely notice of the accident was given to respondent, (F) whether petitioner's condition of ill-being is causally connected to the injury, (J) whether medical services provided to the petitioner were reasonable and necessary, (L) what is the nature and extent of the injury, and (N) is respondent due any credit, the Arbitrator finds as follows:

Having heard the testimony of Petitioner and having reviewed the exhibits offered, the Arbitrator finds that Petitioner sustained an accident that arose out of and in the course of his employment with Respondent on June 9, 2005. The testimony of Petitioner regarding his accident is unrebutted and corroborated by the initial medical records and visits to Becker Chiropractic and Will County Medical Associates. Both of these medical providers note that Petitioner described a recent injury to his back while working on scaffolding. Similarly, Petitioner's testimony that he immediately told his supervisor Adam Medlin is also unrebutted. Respondent has offered no testimony or evidence that would dispute this fact. Because of these reasons, the Arbitrator finds the testimony of Petitioner is credible and supported by the medical record that he did sustain an injury that was properly reported to Respondent.

Having deemed this to be a compensable accident, this Arbitrator will now discuss the treatment received by Petitioner to treat this injury. It is noted that the treatment received by Petitioner has substantial gaps and no lost time off work over a period of almost 3 years. Despite this the Arbitrator finds Petitioner's reasoning and explanation of his treatment regimen persuasive. Petitioner's testimony that he continued working at all cost as he was the sole provider for 5 kids, receiving nothing in support and being responsible for the tuition at 5 schools is compelling. This combined with the fact that Petitioner used conservative treatment modalities to control flare ups of pain both on the job and at home explain why Petitioner may not have sought medical treatment in a more linear fashion. The fact that Petitioner waited until he could no longer take the pain and that he made it to his retirement/pension date before obtaining this surgery is consistent with his testimony that he was trying to avoid losing time from work.

Of particular significance in making this determination that the medical treatment claimed by Petitioner is all related to the initial accident date is his testimony regarding the character and nature of his pain. It is not disputed that Petitioner had previous pain to his back involving prior medical treatment and at least one prior workers' compensation claim. However the prior back pain was characterized as being localized in Petitioner's lower back. Also, Petitioner testified that he was in good health at the time of his accident and was not actively treating medically for any back ailment. Unlike this accident, Petitioner had not experienced any type of radiating pain.

Petitioner's testimony was that this injury caused him to experience a radiating pain that began in his lower back as a tingling sensation and into his left glute. This pain continued to radiate and travel to his thigh, calf and foot. The character and nature of this pain did not ever change from the accident date. These radiating pain complaints are corroborated in the medical record.

The only medical record that is inconsistent with Petitioner's testimony is that of Dr. DePhillips where he indicates that Petitioner told him of a work injury from February of 2002. When asked of this, Petitioner stated that the note was inaccurate, "because I was there for what happened in June of that year." He also stated that he was not afforded an opportunity to review the medical note from the doctor. Petitioner testified that he was there to see Dr. DePhillips for the radiating pain he suffered from the 2005 accident. The fact that Dr. DePhillips may not be a good historian should not be held against Petitioner. It can be pointed out that Dr. DePhillips recordkeeping is also suspect in the office note of November 7, 2007. In that note the doctor indicates that he had seen Petitioner in July 2005 following an injury that occurred on June 6, 2006. This is an obvious typographical/notetaking error as handwritten notes show a date of June 6, 2005. Also, in Dr. DePhillips note from June 23, 2008 he references a work injury from June 6, 2005. In 3 office notes, Dr. DePhillips references 3 different accident dates. These scrivener's errors are not dispositive that any claims that Petitioner was not injured as he testified.

Lastly, because the Arbitrator finds that the accident is compensable and that all of Petitioner's treatment through his surgery is causally connected to the accident, the Arbitrator also finds that Respondent is responsible for repayment of the money paid by Petitioner's union for the medical bills. Petitioner testified that he ran all of his treatment through insurance and submitted an itemization of amounts paid by his union in the amount of \$12,845.28. Respondent has alleged that it is entitled to a credit for these expenses, but offers no evidence as to why. Respondent has not produced any union contract that describes what, if any obligations the employer has for payment of medical insurance premiums, nor has Respondent offered any evidence of what it may have paid in premiums for this Petitioner. There has been nothing presented that allows this Arbitrator to determine if a credit is allowable under Section 8(j). It is the burden of the employer to prove that it is entitled to credits under the Act. Having failed to introduce any such evidence, Respondent has failed to meet this burden and therefore no credit shall be allowed under Section 8(j) of the Act.

Petitioner testified that he felt relief after his surgery and that it resolved his pain complaints. Prior to his accident, Petitioner participated in snow skiing, snowboarding, and water skiing. Presently he does not participate in those activities as he does not feel that his back could take the pounding on it. Petitioner is currently retired from being a union carpenter and is no longer an active member of the workforce.

Based upon the analysis above, the Arbitrator finds that Petitioner did sustain a compensable injury under the Workers' Compensation Act that was properly and timely reported to his employer. The claimed medical treatment was reasonable and necessary and was related to the instant accident. Because of this and because of the permanent nature of the injury, this Arbitrator awards and finds that Petitioner sustained a loss equal to 15% of a person as a whole. The Arbitrator further finds that Respondent shall pay the sum of \$12,845.28 for repayment of medical expenses.

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input checked="" type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gary Ferrari,
Petitioner,

vs.

NO: 10 WC 38442
12 WC 34688

United Parcel Service,
Respondent.

14IWCC0414

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical, temporary total disability and permanent partial disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

In regard to 10 WC 38442, the Commission affirms the Arbitrator's decision in total.

In regard to 12 WC 34688, the Commission supplements the conclusion of law section of the decision. The Commission finds that the evidence shows that Petitioner testified that on August 12, 2012 at approximately 2:30 p.m. he was crouched down, inspecting a trailer with John Hammons, his supervisor. After he inspected the trailer he frog walked backwards, went to stand up and felt his left hip pop. Petitioner's supervisor, who was with Petitioner at the time of the alleged August 12, 2012 accident and was there to "check-up" on Petitioner's work that he had performed earlier that day, testified that Petitioner didn't report an accident at the time of the alleged event. Additionally Mr. Hammons testified, while Petitioner drove a vehicle back to the office and he rode along in the same vehicle, Petitioner did not report that he sustained an accident that day. Nor did he observe Petitioner at any time after the alleged occurrence limping, grimacing or having any kind of pain complaints. Yet, at the end of the day when Petitioner was leaving, Petitioner reported an accident. The next day Petitioner reported that his pain was similar to his prior injury which he had been previously receiving treatment related thereto. The medical records further show that the treatment Petitioner received after August 12, 2012 was the

14IWCC0414

same type of treatment Petitioner had already been receiving leading up to the alleged August 12, 2012 accident. As such the Commission affirms the Arbitrator's decision that the evidence supports a finding that Petitioner failed to prove he sustained an accidental injury arising out of and in the course of his employment on August 21, 2002 and that the alleged August 21, 2012 accident resulted in a continuation of Petitioner's ongoing treatment for the injuries related to the alleged September 14, 2010 accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that since Petitioner failed to prove he sustained accidental injuries arising out of and in the course of his employment on August 21, 2012 his claim for compensation is hereby denied.

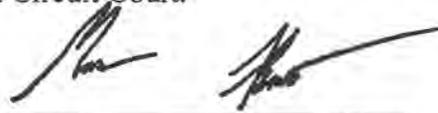
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 05 2014

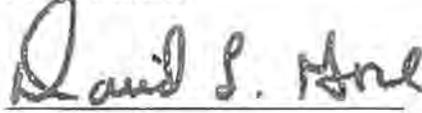
MB/jm

O: 5/1/14

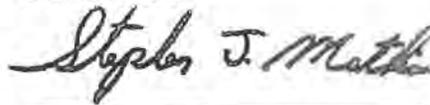
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Mario Basurto



David L. Gore



Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

FERRARI, GARY

Employee/Petitioner

Case# **10WC014905**

10WC038442

12WC034688

UNITED PARCEL SERVICES INC

Employer/Respondent

14IWCC0414

On 5/30/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

0328 LEWIS DAVIDSON & HETHERINGTON
RICHARD SHOLLENBERGER
ONE N FRANKLIN ST SUITE 1850
CHICAGO, IL 60608

2284 LAW OFFICES OF LAWRENCE COZZI
MARK ZAPT
27201 BELLA VISTA PKWY STE 410
WARRENVILLE, IL 60555

14IWCC0414

STATE OF ILLINOIS)

)SS.

COUNTY OF DuPage)

- 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

Gary Ferrari

Employee/Petitioner

v.

United Parcel Services, Inc.

Employer/Respondent

Case # 10 WC 14905

Consolidated cases: 10 WC 38442

12 WC 34688

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 **Carolyn Doherty**, Arbitrator of the Commission, in the city of **Wheaton**, on **April 11, 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 _____

FINDINGS

On April 1, 2010, 9/14/10 and 8/21/12 Respondent *was* operating under and subject to the provisions of the Act.

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

On April 1, 2010, Petitioner *did* sustain an accident that arose out of and in the course of employment. Petitioner did not sustain an accident that arose out of and in the course of employment on 9/14/10 and 8/21/12. SEE DECISION

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 \$45,880.89; the average weekly wage was \$1,194.81.

On the date of accident, Petitioner was 49 years of age, *married* 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. SEE Parties' stipulation at ARB EX 1.

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 under Section 8(j) of the Act and for medical expenses previously paid by Liberty Mutual per the May 17, 2013 stipulation of the parties attached to ARB EX 1.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$796.54/week for 6-1/7 weeks, commencing April 12, 2010 through May 24, 2010, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, the amount of \$155.69 for services of April 8, 2010; of Midwest Orthopaedic Institute in the amount of \$3,040.00 for services from April 12, 2010 through May 28, 2010, and of Rice Chiropractic Life Center in the amount of \$140 for services from June 4, 2010 through June 9, 2010, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$664.72/week for 10 weeks, because the injuries sustained caused the 2% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Based on the Arbitrator's findings in the attached Decision, no benefits are awarded in cases 10 WC 38442 and 12 WC 34688.

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

Date

FINDINGS OF FACT

Petitioner, a 49 year old mechanic for Respondent UPS, began working for Respondent in 1998. At trial, Petitioner alleged three separate dates of injury. Respondent disputes accident in all three cases.

Petitioner alleges his first date of injury as 4/1/10. On that day, Petitioner was working in a bay area installing a spring in a UPS truck. Petitioner testified that he was lying down on a creeper under the left front corner of the truck. His hands were above his chest while lifting the spring. Petitioner testified that the spring was heavy and that he felt a pain in his back above the left hip area while lifting the spring in this position. Petitioner testified that he finished the job and his shift and that he was still in pain at the end of his shift. Petitioner testified that he did not recall whether he reported the accident on 4/1/10 but did testify that he called his senior supervisor, Mike Gallerath, the next day from home to report the incident. The parties stipulated to proper notice. ARB EX 1.

Respondent called 2 witnesses to testify regarding the 4/1/10 accident. Mike Leyesa has worked 13 years for Respondent as the automotive fleet supervisor. He was Petitioner's manager on 4/1/10. The witness testified that he did not learn of the 4/1/10 workplace injury on the day it occurred. He testified that he learned of the accident several days after it occurred and that he was "shocked" to hear that Petitioner was injured because he "fine" at work after 4/1/10. Mr. Leyesa testified to having a conversation with Petitioner on 4/1/10 about the early start time policy at UPS and that he advised Petitioner on that day that he could not allow Petitioner to work the early start schedule. Mr. Leyesa prepared a memo dated 4/9/10 after he learned of the accident. In the memo he noted that on 4/1/10 he had a discussion with Petitioner about the repairs he was performing and that he would no longer be able to accommodate Petitioner's late start requests. He further noted that at no time during the conversation did Petitioner mention being injured during his shift and that Petitioner did not appear injured during the conversation. Mr. Leyesa noted that he also talked to Petitioner the next day 4/2/10 and that Petitioner did not mention a work injury the day before and showed no signs of being injured when observed completing his work duties on 4/2/10. RX B.

On cross, Mr. Leyesa testified that he did not have any notes about his 4/1/10 late start conversation with Petitioner and that the information in the memo was from memory. Petitioner denied ever having a conversation with MR. Leyesa concerning his ability to "late start."

Mike Gallerath testified in his capacity as Petitioner's day supervisor. He testified that he received a call from Petitioner about 4 or 5 days after the accident and that Petitioner advised him the he injured his back installing a spring on the previous Friday. Petitioner advised him that another worker, Dave Lafortune told him there was an easier way to do the spring job and that co-worker Steve Chmielewski was also helping on the spring job. However, Mr. Gallerath testified that he checked the 4/1/10 time card for Steve Chmielewski and that it does not reflect that Steve was working on the same truck with Petitioner that day. He also checked Dave Lafortune's time card and that it does not reflect that he worked on the same truck as Petitioner. RX C. Mr. Gallerath further testified that it was possible that Petitioner simply had conversations with these co-workers and that such conversations would not be reflected on the time cards.

On 4/8/10, Petitioner went to UPS AIM company clinic where he reported the accident of 4/1/10. He offered a consistent history of injury in that he felt a pull in his back while laying down installing a spring.

He stated that his back was stiff on the day of accident and then became progressively more painful and worse with movement. Petitioner was placed on light duty sitting job with no lifting over 5 pounds. He was given pain medication as well. PX 1.

On 4/12/10, Petitioner saw his treating physician Dr. Bodner complaining of low back pain with radiation to this left posterior thigh since 4/1/10 after lifting a metal spring at work. Dr. Bodner noted that "the next day he could barely walk with severe pain on the left side." At the 4/12/10 exam Dr. Bodner noted pain complaints from 2 to 8/10 and a range of motion limited by pain which was worse when seated, bending, or twisting. Petitioner also complained of some numbness in his posterior thigh. Petitioner reported a prior L5 bulging disc problem which improved with PT. Dr. Bodner diagnosed spondylosis pain with some sciatic component. Physical therapy was ordered along with continued medication including Flexeril and Darvocet. A seated position was not appropriate due to his pain when seated so Dr. Bodner took him off work while he attended PT and pending a follow up appointment. PX 2. Dr. Bodner released Petitioner to modified duty on 4/30/10 and full duty on 5/24/10. PX 2. At Petitioner's last visit to Dr. Bodner on 5/21/10, Dr. Bodner noted a normal exam with overall improvement and some residual pain in the right mid buttock. Overall, Petitioner's condition improved. Petitioner attended 10 PT sessions from 4/13/10 through 6/8/10 when he was discharged at his request due to conflicts between his work schedule and the PT appointments. PX 2. The last PT record dated 6/8/10 notes Petitioner was to continue home exercises to further increase core strength and range of motion. It was noted that Petitioner had not met long term goals at the time of the last session. Petitioner testified that although his pain level decreased with PT, he continued to have pain and stiffness in his back when he returned to regular duty work. PX 2.

Petitioner worked full duty from May 2010 until his second accident date of 9/14/10. Petitioner testified that on that day he was working the same shift and noticed the same pain in his back at the start of his shift. Petitioner testified that during his shift he was moving and lifting a box out of a truck inside the shop with a co-worker, Terry Kimmel. Petitioner testified that the box was bulky, long and wide and that he needed the help of a co-worker to get the box out of the truck. Petitioner testified that he reached into the truck and twisted at the waist while moving the box with his co-worker and felt a pop in his left hip. Petitioner testified that he had no prior problems or treatment for his left hip. Petitioner testified that he reported this accident to Mike Leyesa. Petitioner further testified that he was in pain and slightly limping after this accident.

Wayne Moore testified as Petitioner's fleet supervisor on 9/14/10. He testified that he observed Petitioner on 9/14/10 after the accident and that Petitioner "walked fine." He further testified that Petitioner was not limping when he observed Petitioner and that Petitioner "seemed fine" when they discussed the accident in Mr. Moore's office. Mr. Moore testified that the accident report was likely prepared by Mr. Leyesa. Finally, the witness testified that he considers Petitioner to be a difficult employee at times.

RX D is a video of Petitioner and the accident of 9/14/10. The video was watched by all parties at trial and the parties stipulated that the video was taken on 9/14/10 and that it depicts Petitioner lifting the box out of the truck with his co-worker. The Arbitrator viewed the video both at trial and thereafter. The Arbitrator notes that Petitioner is seen handling the box. The video does not depict any obvious twisting maneuver or painful hip gestures. Petitioner is seen moving and walking quickly in the video before and after handling the box.

On 9/14/10, Petitioner was sent to Advanced Occupational Medicine Specialists per his supervisor. The 9/14/10 history contained in the Advanced records reads, "He states that he was lifting a heavy box from the floor of a truck at 4:30 pm on September 14, 2010, when he felt a "pop" sensation in his left hip. He states that he now experiences radiation down the left leg into this left heel and ball of his left foot. He denies any form of a back injury and has no history of back injury in the past. He is able to ambulate with a minimal limp." PX 4. Left hip x-rays were negative and Petitioner was diagnosed with left trochanteric bursitis and left hip pain. Petitioner was placed on modified duty and given exercise to perform at home. Petitioner received a left hip injection on 9/20/10 and a lumbar MRI was recommended on 9/24/10 to evaluate for L2 spondylolysis and herniated disc. PX 4. On 10/1/10, Petitioner underwent the lumbar MRI which showed a disc protrusion at L1-2 on the right, L2-3 central to left sided disc protrusion, L3-4 far left lateral disc protrusion, L4-5 small diffuse disc bulge, L5-S1 central disc protrusion with an annular tear. Some foraminal stenosis was noted at each level and mild to moderate central canal stenosis was noted at L1-2 and L2-3. PX 5. Petitioner had worked light duty to that point but was not provided light duty thereafter.

On 10/7/10, Petitioner returned to Advanced Occupational Medicine and was sent to Midwest Orthopedics for an epidural injection. On 11/3/10, reported sharp left hip pain radiating from his buttock down his left into his foot with resulting pain at the bottom of his foot. Petitioner was examined and it was noted that his complaints were "quite vague" and diffuse. PX 2. Dr. Jain reviewed Petitioner's MRI and left hip x-rays noting a diagnosis of low back and left leg pain. Dr. Jain writes, "I am unsure as to the etiology of his discomfort. His symptoms are quite diffuse. His exam does not match the picture that his MRI is painting as well as symptomology. I would like for him to undergo evaluation by a spine surgeon for their thoughts on definitive management of this." Petitioner was referred to Dr. Roh at the Rockford Spine Center. Petitioner was kept off work in the interim. PX 2.

Petitioner saw Dr. Roh on 12/7/10. Again, Petitioner complained of pain in the left buttock and anterior thigh stopping at the knee and some pain in the posterior left leg. Petitioner rated his pain at 6/10. Dr. Roh reviewed the MRI and determined that Petitioner had a "likely left L3 radiculopathy secondary to both L2-3 and L3-4 herniated discs and left sided greater trochanteric bursitis." He sent Petitioner back to physical therapy and prescribed L2-3 injections. PX 6. Petitioner was sent to Dr. Arnold at the Kishwaukee Pain Clinic for the injections. On 12/23/10, Dr. Arnold noted that Petitioner had left sided buttock pain and anterior thigh pain starting at work when he twisted to the right and felt a pop in his left hip area. Petitioner underwent lumbar epidural injection on 12/30/10 and 1/13/11 at Midland Surgical Center per Dr. Arnold. PX 8. On 1/27/11, Dr. Arnold noted that the injections resulted in great improvement and that the radiating left leg pain was gone. PX 7. Petitioner was to complete physical therapy. Petitioner continued with PT at Northern Rehab through 5/12/11 at which time the PT notes indicate he had been released to return to work. PX 9. Petitioner testified that he was released to regular duty work by Dr. Roh.

On 8/15/11, Petitioner returned to Dr. Arnold who noted that Petitioner returned after "doing very well from a series of left L2-3, L3-4 transforaminal epidural injections for which his back pain is now completely alleviated. He does come here for follow up for continued hip pain." On exam Petitioner showed reproducible pain over the left greater trochanteric bursa which was the source of his pain. Petitioner was prescribed a left hip injection. Petitioner received three injections into his left hip between 8/15/11 and 8/16/12 and was continued on opioids (Norco) per Dr. Arnold during this period. PX 7. As

of his last injection on 8/15/12, Petitioner had a follow up visit at the pain clinic with Dr. Arnold scheduled for 9/13/12.

Approximately one week following his last left hip injection, Petitioner alleges he was at work on 8/21/12 working the day shift from 7 am to 3:30 pm. Petitioner testified that he worked in the shop and in the yard on that day. Specifically, he testified that while in the red tag area inspecting a trailer with his supervisor John Hammon. Petitioner testified that he was crouched under the trailer with a flashlight for about 3 to 5 minutes and that he "frog walked" back out from under the trailer. Petitioner testified that he stood up and felt his left hip pop. Petitioner testified that he was under the trailer to perform a regular maintenance checks on the truck and that these checks are performed two to four times per day to determine necessary repairs. Petitioner testified that he finished the work day on 8/21/12 but noticed that by 3:30 pm he could barely walk out to his car 50 feet away.

Mr. Hammons testified that he works as a fleet supervisor and was Petitioner's supervisor on 8/21/12. He testified that he came to learn Petitioner was claiming an accident on that day when Petitioner told him he was injured. Mr. Hammons testified that he was "surprised" to hear of an injury because he was with Petitioner all day discussing problems with Petitioner's work that day. Mr. Hammons further testified that was a passenger in a car driven by Petitioner to the yard and that Petitioner did not make any pain complaints to the witness. The witness was with Petitioner crouched under the trailer in the red tag area about one hour before Petitioner left for the day. Mr. Hammons testified that Petitioner reported an injury right before leaving for the day at 3:30 pm. Mr. Hammons completed an accident report the next day. Petitioner reported that he previously hurt his left hip and that he had been treating for his left hip, including having undergone left hip injections, immediately prior to 8/21/12.

On 8/22/12, Petitioner was sent to Concentra. He provided a consistent history of injury to the left hip after crouching under a truck on 8/21/12 and feeling a pop in his left hip. Petitioner advised that the pain was "so severe he was barely able to walk." The records also note his left hip injury 2 years prior and his continued treatment with Dr. Arnold for the left hip with pain injections. PX 11. The left hip exam revealed pain with palpation and the left hip x-ray was normal. Petitioner was given Naproxen and told to work modified duty sitting 80% of the time. Petitioner testified he requested this type of work but it was not provided and he was told he had to be 100% to work.

On referral from Dr. Thakkar, Petitioner saw Dr. Fister at Midwest Bone and Joint on 9/11/12. Petitioner reported the complete left hip history starting with an injury of 9/10. Petitioner further reported the 8/21/12 injury after squatting at work and developing left hip pain. Dr. Fister reviewed Petitioner's x-rays from Concentra and the lumbar MRI from 9/10 and determined that Petitioner had left hip trochanteric bursitis. Dr. Fister wrote, "He is quite tender over the greater trochanter of the left hip and he is getting these popping episodes that are intermittently painful so I think we should obtain an MRI of this left hip." The left hip MRI was done on 10/4/12 and showed tearing along the left gluteus tendon insertions upon the left greater trochanter and overlying mild to moderate trochanteric bursitis. PX 10.

In the interim, Petitioner kept his previously scheduled appointment with Dr. Arnold on 9/13/12 and reported the recent popping episode at work. Dr. Arnold noted the left hip MRI scheduled by Dr. Fister and referred Petitioner for two months of physical therapy. PX 7.

After the left hip MRI, Petitioner saw Dr. Glasgow at Midwest on 10/10/12 who recommended a left hip EMG and cortisone injection of the left hip to alleviate symptoms. The EMG was performed on 10/26/12 and showed normal NCV findings and a chronic L2, L3 and L4 radiculopathy on the left. Dr. Glasgow then referred Petitioner to spine specialist Dr. Hwang for a surgical evaluation. On 11/1/12, Dr. Hwang referred Petitioner for a repeat lumbar MRI which was done on 11/7/12. After reviewed the lumbar MRI and the EMG, Dr. Hwang noted "The patient's left lower extremity symptoms are highly suggestive of an L5 distribution; however, the patient's MRI does not demonstrate L5 nerve root involvement. His EMG demonstrates L2 through L4 chronic radiculopathy. As such, the patient's symptoms do not correlate well with his diagnostic studies. ...Given the discrepancy between the patient's symptoms and the diagnostic findings, it is felt that further evaluation is warranted. We will refer patient for a left L3 selective nerve root block for both diagnostic and therapeutic purposes." PX 2. Petitioner was referred back to Dr. Arnold for the nerve block performed on 12/24/12. Petitioner completed PT at Midwest as of 2/13/13 and has worked regular duty since that date.

Currently, Petitioner testified that he feels symptoms in his back and left leg when climbing ladders, standing up from a crouched position, carrying heavy objects, using stairs and walking long term. In the past 30 days he has had pain free times like when laying down in bed. In the past 30 days the highest pain level is between 5 and 8 while at work sitting or trying to stand up from any position. The pain is in his left hip and left back and down the outer portion of his left leg from his waist to ankle and then back up to just below his left knee. Petitioner no longer takes the garbage out at home and has trouble showering. Sleeping causes pain in his left hip. Petitioner is unable to carry hay for his horses or perform yard work due to pain in his left leg.

CONCLUSIONS OF LAW

The foregoing findings of fact are incorporated into the following conclusions of law.

DOA - 4/1/10 - case 10 WC 14905-

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? F. Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator finds that Petitioner met his burden to prove that an accident occurred arising out of and in the course of his employment on 4/1/10. Petitioner testified that he was installing a spring in a UPS truck while lying on his back with his hands above his chest. Petitioner testified that the spring was heavy and that he felt a pain in his back above the left hip area while lifting the spring in this position. Petitioner testified that he was still in pain at the end of his shift. Petitioner testified that he did not recall whether he reported the accident on 4/1/10 but did testify that he called his senior supervisor, Mike Gallerath, the next day from home to report the incident. The parties stipulated to proper notice. ARB EX 1.

The Arbitrator notes the tendered testimony of Mike Leyesa and Mike Gallerath on the issue of accident and specifically notes from the tenure of their testimony that the work relationship between Petitioner and his supervisors was strained. In that context, the Arbitrator finds it plausible that Mike Leyesa and Petitioner had a conversation on or about 4/1/10 about curtailing Petitioner's further ability to "early start" but does not find that disagreement so persuasive so as to impact or preclude a finding of accident.

Similarly, the Arbitrator is not persuaded to find against Petitioner on the issue of accident based on the testimony of Mike Gallerath offered to rebut Petitioner's testimony regarding the presence of two co-workers on the spring job. Mr. Gallerath ultimately agreed that it was possible that Petitioner simply had conversations with these co-workers about the spring job and that such conversations would not be reflected on the time cards. In short, the Arbitrator finds the testimony of Petitioner more credible than that of Messrs. Leyesa and Gallerath on the issue of accident. Accordingly, the Arbitrator finds that an accident occurred that arose out of and in the course of Petitioner's employment on 4/1/10.

The Arbitrator notes Petitioner's consistent history of accident contained in the medical records immediately following the accident. Dr. Bodner diagnosed spondylosis pain with some sciatic component following the lifting incident at work. Petitioner was without low back symptoms prior to this incident and developed these symptoms immediately thereafter. Accordingly, the Arbitrator further finds that Petitioner's low back condition initially diagnosed after the accident on 4/8/10 is causally related to the accident of 4/1/10.

K. What temporary benefits are in dispute? TTD N. Is Respondent due any credit?

Based on the above findings of accident and causal connection, the Arbitrator further finds that Petitioner was temporarily and totally disabled for a period of 6-1/7 weeks commencing 4/12/10 through 5/24/10. Petitioner was taken off work by Dr. Bodner while he attended PT and pending follow up. PX 2. Petitioner returned to full duty on 5/24/10.

Respondent shall receive credit for amounts paid, if any.

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? N. Is Respondent due any credit?

Based on the findings of accident and causal connection, the Arbitrator finds that Respondent is to pay Petitioner the reasonable and necessary medical expenses incurred through Petitioner's last date of care on 6/9/10 pursuant to Sections 8 and 8.2 of the Act. See the parties' stipulation supplementing Arb EX 1. The Arbitrator further finds that Respondent shall receive a credit for amounts paid.

L. What is the nature and extent of the injury?

At Petitioner's last visit to Dr. Bodner on 5/21/10, Dr. Bodner noted a normal exam with overall improvement and some residual pain in the right mid buttock. Overall, Petitioner's condition improved. Petitioner attended 10 PT sessions from 4/13/10 through 6/8/10 when he was discharged at his request due to conflicts between his work schedule and the PT appointments. PX 2. The last PT record dated 6/8/10 notes Petitioner was to continue home exercises to further increase core strength and range of motion. It was noted that Petitioner had not met long term goals at the time of the last session. Petitioner testified that although his pain level decreased with PT, he continued to have pain and stiffness in his back when he returned to regular duty work. PX 2.

Accordingly, the Arbitrator finds that Petitioner 2% loss of use of a person as a whole pursuant to Section 8(d)(2) of the Act.

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? F. Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner alleges two additional accidental injuries on 9/14/10 and 8/21/12 in the above referenced case numbers. Petitioner alleges that on 9/14/10, he sustained injuries to his left hip in the form of trochanteric bursitis and chronic low back pain with radiculopathy due to multi-level disc herniations. Petitioner alleges that the accident of 8/21/12 resulted in the continuation of the injuries suffered on 9/14/10.

Respondent offered a video at trial depicting the Petitioner's removal of a bulky box from a truck on 9/14/10. At trial, the parties stipulated that the video depicted Petitioner on the date in question performing the activities he alleged resulted in his accidental injuries. The Arbitrator reviewed the video with the parties at trial and on her own thereafter. RX D. The video clearly depicts Petitioner lifting the box out of the truck with his co-worker. The Arbitrator notes that Petitioner is seen handling the box. The video does not depict any obvious twisting maneuver or any painful hip or back gestures indicating the sudden onset of pain as testified to by Petitioner. The video does not depict any slight limp. Petitioner is seen moving and walking quickly in the video before and after handling the box. Wayne Moore testified as Petitioner's fleet supervisor on 9/14/10. He testified that he observed Petitioner on 9/14/10 after the accident and that Petitioner "walked fine." He further testified that Petitioner was not limping when he observed Petitioner and that Petitioner "seemed fine" when they discussed the accident in Mr. Moore's office. The Arbitrator finds Petitioner's credibility is undermined by the conflicts between his trial testimony and the video depiction of the accident on 9/14/10, as well as by the credible testimony of Wayne Moore regarding his observations of Petitioner immediately after the accident on 9/14/10.

Based on the foregoing and on the record as a whole, the Arbitrator finds that Petitioner failed to prove he sustained accidental injuries arising out of and in the course of his employment on 9/14/10 and no benefits are awarded in case 10 WC 38442. The Arbitrator again notes Petitioner's assertion, as borne by the medical records, that the accident of 8/21/12 resulted in the continuation of Petitioner's ongoing treatment for the injuries related to the 9/14/10 accident. Accordingly, based on the Arbitrator's finding of no accident on 9/14/10, the Arbitrator further finds Petitioner failed to prove he sustained accidental injuries arising out of his employment on 8/21/12. No benefits are awarded in case 12 WC 34688. The remaining issues raised in case 10 WC 38442 and case 12 WC 34688 are moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with comment	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input checked="" type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mary Sykes,

Petitioner,

vs.

NO: 12 WC 12420

14IWCC0415

Illinois State Police,

Respondent.

DECISION AND OPINION ON REVIEW

Respondent appeals the Decision of Arbitrator Williams finding that as a result of accidental injuries arising out of and in the course of her employment on March 2, 2012, Petitioner received her full salary for time lost from work, that she is entitled to \$2,296.32 for necessary medical expenses under the medical fee schedule and that she permanently lost 15% of the use of her right foot, 25.05 weeks at \$695.78 per week. The sole issue on Review is whether Petitioner sustained accidental injuries arising out of her employment. The Commission, after reviewing the entire record, reverses the Decision of the Arbitrator finding that Petitioner failed to prove she sustained accidental injuries arising out of her employment on March 2, 2012 and denies Petitioner's claim for the reasons set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner, a 49 year old special agent, testified that she started working for Respondent in 1986 as a trooper. She was promoted to Special Agent in 1989. As such, she worked on the riverboats, in the sex offender unit, the general criminal unit, WIC fraud and food stamp fraud

14IWCC0415

undercover unit and undercover drugs for 4½ years (Tr 7). In March 2012, Petitioner was working in the evidence vault located at District 3 (Tr 7). Her duties as evidence custodian were to check in evidence and property that the troopers seize during arrests, transport evidence to and from the crime lab for analysis and to maintain all evidence until a court hearing or until it is destroyed (Tr 8). She was given an unmarked car to use. Respondent's facility is located at 9511 W. Harrison in Des Plaines, Illinois.

Petitioner identified Px1 as photographs she took on or about February 7, 2013. She and other state employees are directed to park in either the east or west lot behind the building. The parking lot in front of the building is for the public only (Tr 9). In the lot she is directed to park in, there are signs posted indicating that the public is not supposed to go into those lots (Tr 9). The photographs in Px1 depict the various signs that indicate the public is not supposed to go into those areas (Tr 9-10). On the date of her accident, March 2, 2012, Petitioner parked in the employee lot. On photograph Px1A, Petitioner marked with a circled "X" the location where she parked just to the north of the driveway for the state garage on the date of her accident (Tr 10). One sign states, "Do not enter except state police vehicles." (Tr 10). Petitioner believed that the Illinois Department of Human Services shares space in the building (Tr 10). Photograph Px1B shows a sign for the Illinois Department of Human Services shipping and receiving and that unauthorized vehicles will be towed at owners expense. On photograph Px1A, Petitioner marked where her accident occurred by writing the word "accident" on the photograph (Tr 13). Upon submission, the Arbitrator entered Px1 into evidence (Tr 14).

Petitioner identified Px2 as four black and white photographs that she took on March 30, 2012 when she returned to work after her accident (Tr 16). On March 2, 2012, Petitioner worked 8:00 a.m. to 4:00 p.m. (Tr 16). She checks off duty when she arrives home via the radio (Tr 16). She gets on the radio when she begins her tour of duty as she starts to drive to work (Tr 16). Petitioner is on duty from the time she gets into her squad car and checks in via radio until she checks off duty when she arrives at home via radio (Tr 17). On March 2, 2012, Petitioner exited the building at approximately 3:50 p.m. (Tr 17). She usually cuts through the state garage to get to her car, but on this day the garage was closed (Tr 17). On March 2, 2012 as she exited the building, it was raining pretty hard (Tr 17). Petitioner was wearing a fanny pack around her waist which weighed approximately 10 pounds that contained her loaded weapon, an extra magazine of bullets, handcuffs, her badge and miscellaneous paperwork (Tr 18). She also had on a backpack on that weighed approximately 5 to 10 pounds that contained work files (Tr 18). Petitioner testified, "I was walking down the sidewalk, and it was raining. I was not running because it was a warm day; and I started to walk, and everything was fine; and when I stepped, I felt my foot slipping and boom, went down – went down like someone hit me with a sledgehammer; and it happened so fast, it was crazy." (Tr 18). It was her right foot and her leg did not give out (Tr 19). Petitioner testified, "I felt like something was just either uneven or a slip. It was crazy, I don't even know; but I stepped, and it just went right from – slipped from under me." (Tr 19). Petitioner fell to the ground. She immediately felt pain and rated it 8/10 (Tr 19). She was on the ground for 30 seconds to a minute when another trooper came to her aid. Petitioner was in tears screaming in pain. She was in shock and could not believe something like

that hurt that bad (Tr 20). Petitioner then stated that the first person to her aid was a state garage worker named Bill who was leaving the building. Bill helped her up and then another trooper who was driving by stopped. The trooper actually passed Petitioner and saw she was laying on the ground and then backed up (Tr 20). The trooper was named Bridget Gilgenberg and she helped Petitioner up and took her inside the building. Petitioner went to the kitchen and grabbed some ice, frozen peas and vegetables from the freezer and wrapped them around her ankle and elevated her leg while the sergeant took a First Report of Injury (Tr 21). This took maybe 40 minutes. Afterwards, Trooper Gilgenberg took Petitioner home (Tr 22). March 2, 2012 was a Friday (Tr 22).

Petitioner did not get better over that weekend. On Monday, March 5, 2012, Petitioner saw a doctor at her primary care physician's office. Her primary care physician was not in, so she saw another doctor who she had not seen before (Tr 22). Her primary care physician was at Advocate Lutheran General (Tr 22). Petitioner was sent for x-rays of her right foot and ankle and then her foot and ankle were wrapped and put into a boot. She wore the boot for 2 to 3 weeks (Tr 23). The doctor informed her the diagnosis was an avulsion fracture (Tr 23). The boot was stiff and kept her foot immobilized (Tr 23). Petitioner was authorized off work and given pain medications, which she took for 4 or 5 days (Tr 24). After that she took Advil and kept her foot elevated. After a period of time, the doctor removed the boot and ordered physical therapy. She attended physical therapy until sometime in June 2012. Petitioner was off work completely or on restricted duty until about March 29, 2012 (Tr 25). She then returned to work at Respondent to her regular job (Tr 25). During the period of time she was off work, Petitioner received her full paychecks (Tr 25). While on light duty status, Petitioner attended physical therapy until released, then she could go back in case she was needed for anything, like in a uniform situation or a tactical situation (Tr 25). Petitioner was on light duty until about the first week of June 2012 (Tr 25). After returning to work, she did not seek any further medical treatment (Tr 26). Petitioner had never injured her right foot or ankle before March 2, 2012 (Tr 26). She did not injure her right foot or ankle since this accident (Tr 26).

Petitioner retired from Respondent on December 31, 2012 after working 27 years (Tr 26). She currently noticed that certain things leave her right ankle sore. She gardened the last weekend and now her ankle is sore. It was sore the night before just by lifting bags of dirt and moving lawn furniture, things that normally were not a problem before the accident. She drove her son to the University of Illinois, a 2½ to 3 hour drive and noticed her ankle was sore (Tr 27). With a lot of stop and go driving and with peddling her bike, her ankle is sore (Tr 27). Walking is pretty great and is all good. She loves to walk (Tr 27). Her right ankle aches when it is going to rain (Tr 27). During her treatment, Petitioner went for a second opinion with Dr. Lim. She did undergo a MRI (Tr 28). Petitioner identified Px6 as medical bills she received as a result of the accident (Tr 28). Some of the bills pre-date her accident for orthotics for plantar fasciitis of both feet. She is only seeking payment of medical bills since March 2, 2012 (Tr 29).

Petitioner again identified Px2 as black and white photographs she took in front of the state garage of the sidewalk that she was walking across on March 2, 2012 when her accident occurred (Tr 30). She took these photographs on March 30, 2012 (Tr 30). Petitioner marked with an "X" on the first photograph where she started to fall (Tr 31). Petitioner testified that the sidewalk is sloping, it is uneven and there is a gap between the sidewalks (Tr 31). Minus the wet pavement, the Px2 photographs accurately depict the condition of the sidewalk that existed on March 2, 2012 (Tr 31). She could not mark the second photograph in Px2 (Tr 32). Petitioner marked with an "X" on the third photograph where she started to fall (Tr 32). The sloped sidewalk leads into the CMS garage driveway (Tr 32). The fourth photograph, Px2A, Petitioner marked with a circled X where she went down (Tr 33).

On cross-examination, Petitioner testified that the photographs she took in Px1 are not date-stamped to indicate they were taken in 2013 (Tr 34). Petitioner used her cell phone to take the photographs in Px1 (Tr 35). Petitioner's lawyer's office had contacted her about taking the Px1 photographs (Tr 35). Petitioner also took the photographs in Px2 with her cell phone and she did not know why those photos were black and white (Tr 35). Other than what she testified to, there is nothing within the photographs that establish that is the place where she fell (Tr 36). It was raining at the time of the March 2, 2012 accident (Tr 37). There is no reason she would have told the doctors that she injured herself somewhere other than at work (Tr 37). A few weeks before March 2, 2012, Petitioner attended a self-aid class (Tr 38). She did have children who were attending school in March 2012. She did not injure herself at their school at any time (Tr 38). Petitioner would say that it is incorrect if the March 5, 2012 Advocate Medical Group records state that she injured herself at a school (Tr 38). Petitioner injured herself by slipping (Tr 38-39). Petitioner completed a report on the day of the injury (Tr 39). Rx2 is not the report she completed (Tr 39). Petitioner identified Rx2 as a supervisory report that her supervisor completed (Tr 39).

On March 5, 2012, Petitioner told the doctors that she slipped when she fell (Tr 40). Petitioner acknowledged she did not report a crack or defect in the sidewalk (Tr 40). She saw podiatrist Dr. Rahimi on March 6, 2012 and reported to him that she twisted her ankle while walking in the rain (Tr 41). Petitioner acknowledged she did not report to Dr. Rahimi about a crack or a defect in the sidewalk (Tr 41). Petitioner saw orthopedic specialist Dr. Lim on March 16, 2012 and reported she had twisted her right ankle and fell and acknowledged she did not report anything about a crack or a defect in the sidewalk (Tr 41). Petitioner attended occupational therapy at Advocate Lutheran General Hospital beginning April 9, 2012 and reported that she had stepped off a curb and turned her foot inward and acknowledged she did not report anything about a crack or a defect in the sidewalk (Tr 42). Petitioner stated she slipped off a wet sidewalk (Tr 42). She made a couple more steps and then fell into the driveway, so she is sure she stepped on a curb as well (Tr 43). The Commission notes that the Px2 photographs do not show any curb.

After the March 2, 2012 accident, Petitioner did not have a second injury to her right ankle. She is not aware of having a second rupture of any kind in her right ankle (Tr 43). Dr. Rahimi released her to return to work on March 29, 2012. She had seen Dr. Rahimi on March 27, 2012 and he wanted her to get physical therapy and discharged her from his care (Tr 43-44). Petitioner knows she saw Dr. Rahimi again and x-rays were taken, but she did not know when she saw him (Tr 44). She did not think there was a second rupture in the right ankle at that time (Tr 44). Petitioner thought she had a shoulder injury between March 2012 and June 2012, but it was not work-related (Tr 44). Petitioner's attorney stipulated that there was no second accident that caused any intervening accident (Tr 45). Petitioner is not claiming any compensation for the treatment of her shoulder (Tr 45). When she injured her shoulder, there was no injury to her right ankle at the same time (Tr 46). Her retirement was not related to the March 2, 2012 incident at all. She had maxed out and was eligible for her pension, so she took it (Tr 46). Petitioner is not on any prescribed medications for her right ankle at this time (Tr 46). She is not still wearing an ankle brace (Tr 46).

On re-direct examination, Petitioner testified that the history noted when she first went to Advocate was, "Three days ago, slipped on a wet sidewalk at school and rolled her right ankle." Petitioner denied ever slipping at any school (Tr 47). Petitioner testified that the reason that she did not tell her doctors about not seeing a crack or a defect or a slope in the sidewalk was because she had not gone back to see the place of the accident until after March 29, 2012 (Tr 48). At the time of her fall, Petitioner was not concerned about how she fell (Tr 48). All the histories in the medical records were before she had gone back and looked at the situs of the accident (Tr 48). After she viewed the accident location after returning to work, the only history she gave was to the doctor at physical therapy. She did not know what was written by the physical therapist (Tr 48-49). On March 2, 2012, Petitioner slipped and went down and then kept stumbling. She tried to outrun her slip because she felt like an idiot and she went over the curb, obviously stepping on the curb to get over it, and then fell in the parking lot (Tr 49). The initial situs of the accident was in the middle of the sidewalk (Tr 49). The photographs she took of the signs in Px1 truly and accurately depict the signs that were up on March 2, 2012 (Tr 49).

Over Respondent's objection, the Arbitrator admitted the Px2 photographs with redaction of the post-it notes attached to them (Tr 61-64).

2. The CMS Workers' Compensation Employee's Notice of Injury dated March 2, 2012, Rx2, noted, "Walking to squad car to go home. Twisted ankle while walking."

In the CMS Workers' Compensation Witness Report dated March 2, 2012, Rx3, Bridget Gilgenberg wrote, "I Tpr B. Gilgenberg #5439 was driving E/B in the ISP parking lot past the CMS garage. I noticed a female, later identified as ISP Tpr Mary Sykes laying on the ground in rain. I stopped my marked squad and exited to assist. Special Agent Sykes stated she had rolled her ankle. I helped Sykes out of the rain and contacted operations. She was unable to put weight on her right foot. I assisted her inside the building and M/SGT Cameron completed 512 packet." The location of what was seen was the rear parking lot near CMS garage entrance.

In the CMS Supervisor's Report of Injury or Illness dated March 2, 2012, Rx4, the following description is noted: "Walking to squad car in rear parking lot near State garage twisted ankle while walking and fell to the ground."

3. Advocate Lutheran General Hospital records, Px3, indicate Petitioner was seen at Acute Care on March 5, 2012. The Acute Care Note from that date noted that Petitioner's chief complaint was right ankle pain for 3 days. It was noted that she had been elevating and icing her right ankle. The following history was noted: "3 days ago pt slipped on a wet sidewalk at school and rolled on her right ankle – eversion injury." Petitioner reported her pain and swelling persisted and she had been weight bearing when necessary. On examination it was noted that there was swelling and ecchymosis of the lateral right ankle, pain with inversion and eversion, pain not elicited on dorsiflexion or plantar flexion and the anterolateral aspect was tender on palpation. The assessment was a right ankle sprain. Right ankle x-rays were ordered. She was to continue with ice and elevation and was to be seen after x-rays. In the March 5, 2012 X-ray Report, it was noted that there were two small calcifications inferior to the lateral malleolus suggesting small avulsion fractures. There was no significant soft tissue swelling. There was an inferior calcaneal bone spur. The ankle mortis was intact. The radiologist's impression was avulsion fracture of the right lateral malleolus.

4. According to the medical records of Fahey Medical Center, Px4, Petitioner saw Dr. Mattana on July 25, 2011 for orthotics adjustment. Petitioner saw Dr. Rahimi on March 6, 2012, who noted that she is a patient of Dr. Mattana and that, "evidently while she was walking in the rain, she twisted her ankle on March 2, 2012. At first, she did not think about it, but then started having more pain and discomfort, swelling so she decided to come in." Petitioner had brought her x-rays with her. After his examination and review of the x-rays, it was Dr. Rahimi's assessment that Petitioner had an avulsion fracture and possible partial ATF rupture. Petitioner was put into a CAM walker. She was to be non-partial to weight bearing for 3 weeks and elevate her ankle and use ice. Dr. Rahimi suggested anti-inflammatory medications and Petitioner was to follow-up with Dr. Mattana. In a CMS Initial Workers' Compensation Medical Report dated March 6, 2012, Dr. Rahimi noted the following description of the accident by Petitioner: "While walking in the rain I twisted my right ankle and fell to the ground in pain."

5. In a letter to Dr. Vergara dated March 16, 2012, Px3 and Px5, Dr. Lim indicated that he saw Petitioner for a second opinion. Dr. Lim noted that Petitioner reported that on March 2, 2012, she twisted her right ankle and fell down. Dr. Lim noted that Petitioner was seen by a podiatrist and was diagnosed with having a possible avulsion of the lateral aspect of the fibula and was put into a walking boot. On examination, Dr. Lim found some black and blue on the lateral aspect of the right ankle, localized tenderness over the tib/fib ligament and ecchymosis, no pain over the lateral malleolus and Petitioner was able to walk tiptoe on her heel and did deep knee bend without much of a problem. Dr. Lim noted that he informed Petitioner that she had a badly sprained anterior tib/fib ligament and that since it was black and blue, the ligament probably was ruptured and would probably take 3 to 6 weeks to heal. Dr. Lim noted that since

Petitioner was very active, she should continue to wear an Ace bandage for compression. She could wear her regular shoes and do activities as tolerated. Dr. Lim anticipated an excellent recovery. Petitioner was to be seen as needed.

6. Petitioner saw Dr. Rahimi on March 27, 2012 and reported she was doing really well with the CAM walker for 3 weeks. She reported her pain was basically completely gone. On examination, Dr. Rahimi found no pain with palpation and good range of motion. Dr. Rahimi noted that x-rays were taken and showed basically all the fragments were healed and he did not see any lesion that is loose. Dr. Rahimi's assessment was healed avulsion fracture and healed ATF rupture. Dr. Rahimi allowed Petitioner to return to work, but noted that because she was a police officer, she should get physical therapy so her strength returns since she had been in a boot for the last 3 weeks. Dr. Rahimi ordered physical therapy and released Petitioner to return to work on March 29, 2012 without restrictions. Dr. Rahimi discharged Petitioner from his care.

In the April 9, 2012 Advocate Lutheran General Hospital Outpatient Initial Evaluation for Physical Therapy it was noted that onset was March 2, 2012. It was also noted that Petitioner's diagnosis was right ankle sprain and a secondary diagnosis was ligament rupture. The following history was noted: "Pt reports stepping off wet curb and turning foot inward. Felt immediate pain."

Dr. Rahimi noted on June 28, 2012 that Petitioner was seen that day for complaints of right ankle pain. Petitioner reported she was doing much better with physical therapy. She reported being 80% better, but was still hesitant to do lateral type of movement and if she pushed herself, she would get pain and discomfort. Dr. Rahimi noted that Petitioner wanted to know if anything else could be done. On examination, Dr. Rahimi noted some pain on the anterior talofibular and lateral calcaneal ligament and that most likely she had instability because of the first rupture that she had. Dr. Rahimi opined that the best option was to do a MRI of the ligaments. Dr. Rahimi noted that Petitioner also asked if he knew any doctor for the shoulder and he suggested Dr. Ali, as long as it was okay with Dr. Vergara. (Px4).

7. Petitioner underwent a right ankle MRI on June 29, 2012 that had been ordered by Dr. Rahimi. The MRI report noted a history of ligamentous rupture. The radiologist compared the MRI results with the March 2012 x-rays. The radiologist noted that there was a partial tear of the anterior aspect of the anterior talofibular ligament. It was the radiologist's impression there was a partial tear of the anterior aspect of the anterior talofibular ligament. (Px3).

8. Dr. Rahimi noted on July 12, 2012 that he saw Petitioner. Dr. Rahimi reviewed the MRI and noted a partial tear of the anterior talofibular ligament, but that Petitioner was still stable. Dr. Rahimi noted that physical therapy had made a big difference. Petitioner did not report any discomfort. He told Petitioner to discontinue exercises and if she was to do any side-to-side activity, she should wear an ankle brace. Otherwise she could do a regular routine. Dr. Rahimi discharged Petitioner from his care and she was to be seen as needed. (Px4).

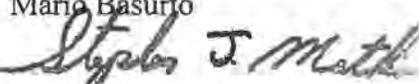
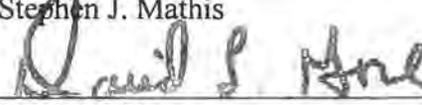
9. Petitioner submitted medical bills and a summary and these were admitted into evidence as Px6. The summary of the medical bills indicates that the total fee schedule amount was \$2,223.14.

Based on the record as a whole, the Commission reverses the Decision of the Arbitrator finding that although Petitioner was in the course of her employment on March 2, 2012, she failed to prove she sustained accidental injuries arising out of her employment on that date. The Commission has thoroughly examined the photographs in Px1 and Px2. The photographs in Px2 show the sidewalk was gradually sloped towards a driveway. Petitioner marked on the photographs where she slipped on the wet sloped sidewalk. There is no defect in the sidewalk and it is just sloped. Petitioner did not testify she tripped on the stress crack between sidewalks. The sloped sidewalk does appear to be slightly higher than the flat sidewalk preceding it, but this is not the area where Petitioner testified that she slipped. The Commission finds there was no defect in the sidewalk. Rain is not an increased risk of employment and neither is a wet sidewalk from rain. Wet sidewalks are common to the general public when it rains. Petitioner was carrying a backpack with files and was wearing a fanny pack containing her gun, handcuffs, bullet magazine and badge, but this did not increase the risk.

IT IS THEREFORE ORDERED BY THE COMMISSION that since Petitioner failed to prove she sustained accidental injuries arising out of her employment on March 2, 2012, her claim for compensation and medical expenses is hereby denied.

DATED: JUN 05 2014
MB/maw
o05/08/14
43



Mario Basurto

Stephen J. Mathis

David L. Gore

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with comment	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify up	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Truvan Thomas,

Petitioner,

vs.

NO: 10 WC 22380

14IWCC0416

Cook County Juvenile Detention Center,

Respondent.

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 causal connection, medical expenses and nature and extent of permanent disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission notes that the Arbitrator awarded additional TTD benefits from October 29, 2010 through November 15, 2010 based on Respondent's proposed decision. The Commission notes that proposed decisions are not evidence in the record and cannot be used to base findings upon. There is support in the record for this period of lost time from work. Therefore, the Commission awards TTD from October 29, 2010 through November 15, 2010 based on the record and strikes as the basis of the award Respondent's proposed decision.

The Commission has reviewed Px9 and finds that this exhibit should have been admitted into evidence as not all the medical bills contained therein were balance due bills and that some of the medical bills were not paid at all. Therefore, the Commission admits Px9 into evidence. In reviewing Px9, the Commission finds that the following medical bills have not been paid:

- Advocate South Suburban Hospital; D/S 8-6-10 for physical therapy through 8-25-10: Total charges: \$957.00. WC Adjustment: \$229.68. \$727.32 is listed as a bad debt (\$957.00 - \$229.68).
- Advocate South Suburban Hospital; D/S 9-2-10 for physical therapy: Total charges: \$243.00. WC Adjustment: \$58.32. \$184.68 is listed as a bad debt (\$243.00 - \$58.32).
- Advocate South Suburban Hospital; D/S 10-14-10 for physical therapy through 10-29-10: Total charges: \$1,550.00. WC Adjustment: \$42.10. \$1,507.90 is listed as a bad debt (\$1,550.00 - \$42.10).
- Advocate South Suburban Hospital; D/S 11-3-10 for physical therapy: Total charges: \$216.00. No adjustment. \$216.00 is listed as a bad debt.

The total of the above is \$2,635.90 (\$727.32 + \$184.68 + \$1,507.90 + \$216.00). The Commission awards \$2,635.90, subject to the Medical Fee Schedule.

The Commission modifies the Arbitrator's Decision finding that Petitioner is permanently disabled to the extent of 15% of the person as a whole. §12 Dr. Khanna opined that Petitioner would be unable to return to his regular job and was capable of performing only sedentary work. Petitioner has significant restrictions and a recommendation for surgery consisting of a decompression and fusion at L4-5 was made. Petitioner failed to improve after undergoing physical therapy, epidural steroid injections, medial branch blocks and a radiofrequency ablation. Petitioner testified to his residuals. The Commission affirms all else.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$702.89 per week for a period of 24-4/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$2,635.90 for medical expenses under §8(a) of the Act, subject to the Medical Fee Schedule under §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$632.60 per week for a period of 75 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the permanent disability of the person as a whole to the extent of 15%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury. The Commission notes that Respondent paid \$15,463.58 in TTD benefits.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit in the amount of \$42,727.98 under §8(j) of the Act; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

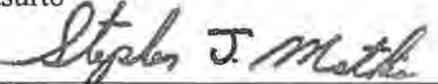
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

No bond for the removal of this cause to the Circuit Court by Respondent is due pursuant to §19(f)(2) of the Act. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 05 2014
MB/maw
o05/01/14
43



Mario Basurto



Stephen J. Mathis



David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

THOMAS, TRUVAN

Employee/Petitioner

Case# **10WC022380**

14IWCC0416

COOK COUNTY JUVENILE

Employer/Respondent

On 7/25/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0320 LANNON LANNON & BARR LTD
PATRICIA LANNON KUS
180 N LASALLE ST SUITE 3050
CHICAGO, IL 60601

0132 COOK COUNTY STATE'S ATTORNEY
ASA RICHARD CRUSOR
509 RICHARD J DALEY CENTTR
CHICAGO, IL 60602

14IWCC0416

STATE OF ILLINOIS)

)SS.

COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Truvan Thomas

Employee/Petitioner

Case # 10 WC 22380

v.

Consolidated cases: _____

Cook County Juvenile Detention Center

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Svetlana Kelmanson**, Arbitrator of the Commission, in the city of **Chicago**, on **June 18, 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 _____

14IWCC0416

FINDINGS

On **5/27/2010**, 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 **\$54,825.68**; the average weekly wage was **\$1,054.34**.
On the date of accident, Petitioner was **61** 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.
The parties stipulate Petitioner was temporarily totally disabled from **May 28, 2010**, through **October 28, 2010**.
Respondent shall be given a credit of **\$15,463.58** for TTD benefits, for a total credit of **\$15,463.58**.
Respondent is entitled to a credit of **\$42,727.98** under Section 8(j) of the Act, provided Respondent holds Petitioner harmless from any claims by its group medical plan.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **\$702.89/week** for **2 4/7** weeks, commencing **October 29, 2010**, through **November 15, 2010**, as provided in Section 8(b) of the Act.
Respondent shall pay Petitioner permanent partial disability benefits of **\$632.60/week** for **50** weeks, because the injuries sustained caused the **10%** loss of the person as a whole, as provided in Section 8(d)2 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

7/25/2013

Date

JUL 25 2013

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner testified that as of May 27, 2010, he worked for Respondent for 16 years. His initial job title was juvenile detention guard. In 2004 or 2005, his job title changed to juvenile detention counselor. Petitioner's job duties as a juvenile detention counselor included observing the behavior of juvenile offenders, intervening in fights, and making sure the juvenile offenders were ready for school or for other activities. Petitioner admitted a prior back injury in 1998, explaining that he received physical therapy and returned to his regular job.

On May 27, 2010, Petitioner sustained injuries when he fell on the stairs shortly after arriving at work at Respondent's facility. Petitioner explained that after going through the security checkpoint, he started walking up the stairs. Another juvenile detention counselor, who was rushing up the stairs, tripped and fell on top of Petitioner. Petitioner immediately noticed pain in his chest, back and right leg. An ambulance transported Petitioner to the University of Illinois Medical Center.

The medical records in evidence show that Petitioner complained to the University of Illinois Medical Center emergency room staff of low back and chest pain and shortness of breath. The staff evaluated Petitioner and transferred him to South Suburban Hospital at his request. The medical records from South Suburban Hospital show that Petitioner was admitted for observation because of complaints of chest pain. He also complained of headache and upper back pain. Chest X-rays showed no obvious fractures. Cardiac workup was unremarkable. The attending physician, Dr. Nagubadi, diagnosed noncardiac musculoskeletal chest pain and headache, both secondary to the fall. He discharged Petitioner home after a 23 hour observation.

On June 2, 2010, Petitioner returned to South Suburban Hospital with complaints of head, neck and back pain. Lumbar X-rays showed no fractures. The staff diagnosed muscle spasm and back pain, and discharged Petitioner home.

Thereafter, Petitioner regularly followed up with Dr. Nagubadi's office, complaining of worsening low back pain since the work accident. The staff prescribed medication and physical therapy.

On July 22, 2010, Dr. Khanna at Advanced Occupational Medicine Specialists examined Petitioner at Respondent's request. Petitioner complained of low back pain, which he rated a 6-7/10, and chest pain, which he rated a 4/10. After performing physical examination and reviewing medical records, Dr. Khanna opined that Petitioner would benefit from medication and physical therapy, and could return to work on sedentary duty. Dr. Khanna anticipated Petitioner would reach maximum medical improvement within four weeks.

From August 6, 2010, through September 2, 2010, Petitioner underwent physical therapy for his back and neck, reporting no significant improvement

An MRI of the lumbar spine performed September 29, 2010, showed mild disc and facet degenerative changes and findings consistent with Paget's disease, involving the L4 vertebral

body and extending into the left pedicle of L4. An MRI of the thoracic spine performed October 7, 2010, showed an "age-undetermined" subarachnoid cyst at T6, and no other abnormalities.

On October 11, 2010, Dr. Nagubadi referred Petitioner for pain management. From October 14, 2010, through November 3, 2010, Petitioner underwent additional physical therapy, reporting some improvement.

On November 4, 2010, Petitioner consulted Dr. Bitar at South Suburban Hospital's pain management center, complaining of low back pain with occasional radiation to the legs. On physical examination, he had pain with flexion more than extension and positive lumbar facet loading bilaterally. Dr. Bitar recommended lumbar epidural steroid injections.

On February 16, 2011, Petitioner underwent an EMG/NCV, ordered by Dr. Nagubadi, which showed no electrophysiologic evidence of lumbosacral radiculopathy, polyneuropathy or mononeuropathy.

On March 16, 2011, Petitioner complained to Dr. Nagubadi of worsening low back pain with radiation to the legs, and Dr. Nagubadi prescribed additional physical therapy. From June 14, 2011, through August 5, 2011, Petitioner underwent the physical therapy, reporting improvement.

On October 19, 2011, Petitioner told Dr. Nagubadi he still had back pain and was awaiting authorization for pain management.

On November 29, 2011, Petitioner began treating with Dr. Gandhi, a pain management specialist, for complaints of low back pain radiating to the legs, the right worse than the left. Petitioner attributed the symptoms to the work accident on May 27, 2010. A repeat lumbar MRI performed February 21, 2012, showed mild disc and facet degenerative changes and stable Paget's disease. On March 16, 2012, April 13, 2012, and June 22, 2012, Dr. Gandhi performed lumbar epidural steroid injections. On September 4, 2012, and January 11, 2013, Dr. Gandhi performed right medial branch blocks from L2 through L5. On March 1, 2013, Dr. Gandhi performed radiofrequency ablation of the right medial branches from L2 through L5.

On April 15, 2013, Dr. Slack, an orthopedic surgeon, examined Petitioner at the request of his attorney. Petitioner reported ongoing low back pain with radiation to the legs, the right worse than the left, since the work accident on May 27, 2010. He rated the pain a 7-8/10. Dr. Slack reviewed the lumbar MRI CDs, interpreting the degenerative changes of the facet joints to be moderately severe. He also noted that lumbar X-rays showed minimal spondylolisthesis at L4-L5. Dr. Slack diagnosed persistent symptomatic aggravation of preexisting degenerative lumbar disc and facet joint disease, and opined that the treatment Petitioner had received was reasonable and causally connected to the work accident. Further, Dr. Slack recommended standing lumbar flexion-extension X-rays to evaluate for segmental instability at L4-L5. In an undated addendum report, Dr. Slack stated that he reviewed the flexion-extension X-rays, attributing Petitioner's ongoing symptoms to "symptomatic aggravation of *** degenerative disc and facet disease and the degenerative spondylolisthesis." Absent surgical intervention,

Petitioner was at maximum medical improvement with permanent restrictions of no intervening in fights between juvenile offenders.

Petitioner testified that on or about October 28, 2010, Respondent sent him a letter, asking him to return to work. Petitioner did not return to work, explaining that Dr. Nagubadi had not released him to return to work. On November 15, 2010, Petitioner retired.

Petitioner further testified that he has not returned to Dr. Gandhi or Dr. Nagubadi since March of 2013, and is not actively treating for his low back condition. Currently, Petitioner suffers from low back pain with radiation to the right leg. The pain becomes sharp after sitting for 30 to 45 minutes. Petitioner takes Tramadol, prescribed by Dr. Nagubadi, and over-the-counter aspirin. Petitioner stated that none of his treating physicians had released him to return to work as a juvenile development specialist. On cross-examination, Petitioner affirmed that he voluntarily retired from Respondent's employ. Petitioner is also receiving Social Security retirement benefits.

In support of the Arbitrator's decision regarding (J), were the medical services that were provided to Petitioner reasonable and necessary, and has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Regarding his medical bills, Petitioner testified that the group insurance carrier through Respondent paid the bills. However, Petitioner seeks payment of "Balances - \$2,855.90," referring to Petitioner's Exhibit 9, asserting that those are balance bills in collection. Petitioner acknowledges that section 8.2 of the Act limits the employer's liability for medical expenses to the medical fee schedule or lower negotiated rate and section 8.2(e) of the Act prohibits balance billing. Petitioner asks the Arbitrator to advise the entities engaged in balance billing in this matter that they are violating section 8.2(e) of the Act.

The Arbitrator finds this would not be within the scope of her statutory jurisdiction. It is well established that the Workers' Compensation Commission "is an administrative agency, and therefore, it has no general or common law powers. Chicago v. Fair Employment Practices Comm'n, 65 Ill. 2d 108, 113 (1976). The Commission's powers are limited to those granted by the legislature, so that any action taken by the Commission must be specifically authorized by statute. Business & Professional People for the Public Interest v. Illinois Commerce Comm'n, 136 Ill. 2d 192, 243 (1989). Consequently, when an administrative agency acts outside its specific statutory authority, it acts without 'jurisdiction.' Business & Professional People, 136 Ill. 2d at 243." Alvarado v. Industrial Comm'n, 216 Ill. 2d 547, 553 (2005).

The Act does not authorize an arbitrator to determine the rights of third parties, such as medical providers or collection agencies. Furthermore, there is no showing that the balance billing entities received notice of the arbitration hearing in this matter and of Petitioner's intent to challenge the balance bill. For these reasons, the Arbitrator rejected Petitioner's Exhibit 9 during the arbitration hearing.

Since Petitioner does not identify any specific charges that Respondent or its group insurance carrier failed to pay pursuant to sections 8(a) and 8.2 of the Act, the Arbitrator awards no medical expenses.

In support of the Arbitrator's decision regarding (K), what temporary benefits are in dispute, the Arbitrator finds as follows:

In the request for hearing form, the parties stipulated Petitioner was temporarily totally disabled from May 28, 2010, through October 28, 2010. Petitioner seeks additional temporary total disability benefits from October 29, 2010, through November 15, 2010. In its proposed decision, Respondent admits that Petitioner is entitled to the additional temporary total disability benefits. Accordingly, the Arbitrator awards additional temporary total disability benefits from October 29, 2010, through November 15, 2010.

In support of the Arbitrator's decision regarding (L), what is the nature and extent of the injury, the Arbitrator finds as follows:

Having carefully considered the entire record, the Arbitrator finds the injuries sustained caused permanent disability to the extent of 10 percent of the person as a whole.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with comment	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify down	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Edwina J. Giles,
Petitioner,

vs.

NO: 10 WC 46936
11 WC 44713

University of Illinois,
Respondent.

14IWCC0417

DECISION AND OPINION ON REVIEW

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

The Commission notes that Arbitrator Simpson's July 1, 2013 Amended Decision only contained Orders. The body of the Amended Decision is contained in her May 29, 2013 Decision, which was recalled on a granted §19(f) Motion. The corrections made in the Amended Decision were regarding the TTD period and the amount of credit given. The Commission incorporates the body of the May 29, 2013 Decision into the Arbitrator's July 1, 2013 Amended Decision.

The Commission affirms the Arbitrator's findings of accident, notice, causation and permanency for both claims. The average weekly wage of \$725.23 is affirmed for 10 WC 46936 (date of accident 11-22-10) as is the TPD period and the TPD rate. The Commission modifies

credit to allow Respondent a §8(j) credit of \$571.00 as the bill clearly shows that amount was paid by Blue Cross & Blue Shield to Advocate Illinois Masonic Medical Center for date of service 12-3-10. The Commission modifies the average weekly wage for 11 WC 44713 (date of accident 10-6-11). Rx2, Employee Time Report, shows that for the 52 week period prior to 10-6-11, earnings were \$30,078.38 over 42 weeks, which yields an average weekly wage of \$716.16 and a TTD rate of \$477.44. Therefore, the TTD period from 11-23-10 through 1-30-11 is 9-6/7 weeks at \$483.48 per week (average weekly wage of \$725.23 for case 10 WC 46936). From 10-8-11 through 10-15-11 is 1-1/7 weeks at \$477.44 per week (average weekly wage of \$716.16 for case 11 WC 44713). The PPD rate for 10 WC 46936 is \$435.13 (AWW \$725.23 X 60%). The PPD rate for 11 WC 44713 is \$429.69 (AWW \$716.16 X 60%). The Commission affirms all else.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$483.48 per week for a period of 9-6/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act for case 10 WC 46936.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$477.44 per week for a period of 1-1/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act for case 11 WC 44713.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,077.13, that being the amount due for temporary partial disability from January 31, 2011 through March 9, 2011, a period of 5-3/7 weeks, under §8(a) of the Act for case 10 WC 46936.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$771.00 for medical expenses under §8(a) of the Act, subject to the Medical Fee Schedule under §8.2 of the Act for case 10 WC 46936.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$435.13 per week for a period of 15 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the permanent loss of the person as a whole to the extent of 3% and the sum of \$435.13 per week for a period of 2.05 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the permanent loss of the use of the left hand to the extent of 1% for case 10 WC 46936.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$429.69 per week for a period of 5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the permanent loss of the person as a whole to the extent of 1% for case 11 WC 44713.

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IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury. The Commission notes that Respondent paid \$4,765.36 in TTD benefits and \$797.62 in TPD benefits.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit in the amount of \$571.00 under §8(j) of the Act; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

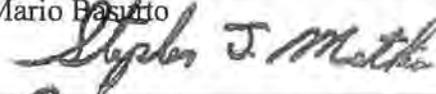
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

No bond for the removal of this cause to the Circuit Court by Respondent is due pursuant to §19(f)(2) of the Act. 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.

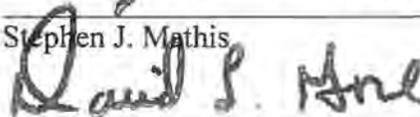
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MB/maw
o04/17/14
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Mario Basutto



Stephen J. Mathis



David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
AMENDED

GILES, EDWINA J

Employee/Petitioner

Case# **10WC046936**

11WC044713

14IWCC0417

UNIVERSITY OF ILLINOIS

Employer/Respondent

On 7/1/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0154 KROL BONGIORNO & GIVEN LTD
CHARLIE GIVEN
120 N LASALLE ST SUITE 1150
CHICAGO, IL 60602

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

1408 HEYL ROYSTER VOELKER & ALLEN
LYNSEY A WELCH
120 W STATE ST
ROCKFORD, IL 61105

1073 UNIVERSITY OF ILLINOIS
OFFICE OF CLAIMS MANAGEMENT
100 TRADE CENTER DR
SUITE 103
CHAMPAIGN, IL 61820

0904 STATE UNIVERSITY RETIREMENT SYS
PO BOX 2710 STATION A*
CHAMPAIGN, IL 61825

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

JUL 1 - 2013



[Signature]
**KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission**

14IWCC0417

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
AMENDED ARBITRATION DECISION

Edwina J. Giles
Employee/Petitioner

Case # 10 WC 46936

v.

Consolidated cases: 11 WC 44713

University of Illinois
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Deborah L. Simpson**, Arbitrator of the Commission, in the city of **Chicago**, on **January 31, 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 _____

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FINDINGS

On **November 22, 2010**, 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 **\$37,711.96**; the average weekly wage was **\$725.23**.

On the date of accident, Petitioner was **61** years of age, *married* 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 **\$4,765.36** for TTD, **\$797.62** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$5562.98**.

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 \$483.49 / week for 11 weeks for the time periods beginning Nov. 23, 2010 through January 30, 2011 and October 8, 2011 through October 15, 2011, as provided in Section 8(b) of the Act. The total amount due for this time period is \$5,318.39. Respondent previously paid \$4,765.36 leaving an underpayment of \$553.03

Respondent shall pay Petitioner temporary partial disability benefits for 5 and 3/7 weeks for the time period beginning January 31, 2011 through March 9, 2011, as provided in Section 8(a) of the Act. The total amount due for this period is \$1,077.13. Respondent previously paid \$797.62 leaving an underpayment of \$279.51.

Respondent shall pay Petitioner permanent disability benefits of \$433.94 / week for 20 weeks because the injuries sustained to the Petitioner's back on Nov. 22, 2010, caused a 3% loss of man as a whole and aggravation of the injury on Oct. 6, 2011, caused a 1% loss of man as a whole for a total of 4% loss of man as a whole pursuant to Section 8(d)2 of the Act.

Respondent shall pay Petitioner partial disability benefits of \$433.94 / week for 2.05 weeks because the injuries sustained by the Petitioner to her left wrist caused a 1 % loss of the left hand, as provided in Section 8(Ex.) of the Act.

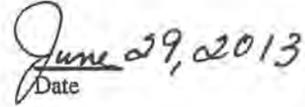
Respondent is responsible for payment of any outstanding medical bills from Advocate Illinois Masonic Medical Center for dates of service of December 3 and 4 of 2010. Respondent shall pay for the reasonable and necessary services as provided in Section 8(a) of the Act.

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.

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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


Date

ICArbDec p. 2

JUL -1 2013

STATE OF ILLINOIS)
)
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Edwina J. Giles
Employee/Petitioner

Case #'s: 10 WC 46936 and
11 WC 44713

v.

University of Illinois
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

At the time of her injury, Edwina J. Giles ("Petitioner") was a 61 year old Building Service Foreman who had worked full time for the University of Illinois ("Respondent") for over 20 years. On November 22, 2010, Petitioner injured her left hand and wrist and lumbar spine while working. Petitioner testified that on that day the basement flooded. The water was a few feet deep and she was instructed by her supervisor, Gail Hampton, to use a wet vacuum to remove the water. Petitioner testified that she used the wet vacuum with a co-worker. She and the co-worker had to move the wet vacuum up the stairs to empty the machine. Petitioner felt pain in her left hand and wrist and lower back while lifting and pulling the vacuum up a flight of stairs. The wet vacuum was full and Petitioner was pulling the vacuum with the assistance of her co-worker. Petitioner testified that she reported the accident to her supervisor, Gail Hampton, within 10 minutes of the accident, and completed her work day.

Petitioner's initial medical treatment was the morning after the accident at The University of Illinois-Chicago medical clinic. This is the company clinic. The doctor took the Petitioner off of work, diagnosed a lumbar strain and prescribed Ibuprofen (P. Ex. 1). On December 3, 2010, Petitioner sought treatment through the emergency room at Advocate Illinois Masonic Medical Center due to pain in her lumbar spine. She was referred back to the company clinic (P. Ex. 3). On December 6, 2010, the company clinic prescribed a course of physical therapy for the lumbar spine. On December 22, 2010, Petitioner was diagnosed with a left wrist ganglion cyst over the scaphoid bone and was prescribed a brace for the left wrist and thumb. She was also prescribed a course of physical therapy for the left hand to be completed in conjunction with the lumbar spine therapy (P. Ex. 1).

On January 25, 2011, Petitioner underwent x-rays of the left wrist that revealed a

bone spur at the head of the first metatarsal bone (P. Ex. 1 and 3). The company clinic allowed Petitioner to return to work in a light duty capacity, four hours per day, starting January 31, 2011. Petitioner increased work activities to 6 hours per day on February 15, 2011 and 8 hours per day on March 10, 2011. She continued working in a light duty capacity through May 24, 2011 when she was discharged at maximum medical improvement by the company clinic (P. Ex. 1).

On October 6, 2011, Petitioner felt an increase in lumbar pain while she was working. Her initial medical treatment was on the morning after the accident at the company clinic. The doctor provided Petitioner with light duty work restrictions that Respondent was unable to accommodate (P. Ex. 1). The Petitioner was seen by her primary care physician, Dr. Conrad May, in his office on Oct. 15, 2011, complaining of low back pain for the past six days. She requested a return-to-work slip. Dr. May's office note of Oct. 15, 2011, states the Petitioner advised that it was not work related and that the Petitioner gave a prior history of low back pain. She reported her pain was a 1/10. She declined a prescription for anti-inflammatory medication and was advised on how to ice/heat the area for relief. She did not return to Dr. May for any further treatment in 2011. (P. Ex. 3.) Petitioner was allowed to return to work full duty by her primary care doctor, Dr Percy Conrad May, on October 15, 2011 (P. Ex. 2). Petitioner testified that this second accident was more of an aggravation than an accident and her pain returned to the baseline level after around two weeks.

At the time of the hearing Petitioner testified that she continues to work in a full duty capacity for Respondent. She continues to notice pain in her left wrist with heavy lifting, gripping and vacuuming. It is more difficult to lift trash than before the accident. She takes over the counter Advil or Tylenol a few times per week to deal with the pain. In addition, Petitioner continues to wear the splint around 3 times per week while working. Petitioner continues to notice pain in her lumbar spine. She tries to avoid heavy lifting and mopping because these activities cause a pain that is similar to a muscle spasm. For pain relief she uses a hot pad 2 to 3 times per week and over the counter Advil or Tylenol on a daily basis.

CONCLUSIONS OF LAW

Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

Whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent is not stipulated to between the parties and is in dispute. Petitioner claims that she injured her left hand and wrist and lumbar spine as a result of a work accident on November 22, 2010. Petitioner testified that on November 22, 2010, the basement flooded. The water was a few feet deep and she was instructed by her supervisor, Gail Hampton, to use a wet vacuum to remove the water. Petitioner testified that she used the wet vacuum with a co-worker. She and the co-worker had to move the wet vacuum up the stairs to empty the machine. In order to move the vacuum, she and her co-worker had to pull the vacuum up the stairs. There is a bar on the vacuum that she was

holding while lifting and pulling the vacuum up the stairs. She was above the vacuum and pulling it up the stairs when she felt a pain in her left hand and wrist and lower back. She and her co-worker were able to pull the vacuum to the top of the stairs and Petitioner reported the accident via telephone to Gail Hampton. The company clinic medical records are consistent with the testimony of Petitioner (P. Ex. 1).

Petitioner testified that she had a second accident involving her lumbar spine on October 6, 2011. Specifically, she felt an increase in her lower back pain while mopping. Petitioner testified that this back pain was an aggravation of her symptoms from November 2010. After a few weeks her pain returned to its baseline level and she was able to return to work full duty.

The Arbitrator has reviewed all of the evidence and finds Petitioner suffered an accident on November 22, 2010 that caused an injury to Petitioner's left hand and wrist and lumbar spine. The accident arose out of an in the course of Petitioner's employment by Respondent. The accident on October 6, 2011 was simply an aggravation of her November 22, 2010 condition.

Was timely notice of the accident given to Respondent?

Petitioner testified at the time of the hearing that she reported both accidents to her supervisor, Gail Hampton, on the same day as the accidents. Respondent did not call any witnesses to refute Petitioner's testimony. The Arbitrator had the opportunity to observe Petitioner and finds her to be a credible witness. The Arbitrator finds that Petitioner provided adequate notice for both dates of accident.

Is Petitioner's current condition of ill-being causally related to the injury?

The causal connection between Petitioner's work accident and her present condition of ill-being is not stipulated to between the parties and is in dispute. Petitioner testified that she had prior lumbar spine and left hand problems. However, she testified that the accident on November 22, 2010 caused a new, different type of pain to both the left hand and the lumbar spine. The records reflect that Petitioner sought medical treatment at the company clinic the day after the accident. Petitioner testified that her normal work day ends at midnight and the company clinic does not open until 7:00AM the next day. Petitioner sought treatment first thing in the morning on November 23, 2010. Petitioner testified the October 6, 2011 accident was really just an aggravation that occurred while mopping at work. She sought treatment at the company clinic the morning after the accident. By the following week her pain had returned to its baseline level.

The Arbitrator has had the opportunity to review the medical evidence and the testimony of the Petitioner and finds a causal connection between Petitioner's present condition of ill-being and the work accident of November 22, 2010. The accident of October 6, 2011 was only an aggravation of her underlying condition that resulted from the November 22, 2010 accident.

What were Petitioner's earnings?

Petitioner claims an average weekly wage ("AWW") of \$776.40. Respondent claims an AWW of \$725.23. The Arbitrator reviewed the evidence presented by the parties and finds the AWW is \$725.23. Respondent's Exhibit 1 provides the actual earnings for the 52 week period before the accident of November 22, 2010. This is the best evidence and reveals earnings of \$37,711.96 with an AWW of \$725.23.

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?

Petitioner presented medical bills from Advocate Illinois Masonic Medical Center (P. Ex. 5). Based on the Arbitrator's findings above, these bills are awarded in the amount of \$771.00, to be paid according to the fee schedule.

What temporary disability benefits are in dispute – TTD and TPD?

Petitioner claims she is entitled to temporary total disability benefits ("TTD") for the periods between November 23, 2010 through January 30, 2011 and October 8, 2011 through October 23, 2011. Respondent claims Petitioner is not entitled to any TTD benefits. Petitioner claims she is entitled to temporary partial disability benefits ("TPD") for the period between January 31, 2011 and March 9, 2011. Respondent claims Petitioner is not entitled to any TPD benefits.

Petitioner presented evidence that she was taken off of work between November 23, 2010 and January 30, 2011. She treated at the company clinic during this time period. She was taken off of work and completed a course of physical therapy. The records reflect that she returned to work in a light duty capacity on January 31, 2011 pursuant to the restrictions of the company clinic doctor. She continued to work in a light duty capacity, less than 8 hours per day, through March 9, 2011. On March 10, 2011, she was returned to work in a light duty capacity, 8 hours per day. She returned to work full duty on May 24, 2011 (P. Ex. 1 and 4).

Petitioner presented evidence that she was given light duty work restrictions by the company clinic on October 7, 2011 (P. Ex. 1). She testified that the Respondent could not accommodate the restrictions. Evidence was presented that Dr. Percy Conrad May allowed Petitioner to return to work in a full duty capacity October 15, 2011 (P. Ex. 2). She returned to work in a full duty capacity on October 24, 2011 (P. Ex. 1).

The Arbitrator has reviewed all of the evidence presented by the parties. The Arbitrator finds the following:

Based on the Arbitrator's findings as stated above, the Petitioner has proven that she had a work accident that caused her to miss time from work. She was off of work per

the company clinic between November 23, 2010 and January 30, 2011 (P. Ex. 1). She suffered an aggravation of her underlying condition on October 6, 2011. The Respondent was unable to accommodate her restrictions between October 8, 2011 and October 15, 2011. On October 15, 2011, Petitioner was released to return to work full duty by her primary care physician, Dr May.

Petitioner presented evidence that she worked in a light duty capacity between January 31, 2011 and March 9, 2011 (P. Ex. 4). She worked less than 40 hours per week until March 10, 2011 and was paid by Respondent only for the number of hours that she worked. She did receive TPD benefits from the insurance company for this period. However, the benefits were paid at the wrong rate (R. Ex. 3).

Section 8 deals with how TPD benefits should be calculated under the Act and states as follows:

“When the employee is working light duty on a part-time basis or full-time basis and earns less than he or she would be earning if employed in the full capacity of the job or jobs, then the employee shall be entitled to temporary partial disability benefits. Temporary partial disability benefits shall be equal to two-thirds of the difference between the average amount the employee would be able to earn in the full performance of his or her duties in the occupation in which he or she was engaged at the time of the accident and the net amount which he or she is earning in the modified job provided to the employee by the employer or in any other job that the employee is working.”

The Arbitrator notes that that the amendments to the Act adopted on June 28, 2011 change Section 8 calculations from “net” pay to “gross” pay. However, the amended Act does not apply in this case.

Petitioner testified that in the full performance of her job she worked 40 hours per week at a rate of \$19.41 per hour. This totals \$776.40 per week. Respondent based the TPD calculations on the average weekly wage of \$725.23. This is incorrect. To calculate the TPD benefits due, the net amount received by Petitioner each week should be subtracted from \$776.40 and the total should be multiplied by two-thirds. The total amount due for the period between January 31, 2011 and March 9, 2011 is \$1,077.13. Respondent previously paid \$797.62 leaving an underpayment of \$279.51.

What is the nature and extent of the injury?

The Arbitrator has reviewed the testimony of the Petitioner and finds her to be credible. Based on the testimony and evidence presented at the time of the hearing, Petitioner has suffered permanent partial disability to her left hand and lumbar spine as a result of the work accident of November 22, 2010. The Arbitrator awards Petitioner 22.05 weeks of permanent partial disability benefits because the accident caused injuries to the Petitioner to the extent of 3% person as a whole for the accident on November 22, 2010 and 1% for the accident which aggravated her previous injury on October 6, 2011 for a

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total of 4% loss of use to the person as a whole and 1% loss of use to the left hand for November 22, 2010 accident.

Is Respondent due any credit?

Respondent claims entitlement to a Section 8(j) credit in the amount of \$571.00. Respondent did not provide any evidence in support of this claim. The Arbitrator does not find Respondent entitled to a Section 8(j) credit.

Respondent also presented evidence of Petitioner's prior IWCC settlements (R. Ex. 5). None of the settlements allow for a credit to the left hand or the person as a whole. Petitioner's prior IWCC settlements are irrelevant.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stephen Waddell,

Petitioner,

vs.

NO: 09 WC 51924

14IWCC0418

Professional Services Industries,

Respondent.

DECISION AND OPINION ON §19(h) AND §8(a) PETITION

Petitioner filed a Petition under §19(h) and §8(a) of the Workers' Compensation Act requesting additional medical expenses and alleging a material increase in his disability since the Arbitrator's Decision dated September 30, 2011, in which Petitioner was found to have permanently lost 35% of the use of his right foot, 15% of the use of his right leg, 35% of the use of his right arm, 5% of the use of his right hand and 5% of the person as a whole, a total of 214.5 weeks. The Arbitrator also awarded \$420.00 in mileage expenses and found Respondent liable for all appropriate charges for all reasonable and necessary medical expenses. The issues on Review are whether Petitioner's permanent disability has materially changed for his right foot, right hand and right arm conditions of ill-being since the last arbitration hearing on August 5, 2011 and whether Petitioner is entitled to reasonable and necessary medical expenses. The Commission, after considering the stipulated findings of the parties, grants Petitioner's §19(h) Petition, finding that Petitioner's permanent disability has materially increased to the extent of an additional 5% loss of the use of his right foot and has now permanently lost 40% of the use of his right foot, an additional 3.075% loss of the use of his right arm and has now permanently lost 38.075% of the use of his right arm, an additional 10% loss of the use of his right hand and has now permanently lost 15% of the use of his right hand and grants Petitioner's §8(a) Petition for reasonable and necessary medical expenses in the amount of \$13,686.00 for the reasons set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Arbitration was held on August 5, 2011. In her Decision filed with the Commission September 30, 2011, Arbitrator White noted that the parties stipulated to the following: accident arising out of and in the course of Petitioner's employment on September 25, 2009, timely notice, causal connection for Petitioner's current condition of ill-being, that Respondent had paid all appropriate charges for all reasonable and necessary medical services related to Petitioner's injuries, that Respondent had paid \$7,626.74 for TTD benefits that Petitioner was entitled to, a total period of 22 weeks from September 26, 2009 through February 3, 2010, from May 26, 2010 through June 4, 2010 and from July 27, 2010 through August 8, 2010. As noted above, the Arbitrator found Petitioner permanently lost 35% of the use of his right foot, 15% of the use of his right leg, 35% of the use of his right arm, 5% of the use of his right hand and 5% of the person as a whole, a total of 214.5 weeks. The Arbitrator also awarded \$420.00 in mileage expenses and found Respondent liable for all appropriate charges for all reasonable and necessary medical expenses.
2. The Arbitrator's Decision was not reviewed and it became final.
3. Petitioner filed this §19(h) and §8(a) Petition on January 23, 2013.
4. On October 23, 2013, the parties submitted the following Stipulated Findings:
 - 1) Respondent has agreed that Petitioner's condition has worsened;
 - 2) Petitioner received treatment from physicians at the Orthopedic Center for his right foot, right arm and right hand;
 - 3) Attached exhibits 1 and 3 are the medical records of Petitioner's treatment for the period January 9, 2013 through September 20, 2013;
 - 4) Attached exhibits 2 and 4 are Petitioner's medical bills for the period January 9, 2013 through September 20, 2013;
 - 5) Respondent agrees that all of Petitioner's medical bills are reasonable;
 - 6) Respondent agrees that all of the medical treatment received by Petitioner was reasonable and medically necessary;
 - 7) Respondent agrees to pay all of Petitioner's medical bills, Exhibits 2 and 4, in accordance with the Medical Fee Schedule;
 - 8) Respondent agrees that Petitioner has suffered additional disability consisting of 5% of his right foot, 10% of his right hand and 3.075% of his right arm;
 - 9) Respondent agrees that Petitioner's PPD rate is \$312.00;
 - 10) Petitioner and Respondent stipulate and agree the Commission may enter a Decision and an award based upon the above stipulated facts.

The document was signed by Petitioner, Petitioner's attorney and Respondent's attorney.

Based on the stipulated findings of the parties, the Commission grants Petitioner's §19(h) Petition, finding that Petitioner's permanent disability has materially increased to the extent of an additional 5% loss of the use of his right foot and has now permanently lost 40% of the use of his right foot, an additional 3.075% loss of the use of his right arm and has now permanently lost

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38.075% of the use of his right arm, an additional 10% loss of the use of his right hand and has now permanently lost 15% of the use of his right hand and grants Petitioner's §8(a) Petition for reasonable and necessary medical expenses in the amount of \$13,686.00 (Exhibits 2 and 4).

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's §19(h) Petition is hereby granted.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's §8(a) Petition is hereby granted.

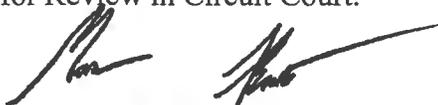
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$312.00 per week for a period of 36.62 weeks, as provided in §8(e) of the Act, for the reason that Petitioner sustained a material increase in his disability to the extent of 5% loss of the use of his right foot, 3.075% loss of the use of his right arm and 10% loss of the use of his right hand. As a result of the accident of September 25, 2009, Petitioner now has sustained permanent loss of the use of his right foot to the extent of 40%, permanent loss of the use of his right arm to the extent of 38.075% and permanent loss of the use of his right hand to the extent of 15% under §8(e) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$13,686.00 for medical expenses under §8(a) of the Act subject to the Medical Fee Schedule under §8.2 of the Act.

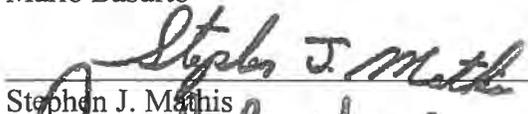
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$25,200.00. 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.

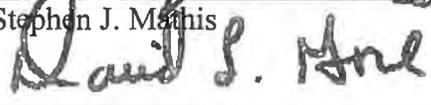
DATED: JUN 05 2014
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r02/27/14
43



Mario Basurto



Stephen J. Mathis



David L. Gore

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Hector Fontalvo,
Petitioner,

vs.

NO: 06 WC 26500

14IWCC0419

Food Team, Inc.,
Respondent.

DECISION AND OPINION ON SECOND REMAND

This case was initially decided by Arbitrator Peterson on August 24, 2011. In his decision, the Arbitrator found that while Petitioner sustained an accidental injury on May 31, 2006, Petitioner failed to prove any causal connection between his current cervical and right shoulder injuries and the May 31, 2006 work accident. The Arbitrator further found Petitioner was not credible. More specifically, the Arbitrator found that Petitioner's cervical condition was not causally connected to the May 31, 2006 work accident because Petitioner's condition related back to a time prior to the date of accident and was ongoing such that the May 31, 2006 work accident didn't cause an aggravation of the same. The Arbitrator addressed the three doctors who weighed in on the causation issue as it relates to Petitioner's cervical condition. They were Drs. Brackett, Giressan and Weber. The Arbitrator set forth all three causation opinions and he stated that, "Based on the foregoing, the Arbitrator concludes that Petitioner has failed to meet his burden of proving that his current condition of cervical ill-being is causally related to his work-related injury of May 31, 2006." The Arbitrator further found that while Petitioner's right shoulder condition was initially causally connected to the May 31, 2006 work accident that due to the fact that Petitioner voluntarily removed himself from treatment his current right shoulder condition was not causally related to the May 31, 2006 work accident. Petitioner filed a Review of the Arbitrator's decision, in which, among other things, he placed at issue causal connection.

Pursuant to Petitioner's appeal, the Commission issued a decision in which it modified the Arbitrator's decision and found that Petitioner's cervical condition is casually related to the

May 31, 2006 accident. The Commission noted that the parties had stipulated to temporary total disability from June 1, 2006 through October 22, 2009 for 176-4/7 weeks under Section 8(b) of the Illinois Workers' Compensation Act. Per the stipulation of the parties, in accordance with the holding in Walker v. Industrial Commission, 345 Ill. App. 3d 1984 (2004) and based on the chain of events analysis, the Commission found that Petitioner's cervical connection was causally connected to the May 31, 2006 work accident.

Respondent appealed the Commission's decision to the Circuit Court. On December 13, 2012 the Circuit Court Judge held that the Commission's findings that the evidence showed Petitioner's right shoulder condition was not causally related was against the manifest weight of the evidence. He also stated that "to the extent the Commission's finding that Petitioner's cervical injuries are compensable is based on the parties' stipulation regarding temporary total disability benefits is legally deficient." The judge also indicated that the "Court also finds that the Commission failed to make sufficient findings regarding the credibility findings regarding causal connection of Petitioner's cervical condition and the absence or presence of a causal relationship between the May 31, 2006 accident at issue and Petitioner's cervical condition/injury. The Court remands this matter to the Commission for further findings on these issues.

On Remand the Commission issued a decision in which it set forth the three above mentioned doctors' findings and/or testimony. The Commission weighed the evidence and found that Petitioner did not sustain an aggravation of his pre-existing cervical condition as a result of the May 31, 2006 work accident. The Commission based its decision on the chain of events, Dr. Grieesan's testimony and Dr. Brackett's most recent causation opinion. The Commission further found based on the Circuit Court transcript that was incorporated into the December 13, 2012 Order that the temporary total disability the parties stipulated attached to Petitioner's right shoulder condition. Moreover, the Commission found that Petitioner's current right shoulder condition was not causally related to the May 31, 2006 accident.

The Commission's decision was appealed to the Circuit Court. Currently the Circuit Court has ordered the Commission to modify and strike its finding that Petitioner did not sustain an aggravation of his pre-existing cervical condition. The Court noted that the Arbitrator adopted the opinion of Dr. Weber that Petitioner sustained an aggravation of a pre-existing problem which resolved and that Petitioner was at maximum medical improvement as of December 19, 2007. Respondent did not file a review petition challenging the Arbitrator's causation condition of ill-being with respect to (sic) the cervical spine was causally related to the accident. When this case came under the jurisdiction of the Circuit Court, the Arbitrator's initial findings concerning causation through December 19, 2007 had not been preserved for challenge or appeal. The Commission was not vested with authority to modify this opinion on remand.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

14IWC0419

The Commission finds:

1. The Commission finds that on its face the Arbitrator's findings regarding Petitioner's cervical condition and its relationship to the May 31, 2006 work accident were incomplete. While the Arbitrator properly weighed the causation opinions expressed by the three doctors regarding the cervical condition and its relationship to the May 31, 2006 work accident the Arbitrator only 1) addressed Petitioner's current cervical condition as it relates to the May 31, 2006 accident and failed to address whether or not Petitioner's overall cervical condition related to the May 31, 2006 work accident and 2) While one can infer that the Arbitrator based his findings that Petitioner's current cervical condition was not causally connected to the work accident on Dr. Weber's opinion, the Arbitrator did not actually specify that his decision was based on Dr. Weber's opinion but instead stated "based on the foregoing" the Arbitrator found that Petitioner's current cervical condition was not causally related to the work accident which the Commission interpreted to be properly based on all three of the doctors' opinions that weighed in on the causation issue.

Petitioner appealed the Arbitrator's decision and specifically placed before the Commission the issue of causation as it related to Petitioner's cervical condition. The Commission upon exercising its powers of original jurisdiction performed a de novo review of the Arbitrator's finding and in doing so they reversed the Arbitrator's findings based on a temporary total disability stipulation of the parties and based on a chain of events theory.

Respondent appealed the Commission's decision. In a December 13, 2012 Circuit Court Order, the Judge found that as a matter of law the Commission's finding of causation based on the temporary total disability stipulation of the parties was legally deficient. Furthermore, the Judge found that the Commission had not made sufficient findings of credibility as it related to the causation issue which pertained to Petitioner's cervical condition. The Court specifically instructed the Commission to make sufficient findings of fact regarding the credibility findings regarding causal connection of Petitioner's cervical condition and the absence or presence of a causal relationship between the accident and Petitioner's cervical issues.

On May 31, 2013 and pursuant to the Court's instructions, the Commission issued a decision in which it specifically detailed all of the doctors' findings and testimony regarding the causation of Petitioner's overall cervical condition and its relationship to the May 31, 2006 work accident and it performed a credibility assessment of the doctors' opinions prior to findings that Petitioner failed to prove he sustained an aggravation of his pre-existing cervical condition as a result of the May 31, 2006 work accident and the Commission based its decision on the chain of events, Dr. Grieesan's testimony along with Dr. Bracket's most recent causation opinion. More specifically, the Commission noted that while Dr. Grieesan's found causation, the basis upon which he supported his causation opinion was not correctly based on the facts in the record. The Commission further pointed out that Dr. Weber's causation opinion also had two potential problems in that the doctor was presented with an insufficient history of his pre-existing condition and the doctor believed Petitioner had sustained a temporary aggravation of his pre-

existing condition when in fact the Petitioner sustained more than a temporary aggravation. As such the Commission placed little, if any weight, on Dr. Weber's opinion. Lastly, the Commission found that the best evidence resulted from Dr. Brackett's reports and not what one may/may not want to infer from the nurse case manager's discussion with the doctor or Respondent's correspondence with the doctor. In short, the Commission did what it was specifically instructed to do by the Circuit Court. It properly detailed the doctors' findings and testimony regarding the causation of Petitioner's overall cervical condition and its relationship to the May 31, 2006 accident and performed a credibility assessment of the doctors' opinions prior to findings that Petitioner failed to prove he sustained an aggravation of his pre-existing cervical condition as a result of the May 31, 2006 work accident.

The claim was appealed to the Circuit Court. Currently the Circuit Court has ordered the Commission to modify and strike its finding that Petitioner did not sustain an aggravation of his pre-existing cervical condition. The Court found that the Arbitrator adopted the opinion of Dr. Weber that Petitioner sustained an aggravation of a pre-existing problem which resolved and that Petitioner was at maximum medical improvement as of December 19, 2007. Respondent did not file a review petition challenging the Arbitrator's causation condition of ill-being with respect to (sic) the cervical spine was causally related to the accident. When this case came under the jurisdiction of the Circuit Court, the Arbitrator's initial findings concerning causation through December 19, 2007 had not been preserved for challenge or appeal. The Commission was not vested with authority to modify this opinion on remand.

Although the Circuit Court has ordered the Commission to modify and strike its most recent findings that Petitioner did not sustain an aggravation of his pre-existing condition, the Commission finds that to do so would be in error for numerous reasons. Namely, the Commission finds that the Arbitrator's finding regarding this issue are deficient in that they only address Petitioner's current cervical condition as opposed to Petitioner's overall cervical condition. Two, contrary to the Judges statement in the most recent order, the Arbitrator did not specifically adopt Dr. Weber's opinion and at most one can only infer that that was a basis for the Arbitrator's finding. More importantly, the Commission cannot ignore the fact that the Arbitrator used the phrase "based on the foregoing", which the Commission has interpreted to mean that the Arbitrator took into consideration not just Dr. Weber's opinion but that of Drs. Brackett and Gireesan alike. Next, the Commission finds through the powers vested through the Act that it has original jurisdiction and can perform a de novo review of the Arbitrator's decision. Additionally, the Commission notes that the review of the generic issue of causation encompasses a review of the current cervical condition as well as the cervical condition overall and as such the Commission finds that the Respondent need not differentiate between Petitioner's current cervical condition as opposed to his overall cervical condition. Additionally the Commission finds, by virtue of the Petitioner placing the issue of causation before the Commission, the Commission was obligated to address this issue. More importantly if the Commission were to strike its findings it would be in violation of the Circuit Court's earlier directive contained in the December 13, 2012 Order that the Commission fully weigh the evidence at hand regarding causation of the cervical condition and its relationship to the May 31,

2006 accident and that the Commission perform a credibility assessment regarding the same. Lastly, the Commission finds that it cannot both “modify and strike” its finding that Petitioner did not sustain an aggravation of his pre-existing cervical condition as these two terms are incongruent with one another and both actions cannot take place. After a thorough analysis of the facts of this case and pursuant to the Circuit Court’s directive, the Commission finds that it has no basis in the record or the law to make changes to this portion of May 31, 2013 decision.

2. The Commission finds that the parties stipulated to temporary total disability from June 1, 2006 through October 22, 2009 for 176-4/7 weeks. The parties did not indicate whether the temporary total disability payments were made in relationship to Petitioner’s alleged cervical condition, his alleged right shoulder condition or both conditions.

Pursuant to Walker v. Industrial Commission, 345 Ill. App. 3d 1084 (2004), the Commission acknowledges that it was bound by the stipulation of the parties and the Commission could not ignore or change the stipulation entered into by the parties. With that in mind, the Commission initially attached the stipulation to Petitioner’s alleged cervical condition. Respondent reviewed the Commission’s decision and the Circuit Court held that to the extent that the Commission’s findings that the Petitioner’s cervical injury is compensable being based on the parties’ stipulation regarding temporary total disability benefits, the decision is legally deficient. The Circuit Court also instructed that the transcript from oral arguments in the circuit court be made part of the December 13, 2012 Circuit Court Order. Contained within the Circuit Court transcript was a statement from Respondent’s attorney that the stipulated temporary total disability period pertained to Petitioner’s right shoulder condition. On remand, the Commission issued a decision in which it cited to the Respondent’s attorney’s statement that the stipulated temporary total disability period pertained to Petitioner’s right shoulder. Once again, the case was appealed. The Circuit Court judge ordered the Commission to modify and strike any and all findings relative to the issue of temporary total disability benefits, specifically its finding that the temporary total disability stipulation was based on Petitioner’s right shoulder condition, which the Commission based on the Circuit Court Oral Argument transcript. The Court made it clear that the Circuit Court Oral Argument was not a new record from which the Commission could take evidence regardless of whether said transcript was to be incorporated into the Court’s December 13, 2012 Order.

The Commission notes that while being directed by the Circuit Court not to address the issue of temporary total disability benefits, it would not be properly performing its job and would be leaving itself open to a further remand by virtue of not reviewing the issue of temporary total disability benefits as part of the analysis of this case. The Commission finds that the record shows that the temporary total disability was paid at a point where Respondent had a different attorney than is presently the attorney of record. The substitute of attorneys occurred in August or September of 2009. As indicated in the record, Respondent’s current attorney stated at arbitration that upon reviewing Dr. Gireesan’s complete medical records and based on Dr. Gireesan’s records that predated the date of accident the Respondent terminated temporary total disability benefits. As such Respondent’s attorney issued a letter dated October 23, 2009 and

submitted into evidence as Petitioner's PX15, which provided very generic language. Specifically it stated that temporary total disability was to be terminated immediately and it was clear from the medical documentation in this case that Petitioner's current medical problems are not related in any way to the occurrence at issue. As such the letter lacked any specificity as to what medical documentation was being used as a basis to cease temporary total disability and what body parts the temporary total disability benefits were being attached.

Without altering its position of causation in relationship to the cervical condition as indicated above, the Commission acknowledges that there was a stipulation of temporary total disability by the parties. Additionally the parties did not assign said stipulation to a specific body part whether it be the cervical, right shoulder or both conditions. It appears by the actions taken by Respondent's current attorney on/around October of 2009 and subsequently noted at arbitration, that, at least in part, the stipulation related to Petitioner's alleged cervical condition. The Commission notes that even if the stipulated temporary total disability related to the cervical condition, payment of temporary total disability is not an admission of liability. Furthermore, given the fact that Respondent's prior attorney was no longer part of the case and at the time of his participation he did not disclose his theory of the case in regard to temporary total disability, at best, all the Commission can do is to limit its actions to acknowledge that the parties entered into a stipulation and it can infer that the stipulate attached, at least in part, to Petitioner's cervical condition. As such the Commission complies with the law and acknowledges that it is bound by the stipulation of the parties and that it cannot ignore or change the stipulation entered into by the parties but it limits itself to not attaching temporary total disability stipulation to any given body part.

3. The Commission strikes its right shoulder causal connection findings as being beyond the scope of the December 13, 2012 remand order.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$225.32 per week for a period of 176-4/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act, and as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

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

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

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

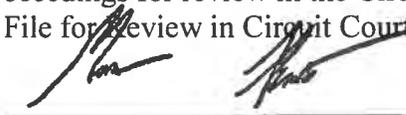
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$4,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for review in Circuit Court.

DATED: JUN 05 2014

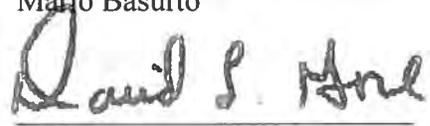
MB/jm

O: 5/8/14

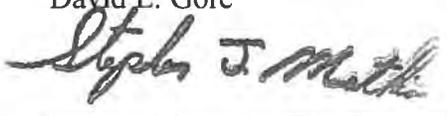
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Mario Basurto



David L. Gore



Steven Mathis

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jova Carrasco,
Petitioner,

vs.

Juno Lighting,
Respondent,

NO: 10WC 30702

14IWCC0420

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 28, 2013, is hereby affirmed and adopted.

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 \$25,000.00. 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: JUN 05 2014

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RWW/rm
046

Ruth W. White

Ruth W. White

Charles J. DeVriendt

Charles J. DeVriendt

Daniel R. Donohoo

Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CARRASCO, JOVA

Employee/Petitioner

Case# **10WC030702**

JUNO LIGHTING

Employer/Respondent

14IWCC0420

On 2/28/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.13% 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:

4642 O'CONNOR & NAKOS PC
MATT WALKER
120 N LASALLE ST 35TH FL
CHICAGO, IL 60602

1872 SPIEGEL & CAHILL PC
MILES P CAHILL
15 SPINNING WHEEL RD SUITE 107
HINSDALE, IL 60521

14IWCC0420

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
Xx	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jova Carrasco
Employee/Petitioner

Case # 10 WC 30702

v.

Consolidated cases: n/a

Juno Lighting
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Carolyn Doherty**, Arbitrator of the Commission, in the city of **Chicago**, on **January 14, 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 _____

FINDINGS

On April 12, 2010, 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 \$26,520.00; the average weekly wage was \$510.00.

On the date of accident, Petitioner was 50 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 \$12,440.00 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$12,440.00.

Respondent is entitled to a credit of \$9,935.00 under Section 8(j) of the Act. SEE ARB EX 1.

ORDER

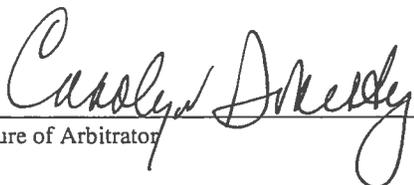
RESPONDENT SHALL PAY PETITIONER TEMPORARY TOTAL DISABILITY BENEFITS OF \$340.00 PER WEEK FOR 47 WEEKS, COMMENCING JUNE 17, 2010 THROUGH MAY 12, 2011, AS PROVIDED IN SECTION 8(B) OF THE ACT. RESPONDENT SHALL RECEIVE CREDIT FOR AMOUNTS PAID. SEE ARB EX 1.

RESPONDENT SHALL PAY PETITIONER THE REASONABLE AND NECESSARY MEDICAL EXPENSES INCURRED THROUGH 5/12/11 AS PROVIDED IN SECTIONS 8(A) AND 8.2 OF THE ACT. RESPONDENT SHALL BE GIVEN A CREDIT FOR AMOUNTS PAID UNDER SECTION 8(A) OF THE ACT. RESPONDENT SHALL ALSO BE ENTITLED TO AN 8(J) CREDIT IN THE AMOUNT OF \$9,935.00, AND SHALL HOLD PETITIONER HARMLESS FROM ANY CLAIMS BY ANY PROVIDERS OF THE SERVICES FOR WHICH RESPONDENT IS RECEIVING THIS CREDIT, AS PROVIDED IN SECTION 8(J) OF THE ACT. SEE DECISION AND SEE ARB EX 1

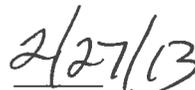
RESPONDENT SHALL PAY PETITIONER PERMANENT PARTIAL DISABILITY BENEFITS OF \$306.00 PER WEEK FOR 102.5 WEEKS AS PETITIONER SUSTAINED THE 30% LOSS OF USE OF THE RIGHT HAND AND 20% LOSS OF USE OF THE LEFT HAND PURSUANT TO SECTION 8(E) OF THE ACT.

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



 Date

FINDINGS OF FACT

Petitioner testified via interpreter at trial. Petitioner, a 52 year assembler, was born in Mexico where she attended one year of school. Petitioner came to the United States in 1977 and did not attend any school in the U.S. Petitioner began working for Respondent making lamps in 1988. She is currently not working.

Petitioner testified that her job title for Respondent was assembler and that she worked assembling lamps from 7 am to 3 pm 5 days per week. During her shift Petitioner was afforded two 10 minute breaks and a 30 minute lunch break. Her job as an assembler required her to use her hands. At trial, Petitioner demonstrated how she moved her wrist at 4 different angles while working with an air gun to assemble lamps. Petitioner testified that she used screw drivers on the job as well. Petitioner used her right hand to assemble and used her left hand only to grab the necessary materials. She did not use the air gun with her left hand. Petitioner testified that she used both hands to place materials onto a table and to affix labels. Petitioner testified she was required to work at a fast pace. The tools were located hanging above her and she had to reach up and pull the air gun down in order to use it. On cross-exam, Petitioner testified that many steps were required to assemble a lamp and that she was rotated throughout the plant and moved around to different assembly stations. At times she would use the air gun other times she would use the riveter. Specifically, Petitioner testified that she was not on the assembly line using the air gun for 8 hours per day 5 days per week but that she rotated and switched jobs with her co workers in the department.

PX 4 is a summary of Petitioner's job duties. The job description describes the essential duties and responsibilities of an assembler at Juno Lighting. Petitioner was required to perform repetitive, light assembly of company product according to schedule following standardized procedures using tools, fixtures and equipment. She was required to assemble boxes and pack final product for shipment. She would also inspect component parts at the job station, as well as the final assembled product prior to packing.

Petitioner's essential duties and responsibilities included carrying material to the line from a nearby staging area, inspecting parts at the work station before, during and after assembly, assembling products using electric, manual mechanical, automatic, semiautomatic, and/or pneumatic machines and tools, labeling products by applying pre-glued labels, and assembling boxes and packing finished product using a bagging machine, staple gun, tape dispenser and semi-automated packing equipment.

The physical demands of the assembly job are as follows: While performing the duties of this job, the Petitioner is regularly required to sit; use hands to finger, handle, or feel objects, tools, or controls; and reach with hands and arms. The Petitioner is occasionally required to stand; walk; and talk or hear. The Petitioner must occasionally lift and/or move up to 50 pounds. The job description further explains while performing the duties of this job, the employee is frequently exposed to moving mechanical parts, and occasionally exposed to vibration. PX 4. Respondent also submitted a job analysis which contained similar requirements and which noted that job rotation is performed generally every two hours and occasionally every hour to provide positional changes and musculoskeletal relief. RX 10, dep ex 4.

Petitioner testified that in the 1990's while working for Respondent she had problems with her hands and wrists. She was prescribed medication and worked light duty for 3 months before returning to her regular duties.

Petitioner testified that in April 2010 she noticed numbness in her hands and pain in her wrists. Petitioner testified that upon voicing these complaints to "Juliana" working in Safety for Respondent, Juliana gave Petitioner a support glove for her right hand, a right wrist bandage and ibuprofen.

Petitioner first sought medical treatment at La Clinica on 6/9/10. The questionnaire Petitioner completed on that date indicates a work accident arising from the fact that Petitioner punches "a lot of small parts in one hour. Her jobs makes a lamps." The form also asked "what is bothering you" and Petitioner responded, "Both shoulders pain and both hands..." PX 1. A notation was made on the form noting "3 y/o R hand sprain put her on light duty - aggravated - right shoulder swelling." The initial consultation history form indicates that "Pt had a unknown injury 3 y/ago at work and light therapy and light duty was done, she never recovered. Since then symptoms have aggravated with bilateral shoulder pain, increased numbness/tingling to both hands, R greater than left. Pt has not made a report because of fear of being fired." PX 1. Her first chief complaint was both hands and the provocative was listed as "movement and working with fine objects- activities of daily living." Under "palliative" Petitioner listed extending her elbows and not working. Petitioner describes her symptoms as a right hand/wrist dull ache with numbness and tingling, neck pain that radiates to upper extremities bilateral. Petitioner also complained of bilateral shoulder pain and right sided neck pain radiating to her bilateral upper extremities with the provocative for those complaints being "movement." PX 1. Only the right wrist was circled on the pain diagram for that date. However, a physical spinal exam was administered noting cervical disc degeneration and cervical sprain/strain along with an upper extremity exam indicating wrist pain at joint, shoulder pain, and possible carpal tunnel syndrome. The diagnosis was carpal tunnel syndrome and cervical disc denegation due to repetitive trauma. Petitioner was given two weeks off work to start therapy 5 days per week for one week. It was further noted "she will first report and open a claim and an attorney will be assigned thereafter." PX 1.

Petitioner's next visit to La Clinica was on 6/16/10. Petitioner reported continued wrist and neck pain. On 6/17/10, it was noted in the daily office notes that Petitioner provided her employer with a work accident form "and they got mad." PX 1. On cross, Petitioner was shown RX 1 which was a form dated 6/17/10 completed by Petitioner one day after her last day worked for Respondent, 6/16/10. The form was an accident report form in Spanish. Petitioner testified that the form was in her handwriting. On the form Petitioner indicated a date of accident of "April", place of accident was listed as "line" and that her right wrist hurt. Petitioner wrote, "Numbness on my hand my hand hurts during nighttime ... hurts and it gets numb while I'm doing my chores too." RX 1. Petitioner testified that she only indicated pain in the right wrist at the time because her right wrist "hurt the most" at that time. Petitioner agreed that she did not relate her right wrist pain to any specific work activity in completing the form. Petitioner did not specifically mention the use of tools or any of her specific work duties in relation to her wrist pain. HOWEVER the Arbitrator notes that Petitioner indicated "the line" as the place of the event at issue.

On cross, Petitioner testified that she noticed wrist pain at night and when working around the house since April 2010 and that this work accident form was completed only after she saw the doctors at La Clinica and was told to complete an accident report for work. Petitioner testified that she completed the form in a hurry and did not list all of her complaints.

Petitioner continued to treat at La Clinica until she was referred to Dr. Padron, pain management specialist, on 6/22/10. PX 7. Dr. Padron testified that Petitioner's complaints consisted of neck pain and

bilateral wrist pain. PX 7, p. 8. He noted a history of performing the same job for the last ten years where Petitioner was required to do repetitive-type movements, starting with her hand extended and then having to flex it over and over again. He noted that she was also in a position where her neck was flexed constantly. PX 7, p. 8. Dr. Padron testified that on exam Petitioner "...was alert and oriented times three, no acute distress. Neck flexion, extension, bilateral rotation and bilateral lateral flexion all reproduce neck pain. She's tender to palpation of the cervical paraspinal muscles, upper trapezius, and upper thoracic paraspinal muscles. She stated that palpation of her neck reproduced pain radiating down both her arms, right and left. She had positive Tinel's and Phalen's on the right and Tinel's positive on the left." PX 7, p. 9. At that time, Dr. Padron was "pretty sure she had bilateral carpal tunnel." PX 7, p. 10. He ordered an EMG/NCV which was performed on July 9, 2010. He also ordered a cervical MRI that was never approved by the workers' compensation insurance carrier. Dr. Padron testified that the EMG/NCV results were consistent with bilateral median nerve entrapment (carpal tunnel). PX 7, p. 11. There was no indication on the EMG/NCV of cervical radiculopathy.

Dr. Padron opined that Petitioner's job duties were competent to aggravate or accelerate any pre-existing degenerative process in her cervical spine. PX 7, pp. 17-18. However, he never saw a cervical MRI and has no opinion on whether Petitioner had any disc pathology and noted in his deposition that her neck complaints resolved after the carpal tunnel surgery. PX 7, p. 17. Dr. Padron testified that the treatment he rendered for Petitioner's carpal tunnel was medically necessary in light of her physical exam, the history of her job responsibilities and the positive EMG. PX 7, p. 19. Dr. Padron referred Petitioner to Dr. O'Keefe for treatment of her bilateral carpal tunnel.

Petitioner began seeing Dr. O'Keefe in August 2010. On several visits to Dr. O'Keefe's office, Petitioner was examined only by a physician's assistant and not directly by Dr. O'Keefe. PX 8, p. 9. Dr. O'Keefe testified that he supervises all of the PA's in his office. Dr. O'Keefe testified that his physician's assistants are qualified to interview and examine patients as well as assign work restrictions after discussing the matter with Dr. O'Keefe. PX 8, p. 47-48. Dr. O'Keefe saw Petitioner for her bilateral wrist complaints. He noted that Petitioner had initial complaints in 2007 which was managed conservatively and after a few months of light duty she was returned to full duty for Respondent. In April 2010 Petitioner began having relentless burning pain and weakness with her normal activities as well as neck pain and symptoms. On August 19, 2010 Dr. O'Keefe diagnosed bilateral carpal tunnel based on the symptoms as buttressed by the July 2010 EMG and recommended surgery. PX 8, p. 16-17.

Petitioner attended a Section 12 exam with Dr. Fernandez on 9/1/10, prior to her carpal tunnel surgeries. Dr. Fernandez examined Petitioner and reviewed the EMG results of 7/9/2010. He diagnosed Petitioner with bilateral wrist carpal tunnel syndrome and concluded that Petitioner was a good surgical candidate. He recommended starting with right wrist carpal tunnel release followed by the left side two weeks later. Surgery was to be followed by physical therapy twice per week for two weeks on each side. He further agreed with the treatment to that date but cautioned against excessive therapy between surgeries. RX 3.

With regard to causation, Dr. Fernandez noted that "based upon the available information... it does appear that there is a relationship between her work activities and the development of her carpal tunnel syndrome. It should be noted that her condition appeared to begin in the 1990s when she was active in the more repetitive and forceful part of her job, particularly with use of tools included air tools. This is a valid causative factor or aggravating factor in the development of carpal tunnel syndrome. It is also noted that despite the fact that she had some internal improvement and despite the fact that she has been in the

lighter portion of her job that this does not negate the initial causality and that his is still related to her job at least dating back to the 1990s when it was first diagnosed.” There is no mention in Dr. Fernandez’ report regarding any complaints arising at work in April 2010. RX 3.

Dr. O’Keefe performed a right carpal tunnel release surgery on 9/20/10 and a left wrist carpal tunnel release on 11/15/10. Dr. O’Keefe testified that Petitioner’s job duties for Respondent were a causative factor in the development, aggravation or acceleration of her bilateral carpal tunnel. Dr. O’Keefe stated the basis for his opinion was the fact that “she had been a full-time employee there working for years and years and didn’t have the problem until she had the overuse symptoms start to develop and it deteriorated.” PX 8, p. 39.

On 11/3/10, Petitioner attended an IME with Dr. Butler. Petitioner was seen for complaints of numbness and tingling in the right hand and forearm radiating up to the neck and shoulder beginning on April 12, 2010. RX 2. Dr. Butler noted that Petitioner had her first CT release on 9/20/10 and that since that surgery Petitioner reported that her neck is “much better.” Her left sided finger and hand numbness continued but without radiation. Dr. Butler opined that Petitioner had “... no neck issue that is related to her work duties but that the right carpal tunnel was of such severity that the symptoms radiating into the arm, shoulder and neck were primarily a result of her right carpal tunnel syndrome. Since she has had her right carpal tunnel syndrome treatment all of the elbow, shoulder and cervical pain has resolved.” RX 2. No further treatment was required of the cervical spine at that time. RX 2.

Petitioner was continued off work while she continued to treat with Dr. O’Keefe after her surgeries and attend physical therapy at La Clinica through December 2010. Dr. O’Keefe sent Petitioner for a functional capacity evaluation on 4/11/11. PX 8, PX 3. The FCE indicated valid results with Petitioner giving full effort. Petitioner demonstrated physical capabilities to function in the light- medium physical demand level indicative of 2 hand occasional carry/lift of 30 pounds and of frequent lifting to 20 pounds. PX 3. It was determined that Petitioner could not return to her previous level of full work activity as an assembler. Petitioner’s last visit with Dr. O’Keefe was on 5/12/11 when she was placed at MMI. Dr. O’Keefe testified that he agreed Petitioner could return to work full time with permanent restrictions per the FCE. He further testified that Petitioner could not work in her former assembler position but that she could be “in manufacturing but would have a lift limit of 20 to 30 pounds.” PX 8, p. 32-33, 42. He further testified to the reasonable and necessary nature of the care provided to Petitioner through May 2011 as it was diagnostic and therapeutic. PX 8, p. 40. Petitioner testified that she returned to Respondent with her permanent restrictions but was not offered an accommodated position.

On 6/21/11, Dr. Fernandez provided a one page report indicating an exam of Petitioner on that date. He further indicated that Petitioner was able to work without restrictions and full time. He considered Petitioner at MMI and indicated that the diagnosis and treatment was causally related to the accident. RX 4. He further indicated that a full narrative opinion would be included in a follow up detailed report but no such report is in the record. RX 4.

Petitioner further testified that she met with her own vocational expert Mr. Ed Pagella on 12/9/11. Mr. Pagella performed a vocational assessment for Petitioner but did not assist in her job search efforts. He testified that he meets with injured workers to perform a vocational assessment to “arrive at a conclusion regarding their employability” and “make a determination as to whether or not they are employable or if they are completely and totally disabled.” PX , p. 8, 26. Mr. Pagella’s report is dated 2/22/12. He

testified that in his opinion, Petitioner was not able to return to her former assembly job due to the permanent restrictions in the FCE because she is unable to use her bilateral upper extremities on a constant basis. PX 8, p. 18. Mr. Pagella defines a stable labor market as "... occupations out there that an individual can obtain based upon their vocational profile; ... being their age, their education, their skills, their transferable skills along with what they're currently capable of doing from a physical and/or mental standpoint." PX 8, p. 18. After interviewing Petitioner and reviewing her medical records and profile, Mr. Pagella opined that Petitioner does not have "... a stable vocational profile that would transfer over into any type of occupation. ... the FCE states that she's only able to utilize her bilateral upper extremities on a frequent basis, which is up to 65 percent of the workday. ... Due to the fact that I have an individual that can't read, write, or speak in the English language effectively and doesn't have a high school diploma or a GED, you have to rule out any type of service occupation... or any type of clerical occupation. Thus I'm limited to that individual to look into occupations within a manufacturing field; ... your hand sorters, hand assemblers..." PX 8, p. 20. Mr. Pagella concluded that since Petitioner is unable to use her bilateral upper extremities on a constant basis to perform a manufacturing job there is no available stable labor market for Petitioner. PX 8, p. 20-21. Finally, he opined that in order for Petitioner to find suitable work she would have to take English language classes and work toward obtaining a GED. PX 8, p. 22.

On cross-exam, Mr. Pagella opined that Petitioner did not possess the basic skills necessary to work at a service occupation such as fast food or store clerk due to the fact that she did not understand basic English. PX 8, 29-31. He conceded that he was not aware McDonald's offers training in 28 languages and that some employers do not require a GED. PX 8, p. 34. He conceded that some employers including manufacturers may accommodate some of Petitioner's restrictions but that his opinion on Petitioner's employability is based on her entire profile and not just on a few factors that may be accommodated by some employers. PX 8, p. 35-37. Finally, he agreed that if an employer is willing to accommodate Petitioner's physical restrictions and help her learn English on the job then Petitioner is employable. PX 8, p. 40-41.

Respondent retained Julie Bose to render a "vocational rehabilitation opinion" regarding Petitioner's employability. RX 10, p. 6. Ms. Bose reviewed Mr. Pagella's employability study, the FCE report, Dr. Fernandez reports and medical records from Dr. O'Keefe. Ms. Bose testified to her conclusion that "... based on her limited English communication skills she would be best placed in a apposition where there was no English reading or writing necessary. I concluded that she was capable of performing light, medium work as indicated in the FCE and agreed upon by Dr. O'Keefe. So it's my thought that she would be unable to do her regular work that she had done as she performed it prior to her work injury and would best be suited for positions such as a housekeeper, office cleaner, or laundry folder." RX 10, p. 9. Learning to speak English is not a prerequisite to re-entering the work force in one of these positions. RX 10, p. 10. She further disagreed with Mr. Pagella and testified that there are service positions available in which "... individuals do not have to speak English. For example, hotels and motels are traditional placements for either Hispanic or Polish workers. ... there is literally no reading or writing in English necessary in these types of positions..." RX 10, p. 11. She further testified that fast food and retail stores in Spanish speaking neighborhoods would consider Petitioner for employment. RX 10, p. 12. Ms. Bose contacted 8 McDonald's in Spanish speaking neighborhoods and 4 responded to her inquiries. One manager stated that basic English such as "hello" was necessary and the others indicated that they hire Spanish speaking workers only. RX 10, p. 13. Ms. Bose opined that if Petitioner targeted the

geographical area where primarily Hispanic people are employed then "it is no more difficult than anybody else to find work." RX 10, p. 14.

On cross, Ms. Bose testified that she recommends early vocational rehabilitation intervention and believes that that makes an individual more successful in returning to work. RX 10. P. 18.

Petitioner testified that she performed her own job search looking for positions in Hispanic stores and fast food restaurants. Her efforts did not result in any job offers. Petitioner is requesting maintenance from 5/13/11 through trial. PX 6 is a log of Petitioner's job contacts made in December 2012 and contains 6 listed employers including 5 fast food restaurants and a cleaning position at a driving school. Petitioner's daughter completed PX 6. Again, Petitioner testified that PX 6 only contains her efforts in December 2012 but that she made other job inquiries prior to that time at Hispanic stores in her neighborhood. No documentation was provided at trial regarding other job search efforts. Petitioner testified that she is currently in school 4 days per week so she has not been able to look for work since December 2012. Petitioner started taking English courses and computer classes on 1/7/13 at a neighborhood Church. She pays \$20 for the class.

Petitioner testified that she currently has pain in her left and right arms that extends from her wrists to her neck. Petitioner also notices pain in her right hand and fingers and numbness in her right fingers with use. Petitioner's right and left arm and hand problems interfere with her activities and personal care at home in that certain activities cause pain in her arms and hands. She experiences pain when reaching overhead or when gripping. Finally, Petitioner testified that she has difficulty straightening her arm at the elbow. Petitioner takes Advil for pain relief. She is unable to clean her yard, sew or perform housework as she did before without taking breaks due to wrist and hand pain.

Respondent submitted RX 5 and RX 6 which are reports drafted by a Dr. Jeanette Fefles of Fefles Family Chiropractic. These reports indicate that Dr. Fefles was retained to review the LaClinica medical records and bills from 6/9/10 through 1/10/11 in an effort to rebut the reasonable and necessary nature of some of the chiropractic treatment rendered Petitioner during that time period. Dr. Fefles, utilizing generally accepted billing practices and chiropractic professional guidelines regarding the extent and duration of medical care, recommended certifying only 8 visits pre and 8 visits post CTS surgery. She recommended non-certifying any chiropractic treatment that correlates to neck injury or cervical degeneration and to non-certify the use of multiple modalities at one visit for the CTS treatment.

CONCLUSIONS OF LAW

C., F. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator finds that Petitioner met her burden to prove that she sustained repetitive trauma type injuries arising out of and in the course of her employment with Respondent which manifested on April 12, 2010. Further, the Arbitrator finds causal connection for Petitioner's bilateral carpal tunnel and her complaints of cervical, upper extremity and bilateral arm pain. In so finding, the Arbitrator notes Petitioner's credible testimony regarding the repetitive nature of her work duties. Petitioner testified to the manual maneuvers associated with her job as an assembler for the Respondent including the repetitive

grasping and pulling of an overhead air gun and the use of both hands in the assembly of parts. Petitioner's testimony regarding her job duties is fully buttressed by exhibits offered at trial by both parties providing a detailed description of Petitioner's job duties which she performed for Respondent during a majority of her 22 year employment period. Although short workday breaks and scheduled work station rotation were mandated, the Arbitrator does not find those provisions cure the cumulative effect of years of repetitive, detailed, bilateral assembly line work performed by Petitioner.

Notice is not at issue. ARB EX 1. Petitioner testified that although she continued to work through prior hand and wrist problems during her 22 years of employment, her symptoms became severe to the point where she reported difficulty performing her duties as of April 12, 2010. The Arbitrator notes that the accident report includes "April" as the date of accident and the place of accident was listed as "line." Petitioner credibly explained that she initially reported only right wrist problems to Respondent as her right wrist was causing the most pain.

Petitioner's initial medical treatment records at La Clinica from 6/9/10 and 6/16/10 are replete with references to her line work and to complaints of bilateral hand with bilateral shoulder pain, increased numbness/tingling to both hands, R greater than left. PX 1. Her first chief complaint was both hands and the provocative was listed as "movement and working with fine objects- activities of daily living." Under "palliative" Petitioner listed extending her elbows and not working. Petitioner describes her symptoms as a right hand/wrist dull ache with numbness and tingling, neck pain that radiates to upper extremities bilateral. Petitioner also complained of bilateral shoulder pain and right sided neck pain radiating to her bilateral upper extremities with the provocative for those complaints being "movement." PX 1. Only the right wrist was circled on the initial pain diagram. Based on the cervical and upper extremity complaints, a physical spinal exam was administered noting cervical disc degeneration and cervical sprain/strain along with an upper extremity exam indicating wrist pain at joint, shoulder pain, and possible carpal tunnel syndrome. The diagnosis was carpal tunnel syndrome and cervical disc denegation due to repetitive trauma.

Finally, in finding both accident and causal connection for Petitioner's carpal tunnel syndrome and its sequelae, the Arbitrator notes that Dr. Fernandez, Dr. Padron, Dr. O'Keefe and Dr. Butler all agreed that Petitioner's job duties caused or accelerated her bilateral carpal tunnel as well as the neck and arm pain initially experienced by Petitioner until after her first carpal tunnel surgery. Dr. Fernandez diagnosed bilateral wrist carpal tunnel syndrome, and commented that "based upon the available information and within a reasonable degree of medical and surgical certainty it does appear that there is a relationship between her work activities and the development of her carpal tunnel syndrome." RX 3. In diagnosing Petitioner's bilateral carpal tunnel, Dr. Padron noted a history of performing the same job for the last ten years where Petitioner was required to do repetitive-type movements, starting with her hand extended and then having to flex it over and over again. He noted that she was also in a position where her neck was flexed constantly. PX 7, p. 8. Dr. Padron went on to testify that Petitioner's "job required her to perform - use her hands and she was in a lot of pain, so I took her off until we got the diagnosis." PX 7, p. 11.

Dr. O'Keefe testified that the job duties performed by the Petitioner were "absolutely causative and related" to her job duties at Juno Lighting. PX 8, p. 38-39. Dr. O'Keefe testified that Petitioner's job duties for Respondent were a causative factor in the development, aggravation or acceleration of her bilateral carpal tunnel. Dr. O'Keefe stated the basis for his opinion was the fact that "she had been a full-time employee there working for years and years and didn't have the problem until she had the overuse

symptoms start to develop and it deteriorated.” PX 8, p. 39. On 11/3/10, Petitioner attended an IME with Dr. Butler. Petitioner was seen for complaints of numbness and tingling in the right hand and forearm radiating up to the neck and shoulder beginning on April 12, 2010. RX 2. Dr. Butler noted that Petitioner had her first CT release on 9/20/10 and that since that surgery Petitioner reported that her neck is “much better.” Her left sided finger and hand numbness continued but without radiation. Dr. Butler opined that Petitioner had “... no neck issue that is related to her work duties but that the right carpal tunnel was of such severity that the symptoms radiating into the arm, shoulder and neck were primarily a result of her right carpal tunnel syndrome. Since she has had her right carpal tunnel syndrome treatment all of the elbow, shoulder and cervical pain has resolved.” RX 2.

Accordingly, based on Petitioner’s testimony, the medical records, reports from Dr. Fernandez, and the evidence depositions of Petitioner’s treating physicians, the Arbitrator finds that Petitioner did sustain a repetitive trauma accident on April 12, 2010 as the result of her job duties as an Assembler for the Respondent. The Arbitrator further finds causal connection for Petitioner’s conditions of bilateral carpal tunnel, bilateral upper extremity complaints and neck symptoms as reflected in the medical records. In finding causal connection for these conditions, the Arbitrator further notes that Petitioner’s treating physician Dr. O’Keefe placed Petitioner at MMI for all of these conditions as of his last visit with Petitioner on 5/12/11 following the April 2011 FCE leaving Petitioner with permanent work restrictions.

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?

Based on the foregoing findings of accident and causal connection, the Arbitrator further finds that Respondent is to pay Petitioner the reasonable and necessary medical expenses incurred in the care and treatment of her injuries as listed above through 5/12/11. Both Drs. O’Keefe and Fernandez opined that the treatment received was reasonable and necessary to cure the effects of Petitioner’s bilateral carpal tunnel and its upper extremity sequelae. Dr. O’Keefe testified to the reasonable and necessary nature of the care provided to Petitioner through May 2011 as it was diagnostic and therapeutic. Dr. Fernandez agreed with the need for carpal tunnel surgeries and stated as of 9/1/10 that he further agreed with the treatment to that date but cautioned against excessive therapy between surgeries. RX 3. On 6/21/11, Dr. Fernandez again indicated that the diagnosis and treatment was causally related to the accident. Finally, Dr. Padron also testified that the treatment he rendered for Petitioner’s carpal tunnel and upper extremity complaints was medically necessary in light of her physical exam, the history of her job responsibilities and the positive EMG. PX 7, p. 19.

The Arbitrator relies on the opinions of the foregoing physicians giving those opinions greater weight than the opinion of the chiropractor retained by Respondent to review the medical bills and treatment. It is not clear whether Dr. Fefles’ review was submitted as a UR review. However, the Arbitrator considered her opinion in finding the medical care received between 6/9/10 and 5/12/11 for the above mentioned casually related conditions to be reasonable and necessary. Respondent is to pay those expenses incurred by Petitioner between 6/9/10 and 5/12/11 pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid and shall hold Petitioner harmless for amounts paid and/or adjusted by the group carrier.

K. What temporary benefits are in dispute? TTD and Maintenance

Based on the Arbitrator's findings of causal connection as stated above, and on the off work authorizations provided by Petitioner's treating physicians through the date of MMI, the Arbitrator finds that Petitioner was temporarily and totally disabled for a period of 47 weeks commencing 6/17/10 through 5/12/11 pursuant to Section 8(b) of the Act. PX 1, PX 2 and PX 3. Respondent shall receive credit for amounts paid.

The Arbitrator finds that Petitioner is not entitled to maintenance for the claimed period of 5/13/11 through trial. In so finding, the Arbitrator notes that Petitioner that although Petitioner was sent to Mr. Pagella it was clearly for a vocational assessment for the purpose of determining Petitioner's employability and specifically to "make a determination as to whether or not they are employable or if they are completely and totally disabled." Mr. Pagella was not retained to provide nor did he provide any vocational rehabilitation or job search assistance. Likewise, Ms. Bose simply reviewed the report of Mr. Pagella and the medical records to provide her own opinion regarding Petitioner's employability. The Arbitrator finds that neither visit/review amounts to participation in vocational rehabilitation such that maintenance benefits are to be made during the program pursuant to Section 8(a).

The Arbitrator further notes that minimal evidence of a self directed job search during the period at issue was offered at trial. Petitioner offered one month of job search efforts at 5 employers in December 2012. Such evidence is also not sufficient to justify an award of maintenance under Section 8(a).

L. O. What is the nature and extent of the injury? PTD

The record demonstrates that Petitioner is not able to return to her former position in assembly due to the fact that she cannot engage in repetitive motion, lift over 30 pounds or exceed the light medium work level. Petitioner requests a finding of permanent total disability on an odd lot basis. The Arbitrator finds that Petitioner failed to prove she is entitled to permanent total disability in this matter. Petitioner's request is based on the opinion of Mr. Pagella who opined that given her language, education and physical barriers, no stable labor market exists for Petitioner. However, the Arbitrator finds more credible the opinion of Ms. Bose who opines that a stable labor market exists for Petitioner in a Hispanic speaking neighborhood where she can work fast food or retail without an English language requirement. The Arbitrator further notes that Mr. Pagella eventually concedes that Petitioner is employable with accommodation at a restaurant or retail store.

Petitioner testified that she currently has pain in her left and right arms that extends from her wrists to her neck. Petitioner also notices pain in her right hand and fingers and numbness in her right fingers with use. Petitioner's right and left arm and hand problems interfere with her activities and personal care at home in that certain activities cause pain in her arms and hands. She experiences pain when reaching overhead or when gripping. Finally, Petitioner testified that she has difficulty straightening her arm at the elbow. Petitioner takes Advil for pain relief. She is unable to clean her yard, sew or perform housework as she did before without taking breaks due to wrist and hand pain. Based upon the above and on the record as a whole, the Arbitrator finds that Petitioner sustained 30% loss of use of the right hand and 20% loss of use of the left hand pursuant to Section 8(e) of the Act.

M. Should penalties or fees be imposed on Respondent?

Petitioner requests the assessment of penalties and fees against Respondent for Respondent's failure to pay the maintenance period of 5/13/11 through 6/21/11, the date of Dr. Fernandez' last report. Based on the Arbitrator's finding that no maintenance is awarded, the Petitioner's request for penalties and fees is moot. In addition, the Arbitrator notes that Respondent's conduct was not so unreasonable or vexatious so as to justify an award of penalties and fees under the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michelle Clover,
Petitioner,

vs.

NO: 11WC 4207

Chester Mental Health,
Respondent,

14IWCC0421

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 3, 2012, is hereby affirmed and adopted.

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.

DATED: JUN 05 2014

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RWW/rm
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Ruth W. White

Ruth W. White

Charles J. DeVriendt

Charles J. DeVriendt

Daniel R. Donohoo

Daniel R. Donohoo

14IWCC0421

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Michelle Clover
Employee/Petitioner

Case # 11 WC 004207

v.

Consolidated cases: _____

Chester Mental Health
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Herrin**, on **October 15, 2012**. 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 _____

FINDINGS

On 11-18-10, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned \$42,675.60; the average weekly wage was \$820.68.

On the date of accident, Petitioner was 51 years of age, *married* with 0 children under 18.

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 \$ for TTD, \$ for TPD, \$ for maintenance, and \$ for other benefits, for a total credit of \$.

Respondent is entitled to a credit of \$**medical bills heretofore paid, if any** under Section 8(j) of the Act.

ORDER

The petitioner demonstrated accidental injuries within the course and scope of employment.

The respondent shall pay the following medical bills, subject to the limits of the Section 8.2 fee schedule, as provided in Section 8(a) of the Act:

Memorial Hospital of Chester	\$ 30.75
Dugan Radiology	\$ 30.00
Dr. Dennis Dusek	\$ 104.00
Healthlink	\$1,466.94
Out of Pocket	\$ 189.25

The respondent shall pay the petitioner the sum of \$492.41/week for a further period of 2.53 weeks as provided in Section 8(e) of the Act, because the injuries sustained caused permanent partial disability to the extent of 1% of the right arm.

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

11-27-12

 Date

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHELLE CLOVER,)	
)	
Petitioner,)	
)	
vs.	)	No. 11 WC 04207
)	
CHESTER MENTAL HEALTH,)	
)	
Respondent.)	

ADDENDUM TO ARBITRATION DECISION

STATEMENT OF FACTS

The petitioner works as an Office Associate II at Chester Mental Health Center, and among her office duties she was assigned to processing workers' compensation claims. Her job duties involved general clerical work, such as file maintenance, paperwork, discussing cases with medical providers, and other similar office duties. The petitioner is right hand dominant, and acknowledged a medical history significant for a right shoulder surgery in 1998.

On November 18, 2010, she was performing file maintenance, pulling purged files and adding documents to others. She testified that the files were overstuffed in the cabinets, and while pulling the files up, she felt right shoulder pain. She did not report the incident at that time. She testified she believed the pain would recede.

On December 10, 2010, the petitioner presented to Chester Memorial Hospital Emergency Room (see PX1). She stated that it had hurt since November 18, but that the pain had increased on December 7, 2010. No precipitating incident was noted for the recent spike in symptoms at the emergency room. X-rays were negative (see PX2) and she was assessed with a right shoulder strain and given medication.

On December 10, 2010, the petitioner reported the incident to her employer. RX1. In this written report, she noted that she had pulled and replaced files on November 18 and 19 as described above. She went on to state that on December 7, 2010, she aggravated the injury while moving files, causing the pain to increase "from a '2' to an '8'." See RX1.

The petitioner then sought care with Dr. Dusek, an orthopedist. On March 4, 2011, he noted the history of injury on November 18 and the worsening on December 7, 2010, but did not note any intervening incident. He noted that Relafen had been prescribed but the petitioner ceased taking it due to drowsiness. Dr. Dusek had access to

the 1998 operative report, as he noted that surgery involved debridement of bursitis and a labral tear. Dr. Dusek also noted a history of multiple unrelated surgeries, which did also include three arthroscopic procedures to the left shoulder, most recently in 2009. He believed she had a SLAP lesion and recommended MR arthrogram. See PX3.

The MR arthrogram was performed on March 11, 2011, and was suggestive of rotator cuff tendonitis without evidence of a rotator cuff tear. PX4. The injection notes of the arthrogram indicated that there may be development of adhesive capsulitis, but no internal scarring was indicated on the arthrogram report.

On August 23, 2011, Dr. Dusek prepared a report in which he stated that while in preparation for his deposition in this matter, he re-reviewed the medical records and further came to understand that the claimant had continued to work her pre-injury job. He re-examined the original operative report from 1998, which referred to adhesive capsulitis, but Dr. Dusek's review of the surrounding medical documents did not support that finding, and he stated that his physical examination and the MR arthrogram suggested adhesive capsulitis was not a concern. He further noted that there was no SLAP lesion identified and he did not believe arthroscopy was indicated. He recommended conservative care, and possibly a subacromial injection. See PX3, RX3. It was noted that the deposition was cancelled.

On December 8, 2011, the petitioner saw Dr. Dusek for the last time. She "adamantly" refused an injection and noted difficulty with medication due to drowsiness. However, she advised him "that 'pain doesn't bother me'." Dr. Dusek wrote a prescription for Mobic to be used at night as needed, and released her from care. PX3. She has not sought medical treatment for this since that time.

OPINION AND ORDER

Accident and Causal Relationship to the Injury

The petitioner acknowledged she did not follow the general injury reporting protocols, which is quite unusual as she was intimately familiar with them, being the coordinator for those claims at her employer. Nevertheless, the description of the asserted injury is corroborated by the descriptions to the medical providers. The Arbitrator therefore finds accidental injury within the course and scope of employment.

The intervening incident of December 7, 2010 is not well laid out. While the claimant asserted such to her employer, and described it as causing a severe upgrade in her symptoms, no description of any such incident is apparent in her statements to her treating medical providers. The Arbitrator provides this assertion minimal credence. Nevertheless, the medical providers link her symptoms to the November 18 date of loss, and the Arbitrator finds sufficient evidence to prove a causal link.

Medical Services

The treatment rendered appears reasonably medically necessary. At the claimant's request, the respondent shall therefore pay the following outstanding medical expenses to the petitioner via her counsel, subject to the cost limits of Section 8.2 of the Act, and these providers shall seek recompense from the claimant and counsel rather than the respondent:

- 1) Memorial Hospital of Chester, \$30.75;
- 2) Dugan Radiology, \$30.00;
- 3) Dr. Dennis Dusek, \$104.00;
- 4) Healthlink, \$1,466.94;

The respondent shall further tender \$189.25 to the petitioner's counsel for recompense of the claimant's out of pocket expenses, but if these payments are for costs which exceed the medical fee schedule (Section 8.2), then the respondent shall only pay the reduced amount.

The respondent shall receive credit for any and all amounts previously paid but shall hold the petitioner harmless, pursuant to 8(j) of the Act, for any group health carrier reimbursement requests for such payments.

Nature and Extent of the Injury

The accident caused a strain to a previously operated right shoulder. The petitioner does not claim temporary disability and has continued her usual and customary employment since the injury.

In determining permanent partial disability, the Arbitrator first takes note of the holding of *Will County Forest Preserve v. IWCC*, 2012 Ill.App.3d 110077WC, which determined that permanency in a surgically operated shoulder should be considered part of the whole person under 8(d)2. However, the Arbitrator notes that the holding in that case relied in its reasoning upon the fact that the surgery in that matter extended to the clavicle and the torso. As this case does not involve surgical intervention or alteration to the back or torso of the petitioner, the arbitrator finds it appropriate to place permanency on the arm pursuant to Section 8(e) rather than the whole person under Section 8(d)2. Had surgery been involved, this determination would in all likelihood have reached a different conclusion, depending on the location and extent of the surgical intervention.

The petitioner having reached maximum medical improvement, respondent shall pay the petitioner the sum of \$492.41/week for a further period of 2.53 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused permanent partial disability to the extent of 1% of the right arm.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Miriam Edmond,

Petitioner,

vs.

NO: 12WC 27710

Kraft Foods, Inc.,

Respondent,

14IWCC0422

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 causation, current and 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 30, 2013, 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.

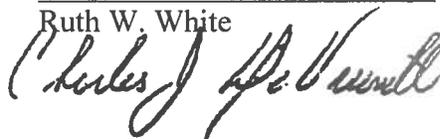
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
o052814
RWW/rm
046

JUN 05 2014



Ruth W. White



Charles J. DeVriendt



Daniel R. Donohoo

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

EDMOND, MIRIAM

Employee/Petitioner

Case# **12WC027710**

KRAFT FOODS INC

Employer/Respondent

14IWCC0422

On 9/30/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% 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 RICH
#2 EXECUTIVE DR SUITE 3
FAIRVIEW HTS, IL 62208

0481 MACIOROWSKI SACKMANN & ULRICH
ROBERT E MACIOROWSKI
10 S RIVERSIDE PLZ SUITE 2290
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION 19(b)

Miriam Edmond
Employee/Petitioner

Case # 12 WC 27710

v.

Consolidated cases: _____

Kraft Foods, Inc.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Mt. Vernon, on August 8, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On April 11, 2012, Respondent was operating under and subject to the provisions of the Act.

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

On this date, Petitioner did 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 \$43,784.00; the average weekly wage was \$842.00.

On the date of accident, Petitioner was 50 years of age, single with 0 dependent child(ren).

Petitioner has not received all reasonable and necessary medical services.

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

Respondent shall be given a credit of \$2,245.36 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$2,245.36. The parties stipulated that TTD was paid in full through the date of trial.

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

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, limited to treatment for the bilateral knee injuries, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall authorize and pay for the medical treatment recommended by Dr. Milne including, but not limited to, right knee surgery.

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.


 William R. Gallagher, Arbitrator
 IC Arb Dec 19(b)

September 23, 2013
 Date

SEP 30 2013

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment for Respondent on two separate dates, April 11, and April 17, 2012. At the time of trial, counsel for the parties agreed to redact the reference to the accident of April 17, 2012. Accordingly, the Application thereby alleged a date of accident of April 11, 2012, and that Petitioner sustained bilateral knee injuries when she fell over a hose while turning on a pump. This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills as well as prospective medical treatment. Respondent stipulated that Petitioner sustained a work-related accident on April 11, 2012; however, Respondent disputed liability on the basis of causal relationship in regard to the right knee.

Petitioner testified that she worked for Respondent as a lab technician/machine operator and, on April 11, 2012, she was working at a machine that makes juice. A problem with the machine pump occurred and when Petitioner turned to tend to the problem, her feet became caught in the hose which caused her to fall to the concrete floor landing on both of her knees.

Petitioner experienced swelling in both knees the following day and Respondent referred her to Dr. Christopher Knapp. When Petitioner was seen by Dr. Knapp, she informed him of the work-related accident and that she had pain in both knees but more on the right than the left. Dr. Knapp ordered x-rays which revealed osteoarthritic changes in the right knee with effusion but the films of the left knee were normal. Dr. Knapp opined Petitioner had sustained bilateral knee contusions with effusions.

Prior to the accident of April 11, 2012, Petitioner was treated for a right knee condition by Dr. James Sola, an orthopedic surgeon. Dr. Sola first saw Petitioner on June 27, 2011, and diagnosed her with a meniscal tear of the right knee. He ordered an MRI scan which was performed on July 1, 2011, which revealed a horizontal cleavage tear of the posterior horn of the medial meniscus. Dr. Sola performed arthroscopic surgery on November 16, 2011, which consisted of a partial medial meniscectomy. Following the surgery, Petitioner received physical therapy and recovered to the point that when Dr. Sola saw her on December 22, 2011, he discharged her from care and authorized her to return to work without restrictions effective January 2, 2012. At trial, Petitioner testified that when she returned to work on January 3, 2012, that she was able to work without restrictions and did not experience any swelling, popping or catching in either of her knees.

Petitioner continued to receive treatment from Dr. Knapp for both her right knee and low back problems (Petitioner injured her low back on April 17, 2012), and Dr. Knapp prescribed physical therapy for both conditions. On June 5, 2012, Dr. Knapp gave Petitioner a steroid injection into the right knee, but her knee symptomatology did not improve to any significant degree. Dr. Knapp ordered an MRI of the right knee which was performed on May 21, 2012, and he subsequently referred Petitioner to Dr. Michael Milne, an orthopedic surgeon, who initially saw Petitioner on June 28, 2012.

Dr. Milne examined Petitioner and reviewed the MRI that had just been obtained. He diagnosed Petitioner with a right knee medial meniscus tear and chondromalacia. In his record of that date,

Dr. Milne noted that "The MRI shows a new medial meniscus tear." (Petitioner's Exhibit 6). Dr. Milne recommended that Petitioner undergo surgery on the right knee consisting of a partial medial meniscectomy and chondroplasty. Petitioner's left knee symptoms were not as severe as those on the right, but Dr. Milne stated that an MRI of the left knee might also be required.

At the direction of the Respondent, Petitioner was examined by Dr. Michael Nogalski, an orthopedic surgeon, on August 29, 2012. Dr. Nogalski's findings on examination of both knees were benign and he opined that Petitioner may have sustained a temporary aggravation of the pre-existing condition in the right knee. He recommended Petitioner have a gadolinium MRI of the right knee to determine if there was, in fact, any new meniscal pathology. Dr. Nogalski also recommended that the same procedure be performed on the left knee as well. (Respondent's Exhibit 5).

Petitioner had gadolinium MRIs of the left and right knees performed on November 6, and November 8, 2012, respectively. Dr. Nogalski reviewed both of the MRIs and opined that they did not indicate any new meniscal pathology, that Petitioner was at MMI and that she could work without restrictions. (Respondent's Exhibit 4). In regard to the MRI of the right knee that was obtained on November 8, 2012, the report of the radiologist stated that "The posterior horn of the medial meniscus is smaller than typically seen most likely related to post meniscectomy changes. There is however linear signal in a portion of the posterior horn remnant that is suspicious for a very short tear. The middle third also has a blunted inner tip that may be post operative in nature. The anterior horn is unremarkable." (Respondent's Exhibit 7).

Petitioner was seen by Dr. Milne on February 21, 2013, and she continued to have symptoms in both knees, more on the right than left. Dr. Milne reviewed the MRI of the left knee that had been obtained on November 6, 2012, and noted that it revealed some degenerative changes. He opined that Petitioner had a recurrent tear of the right medial meniscus and he renewed his surgical recommendation. In regard to the left knee, Dr. Milne opined that there was no need for surgery.

Dr. Milne was deposed on July 9, 2013, and his deposition testimony was received into evidence at trial. Dr. Milne's deposition testimony was consistent with his medical records and he reaffirmed his opinions that Petitioner sustained a new meniscal tear as a result of the work-related accident and that surgery was appropriate. In explaining his opinion regarding causality, Dr. Milne noted that the MRI clearly revealed a tear of the posterior horn of the medial meniscus and while it was "possible" that she had this tear from the prior surgery, the fact that she reported that she was doing well following the prior surgery, had a good mechanism for an injury to the meniscus that this was a "new distinct tear." Dr. Milne also stated that if the tear had been present at the time of the prior injury, it would have been trimmed back like the remainder of the meniscus. Dr. Milne also noted that Petitioner had a significant change in her knee symptoms immediately following the accident. (Petitioner's Exhibit 7, pp. 10-12). When he was deposed, Dr. Milne reviewed the report of only the November 6th MRI performed on the left knee and he opined that there were degenerative changes but no meniscal tears. While Dr. Milne was provided with a copy of the report of the MRI of November 8, 2012, of the right knee, he was not questioned regarding its findings. Dr. Milne further opined that whether the meniscal tear was old or new, his opinion as to the relationship between the right knee condition and the work-

related accident would not be changed because the work injury aggravated the underlying condition which has now necessitated surgery. Dr. Milne further testified that if surgery is performed that, hopefully, the Petitioner would be able to return to her pre-injury status. (Petitioner's Exhibit 7, pp. 26-32).

Petitioner testified that following the prior right knee surgery, she was able to return to work on January 3, 2012, to her full and regular work duties. As previously noted herein, Petitioner testified that she did not experience any swelling, popping or catching in her knees until the time she sustained the injury on April 11, 2012. Other than the four weeks lost time in November and December, 2012, Petitioner has continued to work at her regular job but has also continued to experience significant symptoms in her right knee, especially at the end of her work shift. Petitioner does want to have the surgery performed that has been recommended by Dr. Milne.

Conclusions of Law

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

The Arbitrator concludes that Petitioner's current condition of ill-being in regard to the right knee is causally related to the accident of April 11, 2012.

In support of this conclusion the Arbitrator notes the following:

Petitioner credibly testified that subsequent to the prior knee surgery of November 16, 2011, that she was able to return to work without restrictions on January 3, 2012, and was able to perform her work duties and did not experience any significant swelling, popping or catching of the right knee until the accident of April 11, 2012. This testimony was un rebutted.

Petitioner's treating physician, Dr. Milne, testified that there was a new and distinct tear of the right medial meniscus causally related to the accident of April 11, 2012, based upon the findings on examination, his review of the post-accident MRI and Petitioner's history of making a good recovery with minimal or no symptoms following the prior surgery. Further, irrespective of whether the tear was old or new, Dr. Milne opined that his opinion as to causal relationship would not be altered because the accident aggravated the underlying condition making it symptomatic and necessitated the need for surgery.

Respondent's Section 12 examiner, Dr. Nogalski, opined that the accident of April 11, 2012, was nothing more than a temporary aggravation of the pre-existing condition and that there was no further meniscal pathology, that Petitioner is at MMI and is able to work without restrictions. Dr. Nogalski's opinion is based, in part, on the MRI of the right knee of November 8, 2012, which he opined did not reveal any new meniscal pathology. In addition to this being contrary to the opinion of Dr. Milne, it is contrary to the report of the radiologist regarding the November 8, 2012, MRI scan which does indicate that there may be meniscal pathology that was not related to the prior surgery.

The Arbitrator finds the opinion of Dr. Milne to be more persuasive than that of Dr. Nogalski in regard to the issue of causal relationship.

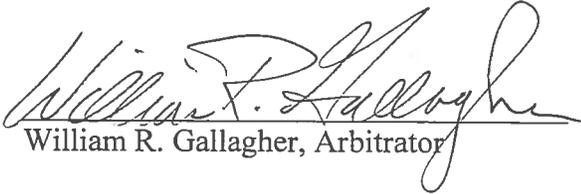
In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

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

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, limited to treatment for the bilateral knee injuries, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

Respondent shall authorize and pay for the medical treatment recommended by Dr. Milne including, but not limited to, right knee surgery.


William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF)
ROCK ISLAND)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Warren Arterburn,

Petitioner,

vs.

NO: 11WC 42919

Henkels & McCoy, Inc.,

Respondent,

14IWCC0423

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 causal connection, medical 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 13, 2013, 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 the 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: JUN 05 2014
o052814
RWW/rm
046

Ruth W. White
Ruth W. White
Charles J. DeVriendt

Charles J. DeVriendt

Daniel R. Donohoo
Daniel R. Donohoo

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

ARTERBURN, WARREN

Employee/Petitioner

Case# **11WC042919**

HENKELS & McCOY INC

Employer/Respondent

14IWCC0423

On 8/13/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

2043 MICHAEL T MAHONEY LTD
PO BOX 295
CHILLICOTHE, IL 61523

1408 HEYL ROYSTER VOELKER & ALLEN
KEVIN J LUTHER
PO BOX 1288
ROCKFORD, IL 61105

14IWCC0423

STATE OF ILLINOIS)
)SS.
COUNTY OF ROCK ISLAND)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

WARREN ARTERBURN,
Employee/Petitioner

Case # 11 WC 42919

v.

Consolidated cases: _____

HENKELS & MCCOY, INC.,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Rock Island**, on **7/10/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **8/15/11**, 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 **\$125,008.00**; the average weekly wage was **\$2,404.00**.

On the date of accident, Petitioner was **56** years of age, *single* 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 **\$00.00** for TTD, **\$00.00** for TPD, **\$00.00** for maintenance, and **\$00.00** for other benefits, for a total credit of **\$00.00**.

Respondent is entitled to a credit of **\$539.17** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical expenses related to petitioner's left knee and left ankle incurred between 8/15/11 and 7/10/13, as provided in Sections 8(a) and 8.2 of the Act.

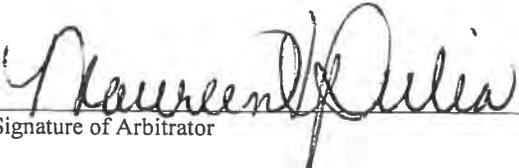
Respondent shall pay all reasonable and necessary medical expenses related to the surgery and recovery recommended by Dr. Below pursuant to Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of temporary total disability, medical benefits, or compensation for a 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

8/1/13
Date

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 56 year old power lineman, sustained an accidental injury that arose out of and in the course of his employment by respondent on 8/15/11. Petitioner has been a power lineman for 33 years, and has gotten his jobs through Local 51 in Springfield. Petitioner began working for respondent in 2011. Petitioner denied any injuries or problems with his left knee or left ankle prior to 8/15/11.

Petitioner's duties as a power lineman included building and maintaining power lines. His duties required climbing, operating equipment, and handling high voltage wires. Petitioner's normal shift was from 7 AM to 7 PM.

On 8/15/11 petitioner was in the process of reeling excess wire to the wire cart and his left foot got lodged between the A-frame and the wheel in a 6 inch space. With his left foot stuck between the A-frame and the wheel petitioner's body fell in the opposite direction, almost turning his foot completely backwards. Petitioner was hanging upside down with his left foot stuck between the wheel and the A-frame. His coworkers helped swing his body around to bring it back into alignment with his leg. Petitioner was then able to release his foot. Petitioner remained on the ground for about 10 seconds before getting back up on his feet and hobbling around. Petitioner felt immediate pain in his left knee and left ankle. Petitioner could not put a lot of pressure on his left foot and left ankle, and as such did more on his right foot. When petitioner would place pressure on his left foot, left ankle, and left knee he experienced pain. Petitioner continued working for the remainder of the shift. He testified that he stayed on the ground and performed his foreman duties. Petitioner directed others to do the more physical work that day.

Within an hour of the incident petitioner reported his injury to another foreman. The other foreman reported it to the general foreman that same day. The general foreman asked petitioner if he wanted to seek treatment. Petitioner told the general foreman that he would give it some time and see if his condition improved. The general foreman then told petitioner to take a few months and if his condition was not improved they could take some action.

As petitioner headed home at the end of his shift he noticed that his left knee and left ankle continued to hurt and were throbbing. Petitioner got home and took off his boot and clothes and noticed that his left ankle and left knee were swollen and hurt. Petitioner iced these body parts overnight and took ibuprofen.

Petitioner continued working for respondent until the beginning of September or end of August 2011. At that time petitioner began working for PAR Electric. On 8/29/11 petitioner completed an employment application with PAR Electric. Petitioner indicated that he had worked for this company before in Paducah Kentucky in 2010 as the foreman. Petitioner indicated that there was not any reason that he might not be able to perform the functions of the job. Petitioner denied any accidents for the past three years or more. Shortly after completing this application petitioner was hired by PAR Electric as a foreman. Petitioner took this job because it paid more than the job with respondent. The job petitioner performed for PAR Electric was different than the one he performed for respondent. The job with PAR Electric was re-conducting wire, which entailed connecting new wire to old wire and replacing the old wire. Petitioner worked on this job 10 hours a day as foreman.

On 10/19/11 petitioner presented to OSF Prompt Care with the complaint of left knee pain and left leg pain. He reported that he injured his left leg at work about two months ago. He stated that he caught his left foot in some cables and twisted the foot almost backwards. He reported that since then he had been having left knee pain on the outside of the knee and over the outside of the ankle. Petitioner stated that he did not get medical attention at that time, and was taking the maximum amount of daily ibuprofen without relief. He complained of left knee, lower leg, and ankle pain, accompanied by occasional numbness/tingling. X-rays of petitioner's left knee and ankle were taken. An examination of the left knee revealed lateral joint line tenderness to palpation. An examination of the left ankle revealed tenderness over the anterior talo-fibular ligament and over the medial and posterior talo-fibular ligaments. Mild Achilles pain was also noted with palpation. Petitioner was discharged with medications.

On 10/30/11 petitioner was evaluated by Dr. Riech at OSFMG Chillicothe. Petitioner gave a history of catching his ankle on a piece of equipment at work, injuring his left ankle and left knee. He reported swelling and continual pain that required him to present to Prompt Care on 10/19/11. Petitioner stated that he was using tramadol for pain, but his pain had not improved. Dr. Riech referred petitioner to Great Plains Orthopedics.

On 10/31/11 petitioner was examined by Dr. Rians at Great Plains Orthopedics. Petitioner gave a history of stringing wire at work on 8/15/11, when his foot got caught in a reel and he twisted his left foot, ankle, and knee. He reported that he was actually hanging by his foot, and his coworkers got him free. He reported that his left knee swelled early on. He also stated that the left ankle swelled, and he has had lateral pain since then. Petitioner reported lateral and posteromedial knee pain. Petitioner reported that he continued to work through it but simply could not continue after eight weeks, and stopped

working two weeks ago. Dr. Rians reviewed the x-rays of the ankle and knee that were taken. He also performed a physical examination. He diagnosed persistent pain in the left knee and ankle after a work related injury two and a half months ago. Dr. Rians ordered an MRI of the left foot and left knee. He also prescribed Mobic.

On 11/7/11 petitioner underwent an MRI of the left ankle without contrast. The impression was longitudinal split tear involving the peroneous brevis tendon, and small tibiotalar joint effusion. That same day petitioner also underwent an MRI of the left knee without contrast. The impression was radial type tear involving the body of the lateral meniscus; increased signal within the substance of the anterior cruciate ligament compatible with cystic degeneration; abnormal signal of the articular cartilage overlying the intercondylar notch with underlying bony signal abnormality compatible with osteonecrosis; and plain film findings of chondrocalcinosis suggesting CPPD.

On 11/10/11 petitioner followed up with Dr. Rians. After reviewing the results of the MRI Dr. Rians was of the opinion that most of petitioner's ankle pain and tenderness were in the lateral gutter, and most of his pain was being caused by significant synovitis. With respect to his left knee, Dr. Rians was of the opinion that it showed a radial tear of the body of the lateral meniscus where petitioner indeed had some pain intermittently especially with squatting or twisting. He also noted other findings not directly related to petitioner's complaints. Dr. Rians diagnosed persistent pain after left lateral ankle sprain and right knee injury at work on 8/15/11. Petitioner's medications were changed. He recommended a surgical opinion from Dr. Below for his knee, and possibly his ankle if it did not respond to conservative treatment.

Petitioner underwent a course of physical therapy at Great Plains Orthopedics for his left ankle. This treatment included cortisone injections and iontophoresis. Petitioner testified that he received some relief from these injections.

On 12/30/11 petitioner returned to Dr. Rians. He reported that he was still having quite a lot of pain in the posterolateral aspect of the left knee and over the peroneals in his left ankle where he has a longitudinal tear. Dr. Rians also noted a radial tear in petitioner's lateral meniscus which he believed could explain petitioner's persistent symptoms. Dr. Rians again referred petitioner to Dr. Below for both problems.

On 10/24/12 petitioner followed up with Dr. Rians for his left ankle and left knee injury at work on 8/15/11. Petitioner reported that he had continued to work with his injuries. He reported that his ankle

was doing better, although he still had occasional soreness and giving way, but generally it was tolerable. With respect to his knee, he reported that it was still quite a bit bothersome. He stated that it hurt laterally, and was sharp at times. Dr. Rians was of the opinion that this was typical of a meniscus tear, which was shown on the MRI. An examination revealed mild atrophy of the left quad, 3+ lateral joint line tenderness, painful McMurray with click laterally, and a normal ankle exam. Dr. Rians diagnosed symptomatic lateral meniscus tear of the left knee. He was also of the opinion that petitioner may have some quad tendinitis with intermittent superior pole pain and some posterior pain as well. Again, he recommended that petitioner see a knee surgeon for a possible arthroscopy. Dr. Rians noted "to be clear, this is unequivocally a work-related injury."

On 11/21/12 the evidence deposition of Dr. Rians was taken on behalf of petitioner. Dr. Rians opined that his findings on examination were consistent with the accident history petitioner provided on 10/31/11. He further opined that some intermittent pain with squatting and twisting is consistent with a meniscus tear. Dr. Rians opined that petitioner's conditions involving his left ankle and left knee were causally related to the work incident he described on 8/15/11. Dr. Rians further opined that the radial lateral meniscus tear was dramatically induced, versus a slow arthritic process, based upon the configuration of the tear being a mid body radial tear. Dr. Rians could not opine as to whether or not the longitudinal split tear of the peroneous brevis tendon was dramatically induced versus some other process, but typically sees those type of tears when they are caused by trauma. Dr. Rians opined that the accident of 8/15/11, if it did not cause the condition, then it at least aggravated a pre-existing condition in petitioner's ankle. Dr. Rians opined that the fact that petitioner attempted to continue to work after 8/15/11 has no bearing whatsoever on any of his opinions as to whether or not his conditions, as they relate to his left knee and left ankle, are work-related. He stated that the nature of both of these injuries were typically accompanied by intermittent pain, but not constant debilitating pain. As such, he believed it was not inconceivable for petitioner to continue working. He believed that people with higher pain thresholds might have more success in attempting to continue to work with these conditions. Dr. Rains opined that it is medically necessary to perform the surgery at this point to relieve petitioner's pain and discomfort in his left knee. He stated that it would not heal by itself.

On cross-examination, Dr. Rians testified that the fact that petitioner did not see his primary care physician until 10/19/11 spoke to his high pain threshold and toughness. Dr. Rians testified that some people may seek treatment earlier depending on their symptoms, but since petitioner was not a complainer he was not surprised that petitioner did not see treatment earlier. Dr. Rians opined that

petitioner's CPPD was not active at the time he saw petitioner. He further opined that the radial tear on petitioner's MRI of his left knee was clearly traumatic. He was of the opinion that the findings in the notch, the osteonecrosis, and the abnormal signal in the articular cartilage, could be either traumatic or degenerative.

On 1/8/13 the evidence deposition of Dr. Kevin Walsh was taken on behalf of the respondent. Dr. Walsh is an orthopedic surgeon. Dr. Walsh performed a record review of petitioner. He never examined petitioner. He reviewed the records of Great Plains Orthopedics, and the x-rays and MRIs from OSF St. Francis Medical Center on disk. Dr. Walsh was of the opinion that CPPD can cause pain, swelling, and discomfort in a joint such as a knee, and is not a traumatically induced condition. Dr. Walsh was of the opinion that the complaints petitioner was having could have been explained by CPPD. He also believed that the radial tear of the body of the lateral meniscus was an incidental finding, and did not cause the petitioner symptoms. Dr. Walsh opined that petitioner had pre-existing disease in his left knee. He did not agree that the radial tear was traumatic because petitioner did not have lateral joint line pain. He also did not believe petitioner would have been able to work for eight weeks with an acute traumatically induced meniscal tear. Dr. Walsh opined that if the trauma of 8/15/11 caused the tissue to tear petitioner would have had more pain at the time of the trauma or shortly thereafter, rather than two months later. He believed it significant that petitioner did not present for medical treatment for at least two months following the alleged injuries. With respect to the longitudinal tear of the peroneus brevis tendon in the left ankle, Dr. Walsh was of the opinion that if the trauma caused the tendon to rip that a person would have pain and discomfort at the time of the ripping of the tendon, not two months later. Dr. Walsh opined that the treatment petitioner obtained following the alleged 8/15/11 injury was not related to the alleged injury on 8/15/11, but to something else, which he did not identify.

On cross-examination Dr. Walsh testified that patients often describe the pain associated with the meniscus tear as "a nuisance". He stated that "they don't necessarily tell us its severe." However, he believed it is a big deal if a laborer has a meniscus tear, but did not know what responsibilities petitioner had as a laborer. He agreed that he did not know if petitioner, a senior man on the job, had very little hard labor responsibilities. Dr. Walsh agreed that he did not know petitioner's job duties before or after 8/15/11, other than that he was a lineman. He also testified that he did not know petitioner's pain threshold. Dr. Walsh opined that you do not tear your meniscus because your leg is being pulled on by traction. He testified that traction injuries cause ligamentous injuries, and do not cause menisci to tear. Dr. Walsh opined that the meniscus tear is a permanent condition, however with regard to the

longitudinal split tear involving the peroneal brevis tendon, it is possible for that to heal. Dr. Walsh opined that there's nothing in the medical records of petitioner's treating physicians that say petitioner sustained an aggravation of a pre-existing condition. He opined that the radial tear of the lateral meniscus was more likely degenerative than traumatic, and was not aggravated by the injury on 8/15/11.

On 2/18/13 petitioner presented to Dr. Below. Petitioner gave a consistent history of the injury and his treatment to date. Dr. Below reviewed petitioner's records and examined him. His assessment was left knee lateral meniscus tear mechanical symptoms with some tricompartmental degenerative changes and findings of chondrocalcinosis and an inflamed plica. Dr. Below recommended a left knee arthroscopy, partial lateral meniscectomy, possible chondroplasty, and plica excision. Petitioner indicated that he wanted to proceed with the recommended surgery.

Petitioner testified that he has continued to work as a foreman and lineman since the date of injury on 8/15/11. He denied any further accidents or incidents that would've injured his left knee or left ankle. Petitioner stated that the therapy on his left ankle helped a lot. He stated that it is now stronger and not swollen. Petitioner testified to a dull pain almost all the time in his left knee. He further stated that his left ankle gives way sometimes, but the pain has decreased with time. Petitioner testified that he has a very high pain tolerance, both before and after the accident. Petitioner has had other injuries to his back and a rotator cuff tear before the injury on 8/15/11. He also gave a history of being hit by a drunk driver in Texas where his wrist was crushed and he had a cast to his shoulder. Petitioner cut the cast down and continued to work his regular duty job as a lineman. Petitioner testified that the only time he will not work is when a doctor absolutely refuses to release him to work.

Petitioner testified that based on his age and seniority as a foreman, he no longer has to do the heavy lifting and climbing. He testified that he lets the younger guys do the heavy lifting and climbing. He stated that he helps them at times, if they need it. He stated that by letting them do the heavy lifting and climbing that is the only way they will learn. Based on his seniority, petitioner testified that he can keep himself safe on any job.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

Petitioner is alleging that his current condition of ill-being as it relates to his left ankle and left knee are causally related to the accident on 8/15/11. Respondent alleges that since petitioner did not seek treatment until 10/19/11, and worked for a new employer since late August 2011 or early, his left ankle and left knee are not causally related to the accident of 8/15/11.

Petitioner denied any treatment for his left ankle or knee prior to 8/15/11. Following the injury on 8/15/11 petitioner had immediate swelling and pain in his left foot and knee that continued. Petitioner continued working for respondent as a foreman, and then in late August or early September 2011, got a job with PAR Electric. Petitioner testified that based on his seniority he is able to pick and choose what he does on the job, and is able to delegate the heavier work to the younger laborers. Petitioner testified that the job with PAR Electric entailed replacing old wire with new wire. Petitioner was the foreman on the job.

Petitioner testified that from the date of accident to the date he first sought treatment on 10/19/11 he had ongoing pain/swelling in his left ankle and left knee but did not seek treatment because he has a very high threshold of pain, was taking the maximum amount of ibuprofen daily without relief, and hoped it would get better. When petitioner sought treatment on 10/19/11 he did so because he realized he was not going to get better.

Dr. Rians performed an MRI of the left knee and left ankle that revealed a radial tear of the body of the lateral meniscus where petitioner indeed had some pain intermittently especially with squatting and twisting, and a longitudinal split tear involving the peroneous bevis tendon, respectively. Dr. Rians diagnosed persistent pain after left ankle sprain and right knee injury at work on 8/15/11. Dr. Rians was of the opinion that the radial tear in petitioner's lateral meniscus could explain his persistent symptoms.

Dr. Rians opined that petitioner's findings were consistent with the accident history petitioner provided. He further opined that petitioner's condition of ill-being as it relates to his left ankle and left knee were causally related to the work incident on 8/15/11, and that his radial lateral meniscus tear was traumatically induced, and not a slow arthritic process. He further opined that even if petitioner had a pre-existing condition in his knee the accident aggravated that condition. Dr. Rians opined that the fact that petitioner attempted to continue to work after the accident has no bearing whatsoever on any of his opinions as to whether or not his condition, as they relate to his left ankle and left knee, are work-related. He believed that people with higher pain thresholds might have more success in attempting to continue to work with these conditions. Dr. Rians was of the opinion that since petitioner is not a complainer he was not surprised that petitioner did not seek treatment earlier. He further opined that petitioner's CPPD was not active at the time he saw petitioner, and therefore would not be a factor.

Respondent only offered the opinion of Dr. Walsh, who did a record review, but never examined petitioner. Dr. Walsh tried to relate some of petitioner's problems to CPPD, but since he never examined him was unaware that petitioner's CPPD was not active. He further opined that the radial tear of the body of the lateral meniscus was incidental, and not causing petitioner's symptoms. Dr. Walsh did not believe petitioner

would be able to work for 8 weeks with an acute traumatically induced meniscal tear, but then went on to state that the pain associated with this type of injury is a "nuisance", and patients don't necessarily tell him that it is severe. Dr. Walsh also did not know what petitioner's job duties were, but assumed that since he was a lineman they were significant. Dr. Walsh did not know, or chose to disregard, the fact that petitioner was a foreman and could delegate the duties. He also testified that he did not know petitioner's pain threshold.

Based on the above, as well as the credible evidence, the arbitrator adopts the opinions of Dr. Rians finding he had a better understanding of the injury, petitioner's work history, his pain threshold, other medical conditions, and current condition of ill-being given the fact that he actually had an opportunity to examine petitioner and discuss his work history and pain threshold with him. The arbitrator gives little weight to Dr. Walsh's opinions given the fact that Dr. Walsh did not examine petitioner, did not have a good understanding of petitioner's job duties and pain threshold, and other conditions, and contradicted himself by stating that there is no way petitioner could work for 8 weeks as a lineman with this type of injury, and then stated that people with this type of pain complain that it is not severe, and only "a nuisance".

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner's current condition of ill-being as it relates to his left ankle and left knee is causally related to the accident he sustained on 8/15/11 while working for respondent.

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?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issue of causal connection and incorporates them herein by this reference.

Having found the petitioner's current condition of ill-being as it relates to his left ankle and left knee is causally related to the accident he sustained on 8/15/11 while working for respondent, the arbitrator finds the treatment petitioner received for his left ankle and left knee from 8/15/11 through 7/10/13 was reasonable and necessary to cure or relieve petitioner from the effects of his injury.

Based on the above, as well as the credible record, the arbitrator finds the respondent shall pay all reasonable and necessary medical expenses related to petitioner's left foot and ankle from 8/15/11 through 7/10/13 pursuant to Sections 8(a) and 8.2 of the Act. The respondent shall receive credit for all bills it has already paid.

K. IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issue of causal connection and incorporates them herein by this reference.

The arbitrator finds the left knee arthroscopy, partial lateral meniscectomy, possible chondroplasty, and plica excision recommended by Dr. Below is reasonable and necessary to cure or relieve petitioner from the effects of the injury he sustained on 8/15/11. The respondent shall pay or reasonable and necessary medical expenses related to the surgery and post-operative treatment as recommended by Dr. Below pursuant to Sections 8(a) and 8.2 of the Act.

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14IWCC0424

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Nancy Strickland,
Petitioner,

vs.

NO: 11WC 39193
11WC 39194
11WC 42980

Lowe's,
Respondent,

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 causation, temporary total disability, both current and prospective medical 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 2, 2013, is hereby affirmed and adopted.

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.

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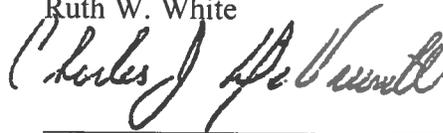
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$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: JUN 05 2014
o052714
RWW/rm
046



Ruth W. White



Charles J. DeVriendt



Daniel R. Donohoo

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

STRICKLAND, NANCY

Employee/Petitioner

Case# **11WC039192**

11WC039193

11WC039194

11WC042980

LOWE'S

Employer/Respondent

14IWCC0424

On 7/2/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

2337 INMAN & FITZGIBBONS LTD
MARK CARTER
33 N DEARBORN ST SUITE 1825
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
 COUNTY OF Madison)

- 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)

Nancy Strickland
 Employee/Petitioner

Case # 11 WC 39192
 Consolidated cases: 11 WC 39193
11 WC 39194
11 WC 42980

v.

Lowe's
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Collinsville**, on **5/28/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date(s) of accident, **8/26/11 (11 WC 39192), 9/16/11 (11 WC 39193), 9/27/11 (11 WC 39194), and 10/21/11 (11 WC 42980)**, 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 August 26, 2011, the Petitioner did not sustain an accident arising out of and in the course of employment.

On the other dates, the Petitioner did sustain accidents that arose out of and in the course of employment.

Timely notice of the accidents *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the September 16, 2011 accident.

The parties stipulated that the average weekly wage pursuant to Section 10 of the Act for each claim would be **\$398.72** based upon earnings of **\$20,733.42**.

On the dates of accident, Petitioner was **55** years of age, *single* with **1** dependent child.

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

Respondent shall be given a credit of **\$13,024.68** for TTD, \$- for TPD, \$- for maintenance, and \$- for other benefits, for a total credit of **\$13,024.68**.

Respondent is entitled to a credit of **\$9,758.11 in medical benefits paid** under Section 8(j) of the Act.

ORDER

Respondent shall pay the medical bills contained in PX1, save for those incurred prior to September 16, 2011. Respondent shall have credit for any amounts previously paid or paid through its group medical plan, but shall hold the petitioner harmless for reimbursement claims for such, pursuant to Section 8(j) of the Act. Respondent shall authorize and pay for the two-level cervical surgery proposed by Dr. Gornet, as it appears reasonably medically necessary within the limits of Section 8(a).

Respondent shall pay Petitioner temporary total disability benefits of **\$\$265.81/week** for 78 weeks, 10/22/11-11/8/11, 12/7/11-2/2/12, and 2/13/12-5/28/13, as provided in Section 8(b) of the Act. Respondent shall have credit for all amounts previously paid.

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

July 1, 2013
Date

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

NANCY STRICKLAND,)	
)	
Petitioner,)	
	)	Nos. 11 WC 39192
vs.	)	11 WC 39193
	)	11 WC 39194
LOWE'S,	)	11 WC 42980
)	
Respondent.)	

ADDENDUM TO ARBITRATION DECISION

These matters were tried pursuant to Sections 8(a) and 19(b) of the Act. Prior to hearing, these matters were consolidated and the parties jointly requested that a singular decision address all of the matters. Given the overlapping issues between the claims, the Arbitrator concurs with this approach.

STATEMENT OF FACTS

The petitioner was a cashier for the respondent who asserts four separate acute incidents occurring in 2011, on August 26, September 16, September 27, and October 21. She testified that the first incident involved moving bundles of roofing shingles off a cart, resulting in a crunch in her neck, and the latter three involved moving an air compressor, moving ceiling tiles, and moving a box of galvanized steel, aggravating that condition. She testified she had a prior low back condition which required injections in approximately 2006. She denied prior claims to her neck, shoulder or back. The respondent disputed the August 26 incident, but stipulated to the other three incidents. Causal connection was disputed with regard to the current surgical recommendation.

On August 22, 2011, the petitioner was seen by Dr. D'Andrienne Jones, her primary care provider. She complained of increasing depressive symptoms and described "having a lot of stress at work." The petitioner reported having gone to the emergency room for chest pain and had been diagnosed with anxiety, and noted that she became more anxious when she has to go to work. The petitioner reported that Xanax helped her symptoms. Dr. Jones assessed her with anxiety and depression and prescribed an antidepressant. The Arbitrator notes that reports of stress are indicated at least as far back as October 2010, when the petitioner reported stress from a check garnishment for student loan repayment, requiring medication. See generally RX2.

On August 29, 2011, the petitioner was seen in the emergency room at St. Anthony's Health Center. She reported progressive pain in the neck and right shoulder

since either "Friday night" or "yesterday" and denied any acute incident or specific injury. X-rays were taken of her cervical spine and right shoulder revealing degenerative changes at C5-6 and spurring at the acromioclavicular, which was "suggestive for calcific tendonitis." She was instructed to follow up with Dr. Jones. See PX3.

On August 30, 2011, the petitioner saw Dr. Jones with complaints of right arm pain radiating into her neck. The petitioner denied trauma and reported she "has been doing her stretches for her neck." Dr. Jones noted possible tendonitis or rotator cuff injury and recommended rest, ice, elevation, heat and medication. PX4, RX2. Dr. Jones initially prescribed her off work, and then released her to work full duty as of September 7, 2011. RX2.

On September 26, 2011, the petitioner was seen by Dr. Dirkers at Midwest Occupational Medicine regarding the September 16, 2011. At that appointment the petitioner asserted an injury on August 26, 2011, and also described the September 16, 2011 incident moving an air compressor. She reported "she felt a burning pain in her right trapezius." She reported a back injury two to three years prior which required epidural injections. She was assessed with a trapezius strain and recommended physical therapy, but was allowed to work regular duty. PX5.

On October 10, 2011, the petitioner saw Dr. Matthew Gornet. She reported the August incident to him, as well as the September 16, 2011 incident. She reported a history of neck pain following a motor vehicle accident in 2007 or 2008 which had resulted in MRI studies. Dr. Gornet reported reviewing MRIs from April 2007 and November 2008; he reported the initial one suggested disk pathology at C6-7 and to a lesser degree C5-6. The latter showed the C6-7 disk had resolved but the C5-6 disk had not. He recommended a new MRI and light duty, and opined her condition was connected to her work injuries on an aggravation theory. PX6.

The petitioner described a lifting incident on October 21 for which she was seen in the emergency room. The ambulance report noted that she denied recent trauma but asserted she was lifting more weight at work than she was supposed to. Improvement was noted during the transport to the hospital. PX7. At the hospital, she asserted back pain without leg pain. PX3.

On October 31, she had the new MRI performed. See PX8. It noted multiple degenerative levels with stenosis from C4 through C7. Disk spurring was noted at each level. Dr. Gornet reviewed the MRI and saw the petitioner that day. He recommended light duty and injections for the neck. He noted some symptoms in her low back and left leg. See PX6. On January 9, 2012, the petitioner no longer described any low back or leg pain, but described ongoing and progressing neck and arm pain. Dr. Gornet recommended completing the injection series and then proceeding with a CT Myelogram if symptoms persisted. PX6.

On February 23, 2012, Dr. Gornet noted the results of the CT Myelogram, and recommended disk replacement surgery at C5-6 and C6-7. He placed her off work at that

time. Periodic follow-ups were had with the claimant during 2012; Dr. Gornet has maintained his surgical recommendation during that time frame. The petitioner, during that time span, continued to describe pain in her neck, shoulders and arms, but did not describe any pain in her low back or legs. PX6.

On March 20, 2012, the petitioner saw Dr. David Lange at the respondent's request pursuant to Section 12 of the Act. Dr. Lange's examination noted multiple Waddell's signs. He noted the MRI findings were more indicative of arthritis than acute injury and did not observe significant nerve entrapment or pathology. He believed that her anxiety and depression were the major cause of her residual symptoms and did not believe that surgery would be beneficial.

Dr. Gornet and Dr. Lange each testified in deposition in support of their recommendations and causal analysis. See PX12, RX1. The petitioner testified that she wants to undergo the neck surgery recommended by Dr. Gornet.

OPINION AND ORDER

Accident (only 11 WC 39192, Date of Loss 8/26/2011)

The respondent stipulated to accident regarding the latter three dates of loss, disputing only the August 26, 2011 injury (11 WC 39192).

The Arbitrator finds the petitioner failed to credibly prove compensable injuries regarding the August 26, 2011 injury. The Arbitrator reviews the medical records in light of the guidance of *Shell Oil v. Industrial Commission*, 2 Ill.2d 590 (1954), where the Illinois Supreme Court stated contemporaneous medical records are more reliable than later testimony because "it is presumed that a person will not falsify such statements to a physician from whom he expects and hopes to receive medical aid." Id. at 602. The petitioner stated to multiple providers on different dates that no acute incident occurred and did not provide a credible explanation of the discrepancy. The credible evidence supports a finding that no work-related accident occurred on or about August 26, 2011. Claim 11 WC 39192 is denied.

Causal Relationship (all claims)

The August 26, 2011 incident has been denied (see above). However, the Arbitrator finds that the petitioner has proven a causal link between the September 16, 2011 accident and her cervical spine condition of ill-being. Her treatment with Dr. Dirken clearly indicates that the September 16 incident aggravated her condition. The physical therapy notes further indicate that the muscle relaxants had permitted recovery from the August condition until the incident when she was moving the air compressor. Dr. Gornet opined that the September 16, 2011 incident was a causal factor in the acceleration of her condition and the surgical recommendation made thereafter.

Dr. Lange is likely correct that the claimant's psychological concerns have played a part in her perception of her symptoms. He is also not alone in finding non-organic components to her complaints, including Waddell's signs, as the Arbitrator observes that the petitioner's treating physical therapy notes include such references in her initial evaluation of November 3, 2011 (see PX9, p.4 of 5). Further, Dr. Jones' pre-accident treatment notes stating the claimant experienced stress at work and anxiety when it was time to go to work are deeply troubling and imply secondary motives. Moreover, the petitioner's testimony that she never had a claim for a neck injury may well be literally true in the sense that she did not file a workers' compensation claim, but suggests at minimum a certain lack of forthrightness; she testified only to a prior low back condition, but she spoke to Dr. Gornet at length about a prior neck injury and treatment following a motor vehicle accident.

With that noted, Dr. Gornet is recommending surgery for conditions which do appear pathological on the MRI study, and is deemed persuasive relative to the cervical spine condition of ill-being and prospective treatment.

The petitioner has not credibly demonstrated a causal relationship to any psychological condition. Her low back complaints receded within weeks of the asserted October 2011 incident, and no further complaints were made to Dr. Jones or Dr. Gornet relative to that anatomical location. The Arbitrator finds no causal connection between these incidents and any current condition in her lumbar spine.

Medical Services (Past and Prospective)

The respondent is directed to pay the medical bills identified in PX1 pursuant to Sections 8(a) and 8.2 of the Act, save for those expenses incurred for treatment occurring prior to September 16, 2011, as those were not related to a workplace accident (see Accident, above). Respondent shall receive credit for any and all amounts previously paid but shall hold the petitioner harmless, pursuant to Section 8(j) of the Act, for any group health carrier reimbursement requests for such payments.

The respondent shall further authorize the disk replacement surgery from C5 through C7 recommended by Dr. Gornet, as it appears reasonably necessary to cure or relieve the petitioner's causally related medical condition, pursuant to Section 8(a) of the Act. These expenses remain subject to the limits of Section 8.2 of the Act.

Temporary Total Disability

The petitioner worked light duty intermittent with lost time; oddly, the petitioner was apparently off work in January 2012 when Dr. Gornet opined she could "continue working light duty." See PX6. The petitioner requests Temporary Total Disability for three separate periods of time, as follows:

- 1) October 22, 2011 through November 8, 2011;
- 2) December 7, 2011 through February 2, 2012;
- 3) February 13, 2012 through May 28, 2013 (trial).

The respondent does not apparently assert the claimant was actually working during these periods; their dispute is effectively synonymous with the causation dispute. In light of the above causal connection findings, the Arbitrator awards TTD benefits for the above periods, which produces a total of 78 weeks benefits accrued. The respondent shall pay the petitioner \$265.81 per week for that period, a total liability of \$20,733.18. The respondent is credited \$13,024.68 in benefits heretofore paid, resulting in present liability of \$7,708.50 due and owing.

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Teresa Smith-Uberlauer,
Petitioner,

vs.

NO: 11WC 29061

Wal-Mart Associates, Inc,
Respondent,

14IWCC0425

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 23, 2013, is hereby affirmed and adopted.

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

DATED: JUN 05 2014
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RWW/rm
046

Ruth W. White

Ruth W. White

Charles J. DeVriendt

Charles J. DeVriendt

Daniel R. Donohoo

Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SMITH-UBERLAUER, TERESA

Employee/Petitioner

Case# 11WC029061

WAL-MART ASSOCIATES INC

Employer/Respondent

14IWCC0425

On 4/23/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

0834 KANOSKI BRESNEY
CHARLES EDMISTON
129 S CONGRESS ST
RUSHVILLE, IL 62681

2593 GANAN & SHAPIRO PC
MELINDA M ROWE-SULLIVAM
411 HAMILTON BLVD SUITE 1006
PEORIA, IL 61602

STATE OF ILLINOIS)
)SS.
 COUNTY OF Adams)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION

Teresa Smith-Uberlauer

Employee/Petitioner

v.

Wal-Mart Associates, Inc.

Employer/Respondent

Case # 11 WC 29061

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 **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Quincy**, on **April 3, 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 _____

FINDINGS

On **December 28, 2010**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *n/a* given to Respondent.

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

In the year preceding the injury, Petitioner earned **\$15,867.43**; the average weekly wage was **\$305.14**.

On the date of accident, Petitioner was **54** 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 **\$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

As the Arbitrator finds that Petitioner *did not* sustain an accident that arose out of and in the course of employment and that Petitioner's condition of ill-being *is not* causally related to the accident, no benefits are awarded.

All other issues are moot.

Respondent shall pay Petitioner temporary total disability benefits of **\$0.00/week** for **0** weeks as provided in Section 8(b) of the Act.

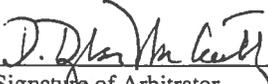
Respondent shall pay reasonable and necessary medical services of **\$0.00**, as provided in Section 8(a) of the Act.

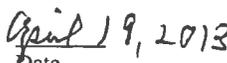
Respondent shall pay Petitioner permanent partial disability benefits of **\$0.00/week** for **0** weeks, because the injuries sustained caused **N/A** % loss of the **RIGHT FOOT** as provided in Section 8(e) of the Act.

As there is no compensation payable under the Act, there is no credit due under Section 8 (j).

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


Date

APR 23 2013

MEMORANDUM OF DECISION OF ARBITRATOR

Per the Application for Adjustment of Claim, Petitioner alleges that on December 28, 2010, she sustained a repetitive trauma type injury to her right foot which resulted in surgical repair of tendons.

Petitioner testified at the time of arbitration that she began working for Respondent back in 2008 as a cashier, and she typically worked in the "smoke shop" where she sold cigarettes. Petitioner testified that the "smoke shop" contained a short register with no belt, and that she had to reach and pivot on her right foot in order to reach the items. Petitioner testified that this motion caused her to rise up and twist her right foot, causing her to lift her left foot in the air. Petitioner testified that her need to move in such a manner varied, and she estimated this would occur approximately every third customer if they were busy. She further testified that the store was busy during the Christmas season, including the months of November and December.

Petitioner testified that she noticed that her right foot started aching and that by the end of her shift she was in pain. Petitioner testified that she typically worked 6-8 hour shifts, and that she typically worked five days per week. She acknowledged that she was a part time employee, but did not elaborate on what that meant. Wage records seem to indicate that she averaged about 32 hours per week from mid-July until November 17, 2010, when she was first seen for treatment by Dr. Patel. (RX 2) Petitioner further testified that with respect to her breaks, she would typically take two 15-minute breaks and a one hour lunch break each shift. She did not say exactly when she first noticed her foot pain, but she did say that it developed gradually. When she first saw Dr. Patel she said that her right heel had been bothering her for several months. (PX 2 at 20)

Petitioner testified that she did not experience any problems with her right foot prior to working at Wal-Mart.

Petitioner testified at the time of arbitration that she was first instructed to wear a boot on her right foot on November 30, 2010, and that on December 10, 2010 she was off work for an unrelated condition. Petitioner testified that upon her return to work on December 28, 2010, she was sent home because she had her boot on. Petitioner testified that on that date, she discussed her injury with Lynette from Personnel and Steve the store manager, and that she told both individuals that her injury was caused by her work. Petitioner testified that she did not fill out any injury reports on that date, but that she was sent home because she was wearing her boot. Petitioner further testified that she requested a note from Dr. Patel and was allowed to return to work for a period of time until February 21, 2011.

Petitioner testified at the time of arbitration that she underwent surgery on her right foot on March 1, 2011, and that post-operatively she was taken off work. Petitioner testified that she was terminated on February 21, 2011, the date on which she completed the worker's compensation paperwork. Petitioner testified that she went to Steve's office, Lynette explained the paperwork to her, and that she used vulgar language during the course of the discussion and was terminated. Petitioner testified that she was given a hard time and that both individuals tried to intimidate her.

Petitioner testified at the time of arbitration that she was not given a physical examination at the time of the IME with Dr. George Holmes, and that Dr. Holmes purportedly spoke with her for approximately five minutes and only asked questions.

Petitioner testified at arbitration that her right foot was fine now, and that sometimes her right ankle swells. Petitioner testified that she has experienced no change in activities, but that her foot swells every few months for 1-2 days. Petitioner further testified that her right foot was more tender than painful.

Petitioner testified on cross-examination that she was truthful with Dr. Patel when she first started treating with him in November of 2010. Petitioner testified on cross-examination that she was provided a floor mat at her

cashier station, and that she worked on a part-time basis as a cashier at the Quincy store. Petitioner further testified on cross-examination that she completed the claim-related paperwork in February 2011, and that she got into a heated discussion with Steve Appleby on February 21, 2011. Petitioner testified on cross-examination that she did not return to the store after that heated discussion.

Petitioner testified on cross-examination that she last saw Dr. Patel on July 20, 2011, and that she had been released from his case for the second time on that date. Petitioner testified on cross-examination that she has not had any return visits to Dr. Patel since July 20, 2011.

Steve Appleby testified on behalf of Respondent at the time of arbitration. Mr. Appleby testified that he is the store manager at the Quincy location, and that he has worked for Respondent for nearly 20 years. Mr. Appleby testified that he has held the store manager position at the Quincy store for approximately three years.

Mr. Appleby testified at the time of arbitration that Petitioner first reported the injury to him on February 21, 2011, and that he did not have notice of any worker's compensation claim for Petitioner prior to this date. Mr. Appleby testified at the time of arbitration that Petitioner stopped working for the store on February 21, 2011, which was the day on which the claim was turned in. Mr. Appleby testified at the time of arbitration that Lynette Bringer was in his office when he spoke with Petitioner on February 21, 2011, and he asked Petitioner why the claim was being turned in late. Mr. Appleby testified that Petitioner became very upset, and proceeded to call him a series of profane names. Mr. Appleby testified that Petitioner was terminated for gross misconduct.

Mr. Appleby testified at the time of arbitration that he was familiar with the cashier work stations, and that floor mats were provided to the cashiers. Mr. Appleby testified that Petitioner typically worked on a part-time basis for the store, and that she would typically work less than an 8-hour shift on any given day. Mr. Appleby testified that Petitioner was allowed to wear her walking boot for a period of time, and that Petitioner was allowed to wear it during the December 30, 2010 through January 15, 2011 timeframe as well to the best of his recollection.

Mr. Appleby testified that with respect to Respondent's Exhibit 1, the Illinois Form 45, that the alleged date of accident was that of November 11, 2010. Mr. Appleby testified that the Form 45 was completed based on information provided by Petitioner.

Mr. Appleby testified on cross-examination that he recalled Petitioner wearing her boot at the store, and he stated that he asked Petitioner how long she would need to wear the boot as he needed a timeframe for how long she would be wearing it. Mr. Appleby testified on cross-examination that he did not recall Petitioner not being allowed to wear the boot, as he believes an ADA request was made. Mr. Appleby testified on cross-examination that he knew something was wrong with Petitioner's foot, but he did not recall her saying that it was work-related.

Lynette Bringer also testified on behalf of Respondent at the time of arbitration. Ms. Bringer testified that she has worked for Respondent for nearly 23 years, and that she has been the Personnel Manager at the Quincy store for 13 years.

Ms. Bringer testified that Petitioner first reported the injury to her on February 21, 2011, and that she did not have notice of any worker's compensation claim for Petitioner prior to this date. Ms. Bringer testified at the time of arbitration that Petitioner stopped working for the store on February 21, 2011, which was the day on which the claim was turned in. Ms. Bringer testified at the time of arbitration that she was with Mr. Appleby at the time of the meeting with Petitioner on February 21, 2011, and that Petitioner became agitated when Mr. Appleby asked Petitioner why she turned the claim in late. Ms. Bringer testified that Petitioner called her a liar,

and then proceeded to use profane language. Ms. Bringer testified that Petitioner became angry because she insisted that she had reported the claim previously.

Ms. Bringer testified that Petitioner typically worked on a part-time basis for the store, but that she did not recall whether Petitioner was allowed to wear her walking boot during the December 30, 2010 through January 15, 2011 timeframe. Ms. Bringer testified on cross-examination that she had several conversations with Petitioner in December 2010, but she could not recall whether she had any conversations with Petitioner regarding her returning to work with her boot. Ms. Bringer testified on cross-examination, however, that she did not recall Petitioner missing work in December of 2010.

Ms. Bringer testified at the time of arbitration that with respect to Respondent's Exhibit 1, the Illinois Form 45, the document indicated that the alleged date of accident was that of November 11, 2010. Ms. Bringer testified that the Form 45 was completed based on information provided directly by Petitioner.

The medical records from Quincy Medical Group were entered into evidence at the time of Arbitration as Petitioner's Exhibit 2. The records reflect that Petitioner was seen on November 17, 2010 for a consultation with Dr. Patel, a podiatrist. Petitioner stated that she had pain in both feet and that her right heel had been hurting her for several months. (PX 2, p. 20). The records suggest that Petitioner pointed to the bottom of the heel as being most painful, and Petitioner noticed that when she has been standing for a significant of time or sitting and then becoming active, it was very painful for her. (PX 2, p. 20). The records reflect that when asked, Petitioner did state that the first thing in the morning was also very painful, and she denied history of injury or trauma. (PX 2, p. 20). The records do not reflect that Petitioner made any reference whatsoever to her work activities at this particular office visit. Dr. Patel's assessment at that time was that of metatarsalgia of the left foot, pain in the foot, and plantar fasciitis of the right foot. (PX 2, p. 21). The records further reflect that at that time, Petitioner was given an injection into the right foot. (PX 2, p. 22). According to the intake document completed by Petitioner, the "History of Present Condition" section with respect to the issue of aggravating factors makes no mention whatsoever of Petitioner's work activities at the store. (PX 2, p. 28).

The medical records from Quincy Medical Group further reflect that Petitioner was seen on November 30, 2010 for re-evaluation of her plantar fasciitis in the right foot. (PX 1, p. 12). Petitioner stated that the injection had helped her but she was still in a fair amount of discomfort. (PX 1, p. 12). The records suggest that Petitioner was dispensed and fitted with a Cam Walker for her to use at all times when ambulatory, and she was instructed to return in two weeks for re-evaluation of her symptoms. (PX 2, p. 12). The records reflect that Petitioner was thereafter seen on December 15, 2010 for re-evaluation of plantar fasciitis and new symptoms of Achilles tendinitis. (PX 2, p. 6). It was noted that Petitioner had been using her Cam Walker for two weeks, and Petitioner certainly noticed an improvement but was not pain-free. (PX 2, p. 6).

The medical records of Quincy Medical Group further reflect that Petitioner was seen on January 4, 2011, at which time Petitioner returned for re-evaluation of her right foot Achilles/plantar fascial pain. (PX 2, p. 41). The records reflect that Petitioner stated that she was about the same as she was previously, and she did not see much improvement from her last visit. (PX 2, p. 41). Petitioner at that time denied any injury or trauma. (PX 2, p. 41). The records reflect that an MRI was ordered at that time to evaluate for any possible tear or other possible pathology. (PX 2, p. 41). The medical records from Quincy Medical Group reveal that Petitioner underwent an MRI of the right heel without intravenous contrast on January 12, 2011, which was interpreted as revealing (1) partial tear of the Achilles tendon with subtle edema surrounding the tendon; (2) partial tear of the peroneus brevis tendon at the lateral ankle with a peroneus brevis tenosynovitis; (3) thickening and increased signal within the proximal plantar aponeurosis concerning for chronic injury/inflammatory change-clinically correlate; (4) subcutaneous edema in small joint fluid; and (5) degenerative change. (PX 2, p. 45). The records from Quincy Medical Group further reflect that Petitioner underwent x-rays of the os calcis on January 12, 2011

as well, which were interpreted as revealing degenerative and probable old traumatic changes of the right calcaneus; no acute findings. (PX 2, p. 46).

The records from Quincy Medical Group reflect that Petitioner was again seen by Dr. Patel on February 17, 2011, at which time she presented for re-evaluation of her right foot pain. (PX 2, p. 54). The records reflect that at that time Petitioner pointed to the insertion of the Achilles as having been tender as well as the plantar heel as having been very tender, and it was noted that Petitioner recently had an MRI performed. (PX 2, p. 54). The records reflect that the clinical examination showed essentially no difference in that Petitioner's pain was still moderate to severe in nature on palpation of the insertion of the Achilles tendon and over the medial plantar calcaneal tubercle of the plantar heel, and it was further noted that there was some pain over the peroneal brevis tendon sub-lateral malleolus. (PX 2, p. 54). The records reflect that at that time, surgical intervention was discussed. (PX 2, p. 54). Petitioner presented for a final pre-operative consultation on February 23, 2011. (PX 2, p. 58).

The medical records of Blessing Hospital were entered into evidence at the time of Arbitration as Petitioner's Exhibit 1. (PX 1). The records reflect that Petitioner underwent repair of the Achilles tendon of the right foot and a plantar fasciotomy of the right foot with Dr. Patel on March 1, 2011. (PX 1, p. 47). The records further reflect that Petitioner's pre-operative and post-operative diagnoses were that of (1) plantar fasciitis, right foot; and (2) possible tear Achilles tendon, right foot. (PX 1, p. 47).

The records from Quincy Medical Group reflect that post-operatively, Petitioner was seen on March 4, 2011, at which time Petitioner stated that she was doing well but she did admit to several falls from losing her balance. (PX 2, p. 69). The records further reflect that Petitioner was seen for re-evaluation of her surgical sites on her right heel and plantar foot on March 18, 2011, at which time it was noted that Petitioner had been in a cast for two weeks and was two-and-a-half weeks out of surgery. (PX 2, p. 74). At that time, Petitioner denied any systemic concerns or signs of DVT, and she appeared to be doing very well. (PX 2, p. 74). The records reflect that Petitioner again returned on April 5, 2011, at which time she returned the roll-a-bout in good condition, and it was noted that Petitioner was able to safely ambulate for necessary activities while using the roll-a-bout. (PX 2, p. 77). The records reflect that Petitioner again returned to Dr. Patel on April 26, 2011, at which time a re-evaluation of her surgical site on the right foot was performed. (PX 2, p. 80). The records reflect that Petitioner stated that she was doing much better, that she was no longer using the Cam Walker, and that Petitioner stated that she could do normal activities without much difficulties. (PX 2, p. 80).

The records from Quincy Medical Group reflect that Petitioner was again seen on May 26, 2011 by Dr. Patel, at which time Petitioner stated that she was doing approximately 90% better than she was pre-operatively. (PX 2, p. 99). The records suggest that Petitioner stated that she was extremely satisfied, and she had no concerns and noted that she got better as time went on. (PX 2, p. 99). The records further reflect that Petitioner requested that letters be given to her explaining that this was a workers' compensation-related claim, and the records further reflect that Petitioner was discharged from Dr. Patel's care at that time and was instructed to return on as-needed basis. (PX 2, p. 99). The records from Quincy Medical Group further reflect that Petitioner was last seen on July 20, 2011, at which time Petitioner stated that for the most part she was doing very well and she had no significant pain or concerns, but occasionally she would get a twinge of pain but it was certainly very mild. (PX 2, p. 108). The records reflect that Petitioner was not recommended any further treatment or evaluation, and she was again discharged from the care of Dr. Patel. (PX 2, p. 108).

The evidence deposition of Dr. Shwetal Patel was entered into evidence at the time of Arbitration as Petitioner's Exhibit 4. Dr. Patel testified that he is a podiatrist who completed a four year podiatric medical degree from what at the time was called Scholl College of Podiatric Medicine, after which he performed a two year surgical residency at St. Louis Veterans Hospital. (PX 4, p. 5). Dr. Patel testified that he is presently licensed to practice podiatric medicine in the State of Illinois, and he is currently board qualified in podiatry by the American Board

of Podiatric Surgery. (PX 4, p. 6). Dr. Patel testified that he presently practices at the Quincy Medical Group, and has been practicing for a total of eight-and-a-half years. (PX 4, p. 6).

Dr. Patel testified that he first saw Petitioner on November 17, 2010, at which time Petitioner complained of right heel pain as well as lateral foot pain on the lateral aspect of her left foot, although primarily the issue was that of right heel pain. (PX 4, p. 7). Dr. Patel testified that Petitioner was complaining of pain, and that the right heel had been hurting her for several months that Petitioner attributed to any time she had been sedentary and became more active. (PX 4, p. 7). Dr. Patel testified that toward the end of her painful period, it became where no matter what Petitioner was doing she was starting to have pain. (PX 4, p. 7). Dr. Patel testified that his examination findings were that of a fair amount of pain/moderate pain on the calcaneal medial tubercle, which is known as the origin of the plantar fascia. (PX 4, p. 8). Dr. Patel testified that at that time Petitioner did not seem to have a significant Achilles tendon involvement, and that the left foot showed some vague diffuse pain but no point tenderness nor anything suggestive of any type of stress fracture. (PX 4, p. 8).

Dr. Patel testified that x-rays of the left foot were not indicative of any type of acute pathology. (PX 4, p. 8). Dr. Patel testified that his assessment at that time was that of plantar fasciitis of the right foot and metatarsalgia of the left foot. (PX 4, p. 8). Dr. Patel testified that at that time Petitioner was advised to avoid bare-footed walking, and to stretch her Achilles tendon several times daily. (PX 4, p. 9). Dr. Patel further testified that Petitioner was given an injection on that date in the bottom of the heel, and she was instructed to follow up in a couple of weeks to evaluate her progress. (PX 4, p. 9).

Dr. Patel further testified that Petitioner was next seen on November 30, 2010, at which time it was noted that there was a slight decrease in the overall level of pain and that the injection had helped, but there was still a fair amount of persisting pain. (PX 4, p. 9). Dr. Patel testified that Petitioner was dispensed and fitted with a Cam Walker or walking boot, and she was to wear that for two weeks and return for further evaluation. (PX 4, p. 9). Dr. Patel testified that the Cam Walker is a below-the-knee walking boot that is used to essentially off load the foot. (PX 4, p. 10).

Dr. Patel testified that he next saw Petitioner on December 15, 2010, at which time she had developed a new symptom and that she continued to have pain with her plantar fascia, but she was now starting to have pain at the back of the heel at the insertion of her Achilles tendon. (PX 4, p. 10). Dr. Patel testified that Petitioner said that it was improved but still certainly not pain-free. (PX 4, p. 10). Dr. Patel testified that Petitioner's examination was essentially unchanged other than the addition of the pain in the back of the heel, and he decided to continue using the Cam Walker and dispensing the heel lift for Petitioner to use to shorten the Achilles and take some of the stress off the tendon. (PX 4, pp. 10-11). Dr. Patel testified that at that point in time he diagnosed Petitioner with Achilles tendinitis, and he advised Petitioner to continue using the Cam Walker which would in essence treat both problems. (PX 4, p. 11). Dr. Patel testified that on December 30, 2010, he provided Petitioner with some restrictions on her work activities, directing that she use her Cam Walker and heel lift at all times while weightbearing and ambulating. (PX 4, p. 11).

Dr. Patel testified that Petitioner was next seen on January 4, 2011, at which time it was noted that Petitioner felt about the same as she was the previous visit, and she did not notice very much improvement. (PX 4, p. 12). Dr. Patel testified the Petitioner informed him that she was using her walking boot faithfully, and the exam showed essentially no improvement from the prior visit. (PX 4, p. 12). Dr. Patel testified at that point in time, he felt it was reasonable and appropriate to get an MRI to evaluate both the Achilles tendon as well as the plantar fascia. (PX 4, p. 12). Dr. Patel further testified that Petitioner was allowed to go back to work effective January 5, 2011, and that she was to still wear her Cam boot but was not issued any other restrictions. (PX 4, pp. 12-13).

Dr. Patel testified that with respect to the MRI that was performed on January 12, 2011, it was noted that Petitioner had a partial tear of her Achilles tendon in the back of the right heel, she had a partial tear of the peroneal brevis tendon of the same foot, and she had some thickening and increased signal with the plantar fascia, which suggested chronic injury/inflammatory changes. (PX 4, p. 13). Dr. Patel testified that he next saw Petitioner in follow up on February 17, 2011, at which time he reviewed the findings of the MRI. (PX 4, p. 13). Dr. Patel testified that at that time Petitioner reported that both problems were still very tender, and she was not feeling that there was much difference in her overall level of pain. (PX 4, p. 14). Dr. Patel testified that he believed that given the chronicity and duration of the pain, that Petitioner would benefit from surgical intervention. (PX 4, p. 14). Dr. Patel further testified that on February 17, he restricted Petitioner to only being able to work three days in a row as she was unable to, in her opinion, work more than that, and to allow Petitioner to wear the Cam Walker when necessary. (PX 4, p. 14).

Dr. Patel testified that Petitioner returned on February 23, 2011, which was essentially a pre-operative consultation, and that surgery was ultimately performed on March 1, 2011. (PX 4, pp. 14-15). Dr. Patel testified that the procedures that were performed were that of a plantar fasciotomy of her right foot and an Achilles tendon repair of the right foot. (PX 4, p. 15).

Dr. Patel testified that with respect to work activities, he was familiar with Petitioner's work activities to some extent. (PX 4, pp. 15-16). Upon receiving a hypothetical from Petitioner's attorney suggesting that Petitioner's job as a cashier required that she stand at a cash register and pass items of merchandise over a scanner while standing on hard floors throughout her work, working 30-32 hours per week, and reaching out to grab items and bring them to the scanner and then turn, twisting to place items in bags after they were scanned, that Petitioner experienced the onset of pain while engaged in such activities, Dr. Patel did testify that he believed that it was more likely than not that Petitioner's job activities were a reasonable contributing factor to her plantar fasciitis in the right foot. (PX 4, pp. 16-17). Dr. Patel testified that the job description as given to him by Petitioner's attorney did not differ from the one Petitioner gave directly to him. (PX 4, p. 17). Dr. Patel further testified that the job duties were more likely than not a causative factor in the plantar fasciitis development, which ultimately led to the subsequent need for surgery. (PX 4, pp. 17-18). Dr. Patel further testified that the Achilles tendon tear that he repaired was also causally related to Petitioner's work activities, in that Petitioner's description of her having to twist, grab items and turn and put them onto the counter could certainly lead to this type of problem and was more likely than not a contributing factor. (PX 4, pp. 18-19). Dr. Patel testified that he thought what initially caused Petitioner's plantar fasciitis eventually led to causing a weakening of the Achilles tendon and then subsequently a tear. (PX 4, p. 19). Dr. Patel further testified that he did not believe that it was a coincidence that the same circumstances that caused the plantar fasciitis were leading up to the Achilles tendon issue. (PX 4, p. 19). Dr. Patel further testified that he believed that it was more likely than not Petitioner's work activities were a contributing factor for the need for surgical intervention on the Achilles tendon tear. (PX 4, pp. 19-20).

Dr. Patel testified that with respect to post-operative treatment, Petitioner was seen on March 4, 2011, at which time she presented for a three day follow up at which time Petitioner stated that she was doing well overall. (PX 4, p. 20). Dr. Patel further testified that he next saw Petitioner in follow up on March 18, 2011, at which time it was noted that Petitioner had been in a cast for two weeks and two-and-a-half weeks out of surgery and Petitioner felt that she was doing well and no surgical complications were noted. (PX 4, p. 21). Dr. Patel testified that with respect to post-operative activity restrictions, Petitioner was asked to wear the Cam Walker, was initially non-weightbearing, and she was also using crutches or a walker and was not allowed to lift heavy weights, not stand excessively, nor bend the foot. (PX 4, pp. 21-22). Dr. Patel testified that as of the March 18, 2011 visit, Petitioner would not have been able to do her job as described. (PX 4, p. 23).

With respect to the post-operative visit on April 5, 2011, Dr. Patel testified that Petitioner seemed to be doing very well and no surgical complications were noted. (PX 4, p. 23). Dr. Patel testified that Petitioner's

restrictions had not changed at that point from the prior visit, and she was next seen on April 26, 2011. (PX 4, p. 23). Dr. Patel testified that at this particular office visit Petitioner was no longer using her walking boot, and she felt that she could no normal activities but had not done anything strenuous. (PX 4, p. 24). Dr. Patel testified that Petitioner was advised not to go bare-footed until she had been noticeably pain-free, and she was asked to follow up in one month for further evaluation. (PX 4, p. 24).

Dr. Patel testified that Petitioner was next seen on May 26, 2011, at which time Petitioner stated she was doing 90% better than she was pre-operatively, and it was noted that Petitioner was satisfied. (PX 4, pp. 24-25). Dr. Patel testified that Petitioner was not currently working, and Petitioner informed him that she was laid off from her position that she held previously. (PX 4, p. 25). Dr. Patel testified that Petitioner requested a letter for her work purposes, which was attached to the deposition transcript as Exhibit 1. (PX 4, p. 25). Dr. Patel further testified that he prepared the April 28, 2011 letter at Petitioner's request concerning the relationship between her condition and her work activities. (PX 4, p. 26).

Dr. Patel testified that he last saw Petitioner on July 20, 2011, at which time Petitioner stated that for the most part she was doing very well but did occasionally get a mild episode of pain. (PX 4, pp. 26-27). Dr. Patel testified that he had not seen Petitioner at any point since July 20, 2011, at which time Petitioner was discharged from his care for the second time. (PX 4, p. 27).

On cross-examination, Dr. Patel noted that at the time of Petitioner's initial visit on November 17, 2010, Petitioner stated that her right foot had been hurting her for several months, and Petitioner stated that sitting and then becoming active was painful for her. (PX 4, pp. 27-28). Dr. Patel further conceded on cross-examination that Petitioner stated that first thing in the morning was also very painful for her, and that Petitioner made no complaint referable to the Achilles tendon at the time of the first visit. (PX 4, p. 28). Dr. Patel conceded on cross-examination that the physical examination performed on November 17, 2010 noted no Achilles tendon involvement, and that his assessment was that of plantar fasciitis. (PX 4, pp. 28-29). Dr. Patel conceded on cross-examination that he did not place Petitioner under any work restrictions as of the November 17, 2010 visit. (PX 4, p. 29).

On cross-examination, Dr. Patel further confirmed that at the second office visit on November 30, 2010, he dispensed a Cam Walker boot for Petitioner's right foot, and that no restrictions were issued at that point in time. (PX 4, p. 29). Dr. Patel further agreed on cross-examination that at the time of the third office visit on December 15, 2010, Petitioner for the first time complained of issues with the Achilles tendon, and it was the first time that he had noted that Petitioner had components of both plantar fasciitis and Achilles tendinitis. (PX 4, p. 29-30). Dr. Patel admitted on cross-examination that no restrictions were issued at the time of the December 15, 2010 office visit either. (PX 4, p. 30).

Dr. Patel further testified on cross-examination that he next saw Petitioner on January 4, 2011, and that as of January 6, 2011, he issued restrictions solely of the need to wear a Cam Walker and heel lift at all times while weightbearing or ambulating with the expected duration of 6-8 weeks. (PX 4, pp. 30-31). Dr. Patel conceded, however, that he put no restrictions on Petitioner as to her ability to work any specific number of hours per week or anything of that nature. (PX 4, p. 31). Dr. Patel conceded that he next saw Petitioner on February 17, 2011, at which time Petitioner complained of pain over the peroneal brevis tendon. (PX 4, p. 31). Dr. Patel clarified on cross-examination that he objectively noted the pain on palpation, but there was no subjective complaint from Petitioner. (PX 4, p. 32). Dr. Patel indicated that other than the one steroid injection and the use of the Cam Walker boot and heel lift, no other conservative treatment modalities were used in the case but he did not recall whether he had prescribed any anti-inflammatory medication. (PX 4, pp. 32-33). Dr. Patel conceded on cross-examination that no formalized physical therapy program was utilized prior to surgery. (PX 4, p. 33). With respect to the work restriction slip issued February 17, 2011, Dr. Patel testified that his intent was to state that Petitioner could work three days in a row max, as Petitioner felt that her working consecutive days more

than three was causing her pain. (PX 4, pp. 33-34). Dr. Patel clarified that he did not want in any 7-day period more than three days to be consecutive and five days in total in the 7-day period. (PX 4, p. 34).

Dr. Patel confirmed on cross-examination that at the time of the visit on May 26, 2011, he allowed Petitioner to return to work in three weeks with no restrictions. (PX 4, pp. 34-35). Dr. Patel confirmed on cross-examination that he also discharged Petitioner from his care and advised her to return on a PRN basis as of the May 26, 2011 visit as well. (PX 4, p. 35). Dr. Patel further testified on cross-examination that at the time that Petitioner returned on July 20, 2011, he again discharged Petitioner from his care and allowed Petitioner to return without restrictions again. (PX 4, p. 35).

With respect to the causation letter prepared by Dr. Patel, Dr. Patel testified on cross-examination that he believed that it was the repetitive motion of twisting, lifting, putting objects onto the conveyor belt, and the turning of the foot that caused the flare-up of the plantar fasciitis and the Achilles, and he did not believe that the hard floor played the only role. (PX 4, pp. 36-37). Dr. Patel admitted on cross-examination that he was not given a history of how many hours Petitioner would work a day or per week, and he indicated that this additional information might have an affect on his causation opinion. (PX 4, p. 37). Dr. Patel further admitted on cross-examination that there are many causes for plantar fasciitis, and that in some cases it can be idiopathic. (PX 4, pp. 37-38). Dr. Patel confirmed on cross-examination that other than any form of alleged work involvement, other major causes for plantar fasciitis include injury, mechanical, foot type, shoe choices, and particular extracurricular activities. (PX 4, p. 38). Dr. Patel further admitted on cross-examination that there were many causes for Achilles tendinitis, and that it was possible that Petitioner's obesity could have played a role in the development of the Achilles tendinitis condition. (PX 4, p. 38).

With respect to the issue of potential contributing factors, Dr. Patel testified on re-direct examination that nothing stood out to him as an obvious contributing factor other than possibly to some extent Petitioner's obesity. (PX 4, pp. 40-41). On further cross-examination, Dr. Patel admitted that he had not physically observed Petitioner performing any of her work activities at the store. (PX 4, p. 41). Dr. Patel testified, however, that he has observed cashiers at Wal-Mart and he is familiar with what a cashier does at Wal-Mart because he was married to one. (PX 4, p. 42).

With respect to the medical evidence submitted and entered into evidence at the time of arbitration on behalf of Respondent, the IME report of Dr. George Holmes, Jr. dated January 11, 2012 was entered into evidence as Respondent's Exhibit 4, and the deposition transcript of Dr. Holmes was entered evidence at the time of Arbitration as Respondent's Exhibit 5.

Dr. Holmes testified that he is an orthopedic surgeon with a subspecialty in foot and ankle surgery. (RX 5, p. 5). With respect to the IME performed, Dr. Holmes testified that he did not review Petitioner's medical records until he first saw Petitioner and it was his practice to review records after talking with the patient. (RX 5, p. 8). Dr. Holmes testified that he had the opportunity to review various medical records for Petitioner, which included the MRI reports, medical records from Dr. Patel, and a printout of Petitioner's medications. (RX 5, pp. 8-9). Dr. Holmes did confirm that he reviewed the interpretive report for the MRI scan for the MRI of January 12, 2011. (RX 4, p. 2).

With respect to the issue of the pertinent findings of the history from Petitioner, Dr. Holmes testified that the onset of her symptoms was that of November 11, 2010 on her right ankle. (RX 5, p. 9). Dr. Holmes testified that Petitioner did not provide the history of an acute injury, but felt that she had repetitive movement in terms of sitting at the register and pivoting on her foot. (RX 5, p. 9). Dr. Holmes testified that Petitioner subsequently developed pain in the right ankle, and she saw her primary care doctor who then referred her to a podiatrist for further workup and treatment of her ankle pain. (RX 5, pp. 9-10).

With respect to the issue of the pertinent findings of the physical examination performed, Dr. Holmes testified that Petitioner had relatively symmetric calf circumferences and that the muscle mass was essentially the same on the right and the left. (RX 5, p. 10). Dr. Holmes testified that it was 42 cm on the right and 43 cm on the left, which is within expectations of a normal person. (RX 5, p. 10). Dr. Holmes testified that Petitioner's ankle circumference was absolutely symmetric at 27 cm for both the left and right sides, and the foot demonstrated no swelling with a 24 cm circumference on both sides. (RX 5, p. 10). Dr. Holmes testified that Petitioner's exam was stable and that she had no ligamentous injury and that she had excellent range of motion, but she did have some noted discomfort with palpation in the posterolateral aspect of the ankle along the course of the peroneal tendons. (RX 5, p.10). With respect to the x-rays performed on the date of the IME, Dr. Holmes testified that the only pertinent positive was that Petitioner did have a traction spur at the heel, that there was some calcification noted at the posterior heel, and that there was a small area of spur on the plantar aspect of the heel as well. (RX 5, p.11).

Dr. Holmes testified that after reviewing the medical records, taking Petitioner's history, and performing the physical examination, his diagnosis was that of status post procedure for treatment of plantar fasciitis, status post procedure for treatment of Achilles tendinitis and Achilles tendinosis, as well as some ongoing pathology related to the peroneal tendon such as a peroneal tendinitis or tendinosis. (RX 5, pp. 11-12). Dr. Holmes testified that with respect to his opinion as to whether Petitioner's condition of ill-being in the case was causally related to the alleged November 11, 2010 work accident, he was of the position that the condition of the Achilles tendinosis, the plantar fasciitis and the peroneal tendinopathy were not causally related to Petitioner's employment as a cashier. (RX 5, p. 12).

Dr. Holmes testified that with regard to the plantar fasciitis, there was no scientific data to show that the job that she has a cashier or a job such as standing or pivoting is a cause of plantar fasciitis. (RX 5, p. 13). Dr. Holmes testified that plantar fasciitis is a fairly common entity that effects approximately 50% of the population at some point. (RX 5, p. 13). Dr. Holmes testified that the first visits were for plantar fasciitis and that there was no data in the literature that suggests that work is related to the cause of plantar fasciitis. (RX 5, p. 13). Dr. Holmes testified that various jobs – such someone who works as a cashier, someone who works at Wal-Mart, someone who works at a bakery, someone who is an attorney or someone who is a doctor -- do not impose any additional risk for developing plantar fasciitis. (RX 5, p. 13). Dr. Holmes testified that a meta-analysis was performed which looked at all the literature on the issue, and the researcher found that there was no causal relationship from an industrial standpoint. (RX 5, p. 13). Dr. Holmes further testified that the article was published by a gentleman by the name of Guyton in *Foot and Ankle International*. (RX 5, pp. 13-14). Dr. Holmes testified that the study found that one was just as likely to develop plantar fasciitis as someone who is a court reporter that sits down all day as someone who is standing up and down at the cash register, and that there is no repetitive trauma issue that would be the cause of plantar fasciitis. (RX 5, p. 15).

With respect to the issue of Achilles tendinopathy, Dr. Holmes testified that Petitioner did not present with any acute injury to the Achilles tendon, and that was not even a presenting symptom at the first visit. (RX 5, p. 15). Dr. Holmes testified that Petitioner did not present with Achilles pain, but rather she presented with heel pain as her initial presentation to her primary care physician. (RX 5, p. 15). Dr. Holmes testified that Petitioner was in the absolute center bulls-eye of the people who are more likely to get Achilles tendinopathy in that the typical patient is a middle-aged woman, she's either hypertensive or obese or diabetic or has been exposed to steroids. (RX 5, pp. 15-16). Dr. Holmes testified that Petitioner had three of the risk factors –her BMI/weight, she was recently diagnosed with the onset of diabetes, and as part of her treatment she received several cortisone injections. (RX 5, p. 16). Dr. Holmes testified that his study showed that if they looked at the people who developed Achilles tendinopathy, some 90% of the women had all of these risk factors so it was rare that you would find a normal woman that would have this disease process. (RX 5, p. 16). Dr. Holmes testified that Petitioner's development of the condition was related to these risk factors as opposed to being related to her being a cashier or being related to a previous diagnosis of plantar fasciitis. (RX 5, pp. 16-17).

With respect to the peroneal tendon issue, Dr. Holmes testified that his basis for indicating that the peroneal tendon issues were not causally related was again that there was no study that showed that repetitive getting up and down from a cashier position was no more likely to get that condition unless there was an acute injury, such as a twisting of the ankle. (RX 5, p. 17). Dr. Holmes testified that the peroneal tendon issue was not in Petitioner's initial presenting symptoms either, and the peroneal issues did not occur until after she had had some other treatment modalities. (RX 5, p. 17).

When asked if, based upon his review of the medical records in this case, the history that was provided by Petitioner, his having performed the physical examination and despite his opinion as to the lack of causal relationship whether he held an opinion as to whether the treatment rendered to Petitioner was reasonable and necessary, Dr. Holmes testified that he thought that the modalities that were rendered to the patient were acceptable modalities, but he did believe that there were some conservative modalities that were not instituted for either the Achilles or the plantar fasciitis prior to surgery that some would argue should have been instituted. (RX 5, pp. 18-19). With respect to the issue of whether any restrictions were necessary for Petitioner, Dr. Holmes testified that he held that opinion that the Petitioner did not require any restrictions. (RX 5, p. 19). With respect to the issue of whether Petitioner had attained Maximum Medical Improvement from any alleged injuries sustained on November 11, 2010, Dr. Holmes testified that Petitioner had obtained Maximum Medical Improvement from any injuries that were sustained on November 11, 2010. (RX 5, p. 19). Furthermore, with respect to the issue of any further treatment having been recommended for Petitioner's right ankle, Dr. Holmes testified that from the standpoint of the reported injury and workers' compensation claim, he did not believe any further treatment was recommended. (RX. 5, pp. 19-20).

On cross-examination, Dr. Holmes did testify that he reviewed the report of the MRI scan and not the films themselves. (RX 5, p. 21). On further cross-examination, Dr. Holmes testified that plantar fasciitis is an inflammatory or painful condition at the insertion of the plantar fascia, and his schematic of a heel and the plantar fascia was attached to the deposition transcript as Exhibit 3. (RX 5, p. 22). Dr. Holmes explained that as one walks during the day or stands, an area on the foot can get inflamed at the insertion of the plantar fascia on the heel. (RX 5, p. 22). Dr. Holmes conceded on cross-examination that he did not have any dispute with the diagnosis of plantar fasciitis in this case. (RX 5, p. 23). When asked on cross-examination as to what caused Petitioner's condition of plantar fasciitis, Dr. Holmes responded that the condition was something that just happens, and the fascia that becomes inflamed is stretched and put under stress by the movement of the foot. (RX 5, p. 23). Dr. Holmes testified that when he looked at the literature, he found no greater incidence of plantar fasciitis in someone who is a jogger as opposed to someone who has a sedentary job, although he did concede that it would make intuitive sense but that there were a lot of things in medicine that made intuitive sense but weren't borne out by research. (RX 5, p. 14). With respect to the study, Dr. Holmes testified that the author was named Guyton, and the study was in the Foot and Ankle publication in approximately 2001 and was a meta-analysis. (RX 5, p. 26). Dr. Holmes testified that Dr. Guyton looked at everything that was published on plantar fasciitis and tried to see if there was a predisposition to getting plantar fasciitis, and he could not find it as of 2001. (RX 5, p. 26). Dr. Holmes testified that Dr. Guyton was doing a study of studies, which is what he was referring to as a meta-analysis. (RX 5, p. 26).

With respect to the Achilles tendon issue, Dr. Holmes testified on cross-examination that his opinion was based upon a lot of studies as well as his own study that he performed entitled Possible Etiologic Factors Associated with Symptomatic Achilles Tendinopathy in 2006. (RX 5, p. 28). Dr. Holmes testified that his study looked at women and men, and 90% of the women in the study all had one of the risk factors of high blood pressure, diabetes, obesity, or steroid use, and that some women had been on hormone replacement, which was like a steroid. (RX 5, p. 28). Dr. Holmes noted that a very small percentage of the patients were normal, and were typically 45-60 years of age. (RX 5, pp. 28-29). Dr. Holmes testified that he has been doing Achilles tendon research since 1987. (RX 5, p. 29). Dr. Holmes testified that when you see a traction spur, it is almost a sign of

a patient with Achilles tendinopathy because they develop a traction spur at the insertion of the Achilles tendon. (RX 5, p. 30).

When asked if a twisting and turning injury-type mechanism put stress on the Achilles, Dr. Holmes testified that he would say no, that it was more of a stress on the ligaments because the Achilles is a straight up and down type of mechanism like going up on your tiptoes. (RX 5, p. 31). Dr. Holmes conceded on cross-examination that if you are walking or if you are rising up on the ball of your foot raising your heel up and down, that would put stress on the Achilles tendon. (RX 5, p. 31). Dr. Holmes further testified on cross-examination that with respect to the issue of need for further treatment, Petitioner did not need any further treatment for the Achilles tendon or plantar fasciitis, but it would not be unreasonable for Petitioner to undergo an exercise program for the peroneal tendon pathology, and possibly even use a small brace although he did indicate that Petitioner's examination demonstrated no swelling nor any atrophy which meant that as of that date both her left and right extremities were being used equally. (RX 5, pp. 33-34). Dr. Holmes confirmed on cross-examination that without regard to causation, Petitioner could work a job where she was on her feet all day. (RX 5, p. 34).

The Illinois Form 45 was entered into evidence at the time of Arbitration as Respondent's Exhibit 1. (RX 1). The Illinois Form 45 reflects that Petitioner reported a date and time of accident of November 11, 2010. (RX 1). According to the Illinois 45, the document was completed on February 23, 2011 by David Day, Assistant Manager at the Quincy Wal-Mart Store. (RX 1). Both Lynette Bringer and Steve Appleby testified at the time of arbitration that the information contained on the Form 45 was completed based upon information provided directly by Petitioner.

Petitioner's Medical Bills exhibit was entered into evidence at the time of arbitration as Petitioner's Exhibit 3, which reflected total outstanding medical bills of \$6,027.25 purportedly due Quincy Medical Group. (PX 3). Also included in Petitioner's Medical Bills exhibit was a letter from Kim Lawrence of Quincy Medical Group dated September 27, 2012, which provided confirmation of receipt of payments from Blue Cross/Blue Shield for treatment rendered to Petitioner for the pending worker's compensation claim. (PX 3, p. 8). The documentation reflecting amounts paid under Petitioner's group health plan with Respondent were entered into evidence at the time of arbitration as Respondent's Exhibit 3, which reflects a total payment of \$7,056.62. (RX 3, p. 5).

Based upon the foregoing, the Arbitrator makes the following findings of fact for all disputed issues:

First of all, if the Petitioner sustained an accident arising out of her employment due to a repetitive trauma, the date of accident would be November 17, 2010 instead of the date alleged on the application. In a repetitive trauma claim, the accident is said to have occurred on the date in which the Petitioner knew or should have known that she was injured and that her injury was related to her work. When the Petitioner saw Dr. Patel on November 17, she learned that she had right plantar fasciitis. She testified that she always believed her problem was related to her job as a cashier and that she discussed her work activities with Dr. Patel when seeing him for treatment. The alleged date of accident, December 28, 2010, has no significance. It was simply the date on which the Petitioner returned to work following an unrelated surgery. She had already been diagnosed and was in fact wearing a boot on her foot prescribed by Dr. Patel.

The main issue is whether the Petitioner sustained an accident arising out of her employment which was causally related to her conditions of plantar fasciitis and a torn Achilles tendon. For the following reasons, the Arbitrator does not believe the Petitioner has met her burden of proof on that issue.

The evidence shows that when the Petitioner began developing pain in her right foot she was not engaged in repetitive work. She testified that he twisted on her ankle while servicing customers as a cashier. She described how she stretched to her right to retrieve the items sold causing her to rock on her right foot. However, she said that she only had to do this for one out of every three customers. She further said that when the store was busy,

during the Christmas season, she performed this rocking mechanism every 5 to 10 minutes throughout the course of her work day. However, she told Dr. Patel on November 17 that her problem had been present for several months. She presented no evidence as to how often she flexed and twisted her ankle in late summer or early autumn when her symptoms began. Certainly it would be reasonable to infer that she was not nearly as busy when she first noticed symptoms. Also, she was diagnosed with the condition on November 17, which the Arbitrator notes was well before any Christmas rush.

Dr. Patel based his opinion on causation on the assumption that the Petitioner flexed her foot repeatedly throughout the workday. (PX 4 at 16-19) He said that the length of time she performed those actions led him to believe that they contributed to her problem. (Id) He also initially based his opinions upon the incorrect assumption that the Petitioner stood on hard floors while working eight hours a day. (PX 2 at 83) The Petitioner acknowledged the fact that she stood on a floor mat while performing her job. When presented with the fact that a floor mat was used, Dr. Patel simply said that repetitive flexing alone could have caused the Petitioner's injuries.

An expert's opinion on causation must be based on proven underlying facts. The Arbitrator does not believe that Dr. Patel's opinions were based on facts proven by the evidence and, as such, his opinions are given very little weight.

Dr. Holmes, an orthopedic surgeon who also specializes in foot and ankle treatment, was more persuasive concerning causation. He said that his experience and the scientific literature did not support a causal relationship between cashier work and plantar fasciitis. He said that the condition could be the result of an acute injury, such as a fall, or from one's sudden change in activity, as would occur, for example, when a sedentary person begins participating in a Zumba class. (RX 1 at 28,30) Neither of those factors are present in this case.

As Dr. Patel testified, the Petitioner developed right plantar fasciitis which in turn caused a tear to her Achilles tendon. The Arbitrator does not believe that she met her burden of proving that those conditions arose out of her employment. As such, the claim is denied. All other issues are moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Phillip Ragusa, Jr.,
Petitioner,

vs.

NO: 11WC 12377

State of Illinois/IDOT,
Respondent,

14IWCC0426

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of nature and extent of petitioner's permanent disfigurement and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

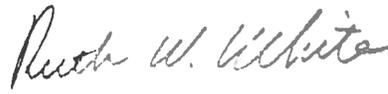
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 18, 2013, is hereby affirmed and adopted.

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.

DATED: JUN 05 2014

o052714
RWW/rm
046



Ruth W. White



Charles J. DeVriendt



Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RAGUSA JR, PHILLIP

Employee/Petitioner

Case# 11WC012377

14IWCC0426

STATE OF ILLINOIS/IDOT

Employer/Respondent

On 10/18/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.15% 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:

0924 BLOCK KLUKAS & MANZELLA PC
BRYAN SHELL
19 W JEFFERSON ST SUITE 100
JOLIET, IL 60432

4980 ASSISTANT ATTORNEY GENERAL
COLIN KICKLIGHTER
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

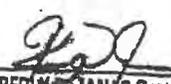
1430 CMS BUREAU OF RISK MGMT
WORKERS COMPENSATION MANAGER
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

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

OCT 18 2013




KIMBERLY S. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)

)SS.

COUNTY OF WILL)

14IWCC0426

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

PHILLIP RAGUSA, JR.

Employee/Petitioner

Case # 11 WC 12377

v.

Consolidated cases: N/A

STATE OF ILLINOIS/IDOT

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **New Lenox, Illinois**, on **June 10, 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 _____

FINDINGS

On **September 16, 2010**, 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 **\$64,891.00**; the average weekly wage was **\$1247.00**.

On the date of accident, Petitioner was **48** years of age, *single* with **2** 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 **\$0.00** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$1728.67** for other benefits, for a total credit of **\$1728.67**.

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

ORDER

Respondent shall pay reasonable and necessary medical services of **\$3,487.00**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **\$669.64/week** for **5** weeks, because the injuries sustained caused the disfigurement of the left ring finger, as provided in Section 8(c) 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


Date

OCT 18 2013

141WCC0426

FINDING OF FACTS:

Petitioner, PHILLIP RAGUSA, JR., at the time of the hearing date is 51 years old. Phil Ragusa Jr., is an employee of the State of Illinois Department of Transportation, and as part of his job duties he was required to clear brush, waste and debris from alongside Illinois highways. On September 16, 2010, Petitioner was assigned the task of and was to clear brush and trees from the highway. Petitioner testified that on this date the foliage was covered in thorns and as he attempted to clear the brush, a large thorn tore through his work glove and slashed into his left middle finger embedding a thorn down into the bone. Despite the injury, Petitioner finished his shift. When the pain in his left middle finger did not go away, Petitioner sought medical treatment.

Petitioner went to Adventist Bolingbrook Hospital September 20, 2010. (Pet. Ex. 2) Upon examination by the ER physician, it was determined that the thorn was still lodged in Petitioner's left middle finger. Petitioner complained of pain and was referred to Dr. Ellis' office. (Pet. Ex. 2 at 7-8).

Petitioner was seen the same day by Dr. Ramsey Ellis. (Pet. Ex. 4) Petitioner presented with a history of puncture wound to the left long finger on September 16, 2010 when he was moving thorny trees and was impaled by a thorn. (Pet. Ex. 4 at 9). Petitioner had complaints of pain over the dorsum of the left long finger. (*Id.*). After examination, Dr. Ellis gave Petitioner a choice of either letting the body absorb the foreign body, or perform an excision of the foreign body from the finger. Petitioner chose to excise the foreign body. (*Id.* at 10). The excision was performed the same day, where Dr. Ellis cut open the finger to remove the thorn and sutured the incision site. (*Id.* and Pet. Ex. 5). Petitioner was given a work restriction of no lifting greater than three (3) pounds and to keep the wounded area clean and dry. (Pet. Ex. 4 at 6).

Petitioner had a follow-up appointment September 27, 2010 where he was returned to work full duty as of September 29, 2010. (*Id.* at 12). Petitioner was last seen October 4, 2010, where he showed good strength and the sutures were removed. Petitioner continued to work full duty. (Pet. Ex. 4 at 14).

Petitioner testified that he still experiences pain and swelling in the left middle finger. The Arbitrator notes that he observed the suture area and there appears to be a one-half (1/2) to three-quarter (3/4) inch by three-quarter inch scar on the left middle finger.

In support of the Arbitrator's Decision regarding "F" (Causal Connection), the Arbitrator finds as follows:

The Arbitrator finds Petitioner to be a credible witness and adopts the testimony of Petitioner and the records of the treating doctors. Respondent offered no contrary or conflicting testimony. As part of his job duties, Petitioner was clearing brush on September 16, 2010 and was impaled by a thorn. Petitioner testified that there was no other occurrence where he was impaled by a thorn and the medical records are consistent with Petitioner's testimony. The Arbitrator finds that a causal relationship exists between Petitioner's work accident of September 16, 2010 and his condition of ill being for which he sought medical treatment, including foreign body excision and all follow ups.

In Support of the Arbitrator's Decision regarding "J" (Medical), the Arbitrator finds as follows:

The Arbitrator has reviewed the medical bills (Petitioner's Exhibits 6-8), which were admitted into evidence. Based upon the evidence presented, including Petitioner's testimony and the Arbitrator's review of the medical records and bills, the Arbitrator finds the Petitioner's medical bills, admitted as Petitioner's Exhibits 6-8 in the sum of \$3,487.00, to be reasonable, necessary and customary and related, and the bills to be reasonable in amount. After finding the injury causally connected with the September 16, 2010 accident, the Arbitrator finds Respondent shall pay reasonable and necessary medical services of \$3,487.00, as provided in Sections 8(a) and 8.2 of the Act.

In Support of the Arbitrator's Decision regarding "L" (PPD), the Arbitrator finds as follows:

Petitioner suffered from an impaling injury, a thorn in his left long finger, which was excised and closed with sutures. Petitioner still has trouble with his left long finger (middle finger), but is working a full duty position with the State of Illinois Department of Transportation. Petitioner testified that he has pain and swelling, especially with the weather change and when it is cold out.

The Arbitrator finds the Respondent shall pay Petitioner permanent partial disability benefits of \$669.64/week for 5 weeks, because the injuries sustained, including scarring, pain and swelling, caused the disfigurement of the left middle finger under Section 8(c) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Guy Roberts,

Petitioner,

vs.

NO: 11WC 45230

Southern Illinois Airport Authority,

Respondent,

14IWCC0427

DECISION AND OPINION ON REVIEW

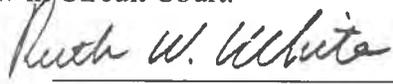
Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical expenses, permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 20, 2013, is hereby affirmed and adopted.

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

DATED: JUN 05 2014

o052814
RWW/rm
046


Ruth W. White


Charles J. DeVriendt


Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ROBERTS, GUY

Employee/Petitioner

Case# **11WC045230**

141WCC0427

SOUTHERN ILLINOIS AIRPORT AUTHORITY

Employer/Respondent

On 2/20/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.13% 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:

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

0180 EVANS & DIXON LLC
JAMES M GALLEN
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

14IWCC0427

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

Guy Roberts
Employee/Petitioner

Case # 11 WC 45230

v.

Consolidated cases: n/a

Southern Illinois Airport Authority
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on December 18, 2012. 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 _____

FINDINGS

On November 14, 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 not 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 not causally related to the accident.

In the year preceding the injury, Petitioner earned \$32,956.50; the average weekly wage was \$633.78.

On the date of accident, Petitioner was 48 years of age, single with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

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

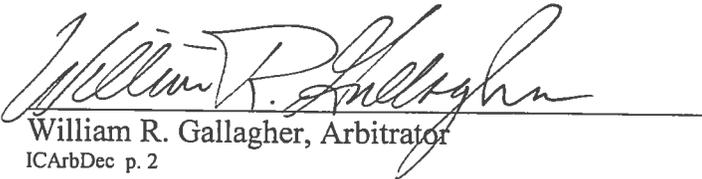
Respondent is entitled to a credit of \$0.00 under Section 8(j) of the Act.

ORDER

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

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

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


William R. Gallagher, Arbitrator
ICArbDec p. 2

February 15, 2013

Date

FEB 20 2013

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment for the Respondent. The Application alleged a date of accident (manifestation) of November 14, 2011, and that Petitioner sustained a repetitive trauma to his right and left arms and right and left hands. Respondent disputed liability on the basis of accident and causality.

Petitioner worked as a maintenance person and handyman for Respondent for over seven years and testified that he performed a wide variety of duties. Petitioner testified that his job duties included maintenance and repair of such things as locks, plumbing, drywall, etc. Petitioner's job duties also required him to work outdoors and he was required to perform various landscaping duties including mowing grass and tree trimming. Petitioner testified that all of his job duties required significant and repetitive use of his hands and arms.

In regard to tree trimming, Petitioner testified he is required to do this approximately ten months out of the year. Trimming the trees requires the use of a chainsaw and what the Petitioner described as a pole saw with a rod extension. Petitioner testified that this particular machine vibrates a lot and that this activity is one of the things that he noticed caused him to experience pain and numbness in his hands. Petitioner testified that because of the severe weather conditions that were present in Southern Illinois in the spring of 2011, that there was an extensive amount of tree damage and, as a result thereof, there was a significant increase in Petitioner's tree trimming workload. Petitioner also testified that he operates end loaders, snowplows, tractors, dump trucks and boom trucks. Petitioner stated that he is required to use hand tools on a daily basis and that his job also involves replacing walls, putting new drywall into old existing rooms that have either been damaged or need to be replaced, carrying sheets of drywall, hanging them, taping them as well as painting.

Petitioner initially sought medical treatment from Dr. Anup Chaudhry of the VA Hospital in Marion on September 14, 2011, and at that time he complained of numbness in the thumb and first finger of the right hand and of the first and second fingers of the left hand. Petitioner also complained of numbness and tingling in both hands going up to the elbow at times. Dr. Chaudhry diagnosed Petitioner with bilateral carpal tunnel syndrome and recommended referral to both physical therapy and an orthopedic surgeon, both of which the Petitioner refused.

On November 14, 2011, Petitioner was examined by Dr. George Paletta. In the history provided to Dr. Paletta, Petitioner stated that he performed building maintenance and a lot of tree trimming, performing this latter duty eight months out of the year, three days a week and three to four hours per day. Petitioner also stated that he operated heavy machinery/equipment 12 months out of the year, an average of two to six hours per day. Petitioner also informed Dr. Paletta that during the winter months, he is required to maintain the runways performing snow removal duties and that his job also requires him to use hand tools such as shovels, picks and rakes, 12 months out of the year, two to four hours a day, three to four days per week. Petitioner also stated that his job requires a lot of heavy lifting, painting and drywall repair.

Dr. Paletta examined Petitioner and opined that he had probable bilateral carpal tunnel syndrome, right greater than the left. AT Dr. Paletta's direction, nerve conduction studies were performed by Dr. Dan Phillips which indicated Petitioner had severe right carpal tunnel syndrome and mild left carpal tunnel syndrome. On December 27, 2011, Dr. Paletta performed surgery consisting of a right carpal tunnel release. Because the condition in the left hand was considerably milder than the right, no surgery was either recommended or performed on the left hand.

Dr. Paletta was deposed on November 16, 2012, and his deposition testimony was received into evidence at the time of trial. In regard to the issue of causality, Dr. Paletta opined that there was a causal relationship between the Petitioner's work activities and the bilateral carpal tunnel syndrome. One of the exhibits attached to the deposition transcript was a hand-written job description prepared by the Petitioner. This job description stated that Petitioner was required to do tree trimming/pruning ten months out of the year, three to four hours a day, three days per week; operate heavy equipment 12 months out of the year, two to six hours a day, three to four days a week; use hand tools (shovels, picks, rakes) 12 months out of the year, two to four hours a day, three to four days a week; lifting heavy objects (power tools, sandbags, bricks-blocks, equipment parts, etc.) 12 months out of the year, five days a week; painting-drywall repair 12 months at 20 hours per week. This description of Petitioner's job duties was consistent with the job duties stated in Dr. Paletta's initial medical record. On cross-examination, Dr. Paletta agreed that if the history of Petitioner's job duties was inaccurate, he would reconsider his opinion as to causality.

Respondent had two witnesses (Butch Mansfield and John Stroub) present to testify at the trial; however, they were both called by Petitioner's counsel to testify. Butch Mansfield testified that he was Petitioner's immediate supervisor and that Petitioner was a good employee and that he would be required to use his hands on a regular basis in the performance of his job duties. Mansfield stated that the maintenance department has three full-time employees, one part-time employee and, on occasion, an intern. Mansfield testified that he works with Petitioner on a daily basis and that Petitioner operates heavy equipment and trims trees on an occasional basis. Mansfield testified that there was not a major storm in May, 2011, that knocked down a lot of trees; however, he did state that there was a big storm which he called the Derecho back in May, 2009.

When asked about Petitioner's job description, Mansfield stated that they do not have occasion to trim trees eight to ten months out of the year unless they have a major storm like they did in 2009. Other than this event, tree trimming would be performed perhaps once or twice a year. Mansfield thought that they did have two or three trees blown over in April, 2011; however, he stated that he and the summer help trimmed a lot of trees. To his knowledge, Petitioner did not perform any of the actual tree trimming and he did not operate a chainsaw and that Petitioner assisted doing other things such as picking up the limbs but the majority of the tree trimming work was performed by either him or the part-time or summer help. In regard to the use of other tools, he stated that they would shovel and rake only occasionally and that they would very rarely have occasion to lift heavy objects.

Petitioner also called John Stroub, one of Petitioner's co-workers. John Stroub also agreed that Petitioner's job duties would require the use of his hands; however, in respect to tree trimming, he stated they would normally do two or three days of tree trimming per year with possible touchups on an occasional basis although there would be more to do after a major storm. He specifically recalled the big storm in 2009 but did not remember a similar one in 2011. In regard to snowplowing, he recalled that this was done perhaps five to ten days per winter since the time his employment began in 2008. The shoveling of the sidewalks is contracted out. He did state that he and the Petitioner would have to go out and apply salt and do touchups in spots that were not completely shoveled.

Conclusions of Law

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

The Arbitrator concludes that Petitioner did not sustain a repetitive trauma injury to his right and left hands/arms as alleged in the Application for Adjustment of Claim and that Petitioner's bilateral carpal tunnel syndrome condition is not related to his work activities.

In support of this conclusion the Arbitrator notes the following:

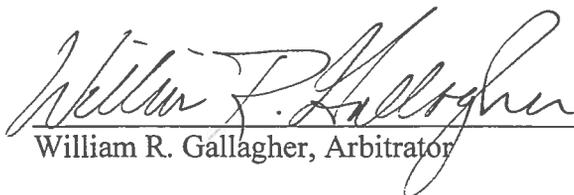
While Dr. Paletta opined that there was a causal relationship between Petitioner's work activities and the bilateral carpal tunnel syndrome, this opinion was based on the job description and history provided to him by the Petitioner.

The job description and history provided to Dr. Paletta are contradicted by Petitioner's witnesses, Butch Mansfield and John Stroub. The job description that Petitioner provided Dr. Paletta stated that he was required to do tree trimming/pruning ten months out of the year, three to four hours a day, three days per week. Mansfield and Stroub testified that the tree trimming only occurred approximately two to three days per year. Petitioner testified that there was a massive storm in 2011, shortly before he began treatment and that this caused a tremendous increase in his workload and that they were required to cut trees almost every day. Neither Mansfield or Stroub could remember a big storm in 2011 although they did recall a big storm occurring in 2009.

The Arbitrator thereby finds that Petitioner's description of his job duties not to be credible.

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

Because of the Arbitrator's conclusions and disputed issues (C) and (F), Petitioner's claim for payment of medical bills and permanent partial disability benefits are hereby denied.


William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Georgenna Wade,

Petitioner,

vs.

NO: 12WC 39990

Twin Rivers Restaurant,

Respondent,

14IWCC0428

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 benefit rate, medical, causal connection, temporary total 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 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 5, 2013, 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.

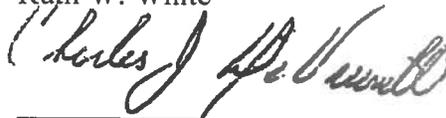
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$5,500.00. 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: JUN 05 2014
o052814
RWW/rm
046



Ruth W. White



Charles J. DeVriendt



Daniel R. Donohoo

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

WADE, GEORGENNA

Employee/Petitioner

Case# 12WC039990

TWIN RIVERS RESTAURANT

Employer/Respondent

14IWCC0428

On 7/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

0246 HANAGAN & McGOVERN PC
STEVE HANAGAN
123 S 10TH ST SUITE 601
MOUNT VERNON, IL 62864

RUSIN MACIOROWSKI & FRIEDMAN LTD
SARAH K TRIPP
239 S LEWIS LANE
CARBONDALE, IL 62901

14IWCC0428

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)**

Georgenna Wade
Employee/Petitioner

Case # 12 WC 39990

v.

Consolidated cases: _____

Twin Rivers Restaurant
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Mt. Vernon, on May 10, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On July 22, 2012, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned \$9,104.19; the average weekly wage was \$326.08.

On the date of accident, Petitioner was 41 years of age, single with 1 dependent child(ren).

Petitioner has not received all reasonable and necessary medical services.

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

Respondent shall be given a credit of \$2,553.94 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$2,553.94.

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

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 3, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

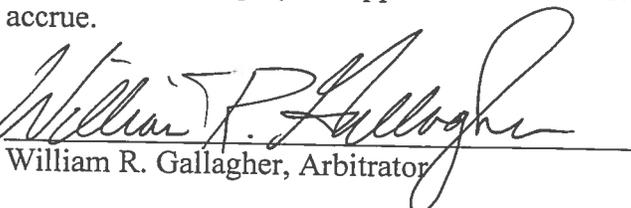
Respondent shall authorize and pay for prospective medical treatment including, but not limited to, the surgical treatment recommended by Dr. Rerri.

Respondent shall pay Petitioner temporary total disability benefits of \$253.00 per week for 41 5/7 weeks, commencing July 22, 2012, through May 10, 2013, as provided in Section 8(b) 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.


William R. Gallagher, Arbitrator

June 28, 2013
Date

JUL 5 - 2013

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment for Respondent on July 22, 2012. According to the Application, Petitioner was lifting a bucket and sustained an injury to the low back and legs. Respondent agreed that Petitioner sustained a work-related accident on July 22, 2012; however, Respondent disputed liability on the basis of causal relationship. There was also a dispute regarding the computation of the average weekly wage. Petitioner and Respondent alleged that the appropriate average weekly wage was \$395.00 and \$175.08, respectively. This case was tried as a 19(b) proceeding and Petitioner sought an order for payment of medical bills, prospective medical and temporary total disability benefits.

Petitioner began working for Respondent in April, 2010, as a waitress/server. In addition to waiting tables, Petitioner had to bus her own tables and also was required to move large bags of sugar, produce, canned goods, etc. On July 22, 2012, Petitioner was lifting a five gallon bucket of ice and felt a stabbing pain in her low back. Afterwards, a couple of co-workers assisted the Petitioner and she was taken to the ER of Wabash General Hospital. Petitioner was diagnosed with an acute lumbar strain, given some medication and directed to remain off work for three days.

Petitioner subsequently sought medical treatment from Pam Miller, a Physician's Assistant (P.A.), who ordered an MRI scan which was performed on July 26, 2012, at Wabash General Hospital. The MRI revealed a small paracentral disc protrusion at L5-S1 on the right side transversing the right S1 nerve root but negative for impingement. P.A. Miller then referred Petitioner to Dr. Bernard Rerri, an orthopedic surgeon.

Petitioner testified that she sustained a back injury in 2001 and had back surgery performed on her by Dr. José Arias. Dr. Arias' medical records were received into evidence at trial which indicated he treated Petitioner for low back problems from 2001 to 2003. On December 18, 2001, Dr. Arias performed back surgery on Petitioner, the procedure consisting of a hemilaminectomy of a herniated disc at L5-S1 on the right side. Petitioner recovered from the surgery and Dr. Arias released her to return to work without restrictions on February 25, 2002.

Petitioner was subsequently seen by Dr. Arias on July 10, 2002, with recurrent low back and right buttock/leg pain that had been approximately two weeks in duration. Dr. Arias' findings on physical examination were benign; however, he obtained an MRI of the lumbar spine on July 17, 2002, which, other than revealing post-operative changes, was unremarkable. Dr. Arias saw her on August 14, 2002, and, at that time, her right leg complaints had resolved. Dr. Arias next saw Petitioner on March 10, 2003, and she was again complaining of low back pain with right hip pain and right leg numbness which had begun approximately one week prior. Dr. Arias had both a CT scan and myelogram performed on March 13, 2003, neither of which revealed any nerve root impingement or disc lesions.

Petitioner had no further medical treatment in regard to her low back until sometime in 2009 when she experienced a back ache with pain into the right hip and thigh. Petitioner testified that she was seen by Dr. Phillip (his treatment records were not tendered into evidence at trial) who ordered an MRI of Petitioner's lumbar spine which was performed on January 22, 2009. According to the radiologist's report, the MRI revealed post-operative changes at L5-S1 as well

as degenerative disc disease and disc bulging at multiple levels. Petitioner was prescribed some medication and after approximately two months, the back and right leg pain subsided.

Petitioner testified that after the preceding occurrences of back and right leg pain that the symptoms improved. Other than normal back aches/pains, Petitioner did not have any difficulties with her back and was able to perform all of the work duties required by the Respondent from the time she was hired in April, 2010, up until the accident of July 22, 2012.

Dr. Rerri first saw Petitioner on August 21, 2012, and Petitioner advised him of the work-related accident and the fact that she previously had disc surgery in 2001. Dr. Rerri examined the Petitioner and reviewed the MRI scan that had just been obtained. Dr. Rerri opined that Petitioner had right sciatica and a possible recurrent disc at L5-S1 on the right or a shift in the epidural scarring. He stated in his medical report "It is my opinion that the 07/22/2012 incident at work is a direct cause of her current pain and disability." He authorized Petitioner to be off work and ordered a repeat MRI scan with gadolinium. Dr. Rerri reviewed this MRI scan and opined that it revealed retrolisthesis at L5-S1 with compression of the right S1 root. Dr. Rerri attempted to treat the Petitioner conservatively with an epidural steroid injection which was administered on September 26, 2012. Dr. Rerri saw Petitioner on October 4, 2012, and her condition was unchanged. At that time, Dr. Rerri recommended that Petitioner undergo surgery at L5-S1, the procedure consisting of a fusion with both bone graft and metal hardware. He continued to authorize the Petitioner to remain off work.

Dr. Rerri was deposed on April 23, 2013, and his deposition testimony was received into evidence at trial. Dr. Rerri's testimony was consistent with his medical records and he reaffirmed his opinion regarding causality and testified that when the Petitioner was lifting/carrying the bucket of ice in July, 2012, she aggravated the pre-existing condition in her lumbar spine and made it symptomatic. Dr. Rerri testified that he reviewed the report of the MRI scan obtained in 2009 and compared to the MRI scan in 2012 and he noted that the 2009 scan did not show a recurrence of the L5-S1 disc but that the MRI scan he obtained in 2012 did reveal such a recurrence of the L5-S1 disc. Dr. Rerri noted that if Petitioner had experienced a recurrent disc before July 22, 2012, that he would have expected her to have symptoms and that Petitioner was able to work for the months preceding the accident but not afterward.

At the direction of the Respondent, Petitioner was examined by Dr. Sherwin Wayne, an orthopedic surgeon, on October 23, 2012. Dr. Wayne reviewed medical records and diagnostic studies regarding the treatment received by the Petitioner both before and after the July, 2012 accident and he examined the Petitioner. In his review of the MRIs obtained in 2009 and 2012, Dr. Wayne initially opined that the 2012 scan was of poor technical quality; however, in comparing the two studies he opined that they were essentially the same. Dr. Wayne opined that the Petitioner's condition was not causally related to the work injury of July 22, 2012, based upon the fact that Petitioner had a significant herniation of the L5-S1 disc in 2001, which required the complete removal of the nucleus of the disc. He opined that it was just a matter of time before there was a gradual collapse of the disc space and foraminal narrowing which would inevitably cause compression of the nerve roots.

Dr. Wayne was deposed on April 24, 2013, and his deposition testimony was received into evidence at trial. Dr. Wayne's testimony was consistent with his medical report and he reaffirmed his position in regard to causality. On cross-examination, Dr. Wayne admitted that Petitioner was

able to work for two and one-half years prior to the July, 2012 accident, but not afterward. He also agreed that following the 2001 back surgery, that any number of factors could affect the progression of the condition including a traumatic event if it caused an anatomical change that was not present before.

In regard to the average weekly wage, Petitioner testified that she was paid \$5.00 per hour plus tips and that the tips she received could vary between \$100.00 and \$150.00 per week. Petitioner also testified that Respondent was required to report a certain amount of earnings as tips even if she did not actually receive them. Purportedly, Petitioner was paid by Respondent based on the number of hours times \$8.25 per hour and the difference between \$5.00 per hour and \$8.25 per hour was the "tip out" that Respondent would have to base its payment to the government for taxes. Petitioner estimated that her take-home pay varied between \$300.00 and \$370.00 per week.

Respondent tendered into evidence a wage statement for Petitioner's earnings for the year preceding the date of accident. This statement identified that for this period Petitioner had gross earnings of \$9,104.19. The statement indicated that Petitioner was scheduled to work 30 to 40 hours per week at an hourly rate of \$8.25 including the "tip out." For weeks one through 26, Petitioner generally worked 30 to 40 hours per week; however, for weeks 27 through 52, the number of hours Petitioner worked per week were substantially less, from a low of 2.75 hours to a high of 12.75 hours. There was no explanation as to why Petitioner worked so little for the six month period preceding the date of accident. The total number of hours worked for the two six month periods were 920.25 and 196.5, a total of 1,116.75 hours.

Conclusions of Law

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

The Arbitrator concludes that Petitioner's current condition of ill-being is causally related to the accident of July 22, 2012.

In support of this conclusion the Arbitrator notes the following:

It is undisputed that Petitioner had a low back condition that pre-existed the accident of July 22, 2012, because in 2001 Petitioner underwent disc surgery at L5-S1 and had periodic flare-ups of her back pain thereafter in 2002 through 2003, and again in 2009.

The Petitioner recovered from these prior episodes of low back pain, the most recent of which occurred over three years prior to the accident of July 22, 2012.

Petitioner began working for Respondent in April, 2010, and her testimony was that she was able to perform all of the tasks required of her job until the accident of July 22, 2012, and this testimony was unrebutted. While the Petitioner apparently worked a rather minimal number of hours in the six months preceding the accident, the reasons for her working a lesser number of hours is unknown. There is no evidence that Petitioner's working such a reduced number of hours was related to any low back issues.

The Arbitrator finds the opinion of Dr. Rerri to be more persuasive than Dr. Wayne. Dr. Rerri's opinion is consistent with the fact that Petitioner was able to work before the July 22, 2012, accident but not afterward. Further, Dr. Rerri opined that there was a difference between the MRI scans of 2009 and 2012, in that the former did not reveal a recurrence of the disc and the latter did. While Dr. Wayne opined that there were no significant differences between the two scans, he could not explain why Petitioner was capable of working before the accident but not afterward.

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

The Arbitrator concludes that Petitioner had an average weekly wage of \$326.08.

In support of this conclusion the Arbitrator notes the following:

The wage statement clearly demonstrates that Petitioner missed in excess of five calendar days of work during the year preceding the date of accident. In Sylvester v. Industrial Commission, 732 N.E.2d 751 (Ill. 2000), the second method prescribed by the Act for computing the average weekly wage is appropriate. Using the 1,116.75 hours the Petitioner worked and dividing by a 40 hour work week equals 27.92 weeks. Dividing \$9,104.19 by 27.92 results an average weekly wage of \$326.08.

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

The Arbitrator concludes that all of the medical services provided to Petitioner were reasonable and necessary and that Respondent is liable for payment of the medical bills associated therewith.

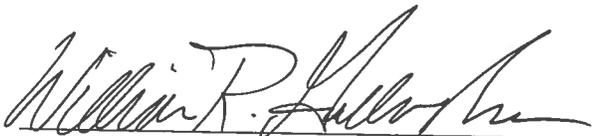
Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 3, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

The Arbitrator concludes that Petitioner is entitled to prospective medical treatment including, but not limited to, the surgery recommended by Dr. Rerri.

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

The Arbitrator concludes that Petitioner is entitled to payment of temporary total disability benefits of 41 5/7 weeks, commencing July 23, 2012, through May 10, 2013.


William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Toby Britten,

Petitioner,

vs.

NO: 11WC 42520
13WC 18550

Family Dollar Stores, Inc.,

14IWCC0429

Respondent,

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 17, 2013, is hereby affirmed and adopted.

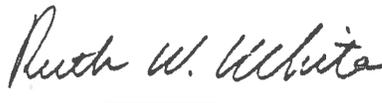
IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written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

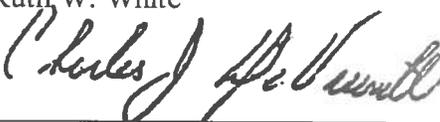
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$47,500.00. 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: JUN 05 2014
o052114
RWW/rm
046



Ruth W. White



Charles J. DeVriendt



Daniel R. Donohoo

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

KITTEN, TOBY

Employee/Petitioner

Case# 11WC042520

13WC018550

14IWCC0429

FAMILY DOLLAR STORES INC

Employer/Respondent

On 9/17/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.03% 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:

4642 O'CONNOR & NAKOS
MATT WALKER
120 N LASALLE ST 35TH FL
CHICAGO, IL 60602

0560 WIEDNER & MCAULIFFE LTD
KAREN COON
ONE N FRANKLIN ST SUITE 1900
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Toby Britten
Employee/Petitioner

Case # 11 WC 42520

v.

Consolidated cases: 13 WC 18550

Family Dollar Stores, Inc.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Molly C. Mason**, Arbitrator of the Commission, in the city of **Chicago, Illinois**, on **August 22, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **7-12-11**, 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 post-traumatic headache condition of ill-being *is* causally related to the accident. Petitioner failed to establish causation as to his current claimed left shoulder and left knee conditions of ill-being.

In the year preceding the injury, Petitioner earned **\$46,800.00**; the average weekly wage was **\$900.00**.

On the date of accident, Petitioner was **39** years of age, *married* with **1** dependent child.

Petitioner has *in part* undergone reasonable, necessary and related treatment.

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

Respondent shall be given a credit of **\$11,057.14** 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 Petitioner temporary total disability benefits of \$600.00/week for 89 weeks, commencing 7/13/11 through 7/26/11 (stipulated, Arb Exh 1) and from 8/3/11 through 4/2/13, as provided in Section 8(b) of the Act. For the reasons set forth in the attached decision, the Arbitrator finds that Petitioner's causally related post-traumatic headache condition of ill-being became stable as of April 2, 2013, in the sense that Petitioner's treatment needs at that point consisted solely of medication management, per Dr. Kapur.

Respondent shall be given a credit of \$11,057.14 for temporary total disability benefits that have been paid.

For the reasons set forth in the attached decision, Respondent shall pay the following medical expenses, subject to the fee schedule: 1) Emergency Room Providers, S.C., \$439.00; 2) Physiotherapy Associates, S.C., 4/26/12, \$570.00; and 3) Advocate Medical Group, 7/12/11 – 4/2/13 (other than 4/1/13), \$4,017.62. The Arbitrator declines to award Petitioner the claimed prescription expenses of \$44.91. PX 6.

Respondent shall authorize and pay for prospective treatment in the form of return visits to Dr. Kapur for medication management.

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.

14IWCC0429

Molly C Mason

Signature of Arbitrator

9/16/13

Date

ICArbDec19(b)

SEP 17 2013

14IWCC0429

Arbitrator's Findings of Fact Relative to 11 WC 42520

Petitioner testified that, on and prior to July 12, 2011, he worked as a manager at a Respondent store located at 1212 West 95th in Chicago. His duties included opening the store, preparing the cash registers, stocking shelves, cleaning and managing ten employees on different shifts.

The parties agree Petitioner sustained a work accident on July 12, 2011. Arb Exh 1. Petitioner testified to three prior work injuries. He injured his knee while working at CVS and underwent a meniscal repair in 2006. On December 3, 2010, a shoplifter threw him to the floor at Respondent's 95th Street store. He injured his left hip, left knee and left shoulder. He sought treatment at a hospital following this incident and saw a physician on a couple of occasions thereafter. He was released to full duty and continued performing his regular duties for Respondent thereafter. He claimed to have injured his head while working for Respondent on May 19, 2011. That injury is the subject of the companion claim numbered 13 WC 18550. He testified he was kneeling that day, while helping "John," his district manager, assemble a display when John accidentally dropped a steel pole on the back of his head. He saw a doctor at Advocate Health Centers the following day, May 20, 2011, and returned to full duty shortly thereafter. He testified he continued to experience some headaches after resuming work but indicated the pain was "nothing [he] couldn't handle." [See separate decision in 13 WC 18550.]

Petitioner testified that power at the 95th Street store had been out for about ten days prior to July 12, 2011, due to severe storms. On July 12, 2011, he showed up for work at the store at about 6 or 7 AM and observed that the air conditioning and lights were still off. His district manager (the same "John" who was his district manager on May 19, 2011) called him and asked if the power was back on. Petitioner told John "no." Despite the lack of power, John wanted a 52-foot truck to be unloaded that day so that the store could be stocked. John instructed Petitioner to start the unloading. John told Petitioner that he and "Kelly," a Respondent regional manager, were en route and would be bringing temporary lighting with them. Petitioner testified he proceeded with the unloading despite his personal belief that there was insufficient light. Unloading a truck consisted of the truck driver throwing items onto rollers and Respondent employees putting these items on "U boats" so that the items could be transported into the store.

Petitioner testified he went into the store's stockroom to get a "U boat." It was dark in the stockroom. Petitioner testified he tripped and fell. The next thing he could recall was John and Kelly picking him up off the floor. John and Kelly sat him in a chair and called an ambulance. At that point, he was experiencing pain in his knees, shins, head, neck and shoulder. He felt disoriented. The paramedics arrived within about 20 or 30 minutes. Petitioner testified he refused to go with the paramedics. Later, after the paramedics left, he asked John if he could seek treatment and John agreed.

Medical Treatment:

Petitioner initially underwent care on July 12, 2011 at PCP Acute Care, where he saw Patrice Burch, D.O. Dr. Burch's history reflects that Petitioner "fell at work today, injuring the left side of his head and bilateral legs." Petitioner reported that he "was working in dark at a Family Dollar Store when he tripped over ladder." Petitioner rated his pain level at 9/10. The doctor assessed Petitioner with a contusion with intact skin surface on the occiput of the head. She administered a Toradol injection for pain and advised Petitioner to go to the Emergency Room via ambulance. Her note reflects that Petitioner "refused ambulance service" and "signed AMA form after being advised of risk factors." PX 2.

Petitioner went to the Emergency Room at Advocate Trinity Hospital later the same day. The registration record reflects that Petitioner arrived at 10:04 PM. The registration record also reflects that Petitioner was injured at work that day and notified his supervisor of the accident. The supervisor is identified as "John Swanson."

The history taken at the hospital reveals "a 39-year-old otherwise healthy male who tripped at work approximately 12 hours prior to evaluation landing on his knees and possibly striking his forehead, which the patient doesn't remember. Patient states witnesses stated he had a few second loss of consciousness which he does not remember. Patient went to his primary care provider several hours later for evaluation. Patient complains of only mild frontal +2/10 aching headache radiating to the bilateral parietal region without any neck pain. Patient has had no other mental status changes otherwise doing well. Patient denies any nausea or vomiting. Patient denies any drug or alcohol use or abuse today or in the past."

The history also reflects that Petitioner indicated he tripped in a dark room at work, striking both knees. The Emergency Room nurse noted redness and abrasions on both shins.

The Emergency Room physician ordered a CT scan of the brain. The scan, performed without contrast, was unremarkable. Petitioner was diagnosed with "concussion with brief loss of consciousness." A progress note dated July 12, 2011 at 11:20 PM reflects that Petitioner denied vomiting but was "now c/o nausea." Petitioner was discharged from the Emergency Room at 12:24 AM on July 13, 2011, with prescriptions for Aofran and Vicodin and instructions to follow up with a physician in one day.

At 12:15 PM that day, July 13, 2011, Petitioner saw Dr. Evelyn Bell, his primary care physician, at Advocate Health Centers. At her subsequent deposition, Dr. Bell testified she obtained board certification in family medicine in 1997 and has been re-certified twice since then. PX 4 at 6.

In her note of July 13, 2011, Dr. Bell recorded a history of Petitioner being seen the previous afternoon for complaints of a head injury: "patient says he was working in a store, unloading a truck in the dark due to power outage and when he was carrying a box to another area of the store, he tripped over a pallet with wheels and hit his head on a peg board on the wall. Patient says that he fell to the floor afterwards and was told he was unresponsive for a few

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seconds. Patient says he didn't remember anything after tripping until he was being helped off the floor into a chair. Patient says that he fell to the floor afterwards and felt like a sharp banging and shooting down his neck. Patient says his head was hurting in the top and forehead afterwards and felt like a sharp banging and shooting down neck. Patient also with pain behind both eyes. Patient says he also felt nauseated right after it happened. Patient also was having pain in both knees and lower legs. Patient has been having nausea since the fall and has been gagging. Patient hasn't had an appetite. Patient says he had to wait 20 minutes for manager before he could leave. Patient came to WIC and was sent to Trinity Hospital for CT scan. CT scan was done and is normal." Petitioner reported feeling "a little better" after taking the Vicodin that had been prescribed at the Emergency Room.

Dr. Bell also noted that Petitioner complained of "dizziness when going from sitting to standing." At her deposition, Dr. Bell testified that Petitioner exhibited a "positive Romberg" sign on July 13, 2011, meaning he was unsteady when she had him stand up and close his eyes. PX 4 at 10.

Dr. Bell diagnosed Petitioner as having a "contusion to head with subsequent nausea and dizziness." She instructed Petitioner to rest, take Vicodin as needed and return in five days. She completed a form indicating that Petitioner "may not resume work at this time" and had a return appointment on July 18, 2011.

Petitioner returned to Dr. Bell on July 18, 2011, as instructed. Dr. Bell noted that Petitioner continued to have head pain, rated 5-6/10. She also noted that Petitioner complained of photophobia, neck stiffness and "shooting pains on the left side of the head to the neck." Petitioner also complained of left shoulder pain and continued soreness in both knees and legs, "somewhat relieved by Vicodin." On examination, Dr. Bell noted tenderness to palpation of the left shoulder. PX 4 at 19.

Dr. Bell obtained cervical spine X-rays. The X-rays showed "mild degenerative changes at C5-C6." PX 4 at 18.

Dr. Bell refilled Petitioner's prescriptions and continued Petitioner off of work. She indicated she planned to order an MRI if Petitioner's symptoms did not greatly improve in the following week. PX 2.

Petitioner followed up with Dr. Bell on July 26, 2011. The chart note revealed that Petitioner was having less nausea and less neck pain. He still had occasional shooting pain down the left side of his head towards his neck. Petitioner complained of pain in the left shoulder, especially when lifting his left arm overhead. Petitioner reported having been slightly more active, but still had dizziness when holding his head down and lifting it back up.

Dr. Bell charted that Petitioner's head and knee contusions, along with his other symptoms, were "all due to accident at work." She released Petitioner to light duty, with no lifting over 25 pounds and no climbing, stooping or bending. She indicated these restrictions were to remain in place for thirty days. She told Petitioner to contact her if he felt worse after

returning to work. She also instructed Petitioner to return to her in one month. PX 2. PX 4 at 20.

Petitioner testified he resumed working at Respondent's 95th Street store after Dr. Bell released him to light duty. Respondent assigned an assistant manager to the store. Petitioner testified that this assistant manager tried to perform his regular duties while he stayed in his office, suffering from "intense migraines" and directing the assistant manager's activities.

Petitioner returned to Dr. Bell on August 3, 2011. Dr. Bell noted that Petitioner started feeling weak after returning to work and complained of severe headaches, nausea and vomiting. At her deposition, Dr. Bell testified that Petitioner's headaches were so severe she had to turn the lights off in her office. Dr. Bell also testified that vomiting can be related to headaches or a head injury. PX 4 at 21.

Dr. Bell's assessment on August 3, 2011 was "neck pain, photophobia, dizziness and contusion with intact skin surface of the head." She ordered MRIs of the brain and cervical spine. She took Petitioner off of work.

When Dr. Bell next saw Petitioner, on August 11, 2011, Petitioner's nausea had improved, but his head pain was still present. The pain was sometimes focused behind the eyes, and at other times in the back of the head. Petitioner also described the sensation of "raking" on the left side of his head, as if somebody was combing his hair. Petitioner said his pain fluctuated between 5/10 on better days to 7.5/10 on bad days. Petitioner also complained of pain in his neck and his left shoulder.

Dr. Bell noted that MRIs of the head and neck were scheduled. She also noted that Petitioner's injuries were work related, and that his left shoulder pain was likely due to a sprain. A left shoulder X-ray performed on August 11, 2011 was normal. Dr. Bell continued Petitioner off of work. PX 4 at 25.

Petitioner underwent the recommended cervical spine MRI on August 11, 2011. The MRI revealed no fractures, subluxations or disc herniations. The interpreting radiologist noted mild facet degeneration, as well as degenerative anterior osteophytes at multiple cervical levels. PX 4 at 26.

Petitioner underwent the recommended brain MRI on August 12, 2011. The findings were normal.

On August 26, 2011, Dr. Bell wrote that Petitioner was feeling better, but that Vicodin and Zofran were helping with his symptoms. He still complained of neck pain and popping, as well as pain in the left shoulder. Dr. Bell's assessment on August 26, 2011 consisted of trauma with concussion of the head, neck pain, dizziness, photophobia, a negative MRI of the brain, a cervical MRI revealing degenerative disc disease, and a shoulder x-ray that was negative.

Dr. Bell noted that Petitioner was likely dealing with bursitis or tendonitis of the left shoulder. She recommended a referral to an orthopedic surgeon. On the referral note, she wrote

that the reason for the referral was "shoulder pain, left shoulder, normal x-ray, and history of trauma." She instructed Petitioner to remain off work.

At the next visit on September 13, 2011, Petitioner was still having headaches, sensitivity to light, nausea and left shoulder pain. He was taking Vicodin and Ibuprofen as needed. He felt better in the dark, and with his eyes closed. He also felt dizzy. Petitioner continued to complain of left shoulder pain. He had not yet seen an orthopedic surgeon. Dr. Bell referred Petitioner to neurology, and was still waiting on authorization for an orthopedic evaluation for Petitioner's shoulder pain.

Petitioner first saw Dr. Sachin Kapur on October 4, 2011. At his subsequent deposition, Dr. Kapur testified he is a fellowship-trained, board certified neurologist. PX 5 at 6. He is affiliated with the University of Illinois at Chicago. PX 5 at 6. Kapur Dep Exh 1.

In his note of October 4, 2011, Dr. Kapur indicated that Petitioner tripped over something at work and struck his head on a pole. He also noted that, a month before the tripping incident, someone had dropped a steel pole on Petitioner's head. This earlier incident resulted in headaches but did not prevent Petitioner from resuming full duty. After the second episode, Petitioner experienced more significant and frequent headaches, light sensitivity, nausea and vomiting.

Dr. Kapur went on to note that Petitioner hurt his left knee when he tripped and that the left leg occasionally gave out on him causing him to collapse. Dr. Kapur noted no complaints of numbness, tingling or visual changes. He did note that Petitioner complained of blurry vision, that that it had resolved.

Dr. Kapur diagnosed Petitioner with "likely post-traumatic headaches which were migrainous in nature." PX 5 at 10. He increased Petitioner's medication dosage and started Petitioner on additional migraine medications. He instructed Petitioner to remain off work until his headaches were better controlled. PX 5 at 12. He attributed Petitioner's lightheadedness to "orthostasis." Individuals who have this condition experience dropping of blood pressure when they rise to a standing position. At his deposition, Dr. Kapur opined that Petitioner's orthostasis "is not necessarily related to" the work trauma. With respect to the orthostasis, he instructed Petitioner to increase his fluid intake and wear compression stockings. PX 5 at 13.

On October 11, 2011, Petitioner followed up with Dr. Bell. Dr. Bell noted that Petitioner was following up for post-traumatic headaches, and that he was still complaining of headaches and photophobia. She recorded his recent visit to the neurologist, and wrote that he was increased on Elavil to 25 mg but hadn't received medications due to awaiting approval. Dr. Bell recommended medications as recommended by neurology, rest, increased fluids and Vicodin as needed. Petitioner was not to return to work until headaches and dizziness were controlled.

At Respondent's request, Petitioner saw Dr. Glantz for a Section 12 examination on November 8, 2011. Dr. Glantz recorded symptoms of headache, and pain at the base of the

neck. Dr. Glantz recorded a prior left knee surgery in 2006. He also charted the work injury that occurred in "February or March of 2011" when Petitioner was struck on the back of his head. *See Claim #13 WC 18550.*

Dr. Glantz recorded a history of the accident that occurred in July of 2011. "He says that there had been a power failure and he was unloading a truck in the dark. He tripped over an object at work and went forward and struck his head on a pole and wall. He also struck his left shoulder and fell to his knees. He says he was told by coworkers that he was unresponsive. He does not know how long he was unresponsive for. He says he remembers first when people were picking him up off the floor."

Dr. Glantz noted that there was no neurological component to Petitioner's antalgic gait. The doctor wrote that when he asked Petitioner what was bothering him when he walked, he stated it was "because of left knee pain. He tended to limp somewhat."

Dr. Glantz recorded tenderness over the left carniocervical area. There was no tenderness over the head itself. When Dr. Glantz tested extraocular motions, which were full, Petitioner tended to blink and flutter and squeeze his eyes. Looking to the right caused more pain than looking to the left.

Dr. Glantz noted that he did not examine the left shoulder.

Dr. Glantz opined that there were no objective neurological findings to corroborate Petitioner's subjective symptoms. Dr. Glantz also noted complaints consistent with symptom magnification. The examination of sensory abnormality was not anatomic and not consistent with any single nerve or nerve root distribution.

Dr. Glantz opined that the continuing complaints of nausea and photophobia were not physiologic and were not connected to the injury that occurred in July of 2011. Dr. Glantz noted that patients who strike their head may have acute and temporary nausea and as part of the strike may suffer from short-lived headache and even photophobia. However, it was Dr. Glantz's opinion that continuing and continuous symptoms 4 months later was inconsistent with the injury.

Dr. Glantz indicated that no further neurological treatment was required. He stated that there were no preexisting symptoms or conditions that predisposed Petitioner's condition, and that no permanent work restrictions were required.

On November 9, 2011, Dr. Bell noted continued headaches, increasing in severity along with dizziness, light sensitivity, nausea and balance issues. Petitioner was also complaining of numbness in his toes. Dr. Bell noted that Petitioner had been seen by a "work comp physician", and that he was still awaiting approval for the MRI / CT of the left shoulder. She directed Petitioner to remain off work.

Petitioner followed up with Dr. Kapur on December 19, 2011. At that visit, Petitioner indicated his symptoms had changed in that his pain was now not just in his head but "also

shooting down his arms.” PX 5 at 13. Petitioner again complained of light sensitivity and nausea associated with the headaches. Petitioner also indicated he was feeling depressed, having some memory issues and experiencing numbness and tingling in his toes. PX 5 at 13. At his deposition, Dr. Kapur opined that these symptoms “may” correlate with post-traumatic migraines. He testified that “migraines can cause neurologic symptoms, including numbness and tingling.”

When Dr. Kapur re-examined Petitioner on December 19, 2011, he noted one new abnormality, i.e., decreased sensation in the left leg. PX 5 at 15.

Dr. Kapur diagnosed Petitioner with nausea and post-traumatic headache. He noted post concussive symptoms that strongly resembled migrainous headaches. Dr. Kapur noted that Petitioner had not yet increased his dose of Topirimate appropriately, and would do that first. Dr. Kapur started Petitioner on Ondansetron for nausea and asked Petitioner to follow up in 2 months. He did not indicate in his note whether Petitioner was capable of returning to work. At his deposition, he testified he “probably” would have continued Petitioner off work on December 19, 2011 based on Petitioner’s reporting of worsening symptoms. PX 5 at 16.

Dr. Bell continued Petitioner off of work on December 20, 2011. She noted that he was being seen by neurology and was still having headaches. She also charted that he was awaiting approval for shoulder treatment.

Petitioner was seen again on January 20, 2012. At that time, Dr. Bell did not feel Petitioner could return to work. She told Petitioner to see the neurologist again, as soon as possible. She continued him off of work.

On February 15, 2012, Dr. Bell noted continuing symptoms. She diagnosed him with post traumatic headache with photophobia, and noted again that Petitioner complained of shoulder pain, but had not been approved for an MRI.

On February 20, 2012, Petitioner followed up with Dr. Kapur. Dr. Kapur noted that the Topirimate and Amitriptyline were helping to a small degree. There was less photophobia and nausea. The headache quality was about the same, and on that date was affecting Petitioner in his bitemporal area. Vicodin was helping with the pain. Dr. Kapur’s assessment consisted of headache, neck pain, post-traumatic headache and muscle spasm. He noted that the headaches were not under good control, even though the photophobia and nausea were improved. Dr. Kapur recommended increasing Amitriptyline to 50 mg qhs, and wanted to try indomethacin PRN. He also recommended physical therapy for stretching and massage of the neck. The referral note dated February 20, 2012 requested evaluation and treatment of neck pain. It further stated that “muscle spasm and tenderness evident on L side of neck and shoulders causing significant headaches.”

Petitioner saw Dr. Bell on March 14, 2012. Dr. Bell noted that Petitioner had been having headaches almost daily since a work injury in July of 2011 when he had an injury to his head. She noted that Petitioner was also suffering with pain in his neck and shoulder which had

not resolved and that Petitioner had not been able to return to work because of the severe consistent pain and disability. At that time, Dr. Bell again noted that she was requesting approval for an MRI of the shoulder.

Dr. Kapur saw Petitioner again on April 9, 2012. He was still complaining of frequent headaches. The pain was mostly concentrated bitemporal and occipital with some radiation to the back of his head. Petitioner was still complaining of dizziness and photophobia. Dr. Kapur diagnosed Petitioner with post-traumatic headaches with tension and migrainous qualities. He charted a moderate response to topirmate–amitriptyline combination, and decided to increase the amitriptyline to 75 mg at night. Dr. Kapur noted a lot of muscle tension at the occiput and expected further symptom relief from PT/massage therapy which had been previously recommended.

On April 26, 2012, Petitioner underwent an evaluation at Physiotherapy Associates in Evergreen Park, Illinois. The chart note described the mechanism of injury as follows: Patient reports that in July of 2011, he tripped on a cart and hit his head on a pole and left shoulder against the wall. Petitioner states that his head snapped backwards. Since then he has been experiencing excruciating pain on both sides of his head, the left side of his neck and the left shoulder.

The therapist wrote that Petitioner required skilled rehabilitative therapy in conjunction with a home exercise program to address his problems. It was estimated it would take 8 weeks to address Petitioner's condition.

On May 7, 2012, Petitioner's therapy session was cancelled due to problems with insurance authorization. The same problem occurred on May 9, 2012 and again on May 14, 2012. PX 3.

Dr. Bell continued Petitioner off of work on May 17, 2012, and noted that he had not yet been approved for an MRI of the shoulder. She also noted that Petitioner had not been approved for physical therapy. PX 2.

The next neurology follow up took place on June 4, 2012. Petitioner complained of near-daily headaches, occasional dizziness and nausea. Dr. Kapur diagnosed Petitioner with "difficult to treat" chronic post-traumatic headaches. He noted that massage was not approved. He prescribed Tizanidine for muscle relaxation and indicated he would consider referring Petitioner to an osteopath if this medication proved to be unhelpful. PX 2.

A discharge summary was prepared by Physiotherapy Associates on June 28, 2012. The summary states that Petitioner was being discharged due to failure to comply with the recommendations for therapy. PX 3.

On August 20, 2012, Dr. Bell indicated Petitioner was "still not doing well." She kept Petitioner off work and told him to follow up with Dr. Kapur. PX 2.

On February 5, 2013, Dr. Bell noted that Petitioner complained of headaches and chest discomfort. She also noted that Petitioner had been fasting and "drinking water with salt." Petitioner's blood pressure was elevated. On examination, she noted some abdominal tenderness. She ordered an abdominal X-ray and instructed Petitioner to return to her in one week for a blood pressure re-check. She noted that Petitioner's workers' compensation benefits had been cut and that he was under stress due to lack of finances. She recommended he see a psychologist. PX 2.

Petitioner last saw Dr. Kapur on April 2, 2013. On that date, Dr. Kapur noted that Petitioner was experiencing headaches every day and three severe headaches every week. He also noted that workers' compensation cut off the occipital massage after three visits. Petitioner had discontinued the Topiramate, thinking it might be causing abdominal distress. Dr. Kapur restarted him on this medication.

At his April 12, 2013 deposition, Dr. Kapur testified he was "disappointed" that Petitioner had discontinued the Topiramate. He also testified that he prescribed an increasing dose of Topiramate on April 2, 2013 because "that's all you can really do" for the type of headache Petitioner was suffering from. PX 5 at 28. He indicated that "Topiramate is FDA-approved for migraine." He did not recall whether he scheduled a return appointment on April 2, 2013.

Dr. Kapur opined that Petitioner has not reached maximum medical improvement because he has "not gotten on the maximum medical therapy." PX 5 at 32. He did not believe that Petitioner was able to return to work, "not only because of the pain but because he was still having memory issues and difficulty concentrating." PX 5 at 33.

Under cross-examination, Dr. Kapur testified he did not review any outside medical records in this case. PX 5 at 34. He opined that hypotension can cause nausea, headaches, vision problems and lightheadedness. PX 5 at 35. He is aware that Petitioner's brain MRI was negative. PX 5 at 35. Petitioner exhibited no abnormalities on examination other than tenderness to palpation in the neck and head. PX 5 at 36. Migraine patients typically have no abnormal findings on examination. PX 5 at 36. His diagnosis of post-traumatic migraines versus "regular migraines" is based solely on Petitioner's history that he began having headaches after the accident. He was not aware that Dr. Bell was working Petitioner up for diabetes as of December 19, 2011. PX 5 at 36. He wanted Petitioner to stop taking Vicodin because Vicodin can actually make migraine headaches worse. Vicodin can also cause "rebound headaches," headaches that seem to improve but come back even stronger. PX 5 at 37. He sometimes instructs a patient with migraines to keep a "headache journal." He does this when he suspects the headaches have a diet or sleep component. He does not usually do this with a patient who is experiencing post-traumatic headaches. PX 5 at 37.

On redirect, Dr. Kapur testified he was aware that Petitioner had two head injuries at work. Petitioner "had minor headaches after the first episode and then more severe headaches after the second episode a month later." PX 5 at 39. At no time during his treatment of Petitioner has he suspected that Petitioner was malingering or being less than forthright. PX 5 at

40. Tingling and numbness in the toes can be indicative of diabetes. PX 5 at 41. Petitioner was hypotensive at times but it is still his opinion that the accident was a causative factor in Petitioner's headaches. PX 5 at 41-42.

At the hearing, Petitioner testified he last saw Dr. Kapur on April 12, 2013. At some point thereafter, he underwent an endoscopy at Advocate Trinity Hospital due to nausea and vomiting. The results were negative. [No endoscopy report is in evidence.]

Petitioner complained of intense headaches, ringing in his ears, nausea, vomiting, neck spasms and giving way of his left knee. He feels "horrible" and cannot get around without medication. His head hurts from his temples across the top of his head and going down the back of his head. His head pain varies in intensity but is never better than 5/10. He is moody and lethargic due to his pain. His wife helps him get dressed. He is unable to keep up with his teenage son and can no longer ride a motorcycle due to dizziness. He is stressed because he has no income and is no longer the breadwinner in his family.

Petitioner identified PX 6 as a group of his medical and prescription expenses. His wife's group carrier paid some of these expenses. He wants to continue treatment.

Under cross-examination, Petitioner recalled receiving a 65% leg settlement in connection with the injury he sustained while working for CVS. He also received a settlement in connection with injuries he sustained while working at K-Mart in 2006. After he underwent a physical therapy evaluation on April 26, 2012, he cancelled several subsequent therapy appointments because his wife's carrier would not pay for the therapy and he had no means of paying for the therapy on his own. He has not applied for unemployment benefits. He is currently taking several medications, including Vicodin. He has not applied for work. He has not sustained any other accidents since July 12, 2011.

On redirect, Petitioner reiterated it was lack of coverage and income that prevented him from attending physical therapy.

Respondent did not call any witnesses. In addition to the Advocate Trinity Hospital Emergency Room records previously discussed (RX 1), Respondent offered into evidence a treatment note dated December 3, 2010 (RX 2) and Dr. Glantz's evidence deposition (RX 3), both of which are discussed in the attached conclusions of law.

Arbitrator's Credibility Assessment – 11 WC 42520

Respondent's examiner, Dr. Glantz, noted inconsistencies and concluded Petitioner was malingering. In contrast, Petitioner's treating physicians, Drs. Bell and Kapur, noted no evidence of symptom magnification.

The Arbitrator found Petitioner credible overall. Petitioner was unable to recall his district manager's last name at the August 22, 2013 hearing (at which point he had been off work for a substantial period) but did provide this individual's full name to Trinity Hospital on July 12, 2011. PX 1.

Arbitrator's Conclusions of Law Relative to 11 WC 42520

Did Petitioner establish a causal connection between his undisputed work accident of July 12, 2011 and his various current conditions of ill-being?

The Arbitrator finds that Petitioner established a causal connection between his undisputed work accident of July 12, 2011 and the post-traumatic migraine headache condition diagnosed by Dr. Kapur, his treating neurologist. In so finding, the Arbitrator relies on the following: 1) the chain of events – the evidence shows that Petitioner was able to resume his regular work duties following the relatively minor head injury of May 19, 2011 [see decision in companion claim, 13 WC 18550] and that his fall of July 12, 2011 brought about a significant change in his ability to work and function; 2) Petitioner's credible testimony that he lost consciousness after hitting his head and had to be helped off the floor by two Respondent supervisors; 3) the complaints (i.e., head pain and nausea) that Petitioner voiced on July 12, 2011 and thereafter; 4) Dr. Bell's testimony as to Petitioner's significant sensitivity to light, which persisted over time; 5) Dr. Kapur's opinions as to diagnosis, causation and Petitioner's believability. [See further below for a discussion as to why the Arbitrator assigns greater weight to the opinions of Dr. Kapur than to those of Respondent's examiner, Dr. Glantz.]

The Arbitrator finds that Petitioner failed to establish causation as to his claimed current left shoulder condition of ill-being. Dr. Bell's records reflect that Petitioner complained of "old left shoulder recurrent pain" on May 20, 2011. The records also reflect that Dr. Bell noted "shoulder joint pain on the left in the acromioclavicular joint" and difficulty lifting the left arm overhead when she examined Petitioner on May 20, 2011. She noted that Petitioner had voiced similar complaints and had undergone left shoulder X-rays at the last visit, in December of 2010. She diagnosed a left shoulder strain on May 20, 2011 and prescribed medication and home exercises. PX 2. Neither Dr. Burch's note of July 12, 2011 nor the Emergency Room records of the same date reflect any complaints relative to the left shoulder. PX 1, 2. Dr. Bell did not note any left shoulder complaints when she saw Petitioner in follow-up on July 13 and

18, 2011. PX 2. It was not until July 26, 2011 that Dr. Bell indicated Petitioner was “also having pain in left shoulder.” In this note, and at her subsequent deposition, Dr. Bell attributed this pain to the July 12, 2011 accident. The Arbitrator finds Dr. Bell unpersuasive on this point. Dr. Bell was unable to explain her left shoulder causation opinions under cross-examination. PX 4 at 70.

The Arbitrator further finds that Petitioner failed to establish causation as to his claimed current left knee condition of ill-being. Petitioner did report landing on his knees on July 12, 2011, with Emergency Room personnel noting abrasions to both shins that day (PX 1) and Dr. Bell subsequently diagnosing knee contusions, but none of Dr. Bell’s notes from August or September 2011 mention any knee-related complaints. It was not until October 4, 2011, almost three months after the accident, that Dr. Kapur noted “giving out” of the left knee. PX 2. At her deposition, Dr. Bell conceded the “giving out” of the left knee was a “new” complaint. PX 4 at 31. Dr. Bell opined that Petitioner’s left knee complaints stemmed from the July 12, 2011 work accident but the Arbitrator finds this opinion unpersuasive. Dr. Bell offered no real explanation as to why bilateral shin/knee abrasions and/or contusions noted on July 12, 2011, which were apparently asymptomatic a month later, would give rise to left knee weakness noted on October 4, 2011. Under cross-examination, Dr. Bell acknowledged that Petitioner had previously complained of left knee pain on December 3, 2010. Records offered by Respondent reflect that Petitioner sought treatment on December 3, 2010 for pain in his left shoulder, left hip and left knee secondary to falling onto a concrete surface the previous day. RX 2. In the Arbitrator’s view, Petitioner failed to prove a causal relationship between the work accident of July 12, 2011 and the left knee “giving way” complaint of October 4, 2011.

Is Petitioner entitled to temporary total disability benefits?

The parties agree Petitioner was temporarily totally disabled from July 13, 2011 through July 26, 2011. Arb Exh 1. Petitioner claims an additional interval running from August 3, 2011 through August 22, 2013, the date of hearing, while Respondent agrees to an additional interval running from August 11, 2011 through November 8, 2011 (the date of Dr. Glantz’s Section 12 examination). Arb Exh 1.

The Arbitrator finds that Petitioner was temporarily totally disabled from July 13, 2011 through July 26, 2011, pursuant to the parties’ binding stipulation. This is a period of 2 weeks. The Arbitrator further finds that Petitioner was temporarily totally disabled from August 3, 2011, the date on which Dr. Bell took Petitioner back off work following Petitioner’s attempt to resume working, through April 2, 2013, the date of Petitioner’s last visit to Dr. Kapur. This is a period of 87 weeks. The two awarded periods total 89 weeks. The Arbitrator finds that Petitioner’s causally related post-traumatic headache condition was stable as of April 2, 2013 in the sense that, according to Dr. Kapur, there was nothing more to be done for that condition other than medication monitoring. The doctor’s note of April 2, 2013 contains no mention of work status or the need for a return visit. At his deposition, Dr. Kapur testified (over Respondent’s objection) that, in retrospect, he would have continued to keep Petitioner off

work as of April 2, 2013 because Petitioner was still having memory issues as well as head pain but his April 2, 2013 note contains no mention of any memory issues. The doctor also testified that Petitioner was not adhering to his dosage directives.

In addressing the issue of temporary total disability, the Arbitrator has given consideration to the opinions voiced by Respondent's Section 12 examiner, Dr. Glantz. Dr. Glantz conceded that head trauma can result in the symptoms Petitioner describes, i.e., headaches, nausea and sensitivity to light. (RX 3 at 16-17). His quarrel was with the duration of Petitioner's symptoms and with what he perceived as symptom magnification on Petitioner's part. He opined that a blow to the head could cause symptoms for up to a month, depending on the extent of the bruising and whether the skull was fractured. RX 3 at 17. He did not view Petitioner as experiencing migraines but, regardless, opined that migraines would not result from the kind of trauma Petitioner sustained. RX 3 at 18, 20. Under cross-examination, however, he conceded that a post-traumatic headache could resemble a migraine, at least in its early stages. RX 3 at 28. He also conceded he had not recently reviewed the treatment records. He further acknowledged that most of the examinations he performs are for insurance carriers. RX 3 at 34.

With respect to Petitioner's presentation and the nature/classification of Petitioner's headaches, the Arbitrator elects to rely on Dr. Kapur rather than Dr. Glantz. Dr. Kapur treated Petitioner over an extended period whereas Dr. Glantz saw Petitioner once, for about ninety minutes. Dr. Kapur testified he never noted that Petitioner was malingering or being less than forthright. He drew a distinction between "run-of-the-mill" migraines and the kind of post-traumatic migraines Petitioner was suffering from. PX 5 at 11. As of his deposition, he was continuing to diagnose post-traumatic migraine headaches. PX 5 at 31.

In addressing temporary total disability, the Arbitrator has also considered Respondent's argument that Petitioner delayed in pursuing a 19(b)/8(a) hearing. In fact, the Commission main frame reflects that Petitioner filed five 19(b) petitions between November of 2011 and June of 2013. The Arbitrator also notes that the parties were engaged in taking depositions of Drs. Bell, Kapur and Glantz in March, April and May of 2013. PX 4-5. RX 3. It does not appear to the Arbitrator that Petitioner dragged his feet.

Is Petitioner entitled to medical and prescription expenses?

In this case, Petitioner claims various expenses relating to treatment rendered by the Emergency Room physician on July 12, 2011, treatment rendered by the doctors at Advocate and a physical therapy evaluation on April 26, 2012. Petitioner also claims reimbursement of prescription expenses totaling \$44.91. PX 6.

The Arbitrator awards the expenses of \$439.00 relating to the physician services provided at Advocate Trinity Hospital's Emergency Room on July 12, 2011. The Arbitrator also awards the expenses of \$570.00 relating to the physical therapy evaluation performed on April

26, 2012. The records relating to this evaluation (PX 3) reflect that the therapy was intended, at least in part, to address a condition, i.e., head pain, the Arbitrator has found to be causally related to the work accident.

The Arbitrator next addresses the claimed expenses relating to the care rendered by physicians at the Advocate Medical Group from July 12, 2011 through April 2, 2013. The Arbitrator declines to award the \$275.00 in expenses relating to Petitioner's office visit of April 1, 2013 since Petitioner did not submit any treatment records relating to this visit. The Arbitrator awards the remaining Advocate Medical Group expenses, totaling \$4,017.62.

The Arbitrator declines to award the claimed prescription expenses. Some of these expenses relate to medication prescribed on December 4, 2010, months before the accident at issue. The remaining claimed expenses are supported only by Jewel Osco receipts, not by actual prescriptions. PX 6.

In summary, the Arbitrator awards the following medical expenses, subject to the fee schedule: 1) Emergency Room Providers, S.C., \$439.00; 2) Physiotherapy Associates, S.C., 4/26/12, \$570.00; 3) Advocate Medical Group, 7/12/11 – 4/2/13 (other than 4/1/13), \$4,017.62.

Is Petitioner entitled to prospective care?

Petitioner seeks various types of prospective care for various body parts. The Arbitrator has already found that Petitioner established causation as to his current post-traumatic migraine headache condition but not as to his claimed current left shoulder and left knee conditions. The Arbitrator has also found that Petitioner's post-traumatic migraine headache condition is stable in that it requires only medication monitoring. Dr. Kapur adjusted Petitioner's medication at the last visit, on April 2, 2013, and testified that medication is essentially the only way of treating Petitioner's particular headache condition. The Arbitrator awards prospective care in the form of return visits to Dr. Kapur for purposes of medication management.

12WC43742

Page 1

STATE OF ILLINOIS)

) SS.

COUNTY OF DUPAGE)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Barbara Anderson,

Petitioner,

vs.

NO: 12WC43742

Community Unit School District 200,

Respondent,

14IWCC0430

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, causation, temporary total 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 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 25, 2013, is hereby affirmed and adopted.

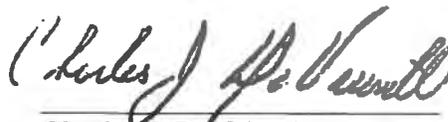
IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written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

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

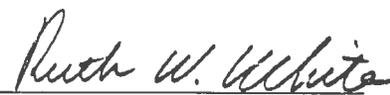
DATED: JUN 05 2014
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RWW/rm
046


Charles J. DeVriendt


Daniel R. Donohoo

WHITE DISSENT

I respectfully dissent from the majority. The record indicates that Petitioner was 55 years of age at the time of the accident. While Petitioner testified she participated in gymnastics in high school and college, there is no indication that she participated in that sport since college. Assuming she graduated from college at an average age for graduation, she likely did not participate in gymnastics for more than 30 years. Petitioner was not endorsed to teach physical education. The school principal testified at arbitration that she was not aware of even teachers who were endorsed to teach physical education to demonstrate activities on a balance beam because of the inherent danger of the activity. She also testified that Petitioner's activity in demonstrating moves on a balance beam was completely out of the ordinary and absolutely unforeseeable. In my opinion, Petitioner's actions were more than simply negligent, they were reckless. Because Petitioner's actions were reckless and because she was not a teacher endorsed or entrusted to teach physical education, I would have reversed the Decision of the Arbitrator, found that Petitioner's accident did not arise out of her employment and denied compensation. For these reasons, I respectfully dissent.


Ruth W. White

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

ANDERSON, BARBARA

Employee/Petitioner

Case# **12WC043742**

COMMUNITY UNIT SCHOOL DISTRICT

200

Employer/Respondent

14IWCC0430

On 11/25/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

2208 CAPRON & AVGERINOS PC
STEPHEN SMALLING
55 W MONROE ST SUITE 900
CHICAGO, IL 60603

1120 BRADY CONNOLLY & MASUDA PC
JOSEPH P CONNOLLY
ONE N LASALLE ST SUITE 1000
CHICAGO, IL 60602

14IWCC0430

STATE OF ILLINOIS)
)SS.
COUNTY OF DUPAGE)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

Barbara Anderson,
Employee/Petitioner

Case # 12 WC 43742

v.

Consolidated cases: none

Community Unit School District 200,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **Wheaton**, on **8/7/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **11/30/12**, 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 **\$60,456.80**; the average weekly wage was **\$1,162.63**.

On the date of accident, Petitioner was **55** years of age, *married* with **no** 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 **\$0.00** for other benefits, for a total credit of **\$0.00**.

Respondent is entitled to a credit of **\$0.00** under Section 8(j) of the Act. The parties agreed that the issue of medical expenses and what has been paid by the group carrier will be determined at a later date.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$775.08 per week for 6-4/7 weeks, commencing 12/3/12 through 1/17/13, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 12/1/12 through 8/7/13, and shall pay the remainder of the award, if any, in weekly payments.

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

11/21/13
Date

NOV 25 2013

STATEMENT OF FACTS:

Petitioner has been employed by the Respondent at Longfellow Elementary School since 2004. On November 30, 2012 she was a third grade classroom teacher with approximately 22 students assigned to her room. Petitioner's principal was Diane Thornburg who acted as her immediate superior. Petitioner testified that she was responsible for the basic curriculum of math, reading, science and English classes which would be conducted within her classroom. The students would also attend physical education ("PE"), art and music classes which would require them to leave the classroom and travel to different rooms throughout the school. The students would also move to the lunchroom on a daily basis where half the time was designated for lunch and the remaining time for recess. Petitioner further testified that at her discretion, she could also designate recess time in the morning wherein she would monitor them while they played organized games outside of the classroom.

With respect to PE, art and music classes, Petitioner's responsibility was to transport her students to the designated room five minutes prior to the commencement of class where they would be turned over to the instructor. She would typically return to her classroom to perform other duties. Petitioner would then return five minutes before the conclusion of class and transport the students back to their homeroom.

On November 30, 2012, Petitioner transported her students from homeroom to the gymnasium to participate in PE class. The assigned PE instructor was Barbara Williams who had been a teacher at the school for approximately 20 years. Ms. Thornburg testified that Ms. Williams was certified and endorsed as a PE teacher and it was her responsibility to implement the curriculum and conduct the class in the most appropriate and safe manner. Petitioner testified that she had worked with Barbara Williams since she began working with the district in 2004. Petitioner testified there were occasions when Ms. Williams was not ready to initiate class and Petitioner would remain in the gymnasium and have the children begin stretching exercises until Ms. Williams was available.

On the date of the incident Petitioner dropped the class off in the gymnasium and returned to her classroom. At the designated time, Petitioner returned to the gymnasium where she observed Ms. Williams teaching a gymnastics unit. The children, eight and nine year olds, were being instructed in the use of a balance beam described as being approximately 4 inches wide, 3 to 4 feet off the ground and surrounded by mats. Petitioner testified that she had experience in gymnastics, at both the high school and collegiate level, and asked Ms. Williams if she could demonstrate a move on the beam. Ms. Williams agreed and spotted her as she walked on the balance beam while the children observed. Petitioner testified that she fell from the balance beam injuring her right leg. Her accident was observed by the children in the PE class.

Diane Thornburg, the principal at Longfellow and Petitioner's supervisor, testified that she had not been advised of Petitioner's intention to demonstrate on the balance beam and would not have allowed her to do so. Ms. Thornburg testified that in her opinion it was out of the ordinary and that she would not have allowed Petitioner to engage in such an activity because of the risk was too high. She also indicated that when she was told by the secretary that Petitioner had fallen from a balance beam she was "shocked."

Following the accident, Petitioner was taken to Central DuPage Hospital and subsequently came under the care of Dr. Kevin Walsh of DuPage Medical Group. (PX1). An MRI revealed a comminuted lateral tibial plateau fracture, non-displaced fracture of the fibular head, longitudinal split tear of the ACL, a high grade partial tear of the collateral ligament and a non-displaced tear of the posterior horn of the lateral meniscus. She was placed in a leg immobilizer and underwent therapy to address the fracture of the tibia. Petitioner was restricted from work from December 3, 2012 through January 17, 2013 at which time she returned to her classroom.

On July 3, 2013, Petitioner underwent surgery at the hands of Dr. Walsh to repair the torn ACL and lateral meniscus. (PX1). Petitioner remained under his care and was undergoing therapy at the time of the hearing. No lost time has been incurred as Petitioner is out of school for the summer and receiving her salary from the Respondent.

Respondent denied Petitioner's claim for benefits contending that the accident did not arise out of and in the course of her employment with the Respondent. The medical expenses incurred in conjunction with the subject injuries were paid through Petitioner's husband's group insurance, BlueCross BlueShield. The parties stipulated that for the purposes of the instant hearing, all issues relating to payment of medical expenses and any credit arising there from would be reserved and addressed by the parties at a subsequent hearing, if necessary.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

An employee's injury is compensable under the Act only if it arises out of and in the course of his or her employment. 820 ILCS 305/2 (West 2008). An injury is deemed in the course of employment when it occurs within the period of employment in a place where the employee can reasonably be expected to be in the performance of her duties and while performing those duties or something incidental thereto. For an injury to arise out of one's employment it must have an origin and some risk connected with or incidental to the employment so there is a causal connection between the employment and the injury. Wise v. Industrial Commission 54 Ill. 2d 138 (1973). Respondent has denied the claim on the premise that the conduct of the Petitioner in getting up on the balance beam to demonstrate for the students was unforeseen, unreasonable and not contemplated by the Respondent so as to remove her from the scope of employment.

If an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, any injury incurred as a result will not be within the course of employment. Segler vs. Industrial Commission, 81 Ill.2d 125, 406 N.E. 2d 542 (1980). In order to remove an employee from the protection of the Act, the employee must have voluntarily undertaken such a course of action for his own benefit and such actions were unnecessary and inherently dangerous.

At the time of the alleged accident, Petitioner was working and present in the gymnasium where her job duties required her to be at certain times of the day. The PE class was under the direction of Barbara Williams who had taught at the school for approximately 20 years. Principal Thornburg testified that Ms. Williams was certified in instruction of PE classes with the most important criteria being her knowledge of the curriculum and how to teach it. Ms. Williams had the responsibility of determining how to conduct the class and to do so in the safest manner. Before standing on the balance beam, Petitioner requested permission from Ms. Williams who not only consented but also agreed to spot her while performing the exercise. (RX4). Petitioner's act of getting on the beam was not for her own benefit but rather to demonstrate to the children in the class how to perform a particular maneuver which was part of the designated curriculum. The act of getting on the balance beam was to further the interests of the Respondent in carrying out the curriculum designed for the students.

The Arbitrator finds that the act of getting on the balance beam under these circumstances did not create an unreasonable or unnecessary risk nor was the conduct inherently dangerous. Principal Thornburg confirmed that the teaching of the gymnastics unit to the eight and nine year old students, including use of the balance beam in question, had gone on for years without incident. She further acknowledged she did not feel utilizing the beam as part of the curriculum posed a hazard to the young students participating in the class. Petitioner

testified that she had experience in gymnastics from high school and college and believed she was physically capable and qualified to demonstrate the beam to her classroom children. The beam in question was surrounded by mats and while on the beam Petitioner was spotted by Ms. Williams, a standard safety practice. Needless to say, the administration itself must not have felt that the use of the balance beam was inherently dangerous, at least at the time of the incident. Otherwise, one would have to seriously question how they could have justified allowing eight and nine year old students to utilize the same equipment in the first place.

Respondent also argues that Petitioner somehow “voluntarily” exposed herself to an unreasonable risk, thereby removing herself from the scope of her employment. This is apparently based on the fact that Petitioner was not the P.E. teacher at the time and would not have been allowed to engage in the activity in question had she asked the administration for permission. Indeed, the school’s principal, Ms. Thornburg, went so far as to say that she was “shocked” when she heard that Petitioner had injured herself on the balance beam and that it had raised concerns in her mind as to Ms. Anderson’s decision making capability (and yet Ms. Thornburg also praised Petitioner for being a good teacher and getting good reviews, and ultimately declined to discipline either Ms. Anderson or the gym teacher following the incident). All of which smacks of an administration “playing Monday morning quarterback”, as it were, taking an employee to task for an admitted error in judgment, while ignoring the fact that Ms. Anderson was most assuredly engaged in a task meant to further her mission as an educator, thereby benefiting her employer, and the community, in the process. Such an argument likewise ignores the fact that Petitioner had been allowed to participate in other activities outside her regular “9 to 5” responsibilities in the classroom, such as bowling and running with students as part of a physical fitness challenge, without being reprimanded.

In any event, hindsight being what it is, it was undoubtedly a regrettable and poor decision on the part of Petitioner to attempt to demonstrate the gymnastics maneuver in question. However, it was not so unreasonable or unforeseeable for her, as a teacher, entrusted with the worthy task of educating the students in her charge, to seek to instruct those students in the finer points of a school sanctioned activity (i.e. gymnastics) that she happened to have personal experience in. This is not a situation where Petitioner was attempting to do something that was totally outside or unrelated to her duties, in an area that had absolutely nothing to do with the job at hand. Instead, this was a teacher engaged in the task of educating her students, on a subject they were in fact receiving instruction for and in a class that was part of their curriculum. Furthermore, this was not a task that one could point to as being inherently dangerous – risky, and no doubt foolish, but not the equivalent of trying to cook a potpie in a foundry oven (See *Segler v. Industrial Commission*, 81 Ill.2d 125, 406 N.E. 2d 542, 40 Ill.Dec. 536 [1980]) or use a blow torch on a barrel containing gas while working on a personal project on company property (See *Bradway v. Industrial Commission*, 124 Ill.App.3d 983, 464 N.E.2d 1139, 80 Ill.Dec. 156 [4th Dist. 1984]). Thus, one would be hard pressed to argue under the circumstances that Petitioner had somehow removed herself from the scope of her employment at the time of the injury. To rule otherwise would be disingenuous at best and would effectively undermine the basic, underlying assumption of the Act, allowing one to circumvent what is and always has been a “no-fault” system by injecting considerations of “contributory negligence” into an already murky equation.

Therefore, based on the above. and the record taken as a whole, the Arbitrator finds that Petitioner sustained accidental injuries arising out of and in the course of her employment on November 30, 2012.

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

Petitioner testified that she had never sustained any trauma or injuries to her right knee or leg prior to the accident. The medical evidence established that as a result of the subject accident, she sustained a lateral tibial plateau fracture, ACL tear as well as a tear of the lateral meniscus. (PX1). Petitioner's testimony combined with the medical records generated by Dr. Walsh confirms that these conditions resulted from the fall off the balance beam at the time of the injury. Petitioner's treatment for these injuries is ongoing and she has sustained no other injuries or trauma to her right leg or knee since the date of the subject accident.

Therefore, based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to accident (issue "C", supra), the Arbitrator finds that the Petitioner's current condition of ill-being with respect to her right knee is causally related to the accident on November 30, 2012.

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

As a result of the subject injuries, Petitioner was examined in the emergency room and subsequently taken off work on December 3, 2012. She came under the care of Dr. Kevin Walsh who restricted her from work until releasing her as of January 18, 2013. (PX1).

Based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to accident and causation (issues "C" and "F", supra), the Arbitrator finds that Petitioner was temporarily totally disabled from December 3, 2012 through January 17, 2013, for a period of 6-4/7 weeks.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

The parties agreed at the commencement of trial that the issue of any credit due the Respondent on account of payments made through the group carrier would be determined at a future date, if necessary. Therefore, no determination as to the amount of credit, if any, is made at this time.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
CHAMPAIGN

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Eyvonne Sallee,
Petitioner,

vs.

University of Illinois,
Respondent,

NO: 11WC 40002

14IWCC0431

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical, temporary total disability, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 23, 2013, is hereby affirmed and adopted.

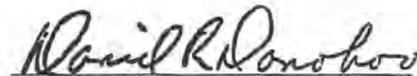
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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.

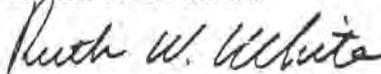
DATED: JUN 05 2014
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CJD/jrc
049



Charles J. DeVriendt



Daniel R. Donohoo



Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SALLEE, EYVONNE

Employee/Petitioner

Case# **11WC040002**

UNIVERSITY OF ILLINOIS

Employer/Respondent

14IWCC0431

On 7/23/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

2333 WOODRUFF JOHNSON & PALERMO
RUSSELL HAUGEN ESQ
4234 MERIDIAN PKWY SUITE 134
AURORA, IL 60504

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

0734 HEYL ROYSTER VOELKER & ALLEN
JOE GUYETTE ESQ
102 E MAIN ST SUITE 300
URBANA, IL 61801

1073 UNIVERSITY OF ILLINOIS
OFFICE OF CLAIMS MANAGEMENT
100 TRADE CENTER DR
SUITE 103
CHAMPAIGN, IL 61820

0904 STATE UNIVERSITY RETIREMENT SYS
PO BOX 2710 STATION A*
CHAMPAIGN, IL 61825

BERTIFIED as a true and correct copy
pursuant to 605 ILCS 305/14

JUL 23 2013



[Signature]
KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

05442-T5043 JKG/njk
 STATE OF ILLINOIS)
)SS.
 COUNTY OF CHAMPAIGN)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

EYVONNE SALLEE

Employee/Petitioner

v.

UNIVERSITY OF ILLINOIS

Employer/Respondent

Case # **11 WC 40002**

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 **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Urbana**, on **June 20, 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

FINDINGS

On May 17, 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 not* 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned \$39,741.52; the average weekly wage was \$764.26.

On the date of accident, Petitioner was 48 years of age, *married* with 0 children under 18.

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 \$00.00 for TTD, \$00.00 for TPD, \$00.00 for maintenance, and \$00.00 for other benefits, for a total credit of \$00.00.

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

ORDER

Petitioner failed to establish that she sustained an accidental injury that arose out of and in the course of her employment with the respondent. As such, benefits are denied.

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

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

D. Dylan McHenry
Signature of Arbitrator

July 18, 2013
Date

JUL 23 2013

FINDINGS ON DISPUTED ISSUES:**C. Did an accident occur that arose out of and in the course of the petitioner's employment by the Respondent?**

The petitioner, Eyvonne Sallee, has alleged a repetitive trauma injury to her right hand, with a manifestation date of May 17, 2011. (AX 2). Specifically, the petitioner was diagnosed with right carpal tunnel syndrome, and underwent a right carpal tunnel release. (RX 3). The petitioner's treating physician, Dr. Shawn Love, opined that the petitioner's "work at the University of Illinois exacerbated her carpal tunnel and lead in part to her need for surgical intervention." (PX 1). According to Dr. Love, the petitioner was "doing repetitive work with her right hand and wrist" in the Dining Services Department at the University. (PX 1). The petitioner's testimony arbitration, coupled with her job description and the respondent's IME report, establish that her job duties were not repetitive. As a result, the Arbitrator finds that the petitioner's injuries are unrelated to her employment with the respondent, and the petitioner's request for benefits is denied.

At arbitration, the petitioner testified that she worked at the University of Illinois for 32 years. (Arb. Tran. p. 11). When the petitioner first started working for the University in 1981, she was employed as a kitchen helper. (Arb. Tran. p. 11). As a kitchen helper, the petitioner would help make salads, cut vegetables, plate food, wait tables and serve meals. (Arb. Tran. p. 12). The petitioner held that position until 1995, when she became a supervisor, although her job duties did not change at that time. (Arb. Tran. p. 12). The petitioner continued the same job duties until 2000, when she began working in the dining halls as a supervisor. (Arb. Tran. p. 12).

From 2000 to the present, the petitioner has been employed as a food service supervisor in various dining halls. (Arb. Tran. p. 13). At arbitration, the petitioner testified regarding her job duties in that position. Specifically, the petitioner testified that her duties included making sure the dining room was set up, filling in for other employees until they arrived, and some limited cooking. (Arb. Tran. p. 13). In addition, the petitioner explained that she had to write the food choices on the sneeze guards above the buffet lines. (Arb. Tran. p. 14). Finally, the petitioner explained that she was required to supervise a number of student workers and complete some limited work on the computer. (Arb. Tr. Pg. 14). Regarding the computer work, the petitioner testified that it took "maybe an hour a day, if that." (Arb. Tran. p. 15).

The petitioner testified that she started experiencing tingling in her fingers and thumb in May of 2011. (Arb. Tran. p. 15). The petitioner explained that she had some pain in her wrist over the course of the school year, but continued to work. (Arb. Tran. pp. 15-16). According to the petitioner, her symptoms were increased by repetitive movements, writing, gripping pens and cooking. (Arb. Tran. p. 16).

On cross examination, the petitioner testified that her symptoms did not progress over the summer, between May and August of 2011. (Arb. Tr. p. 27, 28-29). The petitioner confirmed she was working at the cafeteria in the Ikenberry Residence Hall during the summer of 2011, between May and August. (Arb. Tr. p. 29). The petitioner admitted that Ikenberry dining hall was not serving any meals at that time, and the petitioner was unable to explain her job duties during that summer. (Arb. Tr. pp. 29, 30). Specifically, the petitioner testified, "I don't know what we did during the summer, but I was at work every day." (Arb. Tr. p. 30). The petitioner also acknowledged she did not complete an accident report for her claimed injuries, despite being familiar with the requirement of completing an accident report. (Arb. Tr. p. 33).

The petitioner's testimony regarding the onset of her symptoms and her job duties is contradicted by her medical records. While the petitioner testified that her symptoms did not get any worse between May and August of 2011, she told Dr. Love in her first consultation that she "has had worsening of her symptoms since over the summer." (RX 3, 9-21-11). This same history is repeated in the initial physical therapy consultation of October 7, 2011, when the petitioner explained that her symptoms "increased significantly since April." (RX 2, 10-7-11).

The petitioner's testimony regarding the amount of hands-on work she performs as a supervisor in the dining hall is contradicted by a prior history provided to her treating physician. While seeking treatment for an earlier work-related injury in November of 2003, the petitioner explained that she was "a supervisor in the dining facility, so she reports that she usually does not do any physical labor." (RX 2, 11-25-03). In fact, the petitioner explained that she was seeking treatment on that date because she encountered an odd job that required more physical labor. (RX 2, 11-25-03).

The petitioner provided a similar history to her family physician Dr. Schuchart on June 22, 2005 when she was seen for a lower back condition. She said that she did not do a lot of lifting at work but was a supervisor who walks around. (PX 2, 6-22-05)

The petitioner's testimony regarding her job duties is also contradicted by the testimony of Keith Garrett. Mr. Garrett testified that he is a unit manager in the food service department, overseeing the operation of an entire dining hall. (Arb. Tran. pp. 37-38). When the Ikenberry Residence Hall opened in 2010, he became the unit manager of that facility. (Arb. Tran. p. 37). From when that Residence Hall opened 2010 until the present, Mr. Garrett testified that he would have seen the petitioner every day she worked, and he would have witnessed her performing all of her job duties. (Arb. Tran. p. 39).

According to Mr. Garrett, the petitioner's primary job responsibility was to supervise student workers. (Arb. Tran. p. 39). Mr. Garrett explained that the petitioner was the opening manager, requiring her to work regularly from 5:30 a.m. to 1:30 p.m. (Arb. Tran. pp. 39-40). Generally, the petitioner was responsible for getting breakfast started, cleaning up after breakfast and turning around the dining hall to prepare for lunch service. (Arb. Tran. pp. 39-40). Mr. Garrett confirmed that there were union employees responsible for all food preparation. (Arb. Tran. p. 40).

Mr. Garrett reviewed the petitioner's written University job description, which was admitted at arbitration. (Arb. Tran. p. 41; RX 4). Mr. Garrett confirmed that the job description was accurate and complete, and that it reflected the day-to-day tasks completed by the petitioner. (Arb. Tran. p. 41). According to Mr. Garrett, hands-on work of any kind comprised only 20% to 25% of the petitioner's job duties. (Arb. Tran. p. 41). The remainder of the petitioner's time was spent supervising other workers. (Arb. Tran. p. 41). Mr. Garrett's explanation of the petitioner's job duties is consistent with the written job description, which also indicates very little hands-on work. (RX 4).

Mr. Garrett explained that the dining hall where the petitioner worked was not serving meals between May and August of 2011, when the petitioner experienced an increase in her symptoms. (Arb. Tran. p. 42). During that time, inventory was taken, recipes were tested and there was a lot of menu planning completed. (Arb. Tran. p. 42). According to Mr. Garrett, during that time, the dining hall operates at a "much slower pace." (Arb. Tran. p. 42).

The Arbitrator finds that the petitioner's job duties were most accurately reflected in her written job description and Mr. Garrett's testimony. Those job duties must be evaluated in light of the causal connection

opinions offered by Dr. Love and Dr. Fernandez. Dr. Love's causal connection report only indicates that the petitioner was doing repetitive work with her right hand and wrist, without referencing any specific job duties. (PX 1). The report issued by Dr. Fernandez includes his analysis of the written job description and the history he took from the petitioner regarding her own description of her job duties. (RX 1). That report reveals that the petitioner's description of her job duties is inconsistent with both her testimony at arbitration and the written job description. (RX 1). The petitioner told Dr. Fernandez that she uses a computer one and one-half hours per day, and also assists in cutting, chopping and preparing pans of food. (RX 2). Ultimately, Dr. Fernandez noted the discrepancy between the written job description and the petitioner's description, and concluded that the cause of the petitioner's carpal tunnel syndrome would depend upon her actual job duties. (RX 1). According to Dr. Fernandez, the cause of the petitioner's condition would turn on the amount of hands-on work performed by the petitioner:

"I would state that if the job duties are moderate in nature, requiring use of kitchen utensils and activities such as loading or unloading boxes or pans, and if those work activities were incurred and greater than one-third or one-half of the day, then I would state that the condition of carpal tunnel syndrome should be treated as work related. If however, the activities were more supervisory in nature and that she would only occasionally engage in the heavier activities, less than one-third of the work day or the work cycle, then I would state that it is NOT causally related."

(RX 1).

The written job description and testimony of Keith Garrett establish that only a small portion of the petitioner's job duties involve hands-on work. Even the petitioner's testimony at arbitration revealed that most of her work involved supervision of other employees. The only hands-on duties referenced by the petitioner included writing on the buffet line sneeze guards and computer work averaging less than an hour per day.

Based on the arbitration testimony, medical records and causal connection opinions, the Arbitrator finds that the petitioner's right carpal tunnel syndrome is not causally related to her employment with the University. The petitioner's job did not require the repetitive use of her right arm and hand, as suggested by Dr. Love's causal connection report. Further, the petitioner's symptoms developed and increased during a time where meals were not even being prepared in the dining hall where she worked. The petitioner was not even able to explain the job duties she performed during that summer.

The petitioner's claim for workers' compensation benefits is denied because she failed to establish that she sustained accidental injuries that arose out of and in the course of her employment with the respondent.

F. Is the petitioner's current condition of ill-being causally related to the injury?

The Arbitrator has found that the petitioner failed to establish an accident that arose out of and in the course of her employment with the respondent. As such, all claims for benefits are denied.

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?

The Arbitrator has found that the petitioner failed to establish an accident that arose out of and in the course of her employment with the respondent. As such, all claims for benefits are denied.

K. What temporary benefits are in dispute? TPD Maintenance TTD

The Arbitrator has found that the petitioner failed to establish an accident that arose out of and in the course of her employment with the respondent. As such, all claims for benefits are denied.

L. What is the nature and extent of the injury?

The Arbitrator has found that the petitioner failed to establish an accident that arose out of and in the course of her employment with the respondent. As such, all claims for benefits are denied.

22335310_1

STATE OF ILLINOIS)
) SS.
COUNTY OF)
CHAMPAIGN)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Alvia Dyson,
Petitioner,
vs.

NO: 09WC 18015

Manpower and Advanced Filtration Systems,
Respondent,

14IWCC0432

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 "improper dismissal and denial of reinstatement, evidentiary rulings" and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

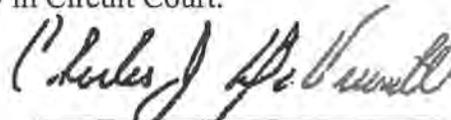
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision/Order of the Arbitrator filed July 23, 2013, is hereby affirmed and adopted.

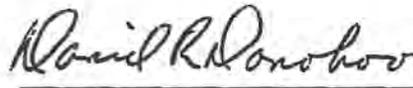
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

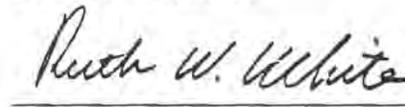
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

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

DATED: JUN 05 2014
o052714
CJD/jrc
049


Charles J. DeVriendt


Daniel R. Donohoo


Ruth W. White

Alvia Dyson

09 WC 18015

v.

Manpower, Inc and

Advanced Filtration Systems

14IWCC0432

Order

This cause called for hearing on June 19, 2013 in Urbana, Illinois before Arbitrator McCarthy. All sides were present and represented by counsel. After hearing arguments and receiving exhibits, the Arbitrator finds as follows:

This claim was filed with the Commission on April 23, 2008. The Petitioner alleged an accident on June 3, 2008 resulting to injuries to various body parts, including the right arm. Two Respondents were named on the application. The case appears to have involved a temporary employment agency as one Respondent, and an alleged borrowing employer as the other. The temporary agency has taken the major defense role in the case.

The evidence indicates that the Respondent sent the Petitioner for a Section 12 exam on May 6, 2010. Beginning on January 11, 2011, the attorneys for Manpower made repeated requests in writing to the attorney for the Petitioner for medical treatment records. RX 9 represents eight such letters sent through July 1, 2011. There is no indication that Petitioner's attorney ever provided medical records in response.

Respondent's attorney eventually obtained records in response to a subpoena. They showed the Petitioner receiving treatment for various injuries and illnesses at Oak Orthopedics from November 24, 2010 through September 13, 2011.

Respondent also deposed its examining physician Dr. Coe on November 11, 2011. He opined that the problems which the Petitioner was complaining of were unrelated to her alleged accident in 2008.

Petitioner had previously filed a claim for a separate accident against another employer which allegedly occurred in 2003. It also alleged an injury to the right arm. That case, 04 WC 21966, had previously been dismissed and a motion for reinstatement denied. It is currently pending on Review before the Commission. Petitioner's attorney has contended that the cases should be consolidated, but no motion to consolidate has ever been filed.

Respondent's attorney filed a motion for trial date certain which was granted by the Arbitrator in March 2012. The case was set for hearing in June 2012. At the arbitration call in June 2012, all of the attorneys were present and the case was discussed. By then the case had become three years old and, as such, was above the "red line", bringing Commission Rule 7020.60 into play. Petitioner's attorney requested a continuance for several reasons. First of all, he said that the case should be consolidated with the earlier filing. Again, no formal motion was presented. Secondly, he said that he had the Petitioner examined by a doctor of his own choosing on June 9, 2012, and he needed time to obtain that doctor's deposition. Third, he said that a trial date certain was improper because the Respondent had treatment records from Oak Orthopedics. The Arbitrator notes that there is nothing in those records which indicate they involve treatment for injuries sustained in the accident in question, and further, that the point became moot when the case reached a "red line" status in June 2012. The Arbitration granted a three month continuance until September 2012, and told the Petitioner's attorney that he had until then to obtain the doctor's testimony.

Respondent's attorneys sent the Petitioner's attorney seven letters between June 21, 2012 and August 30, 2012, requesting that the deposition be scheduled, indicating that they planned on arbitrating the case in September. On September 4, 2012, seventeen days prior to the scheduled arbitration, Petitioner's attorney called Respondent's attorney, advising he was going to request a continuance because he needed to obtain his doctor's testimony. There is no indication that he ever obtained or proposed deposition dates.

The parties appeared in Urbana on September 19, 2012. Petitioner's attorney requested a continuance to obtain his doctor's deposition. There was no indication at that time as to when the deposition might occur. The Arbitrator dismissed the case, finding that there was no good cause for a continuance.

Petitioner's attorney filed a motion for reinstatement exactly 60 days after he allegedly received the dismissal order. The motion contained, for the first time, an allegation that the Petitioner's doctor had, as an available deposition date, October 4, 2012. There is no indication as to when or how that date was obtained, and the Respondent attorneys contend that they were never presented with that or any other date for said deposition.

Applying standards of fairness and equity, the Arbitrator denies the Petitioner's motion to reinstate.

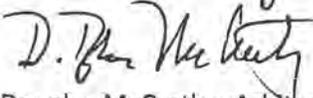
It appears that the Petitioner's attorney did nothing to prosecute his client's claim between April 23, 2009, when it was filed, until June of 2012, when his doctor's exam took place. Respondent made repeated requests for medical information referred to above, and made its position on the case clear to the Petitioner's attorney by providing the opinion of its examining doctor along with his deposition testimony.

The Petitioner's attorney was given three months to schedule his doctor's deposition in June 2012, and despite repeated requests from the Respondent to do so, did nothing until shortly before the hearing was to take place.

The Arbitrator believes that this situation represents the exact reason behind the three year rule referred to above. The Petitioner filed a claim in 2009, and gives no legitimate reasons why it was not pursued. Had the case not reached the red line, the Arbitrator doubts the Petitioner's attorney would have set an examination. Had the case not been dismissed, there likely would have been no discussion about possible deposition dates.

Motion denied.

Dated and Entered July 16, 2013



D. Douglas McCarthy, Arbitrator

JUL 23 2013

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <u>down</u>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Christine Gowin,
Petitioner,

vs.

NO: 12WC 35432

State of Illinois - Murray Center,
Respondent,

141WCC0433

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of nature and extent and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$403.04 per week for a period of 6/7 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 \$362.74 per week for a period of 25 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 5% loss of the body as a whole.

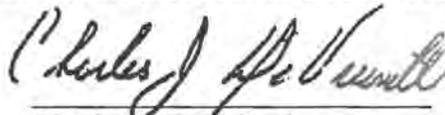
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

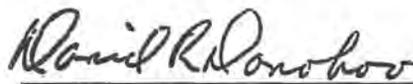
14IWCC0433

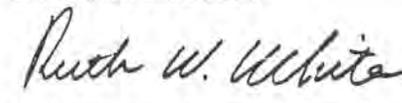
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: JUN 05 2014

o052114
CJD/jrc
049


Charles J. DeVriendt


Daniel R. Donohoo


Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GOWIN, CHRISTINE

Employee/Petitioner

Case# **12WC035432**

STATE OF ILLINOIS/MURRAY CENTER

Employer/Respondent

14IWCC0433

On 11/26/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

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

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

4948 ASSISTANT ATTORNEY GENERAL
WILLIAM H PHILLIPS
201 W POINTE DR SUITE 7
SWANSEA, IL 62226

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

1745 DEPT OF HUMAN SERVICES
BUREAU OF RISK MANAGEMENT
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

NOV 26 2013



**KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission**

STATE OF ILLINOIS)
)SS.
 COUNTY OF JEFFERSON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION
 NATURE AND EXTENT ONLY**

Christine Gowin
 Employee/Petitioner

Case # 12 WC 35432

v.

Consolidated cases: n/a

State of Illinois/Murray Center
 Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Mt. Vernon, on November 8, 2013. By stipulation, the parties agree:

On the date of accident, July 16, 2012, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned \$31,432.12; the average weekly wage was \$604.56.

At the time of injury, Petitioner was 24 years of age, single, with 1 dependent child(ren).

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

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

At trial, the parties stipulated that they were not requesting a written Decision with Findings of Fact and Conclusions of Law. After reviewing all of the evidence presented, the Arbitrator enters the following Order.

ORDER

Neither the Petitioner nor Respondent tendered into evidence an AMA impairment rating report.

At the time of the accident, Petitioner worked as a mental health technician and her job duties included lifting and, at times, restraining residents.

Petitioner was 24 years of age at the time of the accident so she will have to live with the effects of this injury for a significant period of time.

Petitioner was able to return to the same job that she had at the time of the accident; however, she testified that she experiences difficulties in performing many of her job tasks and can no longer work overtime to the extent that she was able to do so prior to the accident. This will have a negative effect on her future earning capacity.

Petitioner was diagnosed with a herniated disc at C5-C6 and the medical records described discogenic neck pain, headaches, pain in both shoulders and positive neurological findings in the left biceps. Petitioner's continued neck pain and spasms result in difficulty in performing her work tasks and engaging in other activities and these symptoms are consistent with the medical treatment records.

Pursuant to the stipulation of the parties, Respondent shall pay Petitioner temporary total disability benefits of \$403.04 per week for 6/7 weeks as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$362.74 per week for 50 weeks, because the injury sustained caused the 10% loss of use of the body as a whole, as provided in Section 8(d)2 of the Act.

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

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


William R. Gallagher, Arbitrator

November 19, 2013

Date

NOV 26 2013

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael McKenzie,
Petitioner,

vs.

NO: 12 WC 06169

Continental Tire
North America, Inc.,
Respondent.

14IWCC0434

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 11, 2013 is hereby affirmed and adopted.

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.

14IWCC0434

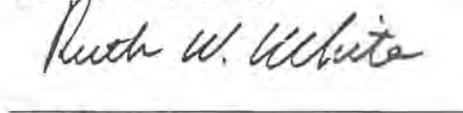
Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$44,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 05 2013

o-05/28/14
drd/wj
68


Daniel R. Donohoo


Charles J. DeVriendt


Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

McKENZIE, MICHAEL

Employee/Petitioner

Case# 12WC006169

14IWCC0434

CONTINENTAL TIRE NORTH AMERICA INC

Employer/Respondent

On 9/11/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.03% 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:

1312 BEMENT & STUBBLEFIELD
GARY BEMENT
PO BOX 23926
BELLEVILLE, IL 62223

0299 KEEFE & DEPAULI PC
ANDREW J KEEFE
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Michael McKenzie
Employee/Petitioner

Case # 12 WC 06169

v.

Consolidated cases: n/a

Continental Tire North America, Inc.
Employer/Respondent

14IWCC0434

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Mt. Vernon, on August 8, 2013. By stipulation, the parties agree:

On the date of accident (manifestation), February 3, 2012, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned \$37,510.70; the average weekly wage was \$872.95.

At the time of injury, Petitioner was 56 years of age, married, with 0 dependent child(ren).

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

Respondent shall be given a credit of \$1,745.91 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$6,809.01 for other benefits (permanent partial disability benefits), for a total credit of \$8,554.92.

At trial, the parties stipulated that temporary total disability benefits were paid in full and that Respondent had made weekly advance payments of permanent partial disability benefits of \$6,809.01.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

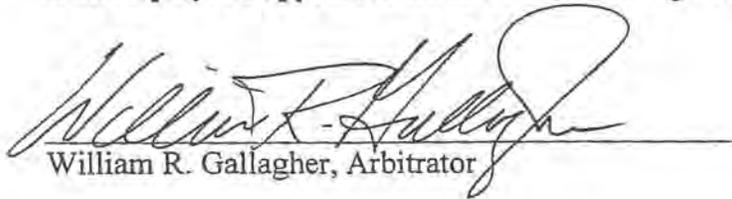
ORDER

Respondent shall pay Petitioner permanent partial disability benefits of \$523.77 per week for 99.65 weeks because the injuries sustained caused the 15% loss of use of the left arm, 15% loss of use of the right arm, and 12 1/2 % loss of use of the right hand as provided in Section 8(e) of the Act. Respondent shall be given a credit for weekly advance payments of permanent partial disability benefits of \$6,809.01, as well as any subsequent advance payments of permanent partial disability benefits.

Respondent shall pay Petitioner compensation that has accrued from February 25, 2013, through August 8, 2013, and shall pay the remainder of the award, if any, in weekly payments.

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

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


William R. Gallagher, Arbitrator

September 6, 2013
Date

SEP 11 2013

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. The Application alleged a date of accident (manifestation) of February 3, 2012, and that Petitioner sustained repetitive trauma to the bilateral upper extremities and other areas. There was no dispute regarding compensability and the parties stipulated that temporary total disability benefits and medical had been paid. Accordingly, the only disputed issue at trial was the nature and extent of disability.

Petitioner worked for Respondent as a truck tire builder for approximately 37 years. Petitioner testified that his job duties required him to push/pull tires, splice rubber by hand, use a hand stitcher and lift various tire components. On February 3, 2012, Petitioner was seen by Dr. Charles Neal, and reported a history of experiencing numbness in the little and ring fingers of both hands for the preceding two years. Dr. Neal referred Petitioner to Dr. David Brown, an orthopedic surgeon.

Dr. Brown initially evaluated Petitioner on April 16, 2012, and his findings on examination were consistent with bilateral ulnar neuropathy and possible carpal tunnel syndrome. He recommended Petitioner have nerve conduction studies performed and opined that Petitioner's job duties were an aggravating factor in the development of Petitioner's condition. Nerve conduction studies were performed on that same day and were positive for bilateral ulnar neuropathies at both elbows and right median neuropathy. Dr. Brown reviewed the studies and opined that Petitioner had bilateral cubital tunnel syndrome and right carpal tunnel syndrome.

Dr. Brown attempted conservative treatment for Petitioner's condition; however, Petitioner's symptoms did not improve. Ultimately, Dr. Brown performed right cubital tunnel and right carpal tunnel surgeries on October 12, 2012, and left cubital tunnel surgery on November 19, 2012. Subsequent to the surgeries, Petitioner remained under Dr. Brown's care and received physical therapy. Dr. Brown released Petitioner to return to work without restrictions on December 26, 2012. Petitioner was scheduled to be seen by Dr. Brown on February 25, 2013; however, he was not seen by Dr. Brown on that date.

At the direction of Respondent, Petitioner was examined by Dr. Richard Howard, an orthopedic surgeon, for the purpose of an AMA impairment rating. When examined by Dr. Howard, Petitioner advised that his condition has improved and that he had no further issues of numbness/tingling. Dr. Howard opined that Petitioner had an impairment rating of two percent (2%) of the left upper extremity and an impairment rating of four percent (4%) of the right upper extremity.

At trial Petitioner testified that he still has some pain/tenderness in the tip of his left elbow and an achy feeling following a shift at work. Petitioner had similar complaints in regard to the right elbow and noted that the right elbow is tender to the touch and the strength of his right arm seems to decrease during the course of a work day. In regard to the right hand, Petitioner stated that his grip strength is less than what was previously but that he has no problems with the

dexterity of his fingers. Petitioner agreed that he was able to return to work and perform all of his regular job duties and that he has been able to satisfactorily meet all production quotas.

Conclusions of Law

The Arbitrator concludes that Petitioner has sustained permanent partial disability to the extent of 15% loss of use of the left arm, 15% loss of use of the right arm and 12 1/2 % loss of use of the right hand.

In support of this conclusion the Arbitrator notes the following:

Dr. Howard examined Petitioner and opined that there was an AMA impairment rating of two percent (2%) impairment of the left upper extremity and four percent (4%) impairment of the right upper extremity.

Petitioner is a truck tire builder and he has worked in that capacity for over 37 years. This job requires the repetitive use of both upper extremities.

The Petitioner was 56 years of age at the time of the manifestation of the injury and he will have to live with the effects of it for the remainder of his working and natural life.

There was no evidence that this injury will have any effect on Petitioner's future earning capacity.

The medical treatment records indicated that Petitioner had bilateral cubital tunnel syndrome and right carpal tunnel syndrome and surgeries were required for all three conditions. While the Petitioner was able to return to work at his regular occupation, he still has symptoms consistent with the injuries he sustained.


William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
)
) SS.
COUNTY OF CHAMPAIGN)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Wanda McCoy,
Petitioner,

vs.

NO: 12 WC 27616

Diversified Healthcare,
Respondent.

14IWCC0435

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident and notice and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 15, 2013 is hereby affirmed and adopted.

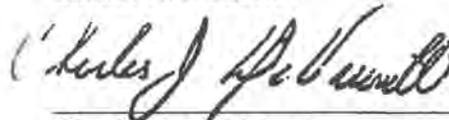
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 05 2013

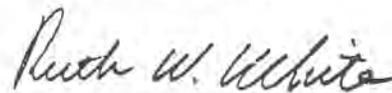
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drd/wj
68



Daniel R. Donohoo



Charles J. DeVriendt



Ruth W. White

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

McCOY, WANDA

Employee/Petitioner

Case# **12WC027616**

DIVERSIFIED HEALTHCARE

Employer/Respondent

14IWCC0435

On 4/15/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

LANGACKER LAW LTD
RONALD S LANGACKER
302 W HILL ST
CHAMPAIGN, IL 61820

0208 GALLIANI DOELL & COZZI LTD
ROBERT J COZZI
20 N CLARK ST SUITE 1800
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF Champaign)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Wanda McCoy
Employee/Petitioner

Case # **12 WC 27616**

v.

Consolidated cases: **N/A**

Diversified Healthcare
Employer/Respondent

14IWCC0435

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Urbana**, on **February 25, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **July 25, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned **\$16,755.46**; the average weekly wage was **\$320.23**.

On the date of accident, Petitioner was **60** years of age, *married* with **0** dependent children.

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

Respondent shall be given a credit of \$ in TTD, **\$0** in TPD, **\$0** in maintenance, **\$0** in non-occupation indemnity disability benefits and **\$0** in other benefits for which a credit may be taken under Section 8(j) of the Act.

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

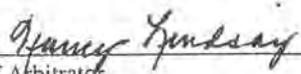
ORDER

Petitioner failed to prove that she sustained accidental injuries arising out of and in the course of her employment on July 25, 2012 or that her current condition of ill-being is causally related to the alleged accident. No benefits are awarded. Petitioner's claim is denied.

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

4.9.13
Date

APR 15 2013

14IWCC0435

Wanda McCoy v. Diversified Healthcare, 12 WC 27616 (19(b))

The issues in dispute are accident, causal connection, temporary total disability, medical expenses, and prospective care. Four witnesses testified at the time of arbitration: Petitioner; Mike Nelson, Gloria Valenti and Clara Glenn.

With respect to the disputed issues, the Arbitrator finds:

The records of the Carle Clinic through March 5, 2012 were admitted into evidence (RX 5) and reflect that Petitioner had been treating with Dr. Kramer since 2002 for back problems. While she had no specific back complaints in October of 2002 Petitioner did report “lots of problems with fibromyalgia” and aches and pains, cramping, and muscle aches. Her hips hurt and her arms hurt. (RX 5, p. 2) In February of 2005 Petitioner returned for a complete physical. Petitioner reported taking Celebrex 200 mg. daily for hip and leg pain, and occasionally switching to Advil and Aleve. Petitioner reported she had stopped taking her Neurontin. Her primary problems were hip pain radiating down to her ankles, worse at night. Petitioner was able to walk and primarily noticed her pain when resting. Petitioner worked as a home health aide. Petitioner reported occasional low backache. Petitioner displayed good range of motion with her back. Her diagnoses were listed as hypertension; fibromyalgia; hip and leg pain; trachanteric bursitis; and obesity. (RX 5, pp. 21-22)

Petitioner presented to Dr. Kramer on October 4, 2005 with ongoing back pain complaints. Dr. Kramer noted the earlier visit in February at which time Petitioner had radiating pain down into her left hip. Petitioner reported things had gotten worse more recently. Petitioner was prescribed an MRI, physical therapy, Flexeril, and Darvocet. (RX 5, p. 25)

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Petitioner underwent a lumbar spine MRI on October 11, 2005 which revealed degenerative disc disease and facet syndrome at L4-5. (RX 5, p. 27) Petitioner had been instructed to return to see Dr. Kramer after the MRI; however, it does not appear she did so until February of 2006 when it was time for her annual physical. Petitioner reported her back was doing quite well and she wasn't experiencing much in the way of back pain. She was continuing to take Celebrex and Flexeril as needed. (RX 5, pp. 58-59)

Petitioner returned to see Dr. Kramer in November of 2007 regarding a recheck of low back pain. Dr. Kramer noted Petitioner's history of degenerative disc disease and facette arthritis. Petitioner reported her back pain had "waxed and waned" but definitely worsened in the preceding three months with pain radiating down into her left buttock and into her leg, but no numbness or tingling. Petitioner experienced some pain with coughing or sneezing and had been using Darvocet and trying to perform back exercises. On physical examination, Petitioner had a mildly positive straight leg raise on the left. She was diagnosed with back pain and radiculopathy. Medications were refilled. Therapy was ordered. She was to return in a month or six weeks if things weren't improving and another MRI would be ordered. (RX 5, p. 108)

Petitioner was re-examined by Dr. Kramer on March 27, 2008. Dr. Kramer noted Petitioner was experiencing a couple of problems she wished to have addressed, including chronic low back pain. Petitioner had been working out at Curves and felt great but then stopped and "now is having a fair amount of pain radiating from her back." (RX 5, p. 117)

Petitioner returned to see Dr. Kramer for her annual physical on August 10, 2009. Petitioner reported having problems with low back pain, hip and leg pain. She had gained about thirty pounds in the last two years, worked in home health care, and had to lift clients. Petitioner

was educated regarding exercise, diet and weight loss and given a book with back exercises. She was prescribed Tylenol with Codeine #3. (RX 5, pp. 150-151)

Petitioner returned to see Dr. Kramer on August 13, 2010 for her annual physical. Petitioner "still" had low back pain, hip pain, leg pain, and knee weight. Her weight was continuing to go up. While Petitioner was still working as a home health nurse, she reported she no longer lifted any more. Petitioner's husband was reportedly quite ill and morbidly obese. Dr. Kramer noted "She cannot walk very far." (RX 5, p. 166) Dr. Kramer recommended that Petitioner get involved in water therapy and lose weight. (RX 5, p. 167) In June of 2011 Dr. Kramer again noted Petitioner's history of chronic low back pain and encouraged Petitioner on weight loss. Petitioner was still taking Tylenol with Codeine as needed. (RX 5, p. 175)

In September of 2011 Petitioner presented to Carle Convenient Care with an alleged left shoulder injury due to repeated lifting and transferring of patients over the preceding last few days. (RX 5, p. 181) The attending physician referred her to Orthopedics for further examination of her shoulder and to Occupational Medicine immediately for a drug screen. An illness injury report form was filled out and Petitioner was given restrictions. (RX 5, p. 182) From then on Petitioner underwent care and treatment on a left shoulder injury. Petitioner underwent surgery in early 2012 and remained off work as of mid-March 2012. (RX 5, pp. 182-263) It is not known when Petitioner returned to work in 2012.

At arbitration Petitioner testified she injured her low back on July 25, 2012 while working as a CNA at the home of a client (Mr. Perry).

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According to AX 2, Petitioner signed her Application for Adjustment of Claim in this matter on July 30, 2012. (AX 2)

On July 31, 2012 Petitioner sent an e-mail to Gloria Valenti for cancellation of her medical and dental benefits effective July 31, 2012. That same afternoon, Ms. Valenti and Petitioner had a telephone call regarding this matter. Petitioner's benefits were terminated on July 31, 2012. (PX 3)

On August 1, 2012, Petitioner was furnished a form to be completed regarding the insurance. Petitioner advised Ms. Valenti she wished to show it to her husband. Petitioner was to return the signed form later that afternoon.

Petitioner presented to Carle Hospital on August 1, 2012 stating she had injured her back while lifting a patient at work. Petitioner's complaints included left low back pain radiating down her left leg to her heel. (PX 2, p. 17) The attending physician, Dr. Kramer, described this as a "new problem" which had started in the last seven days. Petitioner described an aching and burning sensation with pain radiating down to her left foot and indicated her symptoms were aggravated by bending and standing and were worse during the day. On physical examination of her musculoskeletal system, Petitioner exhibited tenderness. Petitioner was diagnosed with a back sprain and radiculopathy, given pain medication, and referred to therapy. (PX 2)

On August 2, 2012, Gloria Valenti, Respondent's owner, e-mailed Petitioner confirming their previous communications and verifying that no deductions had been taken from Petitioner's pay as she had requested and that, to date, Ms. Valenti had not received the signed form back. (PX 3)

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On August 3, 2012, Petitioner sent an e-mail to Gloria E. Valenti, advising her that she (Petitioner) had not instructed Ms. Valenti to cancel Petitioner's insurance and denying she had telephoned Ms. Valenti "that afternoon." Petitioner asked Ms. Valenti to stop deducting her vacation hours any longer. Petitioner stated "I asked to use my vacation hours for work I missed due to my husband's hospital stay. The last three days I called in was from my back injury." Petitioner also stated she had told Ms. Valenti she would be happy to pay the 35% for her coverage so she hoped Ms. Valenti had not taken it upon herself to cancel Petitioner's coverage. (PX 3)

By letter dated August 6, 2012, Jody Eaton from NHRMA Mutual notified Petitioner that the investigation into Petitioner's claim was not yet completed as the company was waiting on medical records. (PX 4)

On August 9, 2012 Petitioner telephoned Dr. Kramer's office advising the nurse she was taking Vicodin and Robaxin and was scheduled to see the therapist the following week. Petitioner further represented that she did not wish to follow up with Occ Med. Petitioner reported being very uncomfortable and unable to sit at times. She wondered if something needed to be done. (PX 5)

Petitioner returned to see Dr. Kramer on August 10, 2012, reporting continued low back pain with minimal relief and ongoing radiating left leg pain. On physical examination, Petitioner displayed tenderness and decreased range of motion. She was diagnosed with unspecified back ache. No changes were made to her treatment plan as she was scheduled for therapy and taking pain medication. (PX 5)

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Lumbar spine x-rays taken on August 10, 2012 showed a slight stepwise anterolisthesis of L3 on L4 and of L4 on L5. Disc spaces appeared fairly well-preserved and there was some facet hypertrophy from L3 to S1. (PX 5)

Petitioner telephoned Dr. Kramer's office on September 12, 2012, requesting a refill of Vicodin. A prescription was left for her to pick up. (PX 7)

Petitioner underwent an examination with Dr. Morris Soriano on September 20, 2012, at Respondent's request. Dr. Soriano, a neurosurgeon, took a history from Petitioner in which she related being injured on July 25, 2012 when she lifted a nursing home resident off a commode. Petitioner stated that as she did so she felt a sharp pain in the midline at L5-S1. Petitioner further explained that as she continued working her pain increased and began radiating to her left hip, thigh, calf, and foot. Petitioner went home and rested and called in sick the next day at which time she also reported her injury. She then saw her family physician who recommended physical therapy; however, the therapy was denied. Petitioner was also given Vicodin and a muscle relaxer which had been providing some mild benefit. Petitioner's current complaints included severe pain with any activity such as walking, sitting, or standing. Petitioner reported improvement when in a recliner with her leg propped up. Petitioner reported she was able to drive, cook, and do some laundry. She remained independent in her home. Petitioner described constant back pain and leg pain; however, she also indicated her leg pain could last up to eight hours and make her cry. While the back pain had originally been in the midline of her back, it was now across her entire low back and she was occasionally getting a "tingling" sensation in her left leg. Petitioner described her job as that of a CNA and working forty hours per week. She

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denied a second job. Outside of work Petitioner had been walking a mile a day but denied being able to do so since her injury.

Petitioner advised Dr. Soriano that she had experienced intermittent back pain over the preceding two years and described the pain as occurring about every four to six months but she had never experienced an episode like this one and had always noticed relief with ibuprofen and an occasional Tylenol #3. Petitioner denied any prior back surgery or treatment with chiropractors.

On physical examination Dr. Soriano noted Petitioner limped when she walked, favoring her left leg. When heel/toe walking she displayed no evidence of a limp. Sagittal balance was described as normal. There was no point tenderness or spasm noted in Petitioner's low back. Range of motion was described as normal in flexion, extension, and lateral bending. Petitioner's lower extremities revealed 5/5 strength and symmetrical reflexes. She removed and replaced shoes and socks with no difficulty and got on/off the examination table with no difficulty. Waddell's testing was performed with Petitioner demonstrating three out of four positive findings.

Dr. Soriano was of the opinion Petitioner was at maximum medical improvement as a result of a lumbar strain and she could resume full duty work without any restrictions as of the date of their visit. Based upon his exam, he saw no signs of any permanent partial disability and did not think Petitioner needed any further treatment in light of positive Waddell's findings. Finally, Dr. Soriano saw no further causal connection between her work injury and her subjective complaints. (PX 6; RX 4)

By letter dated September 24, 2012 Respondent's attorney forwarded a copy of Dr. Soriano's September 20, 2012 report to Petitioner's attorney and advised him Respondent was denying Petitioner's claim on the basis of accident and the opinions of Dr. Soriano as set forth in his report. (PX 6)

Petitioner has had no further treatment since being examined by Dr. Soriano.

At arbitration Petitioner testified that she is 61 years old and was employed by Respondent as a certified nursing assistant. Her job duties required her to provide health and personal care for patients in their homes. She was required to occasionally help lift and move patients.

Petitioner testified that on July 25, 2012, she injured her low back while helping lift a patient off the toilet. She experienced a sharp pain in the lower part of her back. After finishing her shift, she went home and went to bed. She thought she had possibly pulled a muscle. After she woke up, she was no better and called in to let her employer know she would not be in on the 26th to work. Petitioner telephoned Mike Nelson before 3:00 p.m. and told him she had injured herself at "Mr. Perry's." Petitioner testified she did not work on the 26th (overnight shift) and she was not scheduled to work on Friday, the 27th. Petitioner testified she called Mike Nelson on Saturday and told him she would not be coming in on Saturday or Sunday and needed to fill out an incident report. According to Petitioner Mr. Nelson was leaving so he was going to put the incident report on the bulletin board for her to pick up. Petitioner testified that she picked up the incident report on Sunday, the 29th, filled it out at home, and returned on August 1, 2012, to give the report to Gloria Valenti, Respondent's owner.

Petitioner testified she first sought medical attention at the Carle Clinic on August 1, 2012.

Petitioner further testified that when she went in to see Ms. Valenti on August 1, 2012 she was told Ms. Valenti wanted her to sign some insurance papers but Petitioner did not want to do so without first having her husband look them over. Petitioner had a doctor's note with her and gave it to Ms. Valenti, along with the incident report.

Petitioner testified that she continues to experience low back pain for which she takes medication. The pain travels to her left leg. She has difficulty sitting, standing or walking for very long. She currently takes 3 Vicodin per day. Petitioner testified she is unable to carry fifteen pound bags of groceries.

Petitioner testified that she went to the doctor on the 10th and could barely walk. An x-ray was done. Petitioner testified that she wanted an MRI done but she had no insurance as her insurance was terminated on August 1, 2012. Petitioner also testified that she applied for FMLA a little after August 1, 2012 but she has never heard anything back from Ms. Valenti. Petitioner acknowledged that she has not tried returning to work as she doesn't feel like she could.

On cross-examination Petitioner testified that she started working for Respondent around 2007 and was given a handbook but it was not the one marked as RX 1. Petitioner further testified that she would need to consult her handbook regarding the rules for reporting injuries. She did report it within 24 hours of its occurrence and while she admitted she did not report it to her supervisor, she did advise Mike Nelson. Petitioner testified she was unaware she was to report an injury within 6 to 12 hours. Petitioner also conceded that her husband was in the

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hospital but denied telling him she hurt herself moving her husband. Petitioner also testified she did not recall speaking with Ms. Valenti on July 26, 2012.

On further cross-examination Petitioner testified that she spoke to Ms. Valenti by telephone before August 1, 2012. According to Petitioner, Ms. Valenti knew she had hurt her back when they spoke.

Petitioner admitted to having prior problems with her lower back over the past ten years. She described it as arthritis for which she had called in once or twice through the years and occasionally took a day off. Petitioner testified that the arthritis in her back was located in a different area than the pain she experienced with this incident. Petitioner also admitted she had fibromyalgia. Petitioner also testified that she had taken medication off and on during this period of time for her low back pain, including Acetaminophen with codeine. Petitioner indicated she could not recall complaining of radiating pain down her left leg prior to the incident. Petitioner acknowledged taking time off from work during the week before the alleged work accident to take care of her husband who was experiencing health problems.

Mike Nelson testified that he has been employed by Respondent since 2011. He is a schedule coordinator and office manager. His duties include answering the telephones to facilitate the scheduling of home health nurses. He answered the phone when Petitioner called Respondent's office on July 26, 2012. Petitioner identified herself and informed him that she had hurt her back while moving her husband. She stated that she would not be able to work on the following evening. As was his practice, he wrote down the conversation in the phone log as he was talking to the claimant. The phone log is kept in the ordinary course of Respondent's

business and it is standard procedure to write down phone messages pertaining to the scheduling of nurses. The entry which Mike Nelson wrote on July 26, 2012 reflects the following:

“Wanda McCoy rang – hurt back moving husband.
Karen P. will stay at Perry until 9:00 P.M. Sabinem will do 9P-7A.”
(Resp. Ex. 3)

Gloria Valenti testified that she has owned Diversified Healthcare for the past thirty-six years. The company provides home healthcare services to patients. She identified the employee handbook (RX 1) which contains information regarding reporting of work injuries. The policy and procedure requires that when an employee injures herself, “A supervisor must be called immediately.” It further provides that “Any incident involving patient or employee injury requires immediate notification of the supervising nurse. All completed incident reports must be turned into the office within 24 hours.” At the time that Petitioner was hired and trained, Ms. Valenti went through the handbook with Petitioner line-by-line. Petitioner signed an acknowledgement that she has read the handbook and accepted the policies set forth in the handbook. (RX 2)

Ms. Valenti testified that she and Petitioner spoke on July 31, 2012, at which time Valenti knew Petitioner was off work. Petitioner spoke about her husband’s illness. Valenti testified that she inquired about how Petitioner was doing but didn’t know about any injury. Following Petitioner’s alleged work injury of July 25, 2012, Petitioner never orally informed Ms. Valenti that she had hurt her back at work. Ms. Valenti testified that she found out about the work injury when Petitioner came to the office on August 1, 2012 and dropped off an envelope for her. Petitioner was in a hurry and could not stay. After Petitioner had left, Ms. Valenti opened the envelope and it contained an accident report in which Petitioner claimed that she had injured her

low back at work on July 25, 2012. Valenti testified that Petitioner has never applied for FMLA leave nor has she returned the insurance forms given to her on August 1, 2012.

Clara Glenn testified that she is Petitioner's sister. On July 26, 2012, she was with Petitioner because Petitioner's husband was in the hospital. According to Glenn, Petitioner was not working that day as she had hurt her back at work. Glenn testified she was in Petitioner's home and overheard Petitioner's phone call with someone from Respondent in which Petitioner reported that she had injured her back at work and could not work that evening.

PX 1 is a one page "Incident Report." The document is not complete. It identified an accident date of July 25, 2012, described the injury as occurring while Petitioner assisted Mr. Perry, and claims a lower back, hip, and leg injury. (PX 1)

CONCLUSIONS OF LAW

With respect to issue (C) "Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?" the Arbitrator concludes the following:

The Arbitrator concludes that Petitioner failed to prove she sustained accidental injuries arising out of and in the course of her employment on July 25, 2012. Petitioner claims that she injured her lower back while lifting a patient and reported the incident on the following day to Mike Nelson. Mike Nelson credibly testified that he received a phone call from Petitioner on July 26, 2012 and that she told him that she had hurt her back while moving her husband. Moreover, Mr. Nelson contemporaneously recorded the conversation in the phone log. The phone log was admitted into evidence and reflects that Petitioner told Mr. Nelson that she "Hurt back moving husband." Petitioner admitted that her husband was ill and was hospitalized shortly before the incident. In addition, Petitioner did not follow the accident reporting rules of

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reporting the incident immediately to her supervising nurse and by completing an accident report in twenty-four hours. Although Petitioner offered an incident report into evidence (PX 1) the information regarding when the report was filed with her supervisor is incorrect. She did not file the report with her supervisor on July 26, 2012 but rather dropped it off on August 1, 2012, according to both Petitioner and Gloria Valenti. The form is also incomplete.

This is a case in which credibility of the witnesses is key. In that regard, the Arbitrator notes concerns with Petitioner's credibility. First, she downplayed any prior back problems. Yet, the medical records document chronic low back pain which tended to "wax and wane" but which was becoming increasingly bothersome as evidenced by more frequent doctor visits, stronger medications, and additional treatment modalities. This back incident, regardless of where it occurred, appears to be yet another exacerbating episode as shown by Dr. Kramer's conservative treatment recommendations. It is also concerning that Petitioner tried to down play her knowledge of accident reporting procedures when the medical records stemming from Petitioner's alleged left shoulder work accident (RX 5) show she clearly knew what to do when she believed she suffered a work accident. None of the same procedures were followed herein and the reference in Dr. Kramer's note that Petitioner did not want to follow up with Occ Med (PX 5, p. 20) is troublesome. Further troubling is Petitioner's rush to retain an attorney and file her claim before seeking medical attention or reporting the alleged accident. For the reasons stated above, Petitioner's claim for compensation is denied. All other issues are moot.

With respect to issue (F) "Is Petitioner's current condition of ill-being causally related to the injury?" the Arbitrator concludes the following:

Even assuming Petitioner proved an accident, the medical records show Petitioner suffered from low back pain for over 10 years and had undergone intermittent testing and

treatment for her problem. Although Petitioner contends that her back pain never caused radiating pain down the left leg prior to the alleged injury of July 25, 2012 at work, the records of the Carle Clinic clearly reflect complaints of radiating pain down the left leg in 2007 and intermittently before then. Petitioner admitted to taking pain medication with codeine prior the work injury. The records of the Carle Clinic clearly show that Petitioner was taking pain medication with codeine as well as Vicodin at the time she arrived for her first visit following the alleged injury indicating an ongoing prior condition. Dr. Soriano credibly opined there was no connection between her claimed injury at work and her subjective complaints. No other doctor has expressed an opinion on causation.

The Arbitrator concludes that Petitioner failed to prove her present condition of ill-being is causally related to the alleged work injury and her claim for compensation is denied. All other issues are moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Joseph Dechene,
Petitioner,

vs.

NO: 10 WC 46541

State of Illinois
Pontiac Correctional Center,
Respondent.

14IWCC0436

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 22, 2013 is hereby affirmed and adopted.

DATED: JUN 05 2013

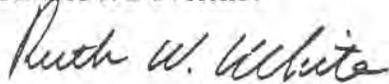
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drd/wj
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Daniel R. Donohoo



Charles J. DeVriendt



Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

DECHENE, JOSEPH

Employee/Petitioner

Case# 10WC046541

14IWCC0436

ILLINOIS DEPARTMENT OF CORRECTIONS

Employer/Respondent

On 7/22/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0190 LAW OFFICES OF PETER F FERRACUTI 0502 ST EMPLOYMENT RETIREMENT SYSTEMS
THOMAS M STROW 2101 S VETERANS PKWY*
110 E MAIN ST PO BOX 859 PO BOX 19255
OTTAWA, IL 61350 SPRINGFIELD, IL 62794-9255

5116 ASSISTANT ATTORNEY GENERAL
GABE CASEY
500 S SECOND ST
SPRINGFIELD, IL 62706

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

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 605 ILCS 206/14

JUL 22 2013



[Signature]
KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Peoria)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Joseph Dechene

Employee/Petitioner

Case # 10 WC 46541

v.

Consolidated cases: _____

Illinois Department of Corrections

Employer/Respondent

14IWCC0436

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 **Stephen Mathis**, Arbitrator of the Commission, in the city of **Bloomington**, on **May 17, 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 _____

14IWCC0436

FINDINGS

On **8/23/2010**, Respondent *was* operating under and subject to the provisions of the Act.
On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.
On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.
Timely notice of this accident *was* given to Respondent.
Petitioner's current condition of ill-being *is not* causally related to the accident.
In the year preceding the injury, Petitioner earned **\$56,943**; the average weekly wage was **\$1,095.06**.
On the date of accident, Petitioner was **42** years of age, *married* with **2** 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 \$ for TTD, \$ for TPD, \$ for maintenance, and
\$ for other benefits, for a total credit of \$.
Respondent is entitled to a credit of \$ under Section 8(j) of the Act.

ORDER

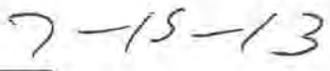
The arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that he sustained an accidental injury due to repetitive work activities that arose out of and in the course of his employment by respondent on 8/23/2010. The petitioner's claim for compensation is denied.

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

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



Signature of Arbitrator



Date

JUL 22 2013

14IWCC0436

STATEMENT OF FACTS

Petitioner, a 42 year old correctional officer, alleges he sustained an accidental injury to his right elbow and bilateral wrists and arms due to his alleged repetitive work activities that arose out of and in the course of his employment by respondent, and manifested itself on 8/23/2010. Petitioner has been employed at the Pontiac Correctional Center since 1991. During this time, Petitioner has been assigned to a number of different duties including but not limited to personal property, armory, gallery duty, tower duty, cage officer duty, and writ transportation. Job activities varied based on what duty Petitioner was assigned. He would work 8 hour shifts and was given 30 minutes for a lunch break. Petitioner stated that he is right handed and uses mostly his right hand when it comes to opening cells and using keys at work.

Early in his career, Petitioner worked at various galleries, including north segregation, in towers, escorting inmates and as a cage officer. Over the years he switched shift times and positions. In 2003, Petitioner recalls being assigned to work personal property for approximately 2 to 2 ½ years. This position consisted of shaking down inmates' personal property, inventorying the property and distributing allowed property back to the inmate. This process would be done each time an inmate was transferred to or from Pontiac.

After working in personal property, Petitioner recalled working in the south protective custody unit, specifically gallery 7, for 2 ½ years. His job duties in this position entailed unlocking all of the cell deadbolts in the morning, counting inmates, waiting for the institutional count to be confirmed, feeding inmates through a hatch in the top of the doors, opening cells for inmates who were released for activities such as yard time, work assignments like kitchen or grounds work, and for showers. Petitioner stated that there were 52 cells in the gallery and they were normally all full. The most he would key any one cell to let the inmate in and out would be 6 times a day, for inmates with jobs who also wanted to shower. For other inmates, they are allowed to shower 3 times a week and were also allowed to go to the yard if not at work. Overall, Petitioner estimated that he turned 300 to 350 keys on a non-shower day and around 500 keys on a shower day. On cross examination, Petitioner estimated that it takes about 5 seconds to key a cell door and open it and 1 to 2 seconds for a food hatch. Based on his 5 second estimation, Petitioner uses keys and doors for 25 to 30 minutes on non-shower days and about 42 minutes on shower days.

Petitioner was next assigned to west segregation, another gallery duty. He stated that this position had less inmate movement and, thus, less use of keys and opening doors. There are 40 cells in 2 galleries that Petitioner would cover. He would use the feeding hatch four times a day to cover breakfast and lunch. Petitioner estimated that he used keys and opened doors/hatches about 225 to 250 times a day in this position. Based on 5 seconds a use, Petitioner would use keys and doors for around 20 minutes each day in this position. He worked this position for about a year.

14TWCC0438

From 2008 until early 2010, Petitioner was assigned to work writ transportation. This position involved getting a packet containing prisoner transportation orders, for activities such as hospital visits and court dates, reading the packet, signing out restraints and necessary equipment, getting the inmate out of their cell, strip searching the inmate, restraining them, and finally transporting them to their location. Petitioner would actually travel with the inmate to the location and back to the prison where they would be placed back in their cell. Petitioner recalled that there were busy months and slow months. When there was no writ needing to be done, Petitioner would be detailed to some other location in the prison where a body was needed. This would involve about 75% gallery duty but could include any other locations a correctional officer may be assigned. Petitioner recalls that in some positions he would just sit and push buttons. In June of 2010, Petitioner was assigned to another protective custody unit for 1 ½ years, where he was assigned during his alleged accident date.

A job site analysis was done for the correctional officer position at Pontiac Correctional Center. (Rx. 4). Richard Brown performed the site visit, wrote the report and filmed and edited a video showing some of the activities that Petitioner would have performed on a regular basis. He was deposed on 8/24/2012 concerning those activities and the results. (Rx. 3). Petitioner was able to view the JSA video and found that it did not include all of his job duties, but agreed when he was asked if it was accurate for the duties it did depict. One point he mentioned was that the pat down of an inmate shown was only from the waist down, when in practice the upper body would also be pat down.

Dr. Sipe treated Petitioner in the summer of 2010. Petitioner reported symptoms of right elbow and hand pain and numbness and occasional numbness in his left hand for about 3 to 4 months prior to beginning treatment. He received an injection in his right elbow and had a carpal tunnel release on his right hand. He was diagnosed with mild left carpal tunnel syndrome that was not severe enough for injections or surgery.

Currently, Petitioner complains of some numbness in his right hand from an unknown cause and occasional numbness in his left hand. His right elbow has been fine. Dr. Sipe indicated that Petitioner had 100% recovery from his carpal symptoms after his release surgery. (Px. 4, p. 27).

Dr. James Williams performed a Section 12 examination of Petitioner on 11/30/2011. (Rx. 2, Ex. 2). He was deposed concerning this examination on 8/1/2012. (Rx. 2). Dr. Williams conducted a review of Petitioner's medical records and employment documents with Petitioner and performed a physical examination. Petitioner presented with no complains or arm pain and was fully functioning. (Rx. 2, Ex. 2, p. 1). Dr. Williams' report summarizes Petitioner's work duties, medical history and treatment before reporting his medical conclusion that Petitioner's bilateral carpal tunnel syndrome was most likely caused by Petitioner's increased BMI of 34, his history of hypothyroidism and his high blood pressure. (Rx. 2, Ex. 2, p. 6). He went on to state that Petitioner's job duties would be neither causative nor aggravating to Petitioner's syndromes as

he has visited Pontiac Correctional Center and turned the keys and opened cells and the force required to do so is not great enough to apply significant pressure to the carpal canal. *Ibid.*

In his deposition, Dr. Williams explained that he never diagnosed Petitioner with any right elbow problems. (Rx. 2, p. 27). That Petitioner had no elbow complains at his examination and the only reason Petitioner would know of any issues with his elbow is because of an MRI that reported an abnormal accessory muscle in his right elbow. *Ibid.* This muscle could cause cubital type issues or lateral epicondylitis issues but because Petitioner was not complaining of any, Dr. Williams would not diagnose either disorder. *Ibid.* This finding was from Dr. Sipe's 6/14/10 visit report for Petitioner's right arm and forearm pain, wherein the doctor states that Petitioner has "Findings of ulnar neuritis associated with anconeus epitrochlearis accessory muscle." (Px. 2, p. 53).

Dr. Williams also explained that he does many independent examinations for the State and that in some cases he does find that State employees have suffered carpal or cubital tunnel syndromes that were caused or permanently aggravated by their work duties. (Rx. 2, p. 56). Dr. Williams explained that in order to find such causation, he looks at the duties performed and whether they are significantly vibratory or require substantial impact force on a highly repetitive basis, giving the example of a road maintainer using a jackhammer or other vibratory tool. *Ibid.* Dr. Williams contrasted his examination and causation with Dr. Sipe's causation opinion in that Dr. Williams sees many similar patients and he lets each one discuss their job duties and concerns with him and he does not transfer complaints or duties that a different patient in a similar or the same job role experienced to the current patient. (Rx. 2, p. 54). Dr. Sipe's opinions are not based solely on the Petitioner, his work history, complaints and medical history but instead are also based on the 100 other prison workers he has treated. (Px. 4, p. 7, 12).

Dr. Sipe was deposed on 9/9/2011 concerning his treatment of Petitioner's hands and arms. Dr. Sipe was of the opinion that Petitioner's job duties of using keys and opening doors was both causative and permanently aggravating to Petitioner's bilateral carpal tunnel syndrome and right side cubital tunnel syndrome. Dr. Sipe did not receive Petitioner's job description or a job site analysis before coming to his causation opinion. (Px. 4, p. 19). Dr. Sipe stated that the top three other factors that cause carpal and cubital tunnel outside of work, in his opinion, are obesity, smoking and diabetes. (Px. 4, p. 20). Additionally, he recognizes that there is literature supporting hypothyroidism as a causative or aggravating factor. *Ibid.* Petitioner was referred to as "a big guy" and that he did have hypothyroidism. *Ibid.* Dr. Sipe agreed that these factors outside of work explain Petitioner's development of carpal tunnel syndrome in his left hand when he primarily used his right hand at work. (Px. 4, p. 21).

Dr. Sipe agreed that Petitioner's left side carpal tunnel syndrome was best explained by his non-occupational risk factors, due to the fact that Petitioner was right handed and would seldom use his left hand at

work for any key turning or cell opening. (Px. 4, p. 21). This fact is corroborated by the fact that Petitioner was diagnosed with left sided cubital tunnel syndrome in 2002 by Dr. Lasher. (Px. 1, p. 57). Dr. Lasher and Petitioner did not attribute this syndrome to Petitioner's work activities but instead the doctor advised Petitioner on arm posture while sitting. *Ibid.*

CONCLUSIONS OF LAW

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

Petitioner alleges he sustained an accidental injury to his right elbow and his bilateral wrists due to his alleged repetitive work activities that arose out of and in the course of his employment by Respondent, and manifested itself on 8/23/2010.

As a general rule, repetitive trauma cases are compensable as accidental injuries under the Illinois Worker's Compensation Act. In Peoria County Belwood Nursing Home v. Industrial Commission, 115 Ill.2d 524, 106 Ill.Dec 235, 505 N.E.2d 1026 (1987), the Supreme Court held that "the purpose behind the Worker's Compensation Act is best serviced by allowing compensation in a case ... where an injury has been shown to be caused by the performance of the claimant's job and has developed gradually over a period of time, without requiring complete dysfunction.." However, it is imperative that the claimant place into evidence specific and detailed information concerning the petitioner's work activities, including the frequency, duration, manner of performing, etc. It is also equally important that the medical experts have a detailed and accurate understanding of the petitioner's work activities.

The petitioner must prove by a preponderance of the credible evidence that his work involves constant or repetitive activity that gradually causes deterioration of or injury to a body part. Petitioner described at trial the various positions that he worked over the years as a correctional officer, such as personal property, armory, gallery duty, tower duty, cage officer duty, and writ transportation. Petitioner testified that his duties varied based on where he was assigned. His complaints all stem from his using of keys and opening of doors. When asked to quantify his use of keys and opening of doors, Petitioner did so for only two gallery positions. His

estimations of quantity and how long each use lasted equate to use of keys and doors for around 20 to 30 minutes per shift while occasionally rising past 40 minutes in a shift, at one specific position. This length of use is very similar to or less than Petitioner's daily lunch break. The Arbitrator finds that Petitioner's key use and door opening for an average of minutes or less, out of a 7 ½ hour shift of actual work, and spread out throughout the day, is not significantly repetitive.

Dr. Sipe found causation between Petitioner's duties of key use and opening doors and his carpal and cubital tunnel syndromes. He based his opinion on a general understanding of what prison personal did, from his treatment of over 100 prison workers from Pontiac Correctional Center, as well as a brief description from Petitioner that he constantly used keys and opened cells. Dr. Sipe did not know how often Petitioner used keys or opened cells, what positions he was assigned and how long he worked them, what the different positions, such as tower or cage officer did, and he did not care about what types of keys Petitioner was using or the amount of force required to use them. Dr. Sipe was also of the opinion that Petitioner's left sided carpal tunnel could have been explained by Petitioner's risk factors exclusive of his work duties, which made sense to him since Petitioner was right-handed and mainly used his right hand at work. He agreed with Dr. Williams that Petitioner had the risk factors of hypothyroidism and obesity. The Arbitrator finds that Dr. Sipe did not have a sufficient understanding of Petitioner's job duties over the past 20 years of work he did for Pontiac Correctional Center. Further, Dr. Sipe was not properly evaluating Petitioner based on only his own complaints and information but instead was drawing conclusions based on his overall prison worker history. The Arbitrator does not agree with Dr. Sipe's causation opinion. Both Dr. Sipe and Dr. Williams found that Petitioner's right elbow ailments were caused by an abnormal accessory muscle and not by Petitioner's job duties.

Dr. Williams found that petitioner's job duties were neither causative nor aggravating to his cubital or carpal tunnel syndromes. Dr. Williams took a detailed record of petitioner's work activities from the Petitioner and confirmed with him the written job description, which he outlined in his IME report. His understanding of Petitioner's job duties was augmented by his visit to the Pontiac Correctional Center where he was able to view correctional officers performing some of the same duties Petitioner performed and where he was able to perform

14IWCC0436

duties such as key turning, cuffing and opening and closing of doors himself. Dr. Williams testified that none of the activities performed by petitioner involved repetitive action with significant vibration or direct impact on his extremities. Petitioner's various risk factors were enumerated by Dr. Williams as hypertension, obesity, and hypothyroidism. The arbitrator finds that Dr. Williams had a significant understanding of petitioner's job duties and medical history and agrees with his causation opinion.

Based on the above, as well as the credible evidence, the Arbitrator finds the Petitioner has failed to prove that he sustained an accidental injury due to repetitive work activities that arose out of and in the course of his employment by Respondent on 8/23/10. The Arbitrator finds that although Petitioner testified concerning how many times a day he would use keys and open cell doors in an average day in the positions that he used keys the most, that it was less than 16% of his day, not continuous but spread out throughout his shift, and the same or less time than he was given for his lunch break. In other positions, Petitioner may have rarely used keys. Additionally, Petitioner developed cubital tunnel syndrome in his left elbow in 2002 and carpal tunnel syndrome in his left wrist in 2010, where Petitioner's activities of opening cells and turning keys with his right hand could not have been a factor even if the left hand was used on occasion. This shows that Petitioner developed these left side syndromes independent of his work activities and contradicts the correlation that Petitioner is trying to show on the right side. Lastly, Dr. Williams' IME opinion accurately described Petitioner's job duties, work environment and his medical history and provided a medically sound opinion regarding the causation of Petitioner's ailments.

- F. Is Petitioner's current condition of ill-being causally related to the injury?**
- 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?**
- L. What is the nature and extent of the injury?**

Having found the petitioner has failed to prove by a preponderance of the evidence that he sustained an accidental injury due to repetitive work activities that arose out of and in the course of his employment by respondent on 8/23/10 the arbitrator finds these issues moot.

11WC19002
14IWCC0437

Page 1

STATE OF ILLINOIS)
)SS
COUNTY OF McLEAN)

BEFORE THE ILLINOIS WORKERS'
COMPENSATION COMMISSION

Deborah Denney,
 Petitioner

vs.

No. 11WC19002
14IWCC0437

Heritage Manor,
 Respondent.

ORDER

The Commission on its own Motion recalls the Decision and Opinion on Review issued in the above-captioned case.

Oral Arguments were presented on June 3, 2014 before Panel A. A Decision and Opinion on Review was issued thereafter. It has come to the attention of the Commission that the Decision and Opinion on Review was not dated. The Commission hereby recalls the Decision and Opinion on Review so that a Corrected Decision and Opinion on Review can be dated and reissued.

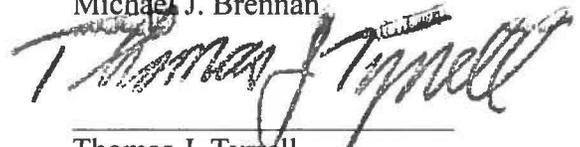
IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission's Decision and Opinion on Review in the above-captioned case is hereby recalled. The parties should return their previously issued Decision and Opinion on Review to Commissioner Michael J. Brennan.

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

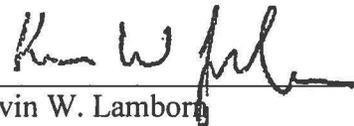
Dated: **JUN 19 2014**



Michael J. Brennan



Thomas J. Tyrrell



Kevin W. Lamborn

MJB:bjg
52

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Deborah Denney,
Petitioner,

vs.

NO: 11 WC 19002
14IWCC0437

Heritage Manor ,
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 causal connection, temporary total disability, medical expenses, prospective medical care, permanent disability, and Sections 19(k) and 19(l) penalties and Section 16 attorney fees, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 11, 2013 is hereby affirmed and adopted.

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

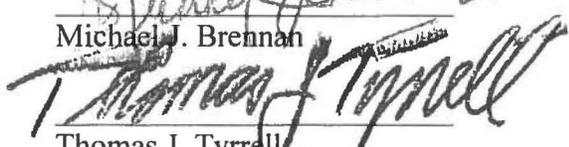
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 19 2014

MJB:bjg
0-6/3/2014
052


Michael J. Brennan


Thomas J. Tyrrell


Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0437

Case# 11WC019002

DENNEY, DEBORAH

Employee/Petitioner

HERITAGE MANOR

Employer/Respondent

On 12/11/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

4251 KELLY LAW OFFICES
DONALD A BEHLE
121 N MAIN ST 3RD FL
BLOOMINGTON, IL 61701

2912 HANSON & DONAHUE LLC
PETER DONAHUE
900 WARREN AVE SUITE 3
DOWNERS GROVE, IL 60515

STATE OF ILLINOIS)
)SS.
COUNTY OF McLean)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Deborah Denney
Employee/Petitioner

Case # **11 WC 19002**

v.

Consolidated cases: _____

Heritage Manor
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen Mathis**, Arbitrator of the Commission, in the city of **Bloomington**, on **August 14, 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 _____

FINDINGS

On **September 2, 2010**, 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$30,680.00**; the average weekly wage was **\$590.00**.

On the date of accident, Petitioner was **50** years of age, *single* 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 **\$29,859.40** for TTD, **\$685.48** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$30,544.88**.

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

ORDER

Based upon the Petitioner's testimony and the corresponding medical records, the Arbitrator finds a causal connection between the Petitioner's accident of September 2, 2010 and her left leg and ankle. The Arbitrator finds that the Petitioner failed to prove a causal connection between her accident of September 2, 2010 and her conditions after October 28, 2011, based upon a lack of supporting medical documentation.

Respondent shall pay Petitioner temporary total disability benefits of \$393.33 per week for 30-3/7 weeks commencing March 29, 2011 through October 28, 2011, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$354.00 per week for 53.75 weeks, because the injury sustained caused 25% loss of the left leg, as provided in Section 8(e)(12) of the Act.

Respondent shall pay to Petitioner penalties of \$-0- as provided in Section 16 of the Act; \$-0- as provided in Section 19(k) of the Act; and \$-0- as provided in Section 19(l) 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

11-25-2013
Date

DEC 11 2013

FINDINGS OF FACT

In support of the Arbitrator's decision in the above-referenced matter, the Arbitrator makes the following findings of fact. On September 2, 2010, the Petitioner was working as an Assistant Dietary Manager at Heritage Manor in Bloomington, Illinois. At that time, she slipped in oatmeal and fell injuring her left ankle, left elbow and left leg. The Petitioner testified that directly after the injury she had pain from head to toe and could hardly walk. However, she finished her shift and sought no medical treatment on that day or any day prior to September 7, 2010. In fact, the Petitioner continued to work regular duty until September 7, 2010, including 10.6 hours on September 4, 2010.

The Petitioner testified that she had medial and lateral knee pain constantly from the time of the accident until her testimony. However, this is contradicted by medical records of AMG Urgent Care, Dr. Zehr, Dr. Hanson and Dr. Ritchie. The Arbitrator notes that much of the Petitioner's complaints were subjective, without objective support.

On September 7, 2010, the Petitioner saw Dr. Zehr complaining of left leg pain from her knee down to her ankle and her foot. She complained of tenderness with no apparent deformity, instability or effusion with a negative McMurray and Lachman test. She was diagnosed with a knee contusion and ankle sprain. She was put on light duty of sedentary work with minimal kneeling and stooping with the knees. X-rays of the left ankle and knee at that time were negative.

On September 13, 2010 Dr. Zehr noted that both her left knee and ankle were sore but improving. She had a negative Drawers, Lachman's and McMurray test. He diagnosed a knee contusion and ankle sprain and restricted work to alternate sit to stand and walk up to 15 minutes each hour.

On September 20, 2010, the Petitioner's left ankle was doing much better with hardly any discomfort. Because of tenderness over the lateral aspect of the knee an MRI of the knee was recommended to rule out possible lateral meniscus tear. On September 22, 2010, the MRI showed a bone bruise on the lateral femoral condyle and the infralateral aspect of the bony patella. There was also a "suggestion of an occult hairline fracture in the lateral tibial plateau."

The Petitioner treated on October 4, 2010 and October 25, 2010 with Dr. Zehr with no complaints to the medial side of her knee. Dr. Zehr placed the Petitioner on physical therapy and continued her sedentary work restrictions. On November 2, 2010 the Petitioner was seen by Dr. Hanson. At that time she complained of lateral ankle pain and lateral knee pain. She had no complaints or physical findings to the medial side of her knee. Dr. Hanson diagnosed an occult tibial plateau fracture. He anticipated full resolution in three months in regard to the knee. He recommended physical therapy and continued work restrictions.

On November 15, 2010, Dr. Zehr noted continued improvement and that her ankle sprain was resolved. He kept her on sedentary work because of her knee complaints. X-rays still demonstrated that the knee was in proper anatomic alignment.

On December 20, 2010, the Petitioner indicated to Dr. Hanson that she did not feel she was able to do full duty work. X-rays showed good position of the fracture site as such that it was hard to even see the fracture and Dr. Hanson noted that the fracture was healed with minor patellofemoral changes. He continued the Petitioner on the same restrictions for another month. On December 28, 2010, Dr. Zehr noted that the Petitioner's knee had only a trace amount of swelling and her ankle was non-tender with no significant swelling. He noted that she was doing very well in regard to the ankle sprain. He continued her sedentary work with physical therapy and home exercise.

On January 17, 2011, the Petitioner again indicated to Dr. Hanson that she did not feel she was ready for full duty work. Dr. Hanson noted that he hoped she would be ready for full duty work in one month. On January 18, 2011, Dr. Zehr noted the Petitioner was doing much better and she stated she was 85% better after the last physical therapy visit. At this time she complained of patellar tracking issues and was first noted to have a limp.

On February 14, 2011, Dr. Hanson noted continued pain mostly anteriorly and medially with no significant lateral pain. The Arbitrator notes that this is a significant change in the area of the Petitioner's pain complaints. She was given a new diagnosis of pes bursitis and patellofemoral pain status post tibial plateau fracture. Dr. Hanson recommended an injection for the pes bursitis and hoped for full duty release to work in one month. On February 16, 2011, Dr. Zehr saw the Petitioner and stated she was doing well with physical therapy and doing well at work walking up to 30 minutes per hour. He noted that her gait was nearly back to normal and the left knee was stable. He recommended continued exercises and work hardening.

The Petitioner continued to work full-time light duty until February 22, 2011. Thereafter, the Petitioner worked half days until March 29, 2011, for which she was paid temporary partial disability. After March 29, 2011, her employment was terminated and she received temporary total disability benefits until September 23, 2012.

On March 8, 2011, Dr. Hanson noted only medial-sided pain. The Petitioner stated that she could not do 30 minutes on her feet and wanted to decrease it to 15 minutes per hour. She complained of pes bursa and pain with restricted patellar tracking. Her examination was otherwise negative, especially on the area of the lateral tibial plateau. Dr. Hanson stated that she was at maximum medical improvement in regard to the tibial plateau fracture and her complaints were from patellofemoral pain and pes bursitis.

On March 16, 2011, Dr. Zehr noted that the Petitioner had been through a number of treatment modalities but still had complaints. The Petitioner had difficulty with a straight leg raise and described an area of numbness over the distribution of the superficial peroneal nerve where she had TENS treatments. Dr. Zehr stated that it was difficult to understand why the Petitioner was progressing so slowly since Dr. Hanson's treatment and physical therapy was appropriate. He noted that the Petitioner was not improving as quickly as what normally would be expected.

On April 5, 2011, the Petitioner again treated with Dr. Hanson for pes bursitis and patellofemoral pain and he recommended an updated MRI. The Petitioner did not treat again until September 22, 2011, with Dr. Zehr. (Rx. 4) Dr. Zehr noticed indentations around her left knee, which he could not explain. He would have expected the fracture related symptoms to have resolved by that time, and noted that the Petitioner should follow-up with Dr. Hanson.

On October 28, 2011, the Petitioner was seen for an independent medical examination with Dr. Ritchie. (Rx. 1, Ex. 2) She complained of numbness down the lateral aspect of her leg, along with giving out. She complained of continued pain with a lot of everyday activities, including cooking and fishing. She complained of a lot of pain with work, even though she had not worked since March 29, 2011. The Petitioner could not lift her right leg off of the table more than six inches and had difficulty with straight leg raise. The Petitioner had no medial complaints with little lateral tenderness, along with full range of motion and normal alignment. Dr. Ritchie noted that the difficulty with straight leg raise was unusual and not related to her knee and her original MRI was negative. He thought that her symptoms were possibly from a peroneal nerve irritation, so he recommended an MRI arthrogram and an EMG/NCV to rule out possible peroneal neuritis.

On November 16, 2011, Dr. Hanson noted that Petitioner's pain was mostly anterior and with resisted tracking. She had good range of motion, strength, stability and was neurologically intact. On January 11, 2012, an EMG/NCV of the Petitioner's left leg was completely negative. Dr. Carmichael, the provider, gave specific attention to the peroneal nerve during the EMG study.

On January 12, 2012, an MR arthrogram of the knee suggested a small focal lineal tear of the superior articular surface of the outer one-third of the medial meniscus; along with mild chondromalacia of the medial compartment; and probable small enchondroma of the posterior proximal tibia.

On January 19, 2012, the Petitioner complained to Dr. Hanson of continued pain to the lateral tibial plateau along with medial pain and occasional mechanical symptoms. The Petitioner did not feel she could work full duty. Dr. Hanson explained to the Petitioner that arthroscopy would deal with the medial meniscus, but not the other pain and may make her better but not perfect. He continued her on permanent restrictions of ten minutes per hour on her feet.

On September 7, 2012, Dr. Ritchie reviewed the EMG and the MR arthrogram. He stated that the medial meniscus tear and chondromalacia were not present at the time of his IME. She had no medial complaints at the time of his IME. He stated that her unexplained findings for the straight leg were not anatomically consistent or explained through the EMG. He stated that the MR arthrogram did not show a through-through type of meniscal tear and he thought the MR arthrogram findings were not significant. He did not think that the medial meniscus was related to her accident and stated that no further treatment was necessary. He stated that she was at maximum medical improvement and could return to full duty work as before. On October 22, 2012, Dr. Ritchie gave another report indicating that as the physical examination and diagnostic tests could not explain the Petitioner's condition and the EMG and MRI were negative except for

early arthritis in the medial compartment, that she was at maximum medical improvement with no need for treatment and full return to work.

Dr. Mark Hanson testified that the original MRI showed no evidence of meniscal or ligament injury in the knee. He testified that the Petitioner's ankle issue had resolved and was not a problem as of January 23, 2013, the date of his testimony. Dr. Hanson testified that as of March 8, 2011, the Petitioner's x-rays looked good and her knee fracture was healed with no significant arthritis. (Px. 8, p. 15) He stated by that time her main problem was patellofemoral tracking and also pes bursitis. Dr. Hanson testified that he recommended a second MRI as a last resort to explain the Petitioner's continued complaints. He stated that by November 16, 2011, her bursal pain had resolved.

Dr. Hanson testified that the medial meniscus tear should cause very specific medial pain, but that Petitioner's presentation was not exactly classic. (Px. 8, p. 22) Regarding her work restrictions, he stated: "It is not even so much that we did not lift them, it looked like we kind of stopped talking about them, so I think we stopped addressing them really." (Px. 8, p. 24) Dr. Hanson testified that medial meniscal tears cause medial-sided pain and her sometime lack of medial pain may mean that the MRI is a false positive. (Px. 8, p. 27) Dr. Hanson stated that there is a possibility that an arthroscopy would show no tear to the medial meniscus and that an arthroscopy would not give much help to her chondromalacia and/or patellar tracking issues. (Px. 8, p. 30)

Dr. Hanson agreed that fractures usually heal within three months. (Px. 8, p. 39) He testified that the bursitis resolved after the injection on November 16, 2011 and is not part of her current problem. (Px. 8, p. 39) Dr. Hanson testified that a healed non-displaced fracture should not cause any pain. (Px. 8, p. 40) He testified that the Petitioner's bursitis and chondromalacia were the types of condition that can develop on their own without any trauma. (Px. 8, p. 37, 40) He stated that these were common in a woman around 50 years old. (Px. 8, p. 41) He stated that the Petitioner's tibial plateau fracture had healed by December 20, 2010. (Px. 8, p. 41)

Dr. Hanson stated that most people go back to full duty without restriction with this type of injury and that he anticipated she would have returned to regular duty in March of 2011. (Px. 8, p. 42) He stated that thereafter her complaints of not being able to stand on her feet were subjective. (Px. 8, p. 43)

Dr. Hanson testified that he could not state within a reasonable degree of medical certainty that the Petitioner's medial meniscus was a result of the accident on September 2, 2010. He also testified that it is possible that the MRI could be wrong and she does not even have a medial meniscus tear. (Px. 8, p. 50) Dr. Hanson testified that the Petitioner's subjective complaints were a large factor in her permanent restriction of no standing more than 15 minutes. (Px. 8, p. 51) The Petitioner is at MMI with no restrictions for the ankle sprain. (Px. 8, p. 54)

Dr. Ritchie testified that after his initial examination of the Petitioner, he recommended an EMG and MR arthrogram because of the Petitioner's strange complaints of numbness around the lateral side of her leg and around her peroneal nerve as well as her difficulty with straight leg raising. Dr. Ritchie was trying to rule out the possible peroneal neuritis or a possible lateral

cartilage/chondral injury. (Rx. 1, p. 14) In his supplemental report, Dr. Ritchie noted the negative EMG and what he described as a negative MR arthrogram. (Rx. 1, p. 15-16) Based on the negative EMG, negative MR arthrogram and negative clinical examination, he stated that the Petitioner could return to work at maximum medical improvement, and full duty with no further treatment as of his IME on October 28, 2011. (Rx. 1, p. 17-18) He explained that he recommended the MR arthrogram originally because he could not see any objective explanation for the Petitioner's complaints. (Rx. 1, p. 30)

Dr. Ritchie explained that the Petitioner's difficulty doing straight leg raise and the numbness down her leg were not anatomically explainable and an indication of possible symptom magnification pursuant to the Waddell's test. He explained that the MR arthrogram represented a pooling of the dye on the top of the meniscus as is normal in many people. He stated that if there was a tear, the dye would have gone through the meniscus space. This is equivalent to a false positive on the MR arthrogram. Dr. Ritchie testified that the Petitioner's complaints were subjective and could not be correlated with objective findings, clinical diagnostic tests or clinical examinations. (Rx. 1, p. 17) He stated that the original MRI showed a contusion and that condition had long resolved by the time he examined the Petitioner in October 2011.

Dr. Ritchie testified that the Petitioner's contusion to her knee was causally related to her original accident but resolved. He stated that the Petitioner's pes bursitis was not causally related to her original accident because there was no significant medial sided discomfort during the initial treatment and the pes bursitis was on the medial side of her knee. He stated that the tracking problem that the Petitioner alleged was not causally related to the original injury because there was no maltracking during her original treatment or at the time of the IME and that the fracture was not displaced significantly enough to cause any type of maltracking issues. He also stated that there was no objective evidence of maltracking on either MRI. Dr. Ritchie testified that any tracking problem the Petitioner had should have easily resolved during the long period of physical therapy and home exercise program that she had. (Rx. 1, p. 26)

Dr. Ritchie testified that a meniscus tear, even if present, is not causally related to the Petitioner's original accident. He agreed with Dr. Hanson that the Petitioner's symptoms and complaints do not fit a "classic" description of a meniscus tear. He stated that during her initial treatment and during his examination, there were no complaints of medial-sided pain which would rule out causation for the medial meniscus tear to her original injury. Finally, Dr. Ritchie testified that there was no causal connection to the Petitioner's chondromalacia because it was not present on the original MRI or her original treatment, due to her lack of medial-sided complaints. He stated that the chondromalacia which was identified by the very specific MR arthrogram, was identified as typical wear and tear suggestive of early arthritis.

Dr. Ritchie testified that the Petitioner was in no need of further surgery for this work condition or treatment after his examination on October 28, 2011. He stated that Dr. Hanson's permanent restriction of ten minutes per hour on her feet was ridiculous given the lack of objective findings and the severe limitation that this would put on the Petitioner's normal lifestyle.

In support of the Arbitrator's decision relating to (F) Is Petitioner's current condition of ill-being causally related to the injury?, the Arbitrator finds as follows:

The Petitioner's original accident of September 2, 2010 was compensable, but amounted to a contusion with suggestion of an occult /non-displaced hairline fracture of the left tibial plateau along with a left ankle sprain. She received appropriate treatment from Dr. Zehr and Dr. Hanson through the end of 2010.

The Arbitrator notes that the Petitioner's testimony regarding her complaints was severe contradicted by the records of Dr. Zehr, Dr. Hanson and Dr. Ritchie. Specifically, the Petitioner testified that she had medial and lateral sided pain from the time of her accident throughout her treatment to the present, which is directly contradicted by the medical records. There were several other instances in her testimony that are contradicted by the medical records. The Petitioner's complaints as reflected in the medical records, as opposed to her testimony are largely subjective, protracted and severe given her limited clinical, objective and diagnostic findings. The Arbitrator notes that the Petitioner's treatment was largely driven by her own subjective complaints. The Arbitrator finds that the Petitioner was less than persuasive.

The Arbitrator notes the Petitioner's negative diagnostic studies including the initial x-ray and MRI as well as subsequent x-rays and the EMG of her left leg. By the end of 2010, the Petitioner's complaints changed from the lateral side of her left knee to the medial side. As early as November 2, 2010, Dr. Hanson was anticipating the Petitioner's return to regular duty. On January 17, 2011, Dr. Hanson anticipated return to regular duty in one month. Around that time, the Petitioner stated she was 85% better but told her doctors that she could not be on her feet even 30 minutes per hour. This severe complaint is not supported by her diagnostic tests or other objective medical records.

Both Dr. Hanson and Dr. Zehr agreed that the tibial plateau fracture was resolved by January 18, 2011. Dr. Ritchie ordered an EMG and MR arthrogram based upon the Petitioner's irregular and subjective complaints. He testified that, after reviewing these tests, the Petitioner could have returned to work without restrictions as of his IME on October 28, 2011. He stated that she was at maximum medical improvement at that point with no need for further treatment and that the medial side complaints to her knee were not related to the original accident.

Based on the Petitioner's testimony and review of the medical records, the Arbitrator accepts the opinion of Dr. Ritchie. The Arbitrator finds that the Petitioner reached maximum medical improvement by October 28, 2011 with no need for further treatment or work restrictions. The Arbitrator finds that the Petitioner's knee condition and treatment after October 28, 2011, is not causally related to her accident of September 2, 2010, since those conditions were located on the opposite side of her knee from the fracture.

In support of the Arbitrator's decision relating to (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?, the Arbitrator finds as follows:

Based on the above findings, the Arbitrator finds that all treatment after October 28, 2011 is not causally related to the original accident. The Arbitrator further finds that the Respondent has paid for all medical treatment prior to October 28, 2011. Therefore, the Petitioner's claim for additional medical benefits is hereby denied.

In support of the Arbitrator's decision relating to (K): What temporary benefits are in dispute?, the Arbitrator finds as follows:

Based on the above findings, the Arbitrator finds that any temporary total disability after October 28, 2011 is not causally related to the Petitioner's original accident. The Arbitrator bases his report on the opinion and reports of Dr. Ritchie. Therefore, the Petitioner's claim for temporary total disability benefits after October 28, 2011 is hereby denied.

In support of the Arbitrator's decision relating to (L): What is the nature and extent of the injury?, the Arbitrator finds as follows:

The Arbitrator finds that as a result of an accidental injury on September 2, 2010, the Petitioner sustained permanent partial disability to the extent of 25% loss of use of the left leg. This finding is based on the diagnostic evidence of a fracture of the lateral tibial plateau .

In support of the Arbitrator's decision relating to (M): Should penalties or fees be imposed upon Respondent?, the Arbitrator finds as follows:

The Arbitrator finds that as a result of the Petitioner's initial injury, the Respondent accommodated her work restrictions. In February of 2011, the Respondent complied with the Petitioner's time restrictions and provided temporary partial disability benefits until March 29, 2011. After March 29, 2011, the Respondent paid temporary total disability benefits until September 23, 2012. The Respondent terminated TTD benefits based not only on the opinion of Dr. Ritchie, dating to October 28, 2011, but also on additional diagnostic studies including an EMG and MR arthrogram.

Given the facts of this case, the Arbitrator finds that the Respondent's reliance upon the opinion of Dr. Ritchie in conjunction with the negative EMG study and MR arthrogram findings, was reasonable. The Arbitrator hereby denies the Petitioner's petition for penalties in this matter.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DONALD WOLFSON,

Petitioner,

14IWCC0438

vs.

NO: 12 WC 16856

SOLAR WIND USA, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability (TTD), medical, and penalties and being advised of the facts and applicable law, affirms, adopts and corrects 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 Commission corrects the Decision of the Arbitrator and finds that the Petitioner's TTD rate is \$961.53, not \$962.01. All else if affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 6, 2013 is hereby affirmed, adopted and corrected as stated above.

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

12 WC 16856

Page 2

without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

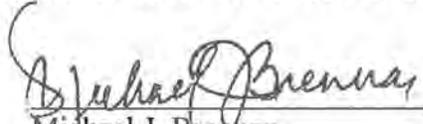
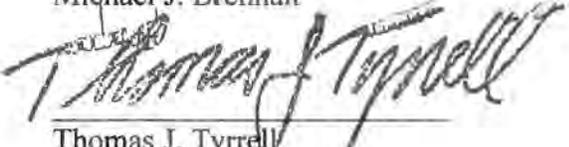
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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

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

DATED: JUN 06 2014

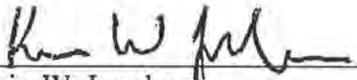
MJB/tm
O: 4-8-14
052


Michael J. Brennan
Thomas J. Tyrrell

Dissent

I respectfully dissent. Section 11 of the Illinois Workers Compensation Act states “No compensation shall be payable if (i) the employee’s intoxication is the proximate cause of the employee’s accidental injury or (ii) at the time the employee incurred the accidental injury, the employee was so intoxicated that the intoxication constituted a departure from the employment.” 820 ILCS 305/11. Section 11 further states that ... “If there is any evidence of impairment due to the unlawful or unauthorized use of (1) cannabis as defined by the Cannabis Control Act, (2) a controlled substance listed in the Illinois Controlled Substances Act, or (3) an intoxicating compound listed in the use of Intoxicating Compounds Act or if the employee refuses to submit to testing of blood, breath, or urine, then there shall be a rebuttable presumption that the employee was intoxicated and that the intoxication was the proximate cause of the employee’s injury. The employee may overcome the rebuttable presumption by the preponderance of the admissible evidence that the intoxication was not the sole proximate cause or proximate cause of the accidental injuries.” 820 ILCS 305/11. I find that Petitioner’s actions created a rebuttable presumption that he was intoxicated by marijuana at the time of the accident. The Petitioner tested positive for marijuana in a respondent mandated post accident drug screening. This screening ultimately took place the day following the accident. The Petitioner by having no communication with the respondent on the April 10, 2012 accident date effectively and constructively refused to submit to testing. When viewed in its entirety the Petitioner’s testimony is not persuasive and raises many red flags as to its credibility. Common sense should not be

abandoned. The Petitioner testified to increasing pain levels such as he was afraid to drive himself home. Faced with this Petitioner does not seek out a clinic or ER but rather leaves work, goes home and then encourages a MD who is also a lifelong friend to make a house call. During this examination the Petitioner seeks a "medical reassurance" to self medicate with Marijuana. The medical visit concluded Petitioner is able to obtain and smoke cannabis shortly after the doctor's departure and before his inevitable drug screening. The Petitioner's explanation for failing a post accident screening is not credible and as such fails to overcome the presumption of intoxication. The arbitrator's finding of compensability should be overturned.


Kevin W. Lamborn

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

14IWCC0438

WOLFSON, DONALD

Employee/Petitioner

Case# 12WC016856

SOLAR WIND USA LLC

Employer/Respondent

On 6/3/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

0206 GAINES & GAINES
GEORGE L GAINES
39 S LASALLE ST SUITE 1215
CHICAGO, IL 60603

0766 HENNESSY & ROACH PC
QUINN M BRENNAN
140 S DEARBORN 7TH FL
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
 COUNTY OF Cook)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION
 19(b)

Donald Wolfson

Employee/Petitioner

Case # 12 WC 16856

v.

Consolidated cases: _____

Solar Wind USA, LLC

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Deborah L. Simpson**, Arbitrator of the Commission, in the city of **Chicago**, on **May 7, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

14IWCC0438

FINDINGS

On the date of accident, **April 10, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did* 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 **\$74,999.60**; the average weekly wage was **\$1442.30**.

On the date of accident, Petitioner was **60** years of age, *married* with **0** dependent children.

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

ORDER

Respondent shall pay the Petitioner Temporary Total Disability benefits of \$962.01/week for 46 6/7 weeks, from 06/13/2012 through 05/07/2013, which is the period of temporary total disability for which compensation is payable.

The Respondent shall pay the Petitioner compensation that has accrued from 6/13/2012 through 5/7/2013, and shall pay the remainder of the award, if any, in weekly payments.

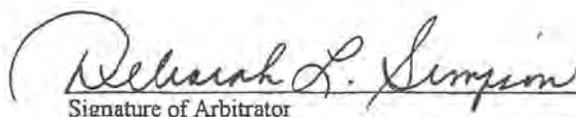
The Respondent shall pay the further sum of \$145,201.67, subject to the fee schedule for necessary medical services as provided in section 8(a) of the Act.

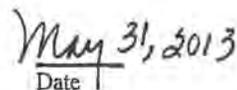
The Petitioner's petition for penalties and fees is denied.

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


Date

JUN -3 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Donald Wolfson,)	
)	
Petitioner,)	
)	
vs.	)	No. 12 WC 16856
)	
Solar Wind USA,)	
)	
Respondent.)	
)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on April 10, 2012 the Petitioner and the Respondent were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer. They further agree that the Petitioner gave the Respondent notice of an accident that he alleges occurred on that date within the time limits stated in the Act.

At issue in this hearing is as follows: (1) Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent; (2) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure; (3) Were the medical services that were provided to Petitioner reasonable and necessary; (4) Is the Petitioner entitled to any prospective medical care; (5) Is Petitioner entitled to TTD; and (6) Should penalties or fees be imposed upon the Respondent.

STATEMENT OF FACTS

Petitioner testified that he is 60 years old and that he previously worked as a general manager for Respondent, a start-up company, since late 2009, focusing on evaluating the market for products. The position that he held consisted of duties such as the development of new products, soliciting partners, providing hands-on personal service to customers and managing the budget. Petitioner testified further that he was working for the Respondent on April 10, 2012, when he fell while carrying a solar panel from the building to the car of a client. When he fell he managed not to break the solar panel, however he injured his knees and his elbows is so doing. He testified that his employment had been terminated because he had a positive drug screen after the accident on April 10, 2012.

Both Petitioner and Robert Belich, an agent of Sustainable Strategies, a customer of Respondent and an eye-witness to the accident, described the accident. On April 10, 2012, between 10 and 11 o'clock am, Petitioner was carrying a solar panel that Mr. Belich was borrowing for a display out to Mr. Belich's car. The solar panel was approximately three feet wide, by four and one-half feet long. While walking out to the car, Petitioner failed to see, or realize that he had reached the curb and lost his balance when stepping off the same, falling to the ground. As he fell, Petitioner instinctively raised the solar panel over his head so that he did not land on glass, breaking it and thereby potentially cutting himself on the broken glass. Petitioner landed on his knees and on his elbows. Petitioner cried out upon falling, his body taking the full brunt of the fall. The panel was undamaged, as Petitioner by swinging it above his head while falling did, in fact protect it.

After about five minutes of lying on the ground, Petitioner and Mr. Belich walked into Respondent's office with Belich carrying the panel. Don Anderson, an engineer who also worked for Respondent, saw Petitioner and Belich in the office. Anderson asked Petitioner what happened.

Petitioner denied having ingested marijuana in any way before the accident, and/or being under the influence thereof, at the time of the accident. Petitioner did admit to using marijuana in 2009 after knee replacement surgery, so as to avoid the need to use medically-prescribed narcotic drugs and so as to control elevated blood pressure resulting from the replacement procedure.

Mr. Belich testified that Petitioner did not appear to be under the influence of any chemical substance, including marijuana, on the date of, and at the time of, the accident. Nor did he ever see Petitioner under such influence on any of the twenty or so occasions, spanning the previous three years that they had worked together. That work consisted of meetings with mutual clients and suppliers and in the field installing equipment. Mr. Belich testified that he took the undamaged solar pane from the Petitioner and placed it near his car. He then accompanied Petitioner as he walked back into Respondent's office. Mr. Belich stated that Petitioner went in to the restroom and cleaned himself up, before Mr. Belich left the office; he said Petitioner was obviously in a lot of pain. During the time that Mr. Belich was in the office with the Petitioner he did not notice the Petitioner make any phone calls.

Petitioner testified that he did not notice that his elbows were hurt or bleeding until Mr. Belich pointed it out to him. He was conscious of pain in his knees and was very concerned about his knees and what damage he might have done to them since he had just really healed after having had the knee replacement surgery in 2009.

Later that morning, Petitioner left two phone messages for Salvadore Jimenez, a human resources worker for Respondent, but received no call back. Petitioner was attempting to notify human resources that he had been injured on the job. Mr. Jimenez did not return the Petitioner's

calls at the time. Petitioner noticed his body tightening up. He left for home at about 1 pm. He had been bleeding through his pants at both knees, and had lacerations on them in addition to the injuries to his elbows.

Petitioner called Dr. Murray Scheinman, M.D., an internist, upon returning home. Dr. Scheinman testified that Petitioner is both a patient and friend, stating that they had been friends for 50 years. He made a 'house call' to Petitioner that evening. He took a history from the Petitioner, was informed of the accident and resulting pain in the right shoulder. (P. Ex. 1, p. 3) A physical examination was conducted. He recommended an MRI of the right shoulder and prescribed narcotic medication, as he found Petitioner in extreme pain, agitation and abnormally elevated blood pressure due to the pain. Petitioner has a family history of heart disease. Petitioner was reluctant to take the prescribed Vicodin and Hydrocodone due to concerns with physical withdrawal he had experienced with such medications after unrelated knee replacement surgery. Petitioner told Dr. Scheinman he was considering using marijuana for these reasons. Dr. Scheinman explained that, although he could not recommend it, he had no problem with Petitioner's smoking marijuana as long as he did not drive. He saw no evidence of Petitioner being under the influence of marijuana that day, or having smoked or ingested marijuana prior to, or during, this house call visit. Later that evening, Petitioner called a friend who delivered marijuana to Petitioner, and he smoked it at home alone that evening.

Curiously, neither the Petitioner nor Dr. Scheinman could remember what time this visit took place, what room of the house the examination occurred in or how long the examination took to complete.

The next day, Petitioner attended a conference on behalf of Respondent. He noticed that he could not shake hands with people because of right shoulder pain. Later that day, Mr. Jimenez spoke with Petitioner. He directed Petitioner to Respondent's Concentra Clinic for examination and a drug test. Before complying with that examination, Petitioner told Mr. Jimenez that he would fail the impending drug test, as he smoked marijuana after the injury. At the clinic, Petitioner was found to have shoulder pain which limited the examination. (P. Ex. 2, p.4) Petitioner submitted to a test later that day, April 11, 2012, which was positive for cannabis. (R. Ex. 1) By April 13, 2012, he was found to be very tender in the right shoulder and unable to abduct, flex or extend his right arm. (P. Ex. 1, p. 3)

Although Petitioner continued to work until April 21, 2012, he found it difficult to perform activities of daily living such as starting and driving his car and holding a hand rail when using stairs, as well as working. The right shoulder got progressively worse. An MRI of the right shoulder on April 27, 2012, revealed injury to the rotator cuff, including a full thickness tear of the supraspinatus tendon with tendon retraction from the distal insertion and tendinopathy of the infraspinatus tendon. Findings in the labrum and capsule were as follows: the long head of the biceps tendon was subluxed anteromedially out of the bicipital groove and was located adjacent to the anterior labrum. (P. Ex. 1, p. 8 & 9)

On May 1, 2012, Petitioner was examined by Dr. Craig Westin. In his report, Dr. Westin recounted the injury of 04/10, noting that surgery was likely to be necessary, but suggesting a course of physical therapy with RIC. Petitioner was unable to raise his arm. (P. Ex. 3, p.12) There was no prior history of trouble with the shoulder. Petitioner testified that he was concerned with the use of prescribed narcotics, and that he tends to use them sparingly. He testified that his sleep was interrupted due to the pain and other symptoms he experienced with his shoulder. Significant loss of motion, soreness and weakness were noted.

On May 31, 2012, Dr. Westin noted that Petitioner had failed to respond to interim care to the right shoulder, had pain with abduction of the left shoulder and exhibited bilateral pain and tenderness in the anterior tibial plateau--all of which were injured in the fall. Surgery to the right shoulder was to be authorized "at the first available date," which resulted "of his work-related accident."

On June 13, 2012, Dr Westin performed a right shoulder arthroscopy, rotator cuff repair, biceps tenodesis, acromioclavicular resection and subacromial decompression-acromioplasty. Findings during surgery included: 1) the biceps tendon had subluxed anteriorly because of the subscapularis tear; 2) a complete rotator cuff tear; and 3) significant biceps tendon damage. (P. Ex. 3, 3 & 4)

Through the summer of 2012, Petitioner progressed well with therapy at Athletico. He treated there at the direction of Dr. Westin. (P. Ex. 5, p.5&7) However, progress was slow. (P. Ex. 5, p.3)

On June 21, 2012, the Petitioner saw Dr. Westin for follow-up. It was eight days after surgery and the medical notes indicate that there were a couple of incidents in the last week, one trying to rescue his dog that had stopped breathing, the other assisting a deliveryman who was trying to deliver a chair to his house. Petitioner did not feel anything pop when he tried to do either of these things which was noted to be fortunate. The June 27, 2012, note from the physical therapist states (P. Ex. 12) he had been in a sling for the first two weeks after surgery during which time he had two incidents where he moved his right upper extremity one involving his dog being unconscious and the other moving a piece of furniture into the house. The notes further state that Petitioner did his best he could to use the left upper extremity as a mover and the right upper extremity as a stabilizer so as not to cause any damage to the rotator cuff.

When Petitioner was questioned about these incidents the Petitioner testified that he had to do CPR on one of his dogs during this time period, but denied he reinjured his shoulder performing CPR. Petitioner explained that he held his dog's head with his right hand at waist level when administering CPR to the animal. When questioned about helping a deliveryman with some furniture that was being delivered shortly after the surgery Petitioner explained that he did not use and could not use his right arm, because it was immobilized shortly after surgery and at the time of the furniture delivery. Petitioner testified that based upon conversations he had he believed that his excessive coughing from throat irritation resulting from a tube inserted into his throat during the June 2012 surgery could account for setbacks in recovery.

On July 25, 2012, there is a note in the physical therapy records that the Petitioner was lifting a bag of charcoal with his left arm and stabilizing with his right. He noticed an increase in pain to his anterior shoulder after this episode. He reported that the pain was severe enough that he had to take painkillers. (P. Ex. 12)

On August 6, 2012, the physical therapy notes indicate that Petitioner had to repair the fence in his yard over the weekend. He denied using the right upper extremity at all during the project. He claimed that he had back pain as result of the activity. (P. Ex. 12)

Nevertheless, as of August 8, 2013, the prognosis was excellent. (P. Ex. 5, p.13)

On Sept. 7, 2012 Dr. Westin noted that an MRI taken two days prior revealed a large re-tear of the right rotator cuff which required repair. (P. Ex. 5, p.2) This revision was performed on Sept. 10, 2012, by Dr. Westin. (P. Ex.10, pp. 6 & 7) Very gradual follow-up therapy continued through the end of the year. Physical therapy was terminated before it was completed by coverage issues. Consequently the therapy ended around the time that Dr. Westin first permitted progressive resistive exercises to begin. (P. Ex 14, p.2; P. Ex 12, p.10)

Petitioner submitted to a Sec. 12 examination at the request of the Respondent with Dr. Kevin Walsh on Nov. 21, 2012. Dr. Walsh found that some of the anatomic findings on the imaging studies are pre-existing, specifically, the humeral head migration, thinning of the rotator cuff, degenerative changes at the AC joint and subluxation of the long head of the biceps. (R. Ex.6, p.5) Dr. Walsh noted that the injury itself did not cause all of the anatomical findings, that some of them were pre-existing. He noted that the Petitioner told Dr. Westin that two days after the first surgery he had a massive coughing episode and two days after that he attempted to resuscitate his dog. At this visit, the Petitioner informed Dr. Walsh that he had injured his left shoulder as well as his right shoulder, but he believed that the injury to the right shoulder masked the injury to the left shoulder. He concluded that "the described is atypical mechanism of injury for a rotator cuff tear," but also found that "the patient had pain and limited range of motion following the work episode." (R. Ex. p.6) Dr. Walsh believed that the incident with the dog was a violation of the immobilization and certainly could have contributed to the recurrent tear. (R. Ex. 6)

Dr. Westin read Dr. Walsh's report and was of the opinion that, although there was preexisting thinning of the rotator cuff, there was marked deterioration in function of the shoulder after the acute on-the-job injury. He cited the fact that Petitioner could not raise the arm after the fall as he had been able to do before the fall as sufficient proof of a significant "deterioration or permanent aggravation." Dr. Westin also explained that the mechanism of injury was "certainly sufficient to injure his rotator cuff." Regarding Petitioner's attempt to rescue his dog and help a delivery man with moving furniture, Dr. Westin noted that these incidents took place when Petitioner was still in a sling, occurring a few days after the second surgery and with no complaints of increased pain or popping sensations. Last, Dr. Walsh believed that Petitioner fell not because of neuropathy to his knees from unrelated arthroplasties, but because his view of the curb and ground was blocked by the solar panel which he was carrying. (P. Ex. 14, p. 9 & 10)

On March 29, 2013, Dr. Westin found that the right shoulder was little improved. For example, Petitioner could not comb his hair with that arm, and active motion was poor. Left shoulder pain and tenderness was now a concern. He ordered another MRI of the right shoulder "to examine not only the integrity of the cuff but atrophy of the other muscles. Consideration is being made for latissimus dorsi transfer or even reverse shoulder arthroplasty." (P. Ex. 23) An MRI taken on April 9, 2013 revealed extensive disruption of the rotator cuff, subscapularis musculature and tendon, fragmentation of the superior labrum, probable disruption of the long head of the biceps tendon and anterior/superior migration of the humeral head in relation to the glenoid fossa. (P. Ex. 21) Thereafter, Petitioner was referred by Dr. Westin to Dr. Benjamin Goldberg who has advised another surgery to the right shoulder—a reverse arthroplasty. (P. Ex. 22) Despite Petitioner's continued inability to perform activities of daily living, and Dr. Westin's consistent findings of the ability to perform only very light duty work (P. Ex. 14, p.1), Petitioner is unsure whether he will proceed with the procedure.

Walter Snodell testified in this matter as well. On the date of accident, he was chairman of the board of Peerless. Peerless owned the Respondent company, Solar Wind, at the time of the accident. It was a subsidiary of Peerless. On that date, Snodell was the principle owner of Peerless. Snodell had worked with Petitioner for over two years at the time of the accident and never saw Petitioner intoxicated, both on or off the job. They saw each other socially as well, for a period of about twenty-five or thirty years. Petitioner was "best man" at Snodell's wedding. Snodell never saw Petitioner intoxicated or under the influence in any way during that time, to his knowledge Petitioner did not use drugs. He was surprised by the positive drug test as he had never known the Petitioner to use drugs.

Mr. Snodell testified that he had no day to day interaction with the Respondent company, Solar Wind, USA. Mr. Snodell was not at work the day that the Petitioner was injured, he was in Montana at the time. Mr. Snodell testified that Solar Wind, USA is no longer in business, that it has been discontinued by its parent company Peerless Industries.

Petitioner admitted that when he was hired by the Respondent he underwent a training process. He indicated that during that training process he was given a copy of the employee manual. He indicated that his copy was different in shape from the copy that the Respondent had and had marked as exhibit number 2. He agreed that there was language in the manual regarding drug screens but he did not recall exactly what they said.

Per Respondent's exhibit 2 the company drug screening policy is as follows:

Blood and/or urine samples or other medical tests may be taken and screened by a laboratory for the presence of drugs or alcohol: (a) where the Company has reason to believe that an employee may be under the influence of illegal drugs, alcohol or other controlled substances; or (b) whenever an individual is involved in an on the job accident or injury. (R. Ex. 2, p.9)

The relevant policy regarding work related accidents is as follows:

Injuries resulting from an accident on the work premises or incurred in connection with work are covered under the worker's compensation insurance plan carried by the company. This

plan is in accordance with state laws. Regardless of the nature or severity, all such injuries must be reported to your supervisor immediately. (R. Ex. 2, p. 26)

The company policy regarding use of or possession of drug or alcohol products on the premises is as follows:

Violations of our Standards of Conduct are very serious, and may result in disciplinary action up to an including termination. Violations include, but are not limited to . . . the use or possession of alcohol or illegal drugs on our premises or while conducting business for Respondent . . . (R. Ex. 2, p. 31)

Peg McNulty, the claims adjuster for Respondent, testified on behalf of the Respondent. She testified that she denied this claim solely because of the positive drug test, and that it was her decision to make. She testified that: 1) she was aware of no evidence that Petitioner had been under the influence of marijuana at the time of the accident; 2) she was aware of no evidence that Petitioner had smoked or in any way ingested marijuana just before the accident; 3) Petitioner told her of his use of marijuana in 2009 in connection with knee surgery, but that smoking marijuana is not Petitioner's "thing;" and 4) that Petitioner admitted to smoking marijuana only after returning home, after the accident, on the date of accident. The case was denied as compensable by the Respondent under Section 11, based upon a failed drug screening. (R. Ex. 5)

In September of 2011, the Illinois State legislature amended the language of Section 11 of the Illinois Worker's Compensation Act to include language that "No compensation shall be payable if (i) the employee's intoxication is the proximate cause of the employee's accidental injury or (ii) at the time the employee incurred the accidental injury, the employee was so intoxicated that the intoxication constituted a departure from the employment." 820 ILCS 305/11. Section 11 further states that "if at the time of the accidental injuries . . . there is any evidence of impairment due to the unlawful or unauthorized use of (1) cannabis as defined in the Cannabis Control Act, (2) a controlled substance listed in the Illinois Controlled Substances Act, or (3) an intoxicating compound listed in the Use of Intoxicating Compounds Act or if the employee refuses to submit to testing of blood, breath or urine, then there shall be a rebuttable presumption that the employee was intoxicated and that the intoxication was the proximate cause of the employee's injury." "The employee may overcome the rebuttable presumption by the preponderance of the admissible evidence that the intoxication was not the sole proximate cause or proximate cause of the accidental injuries." 820 ILCS 305/11

The Petitioner testified that he made three attempts to reach Mr. Jimenez on the date of the accident to inform him of the injury that had occurred. He testified further that Mr. Jimenez did not call him back until the next day. The company policy states that "Blood and/or urine samples may be taken and screened (b) whenever an individual is involved in an on the job accident or injury." The Petitioner presented himself to the company clinic upon direction of Mr. Jimenez, knowing that he had ingested marijuana the night before and that he would fail the drug test. Respondent has not proved that the Petitioner refused to submit to testing based upon the evidence presented at the hearing.

The Petitioner testified that he had not ingested marijuana for approximately 18 months prior to the accident on April 10, 2012. The Petitioner denied being under the influence of marijuana at the time of the accident and the testimony of Mr. Belick was that the Petitioner did not appear to be intoxicated at the time of the accident. Other than the positive drug screen the day after the accident, no evidence was presented to discredit this testimony. That testimony, coupled with both the Petitioner and Mr. Belick testifying that the size of the solar panel obstructed the vision of the Petitioner such that he could not see directly in front of him to notice that he had reached the curb, and the fact that the Petitioner had the presence of mind to realize as he was falling, that if he fell on the panel and it broke he could be seriously hurt causing him to raise it above his head and protect it from breaking clearly rebuts any presumption that the Petitioner was under the influence of cannabis at the time of the injury, or that his consumption of cannabis was such that he was so intoxicated as to cause a departure from employment.

CONCLUSIONS OF LAW

Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

There is no dispute that Petitioner fell as both he and Mr. Belick credibly testified. This evidence supports an accident arising out of and in the course of his employment with Respondent. Respondent's Dr. Walsh also acknowledged "the work episode." The accident issue only arises from Respondent's raising the intoxication defense.

Sec. 11 of the Act provides that no compensation shall be paid 1) if intoxication is the proximate cause of the injury or 2) the claimant was so intoxicated at the time of the injury that said intoxication was a departure from the employment. Here, neither fact pattern exists.

As to the first provision, it cannot be cogently argued that the fall Petitioner sustained was a natural, direct, uninterrupted consequence of intoxication, without which the injury would not have occurred. Even assuming Petitioner was under the influence on the date of accident, it cannot be argued that, but for said drug use, he would not have fallen. All the evidence points to Petitioner's holding a large object which blocked his view of a curb which interfered with his transporting the item, causing him to fall. Petitioner's testimony, the numerous accounts he gave of the accident to medical providers and others, including Respondent's Dr. Walsh, and the eye-witness testimony of Mr. Belick, support the following findings surrounding the accident—Petitioner's view of the curb was blocked by the large solar panel he was carrying, and his failure to negotiate that curb caused his fall.

Moreover, there is no evidence of Petitioner's being under the influence of any substances delineated in Sec. 11 of the Act at the time of the injury. Petitioner denied not only being under the influence, but having ingested marijuana for 18 months prior to the accident. There was no evidence refuting that testimony. Robert Belick had ample time to view, and work with, the Petitioner on the day of accident, and before the fall, to have a reliable, cogent opinion as to whether Petitioner was in an impaired state. He saw no such evidence. Nor did Petitioner's internist, Dr. Scheinman, see any signs of intoxication the evening of the day of the accident.

Even if one assumed, *arguendo*, that Petitioner was intoxicated at the time of the injury, the facts support a finding that the intoxication was not the sole proximate cause or proximate cause of the accidental injuries.

Also supportive of Petitioner's credibility is the lack of evidence to suggest that Petitioner avoided submitting to a drug test immediately after the accident, and on the date of that event. He did not immediately leave his place of employment after the fall, as would be expected if he was trying to avoid submitting to a drug test. Instead, he attempted to contact Salvadore Jimenez of the human resources department after the accident twice before leaving work to go home after the accident. The inference to be drawn is that Respondent would have requested a drug test at that time, Petitioner would have submitted to it and it would have proven negative. His calls were not returned that day by anyone, likely due to their attending a meeting.

As to part two of Sec. 11, involving a departure from the employment, there are no facts of record to support a finding that Petitioner was not so intoxicated at the time of the injury that said intoxication was a departure from employment. On the contrary, there is no evidence that Petitioner was intoxicated at all at the time of the accidental injury. The fact that the Petitioner had the presence of mind to realize as he was falling, that if he fell on the panel and it broke he could be seriously hurt causing him to raise it above his head and protect it from breaking clearly rebuts any presumption that the Petitioner was under the influence of cannabis at the time of the injury, or that his consumption of cannabis was such that he was so intoxicated as to cause a departure from employment.

Based on the above and on the record as a whole, the Arbitrator finds that an accident occurred that arose out of and in the course of Petitioner's employment by Respondent. Intoxication was not the proximate cause of the accidental injury. At the time of the injury, Petitioner was not so intoxicated that the intoxication constituted a departure from the employment. Admissible evidence of the concentration of cannabis in Petitioner's urine was considered. Assuming *arguendo* that said urine test constituted evidence of cannabis "at the time the employee incurred the accidental injury," and that there was a rebuttable presumption that he was intoxicated and that the intoxication was the proximate cause of the injury, the Petitioner has overcome the rebuttable presumption, by a preponderance of the admissible evidence, that the intoxication was the sole proximate cause or proximate cause of the accidental injury.

Is Petitioner's current condition of ill-being causally related to the injury?

All evidence, other than that generated by Respondent's Sec. 12 examiner, Dr. Kevin Walsh, supports a finding that Petitioner's current condition of ill-being is causally related to the injury. Petitioner had no complaint with or injuries to his right shoulder prior to the claimed injury. Nor is there any evidence to refute that testimony. His internist found "extreme" pain in the arm the day of the accident as well as elevated blood pressure which he attributed to said pain. He immediately recommended pain killers and an "imaging" of the shoulder.

Symptoms of the type one would expect with such an injury immediately began and progressed in an uninterrupted fashion. An MRI one week post-injury, and an operative

procedure to the shoulder eight weeks later, confirmed more than the expected pathology from the ageing process—a large, complete rotator cuff tear with significant biceps tendon damage. Dr. Walsh's IME focused on the pre-existing degenerative condition of this 60 year old man's shoulder, as well as what he cryptically termed an "atypical mechanism of injury," are unpersuasive. The surgeon's findings are more cogent and logical. The uneventful prior medical history, followed by this accident and its consequences, support Dr. Westin's findings with respect to this issue.

Mention is made of an aggravation of symptoms with activities at home involving the dog and a delivery man. These events cannot be considered to have broken the chain of causation between the original work-related injury from the accident of 04/10/2012 and the current condition, as: 1) Petitioner was already in a weakened condition due to the injury of April 10, 2012, having had surgery about one week prior to said activities; 2) there was no change in the care ordered and administered shortly after the home incidents; 3) there was no serious symptom of "popping," as noted by Dr. Westin; and 4) symptoms remained the same following the home incidents. See *Vogel v. Ill. Workers' Comp. Commission*, 354 Ill. App. 3d 780. Moreover, Petitioner continued to tolerate the therapy he underwent after these activities. Last, the subsequent procedure was referred to as a "revision," further suggesting no new accident.

The course of care that followed was what is expected with such an injury, outside of the fact that therapy was terminated prematurely due to coverage issues. Although slow progress was made, and yet another procedure is being considered, there is no evidence of incidents to which the condition can be attributed other than the accident of 04/10/2012.

Based on the above and on the record as a whole, the Arbitrator finds that Petitioner's condition of ill-being is causally related to the injury.

Were the medical services that were provided to Petitioner reasonable and necessary?

Having found for Petitioner on the issues of accident and causal connection, the Arbitrator hereby finds that the medical services which Petitioner received were reasonable and necessary, based on the facts elicited at trial and the treating medical records in evidence, to relieve or cure him of the effects of his work accident. Specifically, the fact that Dr. Westin found Petitioner capable of only very light work, and referred him for another surgical consultation in light of those findings, suggests a severe injury warranting the care given to the Petitioner.

The following bills are awarded with payment to be made pursuant to Sections 8(a) and 8.2 of the Act: Concentra Medical Centers, \$272.11; Illinois Bone & Joint, \$26,262.00; Rehabilitation institute of Chicago, \$748.00; Athletico, \$3,041.00; Dr Murray Scheinman, \$649.50; Louis Weiss Memorial hospital, \$106,605.32; Athletico, \$3,025.78; Athletico, \$3,791.32; out of pocket parking costs, \$126.00; out of pocket parking costs, \$12.00; Dr. Stephanie Rosania, \$362.00; medication, \$187.17; medication, \$119.47.

What temporary benefits are in dispute? TTD.

Petitioner claims entitlement to temporary total disability benefits from and including April 21, 2012 through May 7, 2013 representing 54 3/7 weeks. No such benefits were paid to Petitioner by Respondent. It is this Arbitrator's determination that the Petitioner's time off of work during this period was reasonable and necessary and causally related to the work injury.

Despite the significant medical findings indicated above, Petitioner worked light duty until he was discharged from employment for violating Respondent's substance use rule. He had major difficulty performing activities of daily living, including driving. He was under active medical care, including physical therapy, pre-operative testing, two shoulder surgeries, and/or recovering from said surgeries of June 13, 2012 and Sept. 19, 2012. He is currently undergoing assessment for a third surgical procedure. The foregoing has occurred on an ongoing basis since the date of accident and up to the date of hearing. The Petitioner presented evidence that he was taken off of work on June 13, 2012, (P. Ex. 6, p. 6). No evidence has been presented that he has been released and permitted to return to work.

Petitioner is entitled to TTD from June 13, 2012 through the date of hearing.

Should penalties and fees be imposed on the Respondent?

The Act is very specific as to the significance of a Petitioner's intoxication at the time of an accident. If an employee's intoxication is the proximate cause of his accidental injury, or at the time of the injury the employee was so intoxicated that said intoxication constituted a departure from employment, no compensation is payable.

The drug test was performed the day after the injury. There is no indication on the results as to whether the ingestion of the marijuana was recent or remote in time. Moreover there was no evidence offered regarding how much marijuana was ingested, how long it would stay in his system or whether the amount detected was a high concentration or a low one. The test was positive for the presence of marijuana. No evidence was presented as to how the amount of marijuana that was in the Petitioner's system would have affected him physically or mentally, by either party.

The evidence at trial was that the Petitioner was sober or alert enough to have the presence of mind to lift the solar panel over his head in an effort to prevent it from hitting the ground and shattering, which could have caused much more serious injuries to the Petitioner. Whether he ingested the marijuana before or after the accident at this point is not relevant since the Petitioner has presented enough evidence to rebut the presumption of his intoxication at the time of the incident.

Denial of this claim under these circumstances, without benefit of having heard the sworn testimony of the eye-witness to the accident as well as the Petitioner, is not unreasonable within the meaning of the Act.

The Arbitrator denies Petitioner's Petition for Fees and Penalties. The Arbitrator finds no evidence that Respondent's denial of benefits was intentional, arbitrary, vexatious or unreasonable. The Respondent's reliance upon Section 11 of the Act was not unreasonable, arbitrary or vexatious and shields Respondent from any assessment of penalties pursuant to Sections 19(k), 19(l) and or 16 of the Act.

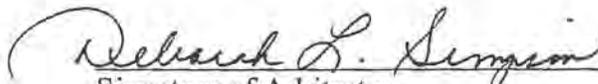
ORDER OF THE ARBITRATOR

The Respondent shall pay the Petitioner Temporary Total Disability benefits of \$962.01/week for 46 6/7 weeks, from 06/13/2012 through 05/07/2013, which is the period of temporary total disability for which compensation is payable.

The Respondent shall pay the Petitioner compensation that has accrued from 6/13/2012 through 5/7/2013, and shall pay the remainder of the award, if any, in weekly payments.

The Respondent shall pay the further sum of \$145,201.67, subject to the fee schedule for necessary medical services as provided in section 8(a) of the Act.

The Petitioner's request for fees and penalties is denied.



Signature of Arbitrator

May 31, 2013

Date

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert K. Wessell,
Petitioner,

14IWCC0439

vs.

NO: 11 WC 14797

Ameren,
Respondent.

DECISION AND OPINION ON REVIEW

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

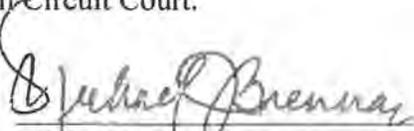
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 10, 2013 is hereby affirmed and adopted.

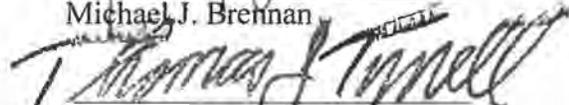
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

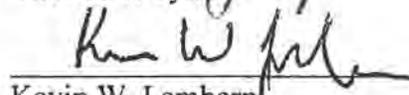
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 06 2014

MJB:bjg
0-6/2/2014
052


Michael J. Brennan


Thomas J. Tyrrell


Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0439

Case# 11WC014797

WESSELL, ROBERT

Employee/Petitioner

AMEREN

Employer/Respondent

On 12/10/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

1076 SL CHAPMAN LLC
ROBERT W BUTLER
330 N FOURTH ST SUITE 330
ST LLOUIS, MO 63102

1241 LEMP & ANTHONY PC
DONALD MURPHY
10805 SUNSET OFFICE DR #203
ST LOUIS, MO 63127

STATE OF ILLINOIS)
)SS.
 COUNTY OF Sangamon)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

Robert Wessell

Employee/Petitioner

v.

Ameren

Employer/Respondent

Case # 11 WC 14797

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 **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Springfield**, on **November 8, 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 _____

FINDINGS

On 2/17/10, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned \$64,480.00; the average weekly wage was \$1,240.00.

On the date of accident, Petitioner was 56 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 \$in full for TTD, \$ for TPD, \$ for maintenance, and \$ for other benefits, for a total credit of \$No liability for TTD .

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

ORDER

PETITIONER HAS NOT PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT HE SUSTAINED N ACCIDENTAL INJURY ARISING OUT OF HIS EMPLOYMENT. THE CLAIM IS DENIED.

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

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

D. D. Kelly
Signature of Arbitrator

Dec. 5, 2013
Date

DEC 10 2013

FINDINGS OF FACT

Petitioner testified that he was employed by Ameren as a combined water operator and auxiliary operator since 1990. He testified that throughout this time period his job duties were essentially the same.

During approximately 80% of the typical work day, Petitioner would perform inspection tasks. This job would require Petitioner to take readings on running equipment, make sure that there were no fires, check oil levels, and otherwise make sure that the equipment was operating properly. During this timeframe, Petitioner would also be on call in case a maintenance issue arose that required his assistance. Petitioner admitted that during the 80% of the time when he was performing inspection activities, he was not required to perform any hand intensive activities.

The remaining 20% of Petitioner's work involved some combination of turning valves, removing and replacing old breaker bars and cleaning out hoppers. He said that of the 20 %, he spent about half the time turning valves, a lesser time replacing breakers and about 15 minutes, twice a week, cleaning out the hoppers.

Petitioner would receive communications over his radio from a shift supervisor indicating that a piece of equipment required maintenance. He would then go to the office, meet with the shift supervisor, put on whatever safety equipment and clothing was necessary for the job, and travel to the location of the equipment to be serviced.

Petitioner testified as to specifics of the loosening and tightening the valves. When a maintenance representative asked to have a piece of equipment taken out of operations, Petitioner would need to turn off a valve, or valves, that supplied the equipment with pressure. The valves were typically 12-18" around and comparable to a steering wheel.

Most equipment that required service possessed a single valve, the remainder involved two valves. The valve would be turned off before service was provided to the equipment. Once the equipment was repaired (by someone other than Petitioner), the valve would be turned back on.

The valves could be turned off and on in one of three ways: turning the valve by hand, using a valve wrench, or by using a "cheater bar". Typically the valves would require Petitioner to use both hands on a wrench, turning the valves like a faucet. Both hands were used to open the valve, and also to close the valve to make sure it was sealed. The turning of the valve was the easiest when at points in the range of motion other than the seating.

It would typically take between 30 and 40 seconds to open a valve; it would take the same amount of time to close a valve. This time frame was accurate whether the valve could be turned by hand or was turned using a wrench.

Approximately one out of ten valve tasks required the use of a cheater bar. The cheater bar would be necessary only for the initial unseating or final seating of a particularly difficult valve.

Some valves were considerably harder to open. Approximately 2-3% of the time, the Petitioner worked with the difficult valves. Petitioner recalled one occasion where it took over an hour to close a water valve. On rare occasion, more than one person would be needed to turn off or on a valve.

Once the valves are turned off, Petitioner would return to the maintenance office and sign paperwork indicating that the job was done. Once the issue has been addressed by maintenance, Petitioner would be called back over to the equipment to turn the valve back on.

Petitioner also had to turn off and on breakers to specific pieces of equipment if those pieces required service. Petitioner would receive and respond to calls that required breaker work the same way as he would with a valve.

The breakers came in two sizes: 480 and 4160. Regarding the work on the 480 breakers, Petitioner testified that they would either require a handle on the front of the machine to be flipped, or a wrench to be inserted into a hole, with the wrench then turned to crank in or out the breaker. The electricity could then be disconnected.

When asked on direct examination about the amount of force required when working on 480 breakers, Petitioner testified that they were, "not too bad really, those are pretty easy." Typically it would take approximately 10 seconds to turn off a 480 breaker.

The 4160 breakers are much larger, designed for much larger equipment. Petitioner testified that a cranking bar would be used to rack in and out these large breakers. Petitioner testified that the cranking bars varied in length from a foot and a half long to between four and five feet long, with the longer bar providing more leverage.

Typically, it would take Petitioner between thirty seconds and a minute and a half to turn on or off a 4160 breaker.

Petitioner testified that cranking out the breakers on a 4160 machine was not difficult, so long as they were working properly. Petitioner recounted his troubles with "unit two". This unit required him to use much more force to open and close than did the others. This unit at one point required Petitioner to stand on the cranking bar to obtain the leverage necessary to connect or disconnect the service.

Finally, Petitioner testified that he would be required to clean out an economizer hopper. The economizer hopper is a large tank that captured ash that would later be converted to slag. The ash would sometimes cause the hopper to get clogged. When the hopper was clogged, Petitioner would use a large pole to break the debris free so that it would run through to the slag tanks.

Petitioner testified that the amount of time required for this activity varied. This was not a daily task and would be performed approximately twice per week. Sometimes he could eliminate the clog in ten minutes, while other times it may take half of a shift. It was quite rare that Petitioner would have to spend half of a day working on an economizer hopper; he estimated that it took that long only a couple of times per year. Typically, the issue with the hopper could be resolved in approximately 15 minutes.

Petitioner testified that he noticed numbness in his hands for about three to four years prior to February 17, 2010, when he was seen by Dr. Brown, a hand surgeon. He said that he noticed the symptoms at work when turning valves, and further that the symptoms lessened when he was away from the job.

According to the records of Dr. Brown, the Petitioner was actually seen on the above date concerning a ganglion cyst on his right wrist. During that visit, he also told Dr. Brown about his hand symptoms, which he said had been going on for a couple of years. He told the doctor that he used some large wrenches at work at times, but not on a regular or consistent basis. Dr. Brown noted that he was not diabetic or suffering from a thyroid disease. (PX 1)

Dr. Brown ordered electrical studies which were performed by Dr. Fortin on March 11, 2010. They revealed bilateral carpal tunnel syndrome, moderate in degree. (PX 2) Dr. Brown then prescribed surgeries, which were performed in May and June of 2010.

It was also established through deposition testimony, referred to later in this opinion, that the Petitioner had undergone electrical studies in 2004. Those studies, apparently done by Dr. Fortin, also showed moderate bilateral carpal tunnel syndrome. (PX 5, Ex. 3; RX 1, Ex. 2) The studies were not offered into evidence.

Petitioner reported significant improvements after his bilateral carpal tunnel surgeries performed by Dr. Brown. Since his surgeries his hands no longer fall asleep like they had before. Despite some temporary pain with specific activities, Petitioner testified that, "day to day they've been great." He also said that his grip strength had decreased, and that his hands would ache if he had a long day at work.

Dr. Michael Ralph performed an IME of Petitioner at the request of Petitioner's attorney on 11/30/11 and provided an opinion that Petitioner's bi-lateral carpal tunnel syndromes were related to his job duties.

Petitioner told Dr. Ralph that he had problems with his hands for a number of years, beginning around 2003. He said that they began when he was required to work with valves which were hard to turn. Dr. Ralph acknowledged that Petitioner's job was not constantly repetitious. Petitioner told Dr. Ralph that the symptoms in his hands would improve if he was off of work for a couple of days, and then return after he came back to work. (PX 5, p. 7-9; Ex. 2).

Dr. Ralph testified that gripping the valves and the tools used on the breakers was a causative factor in the development of his condition. (PX 5 at 10, 23) He felt the gripping activities were performed often enough, with enough force, to cause permanent changes shown on a nerve conduction study (PX 5, p. 10).

Counsel for Petitioner provided a hypothetical to Dr. Ralph to facilitate specifics on his opinion on causation (PX 5, p. 13). Following the hypothetical, Dr. Ralph testified that work activities such as those performed by Petitioner would be enough to cause or aggravate carpal tunnel syndrome (PX 5, p. 14).

Dr. Ralph did not know if Petitioner's gripping activities for a week would be all at once or spread out throughout the week; nor did it matter to him (PX 5, p.25). He was, prior to his testimony, provided with a report and accompanying video consisting of a job analysis performed by Apex at the Respondent's request. The report measured the force needed to grip the tools used by the Petitioner, along with the time actually spent gripping an object and the time of recovery. (RX 2) The video showed an individual performing the job duties of the Petitioner. (RX 3)

Dr. Ralph felt that the Apex information was "disingenuous and of no use at all" (PX 5, p. 16). He found fault with the photos in the report because they showed an employee using the cheater bar with only one hand (PX 5, p. 25). He also took exception to classifying Petitioner's job as "safe", though he did not particularly disagree with that classification (PX 5, p. 26).

He did say that he understood the Petitioner to be doing his provocative activities four to seven hours a week and he did not know, nor care, whether they were done all at once or spread out through the week. (PX 5 at 25) He basically testified that the fact that the Petitioner had performed his gripping activities for the Respondent since 1990 was important in his analysis on causation. (PX 5 at 11)

Citing no sources, Dr. Ralph testified that obesity may cause a person to be predisposed to getting carpal tunnel syndrome, but would not commit to whether or not obesity was a causative factor in the development of carpal tunnel syndrome (PX 5, p. 28-29)

Dr. Ralph felt that Petitioner had an excellent result from his surgeries, and found him to be "basically asymptomatic" with regards to his carpal tunnel syndromes (PX 5, p. 12). When asked to relay the complaints that Petitioner made to him that related to the carpal tunnels, Dr. Ralph simply stated, "None." (PX 5, p.18). Dr. Ralph did not recommend any permanent restrictions relating either to the carpal tunnel syndromes or the surgeries (PX 5, p.19).

He found that Petitioner continued to be symptomatic for an aggravation of degenerative arthritis in his right thumb, an aggravation that he associated with Petitioner's work activities (PX 5, p. 12).

On 10/11/10, Dr. Henry Ollinger examined Petitioner at the request of Respondent. Petitioner provided Dr. Ollinger with a detailed description of his job duties (RX 1, p. 10). Petitioner's statements to Dr. Ollinger were consistent with his trial testimony that 80% of his day was spent no hand intensive duties required. (RX 1, p. 10). Petitioner's description to Dr. Ollinger of the remaining 20% of his day is similar to what he described at trial. He described the valving and racking activities. He also described the work with the economizer hopper, telling Dr. Ollinger that he would work on the hopper, "every two to three weeks, for an hour or so" (RX 1, p. 11).

Dr. Ollinger described the importance of understanding with as much detail as possible the rates, forces, rest cycles, postures, vibrations, and temperature variations of a job when attempting to determine if that job would be associated with a repetitive motion injury (RX 1, p. 13). Dr. Ollinger felt that the information in the Apex report and video were consistent with the description of job duties provided to him by Petitioner (RX 1, p. 13).

Dr. Ollinger explained the importance of reports such as that prepared by Apex when evaluating a repetitive motion injury:

Q: And why are those reports and videos helpful to you?

A: Obviously, I take as good a history as I can from the patient in my office but it's almost impossible for a patient to produce as much detail as what can come in such a report as what the Apex job analysis did. The jobs that were listed on the Apex report were the same jobs that he listed for me. Apex then observed an employee doing those activities and did assessments for those physical risks that we just talked about, which is forces, rates of repetitions, rest cycles, otherwise known as duration factors, postures, and vibrations. They put numerical data in place, so I can understand how much -- when any of those risk factors might be in play in my analysis. And so it's very useful, because of the extent of detail provided" (RX 1, p. 14).

After considering the activities required by Petitioner's job, based upon Petitioner's own description of those activities and the information provided by Apex, Dr. Ollinger opined that the Petitioner's job duties were not a causative factor in the development of his condition. (RX 1 at 15)

Dr. Ollinger did not feel that any one particular job that Petitioner performed, nor all of Petitioner's job activities in the aggregate, were performed on a frequent enough basis to cause a repetitive motion injury (RX 1, p. 16). Similarly, he did not feel that the fact that Petitioner had performed these types of job activities for 20 years was particularly relevant to the equation. He did not feel that any of Petitioner's job duties constituted an "injurious type activity" (RX 1, p. 17). If the frequency of the activities were not enough to cause them to be injurious, it would not matter if he had worked the job for 20 years or one year, the activities would still be incapable of causing harm (RX 1, p. 17).

Dr. Ollinger also looked to the results of nerve conduction studies taken in 2004 and in 2010, comparing same to determine if the results of the tests changed between those periods of time. Dr. Ollinger explained the similarities in the studies and the relevance of those similarities to him:

“So there is no evidence, on an objective basis, of the data of two nerve conduction studies, one done in 2004 and one done in 2010, that there was any deterioration of the condition. And therefore, I can say that if one is to speculate or propose that work was an aggravation, then I don't believe it was, for the reasons I stated. There is no objective basis that it actually did aggravate anything, because the nerve conduction studies are the same six years apart” (RX 1, p.19-20).

Dr. Ollinger also opined that the Petitioner's obesity was a risk factor in the development of carpal tunnel. (RX 1 at 23)

Conclusions of Law

The weight of the evidence in this case supports the finding that Petitioner's job duties with Respondent did not cause or aggravate his carpal tunnel syndromes.

When Petitioner was required to use his hands, he was not required to perform the same tasks on a repetitive basis. Rather, he would open and close a single valve, with much down time in between. Both Dr. Ollinger and the Apex study refer to the importance of rest or down time to the issue of whether the Petitioner's work was a risk factor.

Dr. Ollinger is found to be persuasive in this case as he had at his disposal far more information about Petitioner's job duties than did Dr. Ralph. The job description report and accompanying video were relevant information provided to Dr. Ollinger that established the repetitions and forces required by Petitioner's job tasks. Dr. Ollinger reasonably relied upon this information in determining that Petitioner's job activities were not repetitive or forceful enough to cause or aggravate his carpal tunnel syndrome. Dr. Ralph's disdain for job analysis inquiries is unreasonable and greatly reduces the credibility of his opinions when he chooses to ignore this type of relevant information.

The information in the Apex job analysis is compatible with that provided by Petitioner at trial. His testimony established that the only hand intensive jobs that he performed were valving, racking, and working with the hopper. Petitioner acknowledged that he was not required to perform any of these tasks on an even daily basis. Additionally, he established that when he did, typically the tasks were quite simple and required little time or effort. Petitioner testified that it usually took him 30-40 seconds to turn on or off a valve. Only one in ten valves required a use of a cheater bar to get them started or finished, and only 2-3 % were especially troublesome.

The typical racking of a breaker would also not require much time. If a breaker was a 480, it would usually take about 10 seconds to rack the breaker. If the machine being serviced had a 4160 breaker, the breaker was much larger and typically took between 30 seconds and one minute thirty seconds to rack.

With regards to poking the economizer hoppers to break loose clogs, the fact do not support that this task was required on a repetitive basis. Petitioner told Dr. Ollinger that he would work on the hoppers every 2-3 weeks for an hour at a time. Petitioner testified that he would have to unclog the hopper approximately twice per week, spending usually around 15 minutes per occasion on that task.

Most important to the Arbitrator is the fact that the electrical studies done six years apart showed the same degree of the condition. If the Petitioner's work was a factor, as Dr. Ollinger explained, the studies would show some deterioration. (RX 1 at 19)

Petitioner has failed to prove by a preponderance of the evidence that he sustained an accidental injury arising out of his employment. Accordingly, the claim is denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Travis Richey,
Petitioner,

14IWCC0440

vs.

NO: 12 WC 28980

State of Illinois, Department of Transportation,
Respondent.

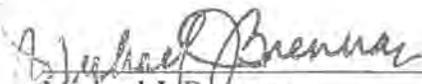
DECISION AND OPINION ON REVIEW

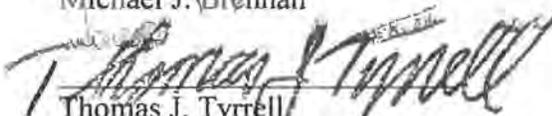
Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, and temporary total disability, and being advised of the facts and law, affirms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

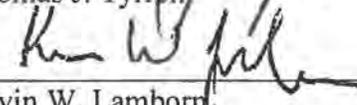
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 20, 2013 is hereby affirmed and adopted.

DATED: **JUN 06 2014**

MJB:bjg
0-6/3/2014
052


Michael J. Brennan


Thomas J. Tyrrell


Kevin W. Lamborn

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

14IWCC0440

Case# 12WC028980

RICHEY, TRAVIS

Employee/Petitioner

IL DEPT OF TRANSPORTATION

Employer/Respondent

On 12/20/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

4463 GALANTI LAW OFFICES
DAVID GALANTI
PO BOX 99
EAST ALTON, IL 62024

1430 CMS BUREAU OF RISK MGMT
WORKERS COMPENSATION MANAGER
PO BOX 19208
SPRINGFIELD, IL 62794-9208

3291 ASSISTANT ATTORNEY GENERAL
DIANA E WISE
201 W POINTE DR SUITE 7
BELLEVILLE, IL 62226

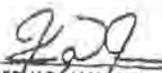
0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

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

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

DEC 20 2013




KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Travis Richey
Employee/Petitioner

Case # 12 WC 028980

v.

Consolidated cases: _____

Illinois Department of Transportation
Employer Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Herrin**, on **10/9/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **8/13/12**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of the alleged accident *was* given to Respondent.

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

In the year preceding the injury, Petitioner earned **\$71,012**; the average weekly wage was **\$1,365.62**.

On the date of accident, Petitioner was **39** years of age, *married* with **3** dependent children.

Respondent *is not liable for* 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 \$ _____ under Section 8(j) of the Act.

ORDER

For reasons set forth in the attached decision, benefits under the Act are denied.

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

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


Signature of Arbitrator

Dec. 18, 2013
Date

DEC 20 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TRAVIS RICHEY,)	
)	
Petitioner,)	
)	
vs.	)	No. 12 WC 28980
)	
ILLINOIS DEPARTMENT OF TRANSPORTATION,)	
)	
Respondent.)	

ADDENDUM TO ARBITRATION DECISION

This matter was heard pursuant to Sections 8(a) and 19(b) of the Act.

STATEMENT OF FACTS

The petitioner, Travis Richey, now 40 years old, is a nine-year employee of the Department of Transportation, employed as a highway maintainer. On August 13, 2012, he was driving a large tractor transporting a lawnmower unit across an intersection, moving at an estimated 17 miles per hour. He alleges he ran over bumps or ruts in the road, three to four inches above pavement grade, which bounced and bucked the tractor. The tractor tires were five feet high. A photograph of that make and model of tractor was introduced as RX14. A photograph of the tractor's interior, reflecting an industrial shock absorber below the driver's seat, was introduced as RX15. The respondent had a field technician, Jason Bollman, take photographs of the area; Mr. Bollman testified that the photographs were taken two to three days after the alleged incident, and these were introduced as RX16.

The petitioner asserts a low back injury as a result of this incident. The petitioner admitted he had several prior workers' compensation claims which had settled or been resolved; corresponding references to bilateral carpal tunnel syndrome and bilateral shoulder surgeries are present in the medical records. The petitioner further acknowledged he had another workers' compensation claim for a knee injury that was pending at the time of the instant hearing relative to the low back.

The medical records demonstrate that the petitioner treated for a low back injury on April 7, 2006, when he presented to the Gateway Regional Emergency Room for low back spasm after he was pulling on the starter cord of his home mower that day. He was treated with medication at that time. RX6.

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On March 3, 2008, the petitioner presented to Dr. Eavenson, a chiropractor. It was noted that the petitioner "returns to the office" but no earlier records are present. The petitioner reported low back pain after working on drains at his house. X-rays showed disk degeneration and joint narrowing at L5-S1. He was assessed with a low back strain and lumbar facet syndrome and prescribed chiropractic care and physical therapy. RX4.

On March 4 and 5, 2008, the petitioner complained of severe low back pain to Dr. Eavenson. On March 5, an MRI of the lumbar spine found retrolisthesis with a disk protrusion and dessication at L5-S1 and a disk bulge at L4-5. See RX4. Dr. Eavenson discussed the findings with the petitioner later that week; on March 10, 2008, the petitioner reported some improvement with muscle relaxers and adjustments. He did not follow up with Dr. Eavenson further at that time. RX4.

On April 8, 2009, the petitioner contacted his primary care provider's office, requesting a letter related to his low back treatment in order to secure compensation from the VA. He required documentation that he is or was treated for back pain. Dr. Harmon's office provided him a copy of the MRI and prepared a letter for the petitioner, indicating that the petitioner had a chronic back condition involving both degenerative disk disease and sciatica for which he was taking pain medication. RX1. On June 29, 2009, the petitioner requested Dr. Harmon prepare a letter that the petitioner's military service accelerated or caused the degenerative disk disease, and noting that the petitioner was involved in an automobile accident while in the military. RX1.

On July 24, 2009, he reported a back strain and muscle spasm to Dr. Harmon. He was prescribed Flexeril and Vicodin. RX1.

On October 14, 2009, he called Dr. Harmon requesting a refill of Vicodin for back pain. This was granted. RX1.

On April 22, 2010, the petitioner presented to Dr. Eavenson with complaints of low back pain after jumping off the back of a truck. Diagnoses of lumbar strain and lumbar facet syndrome were again made. The petitioner was prescribed chiropractic care, therapy, and work restrictions. RX4.

On October 25, 2010, the petitioner went to Gateway Memorial Emergency Room for unrelated causes; the medical history noted diagnoses of degenerative disk disease from L4-S1 along with bilateral carpal tunnel syndrome, a pending surgery to the right knee, and rotator cuff surgeries in 2006 and 2010. RX6.

On February 25, 2011, the petitioner was taken to Gateway Regional E.R. via ambulance for chronic lower back pain which had worsened that morning. He reported having done manual labor the day before after returning to work following his carpal tunnel surgeries. He was noted to have a history of degenerative disk disease and was taking Vicodin, Flexeril and Xanax. He was given Toradol at the ER. RX6.

On February 28, 2011, the petitioner called Dr. Harmon and reported the visit to the ER for back pain and that he could not move due to the spasms and pain. He requested an off work slip at that point, which was given. He did not follow up with Dr. Harmon for that issue at that point. RX1.

On March 2, 2012, the petitioner saw Dr. Harmon because he had some issues at work with regard to his medication. Dr. Harmon noted no cognitive decline due to the Xanax and Hydrocodone which he was currently taking for back problems. RX1. After the petitioner was then informed by his employer that these medications could not be taken while maintaining a commercial driver's license, the petitioner spoke further with Dr. Harmon. On March 5, 2012, Dr. Harmon cancelled the Xanax and Hydrocodone prescriptions, and replaced them with Tramadol and Ultram, and wrote a letter to the petitioner's employer to that effect. RX1.

The respondent submitted a printout from the Prescription Monitoring Program which showed the petitioner refilling pain medication prescriptions once or twice per month from October 2011 through June 2012. RX2.

On July 27, 2012, the petitioner called Dr. Harmon and asked for a prescription pain patch for low back pain. Dr. Harmon prescribed the petitioner a Lidoderm 5% pain patch, with a refill. RX1. At trial, the petitioner denied that he had called because of an increase in symptoms, but rather had called to secure the patches for those times when he had an increase, and that he had used a patch when a friend had allowed him to try one.

On August 13, 2012, the date of loss, the petitioner presented to Dr. Evenson with complaints of lower back pain radiating into the right leg. The petitioner denied any problems since he had last been seen by Dr. Eavenson in 2010. Dr. Eavenson noted the prior MRI findings and assessed a disk protrusion causing right radiculopathy. He recommended work restrictions and chiropractic manipulation and therapy. PX1, RX4. The prescription records show that the petitioner did fill a prescription for Hydrocodone on August 13, 2012. RX2.

On August 14, 2012, Dr. Eavenson noted ongoing severe pain with spasm and restricted motion. On August 15, due to ongoing symptoms, Dr. Eavenson ordered an MRI. On August 16, the petitioner noted reduced spasm and slow improvement. PX1.

On August 17, 2012, the petitioner underwent an MRI of the lumbar spine. It does not appear it was compared to the prior MRI. Disk dessication at L5-S1 with a herniation at L5-S1 was noted; the Arbitrator does note that the radiologist report notes that the herniation is to the left side. PX2.

On August 20, 2012, the petitioner saw Dr. Eavenson and discussed the MRI results. Dr. Eavenson advised that he did not think it was a surgical problem, but elected to refer to claimant to a spine surgeon. In the interim, he maintained therapy and recommended light duty if available. PX1, RX4. On August 23, 2012, the petitioner reported to Dr. Eavenson that he was very upset and frustrated because of a private

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investigator following him. He reported ongoing pain but less spasm. Dr. Eavenson noted that he was recommending an appointment with Dr. Gornet. PX1.

On September 6, 2012, the petitioner saw Dr. Gornet, a spine surgeon. The petitioner reported the history of crossing ruts in the road. Dr. Gornet requested the films from the prior MRI but noted that if the petitioner's prior history was accurate, then he would find the current complaints causally related. He recommended the petitioner be off work and undergo conservative treatment at that time. PX3. Regarding the conservative treatment, the petitioner did continue to pursue chiropractic and physical therapy with Dr. Eavenson's office through mid-November 2012. PX1.

On September 7, 2012, the petitioner saw Dr. Harmon. He reported a work related back strain, and Dr. Harmon noted that he was under an orthopedist's care. He refilled various medications and told the petitioner to follow up in six months. RX1.

The respondent commissioned a Section 12 examination with Dr. Robson, who then saw the claimant on September 25, 2012. See RX7. At the time of the exam, Dr. Robson had access to the X-rays and MRI of August 2012 and the post-injury records from Dr. Eavenson and physical therapy. The petitioner reported having seen Dr. Gornet but Dr. Robson did not have those records. The petitioner specifically denied prior low back injury or treatment. Following examination, Dr. Robson concluded the petitioner had a resolving back strain, which required light duty for approximately one further month while undergoing physical therapy and transitioning into regular work. Based on the history provided, Dr. Robson concluded that the accident was related to the injury.

On October 22, 2012, Dr. Gornet saw the petitioner, who continued to complain of symptoms; Dr. Gornet recommended an injection series and continued therapy for another three weeks. PX3.

The petitioner saw Dr. Boutwell and underwent a series of three epidural injections from October 31, 2012 through December 3, 2012. See PX4-5.

On November 19, 2012, the petitioner called Dr. Harmon, asking for pain medication, which Dr. Gornet had not been prescribing. Dr. Harmon provided Norco and Xanax to the petitioner. RX1.

On November 30, 2012, Dr. Robson wrote a supplemental report opining that the epidural steroid injection was not medically necessary, as it was injected on the right side and the lesion was on the left and not lateralizing. Dr. Robson did not see the claimant at that time. RX7.

On December 4, 2012, a Utilization Review de-certified the chiropractic care and physical therapy following October 31 as not medically necessary. RX8.

On December 10, 2012, Dr. Gornet saw the petitioner and noted that he had obtained narcotic medications, and advised cessation of same. Dr. Gornet noted

persistent symptoms and recommended cessation of physical therapy in favor of anterior-posterior fusion at L5-S1. He maintained the claimant off work. PX3.

On February 8, 2013, the petitioner called Dr. Harmon and reported having tweaked his low back lifting a laundry basket and was having muscle spasms and pain. The petitioner requested Flexeril and Norco "like he used to" in addition to the Ultram for chronic pain he was taking. Dr. Harmon wrote the prescription with refills. RX1.

On February 18, 2013, the petitioner saw Dr. Gornet. Dr. Gornet maintained his surgical recommendation but noted the petitioner had filled a Vicodin prescription. Dr. Gornet recommended the petitioner cease narcotic medication and reduce smoking. PX3. The petitioner has received further prescriptions for Ultram and Zolofit at increased dosages, but has not renewed his Vicodin prescription. Dr. Gornet has since maintained the petitioner off work pending surgery.

The respondent introduced records from the Department of Veteran's Affairs (see RX9) which indicate that the petitioner was evaluated by the D.V.A. at the petitioner's request connected to a disability petition. It shows that the petitioner had requested disability for hearing loss and tinnitus, but then expanded that request to include his low back. It was noted that he had first requested a Compensation and Pension examination in 2009 relative to his low back, which was denied at that time. The petitioner reported low back pain following two car accidents in 1993 and 1997. The V.A. examiner noted a 2009 MRI, separate from the 2008 MRI noted above, which noted a bulging disk extruding centrally at L5-S1 with narrowing of the spinal canal and neural foramina. The petitioner reported an increase in symptoms following his August 2012 work accident. He denied any prior radiating pain. X-rays were taken showing no change from 2009. The VA examiner concluded the petitioner's military service was not the cause of his back pain. The Arbitrator further notes that the 2009 report of the examiner regarding the petitioner's benefit application at that time is present; it does note occasional radiation into the right hip. The petitioner testified that he told the VA that he felt his current low back condition was related to his time in the military.

The respondent further introduced surveillance taken from August 16 through 29, 2012. On August 16 and 18, the petitioner was observed outside his home. On the latter date the claimant was observed cleaning his pickup truck, climbing in and out of the cab, leaning across the seats, and at no time during these dates does he appear to be in any pain or have any kind of motion restriction or limp. He admitted that thereafter, he became aware that he was being followed by a private investigator. On August 19, he was observed walking slowly and hunched over, and generally moving in what appears to be a severely infirm manner. The petitioner testified that his back probably felt horrible on August 19th "because I washed my car."

OPINION AND ORDER

A claimant has the burden of proving by the preponderance of credible evidence

14IWCC0440

all elements of the claim, including that the alleged injury arose out of and in the course of employment. See, e.g., *Seiber v. Industrial Commission*, 82 Ill.2d 87 (1980). This matter involves a pervasive credibility problem originating from the claimant.

At trial, the claimant did acknowledge having had prior back complaints, a somewhat more truthful history than the ones he provided to both his treating and examining physicians. On the asserted date of loss, he told Dr. Eavenson he had not had any back problems since he had last seen him in 2010, but in fact he had been taking prescription pain medication for his chronic back pain for almost a year at that point. He reported to Dr. Gornet that he switched from Vicodin to Tramadol because he had improved symptoms, when in fact this was done to preserve the claimant's CDL status and had further requested Lidoderm patches just two weeks before this alleged incident. And he told Dr. Robson he had never had prior low back symptoms or treatment, an obvious and glaring falsehood.

The petitioner's minimization of his back condition relative to the pain medication he was receiving from Dr. Harmon strains credulity. He switched from Hydrocodone to Tramadol in March 2012 for reasons explicitly stated in the records to be related to his CDL, rather than to any change in the petitioner's physical condition. The petitioner's assertion that he called and asked for pain patches despite having his pain well controlled by his routine medication defies belief. What is clear from the records is the petitioner has a demonstrated history of chronic low back pain.

In addition, the petitioner's trial testimony was less than forthcoming. He repeatedly asserted inability to recall what history he gave to his medical providers when asked about this issue on cross-examination. He attempted to claim that he had "a bad memory," but the Arbitrator observes that the petitioner did not seem to have memory problems on direct examination, suggesting evasiveness.

The surveillance further undermines the petitioner's believability. He displayed no indication of pain or limitation of motion on the 16th or 18th and appeared to be in generally good physical condition and disposition. He apparently discovered that he was being followed that night, and thereafter presented himself as someone hobbling along in crippling pain; the Arbitrator interprets this as suggesting that either he was not being truthful, or else he injured himself at home on the 18th.

The petitioner has repeatedly and conclusively demonstrated that he has serious problems with both veracity and forthrightness. This credibility gap informs the Arbitrator as to all issues in dispute. The petitioner has failed to credibly prove accidental injuries or a causal relationship to any medical condition of ill-being. Compare *Smith v. Industrial Commission*, 98 Ill.2d 20 (1983).

All other issues are moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Dennis K. Shamhart,
Petitioner,
vs.

14IWCC0441
NO: 10 WC 38071

Select Remedy,
Respondent.

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 causal connection, medical expenses, prospective medical care, temporary total disability and Section 19(1) penalties, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 11, 2013 is hereby affirmed and adopted.

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.

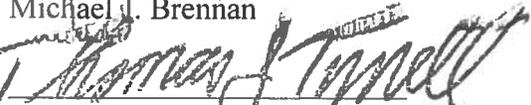
No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 06 2014

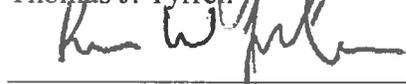
MJB:bjg
0-6/3/2014
052



Michael J. Brennan



Thomas J. Tyrrell



Kevin W. Lamborn

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

14IWCC0441

SHAMHART, DENNIS K

Employee/Petitioner

Case# **10WC038071**

SELECT REMEDY

Employer/Respondent

On 9/11/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.03% 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:

2126 BRANKEY & SMITH PC
CHARLES F YOUNG
622 JACKSON AVE
CHARLESTON, IL 61920

1505 SLAVIN & SLAVIN
PETER SINK
20 S CLARK ST SUITE 510
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
 COUNTY OF CHAMPAIGN)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION
 19(b)

DENNIS K. SHAMHART
 Employee/Petitioner

Case # 10 WC 38071

v.

SELECT REMEDY
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Urbana**, on **January 18, 2013, April 18, 2013, and July 17, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **September 10, 2010**, 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$10,264.53**; the average weekly wage was **\$488.79**.

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

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services. (See Memorandum of Decision of Arbitrator for further discussion).

Respondent shall be given a credit of **\$13,311.00** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$13,311.00**.

Respondent is entitled to a credit of **\$5,381.02** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services for treatment occurring from September 11, 2010 through March 16, 2011, as set forth in the trial exhibits (as more fully discussed in the Memorandum of Decision of Arbitrator), and as provided in Sections 8(a) and 8.2 of the Act. Respondent shall have a credit for all medical bills paid by it or through its group insurance carrier, as noted above.

Respondent shall pay Petitioner temporary total disability (TTD) benefits of **\$325.86/week** for **26 5/7** weeks, commencing 09/11/2010 through 03/16/2011, as provided in Section 8(b) of the Act. Respondent shall have credit for TTD benefits paid in the amount of **\$13,311.00**, as noted above.

Petitioner is not entitled to any further benefits, as his current condition of ill-being is not casually related to the work accident. Penalties and attorney's fees are also not imposed on Respondent.

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

09/06/2013
Date

STATE OF ILLINOIS)
)SS
COUNTY OF CHAMPAIGN)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

DENNIS K. SHAMHART
Employee/Petitioner

14IWCC0441

v.

Case # 10 WC 38071

SELECT REMEDY
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, Dennis K. Shamhart, testified that he was working as a material handler for a factory named GSI through Respondent, Select Remedy (a staffing agency) on September 10, 2010. His job duties required him to deliver steel parts to an assembly line. Petitioner testified that on September 10, 2010, he reached for a galvanized steel plate above his head and he proceeded to pull it off the rack, but that other steel plates were on the back half of the plate he was pulling unbeknownst to him, and he felt a sharp pain down his back and legs after pulling upon the plate. His knees buckled, but he did not fall. Petitioner testified he reported the incident to his supervisor, Gary Landsaw. Mr. Landsaw testified at trial, and confirmed that Petitioner reported the claimed mechanism of injury to him on that date. Mr. Landsaw also prepared an incident report. (See Respondent's Exhibit (RX) 3).

Petitioner presented to St. Anthony's Memorial Hospital for emergency medical care on September 11, 2010, where he was diagnosed with a lumbar strain. (PX 5). Petitioner then presented to Dr. John Gapsis at Bonutti Clinic on September 14, 2010, giving a consistent history of accident as testified to at trial. X-rays taken were interpreted as essentially normal, and Dr. Gapsis made a diagnosis of low back strain. The doctor also took Petitioner off work at this time and recommended physical therapy. Dr. Gapsis ordered MRI testing on September 29, 2010, and kept Petitioner's work restrictions in place. (PX 4).

Petitioner underwent a lumbar MRI on October 13, 2010. The radiologist's impression was that of a small central canal accentuated by degenerative changes, canal stenosis at L2-3, L3-4 and L4-5, and edema within the pedicles of L4 bilaterally. (PX 4; RX 10). Dr. Gapsis reviewed the MRI and noted no evidence of disc herniations. Dr. Gapsis noted that the small central canal was congenital. Dr. Gapsis referred Petitioner to a spine specialist within the Bonutti Clinic, Dr. Josue Gabriel. Petitioner presented to Dr. Gabriel on October 22, 2010, and again on December 6, 2010. Dr. Gabriel believed Petitioner could be a candidate for fusion surgery, as well as a bone scan and discogram. (PX 4). Utilization reviews for further testing including a lumbar discogram and a total body bone scan as prescribed by Dr. Gabriel were non-certified, and un-challenged by Petitioner. (RX 11; RX 12). Petitioner also underwent a lumbar epidural injection in the fall of 2010. (PX 4).

Petitioner underwent a brief course of physical therapy in September and October 2010. However, he was discharged on October 28, 2010, because he had not shown up for therapy sessions since October 8, 2010. (PX 13).

Petitioner testified that he attended an examination at Respondent's request in November 2010 with Dr. Juan Carrilo, pursuant to Section 12 of the Illinois Workers' Compensation Act. 820 ILCS 305/1 *et seq.* (hereafter the "Act"). The report was not produced at trial, and Petitioner testified that he never saw the report.

Petitioner underwent electrodiagnostic testing by Dr. Naeem Kohli on November 17, 2010, upon referral from Dr. Gabriel. Dr. Kohli noted that the testing revealed L5-S1 radiculopathy in the lower extremities, which was reported as "chronic in nature." Dr. Kohli further reported that the testing revealed no evidence of neuropathy in the lower extremities. (PX 8).

Petitioner next presented to Dr. Brian Ogan with the Illinois Spine and Pain Center on February 21, 2011. The referral form included in Dr. Ogan's records indicate that Petitioner was to be seen by the doctor to monitor pain medication refills "per work comp." (RX 6). This is confirmed in a letter from Respondent's nurse case manager dated January 18, 2011. (RX 12). Dr. Ogan diagnosed low back pain "post industrial-related injury, 09/10/2010," and recommended a series of epidural injections. Dr. Ogan did not believe having only one injection, as Petitioner had, would be indicative of the treatment potential of undergoing a series of injections. (RX 6). Petitioner denied that Dr. Ogan ever recommended this course of injection treatment.

On March 16, 2011, Petitioner was scheduled for an examination at Respondent's request pursuant to Section 12 of the Act with Dr. Peter Mirkin. Petitioner did not attend the examination. Correspondence from Petitioner's counsel to Respondent's counsel indicates that the refusal was on the basis that Petitioner had never been provided the November 2010 report from Dr. Carrillo. (RX 23; PX 14). Respondent's counsel made a representation in a letter to Petitioner's counsel that he had no report from Dr. Carrillo, and did not in fact believe such a report existed. (RX 23).

Petitioner testified that he presented for a second opinion with Dr. Todd Stewart at Washington University in St. Louis on April 21, 2011. Dr. Stewart diagnosed lumbar stenosis, chronic S1 radiculopathies and low back pain. Dr. Stewart recommended L3, L4 and L5 laminectomies for decompression, but refused to operate on Petitioner because Petitioner was a smoker. Dr. Stewart reported that he did not have an opinion as to whether Petitioner's condition was causally related to the work injury from September 2010. (PX 7).

Petitioner called the Bonutti Clinic on September 13, 2011, and asked for an "off work slip." The registered nurse who took the call explained to Petitioner on this date that they could not provide such a work slip as Petitioner had not presented to the clinic since December 2010 (when he had last been evaluated by Dr. Gabriel). (RX 12). Petitioner then returned for evaluation with Dr. Gabriel on November 21, 2011. Dr. Gabriel's diagnosis was a lumbar "sprain/strain, improved." The doctor also reported that Petitioner was "now mostly symptomatic from the severe stenosis and neurogenic claudicatory symptoms." Dr. Gabriel noted that conservative treatment was not working, and that the injections provided no relief. The doctor noted that a decompression fusion would be an option, and further reported that Petitioner would need a CT scan and a new MRI of the lumbar spine. (PX 4).

Dr. Gabriel's deposition testimony was taken on June 27, 2012. (PX 12). Dr. Gabriel reviewed Petitioner's October 2010 MRI results, and testified that the scan revealed multi-level stenosis at L2-3, L3-4 and L4-5, suggesting a stress reaction that seemed to be possibly acute from the sprain/strain Petitioner suffered. (PX 12, p. 12). Dr. Gabriel also noted Petitioner had some spondylolisthesis. (PX 12, p. 13). When asked regarding a causal relationship between his diagnoses of Petitioner and Petitioner's work incident in September 2010, Dr. Gabriel testified as follows:

"My stance is of the lumbosacral sprain/strain being caused, due to the fact that he had pain and spasm of symptoms of – typical with a sprain and strain, and the stress reaction, the signal uptake on the L4 pedicles, the edema that most likely were caused – those were caused by the injury...Now...the severe stenosis and the [disc] slips, I think those were preexistent just because of the nature of that arthropathy...but due to the traumatic event, it would be aggravated by the injury...but those did not seem to be acute injuries."

(PX 12, pp. 13-14).

When asked if the doctor had an opinion whether the bulging disc at L2-3 that he found was caused or aggravated by Petitioner's work incident, Dr. Gabriel testified as follows: "I think that appeared to be preexistent. It did not appear to be a herniation but more of a bulge, so, if anything, more of an aggravation but not caused by." (PX 12, p. 14). Dr. Gabriel believed that of all the conditions for which he diagnosed Petitioner, that the conditions causing Petitioner the most problems were a combination of the lumbar sprain/strain and the severe stenosis. (PX 12, p. 14). Dr. Gabriel reiterated in his deposition testimony that his last recommendation was to consider surgical intervention for Petitioner in the form of a laminectomy, and possibly a fusion. Dr. Gabriel also reiterated that he would recommend new MRI studies, as well as a CT scan. (PX 12, p. 15). Dr. Gabriel testified that he restricted Petitioner from work on December 6, 2010, and that Petitioner did in fact call the doctor's office on September 13, 2011, wanting a work restriction note, but that his nurse explained to Petitioner that he would need to schedule an appointment for that. (PX 12, pp. 18-19). Dr. Gabriel testified that Petitioner was not capable of working on November 21, 2011. (PX 12, p. 19). When asked again what was causing Petitioner the most problems as of the November 21, 2011 evaluation, Dr. Gabriel answered, "[t]he severe stenosis and the inability to stand up straight and the symptoms down [Petitioner's] legs and feet, the pain and numbness which was related to his stenosis, and the fact that he just is not getting any better." (PX 12, p. 20).

On cross-examination, Dr. Gabriel testified that during his last evaluation of Petitioner, he had noted Petitioner's lumbar sprain/strain had improved, and clarified that such an event would be improved in about three-to-six months from its inception. Dr. Gabriel reiterated that at the time he last saw Petitioner, Petitioner was mostly symptomatic from the severe stenosis and neurogenic claudicatory symptoms. (PX 12, pp. 45-46). Dr. Gabriel testified that Petitioner's lumbar strain was related to the work accident, that the stress reaction was possibly related to the accident, and that all other conditions were pre-existent. (PX 12, p. 51).

On July 19, 2012, Petitioner was evaluated at Respondent's request by Dr. Frank Petkovich pursuant to Section 12 of the Act. (RX 1, Dep. Exh. 2). Dr. Petkovich's deposition testimony was taken on October 22, 2012. (RX 1). Dr. Petkovich conducted a physical examination of Petitioner and reviewed his medical records. Dr. Petkovich's diagnoses of Petitioner were that of a lumbar strain, and underlying lumbar stenosis with degenerative disc disease. (RX 1, p. 17). Dr. Petkovich testified that the lumbar strain was a result of the work accident as described by Petitioner that occurred on September 10, 2010. (RX 1, pp. 17-18). Dr. Petkovich believed that Petitioner's lumbar strain had resolved by the time the doctor evaluated him on July

19, 2012. (RX 1, p. 18). Dr. Petkovich testified that Petitioner's lumbar stenosis was a pre-existing degenerative condition, and that the September 2010 work incident did not cause or aggravate the underlying stenosis or degenerative disc disease. (RX 1, p. 18). Dr. Petkovich did not believe Petitioner required any additional treatment for the lumbar strain. Dr. Petkovich testified that Petitioner could return to performing the same work he was doing prior to the accident, and that Petitioner was a maximum medical improvement (MMI) at the time the doctor evaluated him. (RX 1, pp. 19-20).

Petitioner testified that he had not previously treated for a back injury or back problems prior to September 10, 2010, but had experienced back discomfort prior to this date of accident. Petitioner stated that when he experienced back pain, he would take a hot shower and that usually would alleviate any such discomfort. Petitioner stated that at the time of the hearing he was continuing to have back problems pain in the lower back, and had to start walking with a cane and taking over-the-counter pain medication.

Petitioner testified he received temporary total disability (TTD) benefits up until July 22, 2011, and has not received any TTD checks since that date. (See also PX 11). A dispute between the parties existed as to whether Respondent had received any work restriction notes or medical records throughout a significant portion of 2011. (See RX 19-21; RX 23; PX 14).

Extensive video surveillance of Petitioner was conducted at Respondent's behest. One of the investigators who conducted said surveillance, Audy Fenton, testified at trial. The surveillance showed, *inter alia*, Petitioner lifting and moving metal patio chairs and tables, using a power sander, raising a retractable awning, and climbing a small ladder (August 5, 2011 surveillance); and Petitioner bending over and kneeling, performing garden work (March 30, 2012 surveillance). (RX 17-18).

Respondent offered the testimony of Trish Tokach, an investigator with a company called Trace America. She testified that her job title is that of claims investigator and that her responsibilities are to identify possible fraudulent claims. In order to be an investigator, she is required to be licensed, and is in fact licensed. When presented with Respondent's Exhibit 16, Ms. Tokach identified it as a report she personally prepared in response to her investigation and telephone call to Petitioner. She reported that she called telephone number 217-487-2359 (the same number on the website advertisement authenticated by Petitioner, see *infra*), and a male voice answered the phone. This conversation occurred on July 11, 2011. She asked if she was speaking to a representative of "Dennis Shamhart Home Repair Services." The male voice indicated that he was currently only taking on small jobs for people that he knew personally, or for previous clients. He stated that he had not taken on a new client in some time. He told Ms. Tokach that when he was taking on new clients, he offered a variety of home repair services, including flooring, carpentry and handyman work. He stated, however, that he was no longer offering these services to people he did not personally know. He told Ms. Tokach that he removed his advertising and was at that time only advertising through word of mouth and via recommendations. The male person on the phone with Ms. Tokach identified himself to her as "Dennis, the owner." At trial, Petitioner denied making most of these statements claimed from Ms. Tokach. Ms. Tokach indicated that she immediately transcribed her report following the telephone conversation, and that Respondent's Exhibit 16 accurately reflected the exact nature of the conversation.

Other discussions Ms. Tokach had with various people were also transcribed in her report. She indicated she spoke with Louise McClane on July 11, 2011, who resided at 204 West Reynolds Street, Newton, Illinois. Ms. McClane was Petitioner's neighbor, and this was confirmed by Petitioner at trial. The report indicates that Ms. McClane told Ms. Tokach that Petitioner was in business for himself, and performed carpentry, flooring and general "handyman" work. The report indicates that Ms. McClane stated

she had referred friends to Petitioner's business. (RX 16). Petitioner denied these statements at trial, and believed Ms. McClane would be lying if she indeed made those statements.

When asked what "Dennis Shamhart Home Repair Services" was, Petitioner responded that it was "nothing." He then testified that it was a business he started, but that he did not have any clients so he terminated the business. An internet advertisement found via Google with a search date of November 2, 2010 was offered by Respondent, indicating a business listed as "Dennis Shamhart Home Repair Services" that performed "complete handyman services from top to bottom." The address for the business listed was 203 W. Reynolds, Newton, Illinois 62448. (RX 13). Petitioner's Application for Adjustment of Claim lists 203 W. Reynolds, Newton, Illinois 62448 as his address. (Arbitrator's Exhibit (AX) 2). The internet advertisement also contained a customer testimonial from Lisa M. Berg dated February 16, 2010, praising the home remodeling work performed by "Dennis" on her house. Petitioner testified that Lisa Berg is currently his wife and that they were married on October 9, 2010. He testified that Ms. Berg was previously a customer of his business several years ago before a personal relationship began between them.

CONCLUSIONS OF LAW

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

Petitioner testified that on September 10, 2010, while in the employment of Respondent, he was attempting to pull a plate of metal from an elevated shelf. Unbeknownst to Petitioner, there were additional plates of metal sitting on top of the plate which Petitioner was trying to retrieve, at which time he experienced pain in his back by pulling on the plates, which radiated down both lower extremities. Petitioner sought medical care with doctors and a hospital after said accident. An accident report was made following the incident, and Petitioner's supervisor confirmed that Petitioner reported the accident on September 10, 2010. Further, Respondent's examining physician, Dr. Petkovich, testified that he believed Petitioner suffered a lumbar strain/sprain injury on the date of accident based on the mechanism of history described. Therefore, the Arbitrator finds that Petitioner experienced an accident that arose out of and in the course of his employment by Respondent.

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

The Arbitrator finds that Petitioner's current condition of ill-being is not causally related to the work accident of September 10, 2010. Petitioner suffered from extensive, pre-existing spinal stenosis. He experienced a lumbar strain/sprain on the date of accident. He initially sought emergency medical care, where he was diagnosed with a lumbar strain. He then presented to Dr. Gapsis, who referred him to orthopedic surgeon, Dr. Gabriel. Petitioner underwent a single epidural injection in the fall of 2010, and also underwent a brief course of physical therapy in September and October 2010. However, he was discharged from the therapy for not showing up to appointments. Petitioner saw Dr. Gabriel in November and December of 2010. He did not return to Dr. Gabriel until November 2011, after he had attempted to secure an "off work" slip from the doctor in September 2011, to no avail.

Petitioner presented to Dr. Ogan in February 2011, apparently at the request of Respondent's workers' compensation insurance carrier. Dr. Ogan recommended a course of injections, and noted that having only one injection as Petitioner did would not be indicative of the treatment potential of undergoing a series of injections. Petitioner did not undergo the injections, and testified that Dr. Ogan did not in fact

recommend injections. Petitioner presented for a second opinion to Dr. Stewart in April 2011. Dr. Stewart specifically noted that he did not have an opinion regarding causal connection.

The MRI radiologist's impression was that of a small central canal accentuated by degenerative changes, canal stenosis at L2-3, L3-4 and L4-5, and edema within the pedicles of L4 bilaterally. Dr. Gapsis reviewed the MRI and noted no evidence of disc herniations. Dr. Gabriel, Petitioner's treating physician, testified that Petitioner's lumbar strain was related to the work accident, but that the severe stenosis and disc slips were pre-existing. Dr. Gabriel noted that a lumbar strain would be improved normally within three-to-six months following the incident, and noted that in November 2011, Petitioner's strain injury was improved but that his primary problem was that of his pre-existing severe stenosis. Dr. Gabriel also testified that the strain would have aggravated the stenosis. Dr. Gabriel provided a favorable causal connection opinion for Petitioner. However, the Arbitrator finds the testimony of Dr. Gabriel unpersuasive in this regard due to the confusing and at often times vague nature of his testimony regarding causal connection. The Arbitrator notes that Dr. Gabriel appeared combative and obstinate in attempting to establish causal connection during cross-examination. At one point, Dr. Gabriel testified that Petitioner's current complaints (as of his last evaluation) were from the stenosis, but he at another time testified that Petitioner's problems were primarily from a combination of the strain *and* the stenosis.

Dr. Gabriel was also ambiguous regarding his course of further treatment. It is not entirely clear whether the doctor wants to perform a fusion or not. Dr. Gabriel believed Petitioner had failed conservative treatment, including *injections*. The Arbitrator notes that Petitioner only underwent one injection, and did not undergo the prescribed series of injections per Dr. Ogan in February 2011. Petitioner denied the injection treatment was offered, but the Arbitrator finds this testimony not credible. Petitioner also did not faithfully undergo the recommended physical therapy, and this led to a discharge from that treatment after only a brief period of therapy. Dr. Gabriel's opinions that Petitioner failed conservative measures are therefore called into question, as it is apparent the doctor is not aware of Petitioner's conservative treating history.

The Arbitrator also notes the electrodiagnostic testing performed on Petitioner. Dr. Kohli performed these tests, and noted that the testing revealed L5-S1 radiculopathy in the lower extremities, which was reported as "chronic in nature." Dr. Kohli further reported that the testing revealed no evidence of neuropathy in the lower extremities.

Further, the Arbitrator notes the temporal aspects of medical treatment in this case. Petitioner did not return to Dr. Gabriel after his December 2010 evaluation until November 2011, and this was only after being told that he had to present for an appointment in order to receive another work restriction note. In the time between Dr. Gabriel's December 2010 and November 2011 evaluations (almost one year's time), Petitioner only presented to Dr. Ogan in February 2011 (upon Respondent's referral), and to Dr. Stewart in April 2011 for a second opinion. Petitioner collected TTD benefits until July 2011, and when those terminated, he did not initially seek another evaluation, but rather simply desired another work restriction note.

The Arbitrator places more weight on the opinions of examining physician Dr. Petkovich than on treating physician Dr. Gabriel. Dr. Petkovich's diagnoses of Petitioner were that of a lumbar strain, and underlying lumbar stenosis with degenerative disc disease. This is essentially the same diagnosis as provided by almost all physicians in this case. Dr. Petkovich testified that the lumbar strain was a result of the work accident as described by Petitioner that occurred on September 10, 2010. However, Dr. Petkovich believed that Petitioner's lumbar strain had resolved by the time the doctor evaluated him on July 19, 2012. Dr. Petkovich testified that Petitioner's lumbar stenosis was a pre-existing degenerative condition, and that the September 2010 work incident did not cause or aggravate the underlying stenosis or degenerative disc

disease. Dr. Petkovich believed that Petitioner was a MMI at the time the doctor evaluated him in July 2012. Taking into account all of Petitioner's treating medical history, Dr. Petkovich's opinions are logical and well reasoned. Great weight is placed on his opinions when assessing causal connection.

Petitioner claims to have been completely unable to work from the time of the accident until the present. Surveillance in this matter revealed instances of Petitioner engaging in activities that required lifting, bending, and kneeling. Further, the Arbitrator finds the testimony and report of Ms. Tokach more persuasive and credible than Petitioner's testimony. The Arbitrator finds that the weight of the evidence indicates Petitioner was engaged in, or attempted to engage in, home repair work via his business, Dennis Shamhart Home Repair Services, while he was collecting TTD benefits from Respondent and ostensibly unable work. The weight of the evidence establishes that Ms. Tokach did in fact converse with Petitioner during her phone conversation. The address of Dennis Shamhart Home Repair Services, as evidenced on the internet advertisement, is the same address listed on Petitioner's Application for Adjustment of Claim. Further, the reports of other conversations Ms. Tokach had with various people who knew Petitioner, including his neighbor, confirm the fact that Petitioner was holding himself out as able to perform physical duty work during the relevant periods in question. Ms. Tokach was hired by Respondent to perform investigative work and has no vested interest in the matter, and she had no apparent reason to falsify her report. She testified at trial in an open and forthcoming manner. Petitioner, however, was not a credible witness. In addition to the foregoing points made regarding credibility, the Arbitrator notes that on multiple occasions Petitioner disagreed with opinions and points recorded in his medical reports. Great weight is placed on this lack of credibility when assessing causal connection.

Based on all of the foregoing reasons, the Arbitrator finds that Petitioner failed to prove that his current condition of ill-being is causally related to the work accident of September 10, 2010.

Issue (I): What was Petitioner's marital status at the time of the accident?

Petitioner claims that on the date of accident, September 10, 2010, his marital status was that of "single." Respondent disputed this assertion. Petitioner testified that he and Lisa Berg were married on October 9, 2010, approximately one month following the work accident. The un-rebutted testimony of Petitioner therefore establishes that he was indeed single on September 10, 2010.

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?

As a preliminary matter, the Arbitrator finds that Petitioner did not exceed his choices of physicians allowed under the Act. Petitioner's initial emergency room visit occurred the day following his work accident. The Arbitrator finds this treatment to be considered emergency care pursuant to the Act. Petitioner next presented to Dr. Gapsis at the Bonutti Clinic. Dr. Gapsis in turn referred Petitioner to Dr. Gabriel, an orthopedic doctor within the Bonutti Clinic. Dr. Gabriel was Petitioner's primary treating physician in this matter. Dr. Gabriel referred Petitioner to Dr. Kohli for diagnostic testing, and therefore Dr. Kohli's treatment was within the chain of referrals under Dr. Gabriel via Dr. Gapsis. The physical therapy at Biomax was prescribed by Dr. Gapsis, and is also in the chain of referrals. The evidence indicates that the treatment received from Dr. Ogan was at the request of Respondent's insurance carrier, and therefore the treatment rendered from that doctor does not constitute a choice under the Act. Petitioner testified he sought a second opinion from Dr. Stewart with Washington University. Dr. Stewart therefore constitutes Petitioner's second choice of physicians under the Act. Petitioner subsequently returned for treatment with Dr. Gabriel. Based on the foregoing, Petitioner did not exceed his allowed number of physician choices under the Act.

The Arbitrator finds that the appropriate date of MMI in this matter is March 16, 2011. (See discussion regarding Issue (L), *infra*). Petitioner initially sought emergency care treatment following his accident, and then underwent a course of physical therapy, a lumbar injection, and evaluations with Dr. Gapsis and Dr. Gabriel in 2010. Said care in 2010 was reasonable and necessary in light of Petitioner's accident. The treatment received by Dr. Ogan is also deemed reasonable and necessary, as that appointment was initiated by Respondent. Further, the Arbitrator finds that the testing provided by Dr. Kohli in November 2010 was reasonable and necessary, as it was recommended shortly after the accident by Dr. Gabriel. Finally, while Petitioner was not faithful in attending his physical therapy appointments, the Arbitrator finds the physical therapy treatment that Petitioner did receive was reasonable and necessary, as it was recommended directly after the work accident from Petitioner's treating physician. Respondent is therefore liable for all medical treatment invoiced in the exhibits in the record for treatment commencing on September 11, 2010 through March 16, 2011. Respondent paid medical expenses to date totaling \$5,381.02. (See AX 1; RX 14). Any medical treatment and related invoices incurred after March 16, 2011 are not the responsibility of Respondent.

Issue (K): Is Petitioner entitled to any prospective medical care?

The Arbitrator finds that Petitioner has failed to establish that he is entitled to prospective care under Section 8(a) of the Act. Dr. Gabriel essentially testified that he is only looking for more testing at this stage and that Petitioner is suffering from "long standing degeneration" and that there were no herniated discs discovered on the MRI. The recommended tests were non-certified by utilization review and never challenged by Petitioner or his treating physicians.

Dr. Gabriel first saw Petitioner on October 22, 2010, on referral of Dr. Gapsis, who diagnosed Petitioner with a sprain. Dr. Gabriel stated that he had no knowledge of any prior symptoms, but Petitioner clearly testified at trial that he experienced back pain weekly prior to the date of alleged accident. Dr. Gabriel testified that the only potential traumatic finding that could be related to the date of accident as Petitioner described is the "edema within the pedicles," as all other findings on the MRI predated the date of accident. He then testified that he was not sure that was even traumatically induced by the alleged date of accident. Dr. Gabriel testified that he noted "hyperesthesia of the right lower extremity," which means only extreme sensitivity to touch and is most associated with chronic, longstanding neurological conditions. The EMG findings were consistent with chronic, longstanding neurological radiculopathy. The pain Petitioner was experiencing into both of his legs was indicated by the EMG to be chronic, and pre-existent to the date of accident. Dr. Gabriel testified that Petitioner's stenosis was pre-existent. He did not know when the "kyphotic posture" of Petitioner started – whether before the date of accident or after, and could not offer medical testimony as to the same. Dr. Gabriel never diagnosed Petitioner with a herniated disc at any time. Dr. Gabriel testified that he determined that Petitioner needed surgery because conservative care failed. However, he had not reviewed the Biomax records of the physical therapist terminating Petitioner as a patient for failing to show up. He also did not know how many epidural injections Petitioner underwent, only stating that there were more than one, when in fact there was only one. Finally, in his December 5, 2011 office note from his visit with Petitioner on November 21, 2011, Dr. Gabriel testified that he indeed wrote that Petitioner was mostly symptomatic from the pre-existing severe stenosis, and that the lumbar strain had improved. Dr. Gabriel testified that the lumbar strain being improved at that time made sense, as he noted a three-to-six month improvement window was normal for that injury. It should also be noted that Dr. Gabriel testified that he did not say that Petitioner was definitely going to undergo a fusion. At the present, the only thing that can be clearly gleaned regarding Dr. Gabriel's recommendations is that of a prescribed bone scan, a new MRI and possibly a CT scan. The previous tests prescribed were a discogram and a total body bone

scan, which were non-certified by utilization review and unchallenged by Petitioner. Dr. Gabriel also testified that the bone scan may indicate this is all related to a tumor, and not a work related event at all.

The x-rays taken at the emergency room on the day following the alleged accident did not show any acute findings of injury; the MRI report of October 13, 2010 found no acute injury to the Petitioner's back, only "chronic degenerative findings"; and the EMG examination results described only chronic changes and underlying spinal stenosis. Dr. Petkovich took his own x-rays, and they showed underlying degenerative changes but no acute findings. Petitioner told Dr. Petkovich that he had performed very physical labor in his own home remodeling business for the last 30 years. Dr. Petkovich opined that Petitioner suffered a lumbar strain on September 10, 2010, and that strain had resolved as of July 19, 2012. He believed the lumbar stenosis pre-existed the date of accident, and that it was not aggravated in any way as a result of the strain. He did not believe that Petitioner was in need of any additional medical care for the lumbar strain and that he could return to work performing his regular duties. Dr. Petkovich also believed that Petitioner had symptoms consistent with peripheral vascular disease, consistent with his age and decades of smoking. He opined that Petitioner's family history of diabetes was also a contributing factor to his leg pain. Dr. Petkovich continued to testify that Petitioner did not have an acute discogenic problem – he had a degenerative disc condition with underlying spinal stenosis. The doctor also testified that any exacerbation is by definition temporary. Petitioner told Dr. Petkovich that he had daily and weekly pain in his back prior to the date of accident. Dr. Petkovich testified that the objective testing indicated spinal stenosis so severely degenerated that any activity of daily living would or could have brought about the same pain on the date of accident. Based on the foregoing reasons, the Arbitrator finds that Petitioner is not entitled to prospective medical care.

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

Petitioner received TTD benefits from September 11, 2010 through July 22, 2011. Petitioner was advised of one of the reasons TTD benefits were terminated, namely because Respondent was not provided updated medical records or work release notes for a large portion of 2011. (See RX 21). Petitioner also refused to submit to an examination pursuant to Section 12 of the Act with Dr. Mirkin on March 16, 2011. The grounds of refusal were that Petitioner was not provided with the report of Dr. Carrillo. As an initial point in this regard, Respondent made a representation that it did not in fact have a report from Dr. Carrillo, and did not believe such a report existed. Regardless, Petitioner's refusal to attend the examination in March 2011 was unwarranted. Pursuant to Section 12 of the Act, if Dr. Carrillo did indeed even have a report that was provided to Respondent, Respondent would have had to tender the report to Petitioner no later than 48 hours before the case was set for hearing. See *Fenton v. Gardner Denver, Inc.*, 12 IWCC 1366 (Dec. 10, 2012). Because Petitioner refused to attend the March 2011 examination with Dr. Mirkin, his right to compensation was to be suspended as of that date pursuant to Section 12 of the Act. Respondent was within its right to terminate TTD benefits on March 16, 2011, but instead chose to pay said benefits through July 22, 2011. Based on the foregoing, and on the discussions related to causal connection (as discussed *supra*), the Arbitrator finds that March 16, 2011 is the appropriate date to have terminated TTD benefits.

Further, treating physician Dr. Gabriel testified that a lumbar strain would typically be improved three-to-six months post-injury. Petitioner did not seek medical care following his appointment with Dr. Stewart in April 2011 until November 2011, after he was refused a requested "off work" slip over the phone because he was told he would have to make an appointment to receive such a note. Lastly, the surveillance disclosures indicating Petitioner performed lifting and bending tasks in 2011, coupled with the credible testimony and report of Ms. Tokach in that Petitioner was holding himself out to provide "handyman" and general construction services in the summer of 2011 lend guidance to the determination that TTD benefits could justifiably be ended on March 16, 2011. The Arbitrator has found that Petitioner only suffered a

lumbar strain, with no aggravating injury. Dr. Petkovich further opined that Petitioner was at MMI for his lumbar strain at the time of his evaluation in 2012.

Based on the foregoing, the Arbitrator finds that Petitioner is entitled to TTD benefits from September 11, 2010 through March 16, 2011. Respondent shall have a credit for TTD benefits paid in the amount of \$13,311.00. (See AX 1).

Issue (M): Should penalties or fees be imposed upon Respondent?

Based on the foregoing discussion and findings regarding the above-stated issues, the Arbitrator does not find Respondent's conduct in its denial of benefits in this matter to be unreasonable or vexatious, and thus denies Petitioner's petition for penalties or fees.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="checkbox"/> up	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STANLEY K. ELINSKY,

Petitioner,

vs.

NO: 07 WC 34574

14IWCC0442

WALSH CONSTRUCTION CO.,

Respondent.

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 causal connection, Section 8(d)(1) award, temporary total disability benefits, and permanent partial disability benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator awarded Petitioner permanent partial disability benefits of 25% loss of the person as a whole. We amend the Arbitrator's decision and award Petitioner permanent partial disability benefits of 50% loss of the person as a whole.

Even after Petitioner underwent surgery and extensive physical therapy, he was given permanent work restrictions and complained of continued, and at times disabling, issues. Petitioner was diagnosed with cervical disk bulges at C3-4, C4-5 and C5-6 with associated subjective complaints of headaches and dizziness. He was given work restrictions limited to ground work only with no working at heights.

14IWCC0442

Petitioner explained he still suffers from continuing migraines and vestibular issues. Petitioner testified he has good and bad days and still takes medications for migraines and to relax his muscles. Petitioner explained he has a vestibular problem and the fall season is difficult for him. He said when he walks and watches the leaves move, he experiences vertigo and has problems "spinning out." Further, Petitioner said when he mows the lawn in a vertical or a horizontal pattern and turns, the ground spins out in front of him but said he is getting used to the effect. Petitioner further testified that if he works on the computer or reads too much, he is prone to headaches and possibly migraines. He said he feels a "little bit off" and if he moves too quickly, his vision will blur. Additionally, if Petitioner does physical activities related to work or his personal life and gets a little too confident and pushes himself too hard, he testified he suffers from a bad headache that sometimes develops into a migraine that can last for one to two days. Petitioner testified that he has to be very careful with what he does and he "pays to play."

When Petitioner saw vocational rehabilitation counselor Susan Entenberg, he said he has constant tight neck pain on the left side that radiates into his left shoulder; he rated the pain at 5/10. Petitioner described "spinning out" to Entenberg and said he has poor balance. Petitioner told Entenberg that he gets dizzy with rapid movement when bending and avoids twisting his torso. Petitioner told her that he tried to return to carpentry work at ground level but still had problems and was not able to continue working. Petitioner also met certified rehabilitation counselor Mary Schmit. He told her that two to three times a month he suffers from migraine headaches that last for two to four days. Petitioner's life continues to be greatly limited by issues resulting from his work related injury. We thus award Petitioner permanent partial disability benefits of 50% loss of the person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is modified as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$619.97 per week for a period of 250 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the 50% loss of the person as a whole.

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.

14IWCC0442

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:
TJT: kg
O: 4/8/14
51

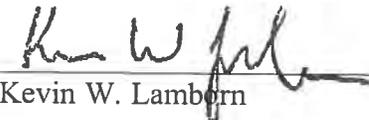
JUN 06 2014



Thomas J. Tyrrell



Michael J. Brennan



Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ELINSKY, STANLEY K

Employee/Petitioner

Case# 07WC034574

WALSH CONSTRUCTION CO

Employer/Respondent

14IWCC0442

On 1/15/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0293 KATZ FRIEDMAN EAGLE ET AL
DAVID M BARRISH ESQ
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

1564 HINSHAW & CULBERTSON LLP
MATTHEW P WALSH II
222 N LASALLE ST SUITE 300
CHICAGO, IL 60601

14IWCC0442

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Stanley K. Elinsky

Employee/Petitioner

v.

Walsh Construction Co.

Employer/Respondent

Case # 07 WC 34574

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 **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Chicago**, on **October 19 and 29, 2012**. 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 **Vocational Rehab (see 10 ICC 1132), 8(d-1), PPD**

FINDINGS

On **June 14, 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 as stipulated by the parties. *See* AX1.

In the year preceding the injury, Petitioner earned **\$74,880.00**; the average weekly wage was **\$1,440.00**.

On the date of accident, Petitioner was **47** years of age, *married* with **1** dependent child.

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 **\$60,450.87** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$13,000.00** for other benefits, for a total credit of **\$73,450.87**. *See* AX1.

Respondent is entitled to a credit of **\$0.00** under Section 8(j) of the Act. *See* AX1.

ORDER

Temporary total disability benefits were not placed in dispute at trial and Petitioner's entitlement to such benefits has been resolved. Similarly, Respondent's entitlement to credit for any such payment of benefits was not placed in dispute. Notwithstanding, the Arbitrator notes the Commission's findings and the parties' stipulation regarding temporary total disability benefits and credits due to Respondent. *See* AX1 and 10 IWCC 1132.

As explained in the Arbitration Decision Addendum, Petitioner's claim for maintenance benefits is denied.

Respondent shall pay Petitioner permanent partial disability benefits of \$619.97/week for 125 weeks, because the injuries sustained caused the 25% loss of the person as a whole, as provided in Section 8(d)2 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

January 14, 2012
Date

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*

Stanley K. Elinsky
Employee/Petitioner

Case # 07 WC 34574

v.

Consolidated cases: N/A

Walsh Construction Co.
Employer/Respondent

FINDINGS OF FACT

The only issues in dispute are petitioner's entitlement to further maintenance benefits beginning December 22, 2010 through October 19, 2012 as remanded by the Commission in 10 WC 1132 and the nature and extent of petitioner's injury. Arbitrator's Exhibit ("AX") 1; October 19, 2012 Arbitration Hearing Transcript ("Tr. pp.") 4-6. The Arbitrator adopts and incorporates by reference the findings of fact made by Arbitrator Lee on December 15, 2009 as modified by the Commission in its November 16, 2010 decision in 10 IWCC 1132. Respondent's Exhibit ("RX") 14, pp. 40-57.

Complying with the Commission's decision, respondent filed a rehabilitation plan on January 25, 2011 noting that on December 10, 2010, December 13, 2000, January 22, 2011, respondent consulted with petitioner's representative and offered to provide an independent or mutually agreeable vocational assessment and compliance with the commission's decision which would address petitioner's earning capacity and the labor market for carpentry jobs within petitioner's restrictions. RX14. Petitioner denied refusing an independent vocational assessment offered by Respondent prior to seeing his own vocational rehabilitation counselor, Ms. Entenberg. Tr. pp. 67-68; *but see* RX14, p. 39.

Mary Schmit

Respondent submitted another rehabilitation plan on April 28, 2011 at respondent's request subsequent to a March 11, 2011 vocational assessment performed by Mary Schmit, is a certified rehabilitation counselor, at Triune. RX15; RX16. Ms. Schmit also submitted to a deposition on May 25, 2012. RX16.

Ms. Schmit testified that she met with petitioner, gathered background information, reviewed medical information provided to her regarding his restrictions, and performed a transferable skills analysis. RX16, pp. 9-10. She understood that petitioner was restricted from working on ladders and to avoid heights. RX16, p. 16. Petitioner reported interest in becoming a chef as well as his opinion that he could not do that because loud noises affect his headaches. RX16, p. 13.

Ms. Schmit also testified that Petitioner reported that he "would talk to somebody and they would say, oh, so and so is -- needs a good carpenter and they bring him along and he would then go to work for them; but I also think that his Union functions as a hiring hall as well. So some of the companies that he worked for over the years when he did not have something consistent himself, he would get through the carpentry hall, the union Hall." RX16, p. 15.

Ultimately, Ms. Schmit concluded in her report that Petitioner could return to work as a union carpenter foreman in alternative areas of carpentry outside of the bridge building industry and that a reasonably stable labor market existed in these areas of union carpentry. RX15, p.64-65; RX16, pp. 19-25. Specifically, she

found that petitioner had the ability to return to work with the union in a variety of positions that were reported to be routinely available with no loss of earning power or required additional training or education including as a carpenter—labor supervisor/foreman, hardwood floor installer, truss assembler, cabinet maker, carpenter II, box carpenter, carpenter maintenance, finish carpenter, and bench carpenter. *Id.* She found that based on petitioner's age, education, and skills as well as 20+ years of experience, petitioner had transferable skills and abilities allowing transition into occupations of similar work without additional training. *Id.* On cross-examination, Ms. Schmit admitted that she did not have any data regarding the availability of union jobs at local 54 in the titles identified by her or the wages for non-union work. RX16, pp. 28-29. Ms. Schmit also noted in her report that petitioner was “heavily invested in his self-reported symptoms and limitations, and this may serve as a substantial inhibitor to his acquiring employment, union or otherwise.” RX15, p. 64.

Susan Entenberg

On May 21, 2012, Ms. Entenberg, a vocational rehabilitation counselor, submitted to a deposition regarding her December 22, 2010 evaluation of petitioner and subsequent report dated January 14, 2011. Petitioner's Exhibit (“PX”) 1. Ms. Entenberg reviewed various documents prior to meeting with petitioner including the Commission's decision, neuropsychological evaluations by Dr. Sweet and Dr. Andrise, and the records of Dr. Piekos at Midwest Neurological Associates. PX1, pp. 6-7, 19. She also took a history from petitioner in which he reported that he received social security disability benefits and a union pension. PX1, p. 7.

Regarding his medical condition, petitioner reported an injury to his neck, head, left shoulder, and hands on June 14, 2007 while working for respondent after which he received immediate care and follow-up medical treatment as indicated by petitioner and delineated in the records made available to her. PX1, pp. 8-11. Petitioner also reported taking prescription medication at the beginning of the bad migraine headache which can last up to two days occurring two to three days per month. PX1, p. 9. Further, petitioner reported shooting pain in the back of his neck up to 20 min., constant tight neck pain on the left side radiating into his left shoulder at a level of 5/10, dizziness from optical patterns, and spinning out. PX1, pp. 9-11.

Regarding his physical abilities, petitioner reported no difficulty with sitting, standing, reaching or walking which he could do up to 5 miles, lifting which he could do between 50 and 75 pounds, driving which he could do for up to 1½ hours although he needs to look straight ahead, and that he “does not do any ladders.” PX1, pp. 10-11. He reported inability to concentrate/read/perform any activity, poor balance, tripping while ascending/descending stairs, dizziness with rapid movement and bending, avoiding twisting his torso, dizziness, nausea, and erratic sleeping. PX1, pp. 10-11.

Petitioner reported earning approximately \$40 per hour at the time of his injury and having been employed with respondent on and off for about 15 years as a union carpenter member of Local 54. PX1, p. 11. Previously, petitioner worked for the Stuart Oil Company and as a union construction laborer on the deep tunnel project from 1979 through approximately 1983. PX1, p. 11.

Ms. Entenberg testified that the construction carpenter position is considered a skilled heavy job requiring lifting up to 50 pounds frequently, 100 pounds occasionally, standing and walking for 6-8 hours every day, but postural movements, frequent climbing, “being on ladders, being in height, being on uneven surfaces.” PX1, pp. 11-12.

Ultimately, Ms. Entenberg opined that petitioner could not perform the full duties of a carpenter based on his restrictions to perform “ground work only” and that no reasonably stable labor market existed for a carpenter, labor supervisor/working foreman, truss assembler, carpenter maintenance, or finish carpenter based on his

restriction to ground work only. PX1, pp. 12-17, 20. Hardwood floor installer and bench carpenter positions were possible, but probably did not pay as much as union carpenter. PX1, pp. 15-17. Ms. Entenberg testified that Petitioner was not qualified to be an estimator or project manager based on his lack of training and education in those areas. PX1, pp. 37-38. She also opined and her report reflects that petitioner *was a candidate for vocational rehabilitation, that he was a good training candidate, and that his prognosis for placement upon completion of additional education was good for groundwork only work* based on his background, transferable skills, and his interest in culinary training in which the average wages would be between \$15 and \$19 per hour and that petitioner was employable. PX1, pp. 13-18 and Dep. Ex. 2 (*emphasis added*). In her deposition, she further opined that petitioner would have a wage loss looking at positions earning between \$15 and \$20. PX1, p. 19.

On cross examination, Ms. Entenberg admitted that in general there were reasonably stable labor markets for working foreman, finish carpenters, and others. PX1, pp. 22-24. She also admitted that she did not have a contact at local 54 about the specific duties and responsibilities of its carpenters. PX1, p. 25. After cross examination questioning regarding a functional capacity evaluation calling the validity of petitioner's effort into question, the lack of information petitioner seeking work with respondent or any of his other contact on his own, and minimally addressing petitioner's reported physical in capabilities including balance issues, Ms. Entenberg denied viewing petitioner as an individual without motivation to return to any work based on receiving approximately \$56,500 in yearly gross wages from Social Security and union pension benefits. PX1, pp. 31-39.

Ms. Entenberg was not aware whether petitioner refused respondent's offer for an independent or mutually agreeable vocational assessment. PX1, p. 27.

Jose Maldonado

Mr. Maldonado testified that he is a part-time financial secretary and a business representative for the Chicago District Council of Carpenters, Local 54, which falls under the Chicago Regional Council of Carpenters. Tr. pp. 8-9, 14, 19. As financial secretary, Mr. Maldonado basically oversees, determines, and implements policy with respect to financial resources in and out of the union. Tr. p. 14. As a business representative, he promotes local union membership, is somewhat involved with contract negotiations, investigate grievances, and represent local union members. Tr. pp. 18-19. Mr. Maldonado receives approximately \$750 per quarter as compensation for this position. Tr. pp. 14-15. He earns approximately \$89-\$90,000 per year as the business representative. Tr. p. 16. On re-direct examination, Mr. Maldonado testified that this income is supposed to compensate him for what he would otherwise earn if he worked as a carpenter. Tr. p. 44.

In these roles, Mr. Maldonado is familiar with the duties of the members of his union and the prevailing wage rates. Tr. p. 9. Local 54 union members are carpenters covering heavy and highway construction work including work on bridges, roads, the airport, and at the water reclamation plant. Tr. pp. 9-10. They also do general commercial build-outs with framing and drywall, and cover a lot of garage doors. Tr. pp. 9-10. Union members work 40 hours per week. Tr. p. 10.

Mr. Maldonado testified that he had not previously met petitioner. Tr. p. 16. As financial secretary he did determine that petitioner was a member in good standing of the union, meaning that petitioner was current with his union dues. Tr. pp. 16-17. The union does not keep records on its members' physical capabilities. Tr. p. 43.

Mr. Maldonado testified that his local union is not a hiring hall, but it does assist contractors calling to find workers, which is why out of work members place themselves on the "out-of-work" list. Tr. p. 17. Mr. Maldonado checked the list and petitioner's name was not on it. Tr. pp. 17-18. Union members, however, network with contractors and the character of the union member is important to move from project to project. Tr. pp. 42-43.

Mr. Maldonado testified that there are no jobs available for members that cannot work at heights. Tr. pp. 11, 40. At the request of Petitioner's counsel, Mr. Maldonado authored a letter stating that there is no light duty work available for carpenters and listing some of the duties of carpenters including the requirement that they "build and dismantle Scaffold and work on ladders and different elevated structures and lifts for long periods." PX3; Tr. pp. 10-11, 40-41.

Mr. Maldonado testified that he does not know whether petitioner has retired or if he is receiving a pension from the union. Tr. p. 18. He also testified that, as a matter of practice, members of Local 54 cannot become members of other locals or join a different local if they quit Local 54 except in very limited circumstances including moving out of state. Tr. pp. 19-23.

Wage rate sheet 2010 and 2011 \$40.77 per hour. PX2; Tr. pp. 10, 26. Mr. Maldonado testified that the current prevailing wage rate for a journeyman is \$41.52 since June 2012, which is the baseline and there are increases given to the general foreman depending on how many carpenters he oversees (i.e., \$41.52 + \$2.00 if he oversees two carpenters or +\$3.00 if he oversees three carpenters¹, etc). Tr. pp. 10, 27-31.

Mr. Maldonado testified that the carpenters' union district website provides description of different specialties within the industry. Tr. pp. 31-32, 46. RX1. Certified energy analysts, floor installers, exhibition and display installers, cabinetmakers, and millworkers are not part of Local 54. Tr. pp. 33-37, 44-46, 48. Drywallers, insulators, and residential general carpenters/joiners are part of Local 54. Tr. p. 35, 38-40, 50. However, some Local 54 members occasionally have to install insulation which occasionally requires the use of ladders. Tr. pp. 48-50. Mr. Maldonado testified that, at the time of trial, he had no drywaller positions that were ground level only (i.e., did not involve use of a ladder). Tr. pp. 47-48.

Mr. Maldonado testified that cabinetmakers, hardwood floor installers, and bench carpenters are jobs under different local unions and have different prevailing wage rates. Tr. pp. 12-13.

Mr. Maldonado testified that the Chicago Regional Council of Carpenters has an apprenticeship school in which members can take free skill advancement classes in scaffolding, drywall, concrete work, cabinet installation, etc. To ensure its carpenters are well trained and knowledgeable about new technologies. Tr. pp. 23-24; RX12. These classes are available to members in good standing and there is an online catalog of available classes. Tr. pp. 24-25; RX13. Mr. Maldonado testified that skill advancement training classes are different than professional continuing education credits ("CEUs") which are offered to the contractors, architects, or building planners that need credit to maintain their licenses updated. Tr. pp. 25-26. CEUs are not available to carpenters. Tr. p. 26.

¹ The Arbitrator notes discrepancies in Mr. Maldonado's testimony about the amount that a foreman would receive over the base rate if he oversees four carpenters, and further notes that no current prevailing wage rate statement was proffered at trial.

Petitioner

Petitioner last testified in 2009 before Arbitrator Lee and did so at length about his symptoms at that time. Tr. pp. 52-53. Since then, petitioner testified that his condition has been approximately the same with good days and bad days. Tr. p. 53. He continues to take medication for headaches and one or two muscle relaxants. Tr. p. 53. Petitioner has not had any new injury to his head or neck. Tr. p. 60.

With regard to his current condition, petitioner testified that he gets vertigo and he has problems "spinning out" as a result of his vestibular problem. Tr. pp. 53-54. He testified that he is prone to headaches and possibly migraines when he is on the computer or reading too much. Tr. p. 54. If he is performing physical activities in his trade or at home he gets huge headaches and sometimes it develops into a migraine that can sometimes go 1-2 days, and sometimes 4 days. Tr. p. 54.

As an example, petitioner testified that he helped his father build a stone wall which required digging, lifting under 75 pounds, and did not involve the use of a ladder. Tr. pp. 55-57. Petitioner testified that he was okay for the first two days during which he worked 2-4 hours per day, but on the third day he felt comfortable enough to work about 6½ hours and developed a headache that lasted for two days. Tr. pp. 55-56. Thereafter, petitioner and his father only worked two hours per day for two weeks to complete what would otherwise have been a four-day job. Tr. pp. 56-57.

Petitioner also testified that the ground spins out in front of him every time he turns while mowing the lawn in vertical or horizontal patterns. Tr. p. 57. Petitioner testified that every time he turns his vision blurs and comes back after a couple of seconds requiring him to keep both feet on the ground and one hand on the lawnmower. Tr. pp. 57-58. He also testified that his vision blurs if he moves too quickly even when loading a dishwasher. Tr. p. 58. Petitioner further testified that he does vestibular exercises for 30 minutes 4-5 times per week in the morning and he feels "off" and nauseous for approximately 30 to 40 minutes after which he has to relax and adjust. Tr. pp. 50-51. He learned these exercises in therapy in 2007-08 to help him keep focus on an object as compared to its background so that he does not "spin out." Tr. p. 59.

Petitioner testified that he receives disability benefits from Social Security since approximately July of 2010 and a pension from his union since approximately August of 2010. Tr. pp. 60, 62. Petitioner testified that he receives a disability retirement pension from the union. Tr. pp. 62-67. He also testified that he has no other source of income. Tr. p. 68.

14 IWCC 0442

ISSUES AND CONCLUSIONS

The Arbitrator hereby incorporates by reference the Commission's Decision in 10 IWCC 1132, the Findings of Fact delineated above, and the Arbitrator's and parties' exhibits (AX1, PX1-PX3, and RX1-RX17²) which are hereby made a part of the Commission file. After hearing the parties' testimony, reviewing the evidence, and due deliberation, the Arbitrator finds on the issues presented at trial as follows:

In support of the Arbitrator's decision relating to Issue (K), Petitioner's entitlement to maintenance benefits, the Arbitrator finds the following:

The Arbitrator finds that Petitioner is not entitled to maintenance benefits as claimed. Section 8(a) of the Illinois Workers' Compensation Act ("Act") plainly states certain obligations imposed upon employers with regard to vocational rehabilitation and states, in pertinent part:

The employer shall also pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including *maintenance* costs and expenses incidental thereto.

820 ILCS 305/8(a) (*emphasis added*).

In its decision, the Commission noted that "...the Arbitrator correctly acknowledges that Petitioner is no longer able to perform some aspects of his job as a carpenter, such as working at heights. *However, we note that there are many aspects of carpentry work that Petitioner is still able to perform.*" 10 IWCC 1132 (*emphasis added*). The Commission also specifically found that Petitioner reached maximum medical improvement on June 26, 2008 per Dr. Peikos, and further found that he was not entitled to maintenance benefits pending the completion of the "initial vocational assessment." *See* 10 IWCC 1132. The case was remanded back to arbitration and the Commission ordered that Respondent provide an "initial vocational assessment" pursuant to Section 7110.10(b) of the Commission's Rules and that, "therefore, the vocational assessment provided by Respondent should address whether Petitioner's injury has reduced his earning capacity, as well as whether there exists a reasonably stable labor market for carpentry jobs that Petitioner is capable of performing." *See* 10 IWCC 1132. While the Respondent was required to comply with its duties pursuant to Section 8(a) of the Act and Section 7110.10(b) of the Commission's Rules the Commission's order did not exempt Petitioner from otherwise complying with the law such that he should be entitled to continuing maintenance benefits.

"Maintenance is awarded incidental to vocational rehabilitation." *Interstate Scaffolding v. Workers' Comp. Comm.*, 385 Ill.App.3d 1040, 1049, 896 N.E.2d 1132 (3rd Dist. 2008). A claimant need not participate in a prescribed rehabilitation program in order to be entitled to maintenance benefits and he may engage in a self-directed job search. *Greaney v. Industrial Comm.*, 358 Ill.App.3d 1002, 1020, 832 N.E.2d 331, 348 (1st Dist. 2005); *Roper Contracting v. Industrial Comm.*, 349 Ill. App. 3d 500, 506, 812 N.E.2d 65 (2004) (while self-directed job searches are disfavored, there is no rule prohibiting a claimant from engaging in a self-directed job search). No evidence presented at trial established that Petitioner engaged in any rehabilitation efforts or a self-directed job search such that he is entitled to maintenance throughout the time that he claims such entitlement. Thus, the Arbitrator finds that Petitioner is not entitled to maintenance from December 22, 2010 through October 19, 2012 as claimed.

² Petitioner's objections to the relevance of Respondent's Exhibits 1 through 11 are overruled and the exhibits are given some weight, if any, based on the testimony of Mr. Maldonado about the availability of some positions through Local 54.

In support of the Arbitrator's decision relating to Issue (L), the nature and extent of Petitioner's injury, the Arbitrator finds the following:

Based on the record as a whole, the Arbitrator finds that Petitioner has not established his entitlement to wage differential benefits. In so finding, the Arbitrator notes the findings in 10 IWCC 1132 and further stipulations made by the parties at this hearing. *See* AX1.

Petitioner also believed himself to be "capable of earning union-scale wages in the construction carpentry industry, evidenced by his continued and single-minded pursuit of positions with a number of different companies." *Id.* Moreover, Petitioner's 20+ years as a journeyman carpenter "resulted in employment relationships with nearly two dozen entities other than [Respondent]. In the past, he primarily utilized his personal contact system within the industry to move from project to project." *Id.* Respondent's heavy highway project safety manager, James Conway, also testified that "ground work only" work was available to carpenters in the Chicagoland area at union scale. *Id.*

This evidence supports Ms. Schmit's opinion that a stable labor market does exist for Petitioner and that he would not suffer a wage loss, which the Arbitrator finds persuasive given the totality of the record. Based on all of the foregoing, the Arbitrator finds that Petitioner has failed to establish entitlement to Section 8(d)(1) wage differential benefits.

Petitioner has established entitlement to permanent partial disability benefits pursuant to Section 8(d)(2). He was diagnosed with "mild concussion (resolved) and cervical disk bulges at C3-4, C4-5 and C5-6 with associated subjective complaints of headaches and dizziness" and work restrictions limited to ground work only and not working "at heights." 10 IWCC 1132. Petitioner reached maximum medical improvement per Dr. Piekos on June 26, 2008. *Id.* The Arbitrator notes that Petitioner's testimony at this hearing was less than credible; that the record is replete with findings made in 10 IWCC 1132, in addition to the evidence adduced at this hearing noting the subjective nature of Petitioner's reported symptoms.

Based on the record as a whole, the Arbitrator finds that Petitioner has established permanent partial disability to the extent of 25% loss of use of the person as a whole pursuant to Section 8(d)(2).

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Andy Kraly,

Petitioner,

vs.

NO: 12 WC 40591

Cook County Forest Preserve District,

Respondent.

14IWCC0443

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, medical expenses, temporary total disability, 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 16, 2013, 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.

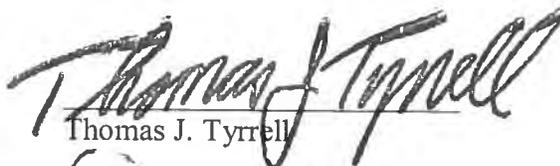
14IWCC0443

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

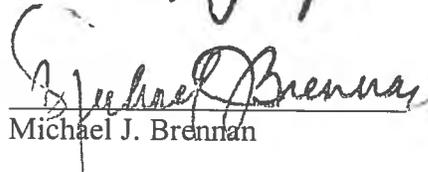
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

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

DATED: JUN 06 2014
TJT:yl
o 4/8/14
51



Thomas J. Tyrrell



Michael J. Brennan

DISSENT

I respectfully dissent from the decision of the majority. The definition of a traveling employee contemplates an employee being injured while traveling off their employer's premises Mlynarczyk v. Illinois Workers Compensation Commission 2013 IL App (3d) 120411WC Petitioner in the instant case was injured while on the Respondent's property. Petitioner's work duties brought him to the property of the Respondent where he encountered a neutral risk of traversing a non-defective curb. Finding the claim compensable improperly imposes positional risk liability on the Respondent and is an improper expansion of the judicially created traveling employee doctrine.



Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR
& 8(A)

KRALY, ANDY

Employee/Petitioner

Case# **12WC040591**

**COOK COUNTY FOREST PRESERVE
DISTRICT**

Employer/Respondent

14IWCC0443

On 7/16/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

2221 VRDOLYAK LAW GROUP LLC
MICHAEL P CASEY
741 N DEARBORN 3RD FL
CHICAGO, IL 60654

1681 FOREST PRESERVE DIST COOK CO
ROBERT L BAKER
69 W WASHINGTON ST SUITE 2010
CHICAGO, IL 60602

14IWCC0443

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b) & 8(A)

Andy Kraly
Employee/Petitioner

Case #12 WC 040591

v.

Consolidated cases: _____

Cook County Forest Preserve District
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Chicago**, on **05-20-13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS OF FACT

Petitioner testified in open hearing before the Arbitrator who had opportunity to observe his demeanor during direct and cross-examination. The Arbitrator considered the testimony of the Petitioner in light of all the other evidence of record. The Arbitrator finds Petitioner a fairly credible witness.

Petitioner is 5'8" tall and on the accident date, February 1, 2012, he weighed approximate 264 pounds. He had no complaints or problems with his right knee, right elbow, right-hand, right shoulder or left knee before the accident date. He had no complaints in the right knee for at least five years prior to the accident date and did not injure his knee in any other accident between the accident date and his examination with Dr. Reagan on February 28, 2013.

Petitioner worked as a police officer for Respondent for approximately 24 years. His job duties included patrolling the forest preserves and he performed this on foot and by driving vehicles.

On February 1, 2012, Petitioner started work at 8:00 AM and he was scheduled to finish at 4:00 PM. As he was driving his assigned patrol vehicle, he received a call from Headquarters in Lemont to go to the Aloha Headquarters in Hinsdale to pick up documents and return them to Lemont. He was on his assigned beat number 42 which included Hinsdale and Brookfield areas in Cook County. Petitioner drove his vehicle to the Aloha Headquarters and arrived at approximately 2:40 PM. He was in a hurry because the traffic in the area where the Aloha Headquarters is located in Hinsdale becomes congested in the late afternoon and he wanted to make sure he picked up the documents and was able to get them back to South Headquarters in Lemont before the end of his shift. When he arrived at Aloha Headquarters he parked his assigned patrol vehicle in the parking lot which owned by Respondent and open to the public.

Petitioner got out of his patrol vehicle and walked to the front of the vehicle to enter the Aloha Headquarters when he tripped over the elevated sidewalk adjacent to the parking lot. There was no defect. In fact, Petitioner testified he tripped because he was hurrying to complete his assigned task before the end of the shift. His was looking at at his wrist watch before he fell.

He injured his right knee, right elbow, right-hand, right shoulder and left knee. He was able to get up. A coworker in the Aloha Headquarters came out because she had seen him fall. Petitioner told her he thought he was "all right." He went into to the Aloha Headquarters to get the documents and returned to his patrol vehicle to return to South Headquarters. He patrolled for 10 or 15 minutes before going to the South Headquarters. When he arrived at South Headquarters his pain in the right knee had increased to the point where he could not put weight on it and he requested his coworkers to call an ambulance.

CONCLUSIONS OF LAW**C. Did an Accident Occur That Arose Out of and In the Course of Petitioner's Employment by Respondent?**

The threshold issue in this case is whether the Petitioner was a "traveling employee" as defined by one who "is required to travel away from the employer's premises in order to perform his job." See, Chicago Bridge & Iron, Inc. Industrial Comm'n, 248 Ill.App.3d 687, 694, Ill.Dec. 573, 618 N.E.2d 1143 (1993). In this particular case, the Petitioner was issued a patrol vehicle to travel to various forest preserve properties to insure law and order to the same. His job required constant motion whether on boat, foot, or vehicle. There were at least two headquarters and two properties that Petitioner patrolled. In order to perform his work, Petitioner had to travel off forest preserve property and did so daily. As a result, he was a traveling employee.

Courts have considered traveling employees differently from other employees when considering whether an injury arose out of and in the course of employment. Hoffman v. Industrial Comm'n, 109 Ill.2d 194, 199, 93 Ill.Dec. 356, 486 N.E.2d 889, (1985) However, a finding that a claimant is a traveling employee does not exempt the claimant from proving that an injury arose out of and in the course of employment. Hoffman, 109 Ill.2d @ 199. Whether an injury to a traveling employee arises out of and in the course of employment depends upon the reasonableness of the specific conduct and whether it might normally be anticipated or foreseen by the employer. U.S. Industries v. Industrial Comm'n, 40 Ill.2d 469, 474-75, 240 N.E.2d 637 (1968).

Therefore, in the present case, the next two questions to determine compensability are the following. First, was the specific conduct reasonable? Second, would that conduct normally be anticipated or foreseen by Respondent?

Was the specific conduct reasonable? The specific manner in which the Petitioner walked across the parking lot is an appropriate analysis. Jensen v. Industrial Comms'n, 305 Ill.App.3d 274, 711 N.E.2d 1129, 238 Ill.Dec. 468 (1st Dist. 1999). The facts indicate that the specific conduct here is walking across a parking, alighting a curb (with no defect) and tripping and falling while looking at a wristwatch. In short, the Petitioner was momentarily distracted, not paying attention to what he was doing; tripped and fell. Nevertheless, the very act of walking across the parking lot is reasonable. Petitioner was doing was doing exactly what he was instructed to do at the time appointed by his employer. Walking across the lot and alighting the curb was reasonable as well. But was it reasonable for him to check his wristwatch while doing so? Such an ever-so-brief, but common distraction should not arise to unreasonable behavior even if it caused him to trip and fall in this instance. The Petitioner's conduct was reasonable.

K. Is Petitioner Entitled to Prospective Medical Care?

Petitioner has undergone a course of conservative management for right knee pain from the date of accident to the date of hearing. Orthopedic specialist, Dr. Thomas P. Ragan has recommended arthroscopic surgery for the right knee. The Arbitrator finds this prescription to be both reasonable and necessary and orders Respondent to authorize and pay for same.

L. What temporary benefits are dispute? TTD

The weight of evidence indicates that Petitioner was off work from February 4, 2012 to February 10, 2012. Having found the condition of ill being causally related to the work accident; the Arbitrator orders Respondent to pay Petitioner TTD from February 4, 2012 to February 10, 2012.

M. Should Penalties or Fees Be Imposed upon Respondent?

Respondent refused to pay workers compensation benefits to Petitioner on the basis that Petitioner fell in the parking lot owned by Respondent which was open to the public and as such was not exposed to a risk different from that to which the public is exposed. Additionally, Respondent disputes that Petitioner was hurrying at the time he tripped over the elevation. Even if Petitioner was not hurrying, the law indicates that when a traveling employee is injured, the claim will be compensable as long as the employees conduct was reasonable and foreseeable by Respondent.

While Respondents failure to pay benefits arises from an incorrect analysis of the law, its conduct does not warrant penalties for the following two reasons. First, the law on traveling employees is expanding due to recent case law. Mlynarczyk v. IWCC 120411WC Ill.App.3d (2013) and others. The written opinions are contradictory and somewhat confusing. Second, there were two treatment gaps in this matter, one of which was five months long. As a result, the Arbitrator finds that Respondent's failure to pay benefits to Petitioner was reasonable and not vexatious. No penalties are awarded.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="text" value="down"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARIA E. GOMEZ / PATRICIA MARIN,

Petitioner,

vs.

NO: 11 WC 03723

SPEEDWAY SUPER AMERICA, LLC.,

14IWCC0444

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, prospective medical and penalties and attorney fees, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission affirms and adopts the Arbitrator's finding that the causal relationship of Petitioner's condition to the January 10, 2011 accident ended as of June 6, 2011, for the same reasons noted by the Arbitrator, in particular the June 6, 2011 report of Alivio (Petitioner's Exhibit 5) finding the Petitioner had reached maximum medical improvement from a conservative standpoint. The Commission specifically finds that all of the medical treatment provided to the Petitioner after June 6, 2011 by numerous providers, including but not limited to Dr. Harsoor, Alivio Physical Therapy and Chiropractic, Rogers Park One-Day Surgery Center, Dr. Michael, Metro South Hospital and Oak Park Medical Center was excessive and unnecessary. Pursuant to Section 8.2(e) of the Act, these providers shall not bill or otherwise attempt to recover from the Petitioner for medical services or treatment that have been

determined by the Commission to be excessive or unnecessary. The Commission finds its support for this in the reports of Dr. Goldberg, Dr. Graf and in the utilization review reports submitted by Respondent as Exhibits 5 through 9.

In this case, the Commission notes that both it and the Arbitrator have determined, based on the preponderance of the totality of the evidence, that the Petitioner sustained an aggravation of a degenerative lumbar condition, for which she reached maximum medical improvement as of June 6, 2011. The noted providers, despite minimal objective findings on MRI, and opposing opinions from reputable surgeons Dr. Graf and Dr. Goldberg, provided ongoing conservative care that clearly provided little if any benefit, and when that failed went ahead and performed fusion surgery without authorization from the Respondent. As noted by Dr. Graf when he saw the Petitioner post-surgery on February 27, 2012, her subjective pain level improved from 6 to 7 out of 10 pain to 5 out of 10 pain, and she continued to complain of burning leg pain. This is far from the "rather spectacular achievement" surgical result that Dr. Michael references. Again, while different physicians have differing opinions on treatment protocols, in this case Dr. Michael took it upon himself to provide his recommended treatment without authorization, which the Commission now finds was excessive and unnecessary. The wiser choice would have been to heed the cautions from Dr. Goldberg and Dr. Graf with regard to the inconsistencies they noted in the preceding medical records in terms of significantly varying symptomatic complaints of the Petitioner, as well as on the examinations of Drs. Goldberg and Graf, and to review these inconsistencies within the medical records, rather than spending significant time drafting reports to attack his colleagues and performing a surgery that appears to have essentially been based on the Petitioner's subjective complaints. MRI findings were minimal. While Dr. Michael claims the discogram "unequivocally" demonstrated an L4/5 pathology, the Commission questions how this could possibly be so when the discogram report itself noted 8 out of 10 pain at two lumbar levels in addition to L4/5. The Commission reviews discogram results repeatedly on review, and the point of performing multi-level testing is to provide control levels to make certain of which level or levels are producing pain. In this case, three different levels produced at least 8 out of 10 pain. How this did not lead Dr. Michael to question a surgical remedy, particularly in the face of the other medical evidence in this case, remains unclear. In fact, on August 29, 2011 he specifically notes discogram showed L1/2, L3/4 and L4/5 pathology. MRI of February 1, 2011 showed no pathology whatsoever at L3/4, and very mild findings at the other two levels.

The narrative reports of Dr. Michael take on a tone wherein he appears to be personally offended by differing medical opinions. At one point Dr. Michael notes there may be a "cultural expression" of Petitioner's pain, whatever that means, which should not be taken as exaggeration. This tone does not help his credibility. In this specific case, we find that the questionable subjective complaints, minimal MRI findings and clearly equivocal discogram findings resulted in excessive and unnecessary treatment. Pursuant to Petitioner's Exhibit 12, including treatment both before and after June 6, 2011, the various providers billed upwards of \$442,429.82 for a lumbar strain. The Commission continues to note that the "non-emergency transportation" charges from \$275 to \$125 per trip will not be accepted without very solid and credible proof of medical necessity, which is clearly lacking in this case.

14IWCC0444

The Commission also specifically affirms the Arbitrator's denial of penalties and attorney fees, noting the evidence does not support a finding of unreasonable and/or vexatious behavior on the part of Respondent in issuing or failing to issue benefits.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$251.30 per week for a period of 18-3/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the causally related medical expenses incurred by Petitioner through and including June 6, 2011 pursuant to §8(a) of the Act, and subject to the fee schedule contained in §8.2 of the Act.

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

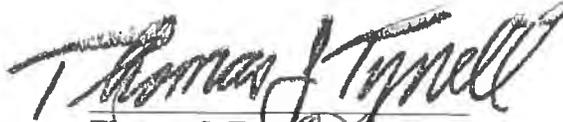
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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

IT IS FURTHER ORDERED BY THE COMMISSION that 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.

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: JUN 06 2014
TJT: pvc
o 4/8/14
51



Thomas J. Tyrrell



Michael J. Brennan



Kevin W. Lamborn

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

GOMEZ, MARIA (PATRICIA MARIN)

Employee/Petitioner

Case# 11WC003723

SPEEDWAY SUPERAMERICA LLC

Employer/Respondent

14IWCC0444

On 6/10/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

0293 KATZ FRIEDMAN EAGLE ET AL
MARIA S BOCANEGRA
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

0766 HENNESSY & ROACH PC
LAUREN A SERAFIN
140 S DEARBORN 7TH FL
CHICAGO, IL 60603

STATE OF ILLINOIS)

COUNTY OF COOK

)SS.
14IWCC0444

- 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)

MARIA GOMEZ (PATRICIA MARIN)

Employee/Petitioner

Case # 11 WC 3723

v.

Consolidated cases: _____

SPEEDWAY SUPERAMERICA LLC

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Carolyn Doherty**, Arbitrator of the Commission, in the city of **Chicago**, on **1/7/13** and **Wheaton** on **4/10/13**. 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 - Prospective Medical Care Under 8(a).

FINDINGS

On 1/10/11, 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 prior to 6/6/11 *is* causally related to the accident. SEE DECISION

In the year preceding the injury, Petitioner earned \$13,067.60; the average weekly wage was \$251.30.

On the date of accident, Petitioner was 39 years of age, *single* with 3 dependent children.

Petitioner *has* received all reasonable and necessary medical services through 6/6/11. SEE DECISION.

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

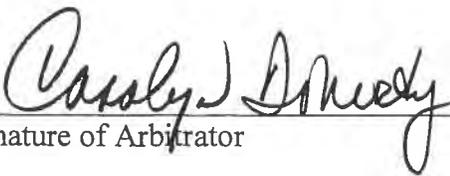
Respondent shall pay Petitioner temporary total disability benefits of \$251.30/week for 18-3/7 weeks, commencing 1/29/11 through 6/6/11, as provided in Section 8(b) of the Act.

Respondent shall pay directly to Petitioner reasonable and necessary medical services incurred through 6/6/11, as provided in Sections 8(a) and 8.2 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

6/10/13
Date

JUN 10 2013

FINDINGS OF FACT

Petitioner testified via interpreter at trial. Petitioner testified that her name is Patricia Marin. The Application was filed under the name Maria Gomez which Petitioner testified is the name she "just used." T. 8. The Application was amended to reflect the name Patricia Marin at trial. T. 4. Petitioner testified that she is not legally married but refers to her partner as her husband. T. 8. Petitioner's highest level of education is "up until the first grade of secondary school in Mexico." T. 8.

Petitioner testified that she began working for Respondent Speedway on 1/26/05 and that when she worked for Respondent she used the name Maria Gomez. T. 9. Petitioner's job duties included putting out the coffee and food for the gas station store. Her activities included making breakfast, lunch and coffee and carrying heavy boxes of frozen food. T. 9. On 1/10/11, Petitioner began her shift at 4:30 am. At that time, she was preparing breakfast and "getting the boxes of frozen meat to prepare the breakfast." T. 10. Petitioner felt "good" when she started her shift. T. 10. Petitioner testified that about "... 10:00 am in the morning I went to the cooler to pick up - to get a box of chicken of about 30 pounds and I took it back to the Speedway and I placed it on a table, and just as soon as I kind of leaned forward and put it on the table I felt a pain in my lower back and I felt it but then I just continued working." T. 11. Petitioner finished her shift at noon. Petitioner testified that she worked that day with her boss "Lorenzo", Vanessa and Juan. Petitioner did not report her injury on 1/10/11. Petitioner testified that she went home after her shift, laid down and took Tylenol because she thought it would help the pain. She testified that "the pain was very strong, but after taking the Tylenol it only made it worse." T. 11.

Petitioner testified that she worked every day between 1/10/11 and her last day worked on 1/26/11. T. 12. During that period she noticed a "very strong pain" in her lower back that traveled down her leg. Petitioner continued taking Tylenol which did not help alleviate her pain. T. 12. Petitioner testified that on 1/26/11, she reported her injury to Lorenzo. Petitioner testified, "I reported on the 26th because my back was hurting really bad, and I didn't report it before because I was worried that they would fire me, but I waited and I reported it on the 26th." T. 13. Petitioner testified that she went to Speedway and reported to Lorenzo. Petitioner's daughter went with Petitioner so she could translate for Petitioner. Petitioner was given an accident report to complete. Petitioner testified that she completed the form and then was told by Lorenzo to go to the ER at MacNeal Hospital because the company clinic was too far. T. 15-16.

Petitioner's daughter Nancy Marin testified at trial. T. 30. Ms. Marin testified that she went with her mother to Speedway on 1/26/11 at 5:00 pm to report the accident. T. 31. Ms. Marin testified that she went with her mother because Petitioner needed a translator. Ms. Marin testified that she spoke with Lorenzo and "we explained to him about her going to the cooler and taking that box to Speedway because she had to do her job as a - cook breakfast and stuff like that. So we explained to him how she carried the box over to Speedway and when she put the box on the table that she felt that pain in her back." T. 32. Ms. Marin testified that Lorenzo told them to fill out a report for the company and she completed the report for her mother as the report must be in English. T. 33. Ms. Marin testified that she reported the same accident details on the report and added that Petitioner did not report the accident "as soon as possible" because she was afraid of being fired and that she took Tylenol to see if the pain would go away. T. 33.

The witness testified that she recalls signing the report and believes Petitioner signed it as well. Ms. Marin further testified that Lorenzo told them they should go to the company clinic but that it was too far and too late so they should just go to the ER. T. 34. Ms. Marin testified that she does not recall her mother telling Lorenzo that she was resigning from her position at Speedway. T. 34. Finally, she testified that her mother was given a copy of the completed report. T. 35.

Respondent called Lorenzo Lampignano to testify in his job capacity as Petitioner's manager at Speedway on 1/10/11. The witness currently works for Road Ranger which bought the former Speedway location where the accident occurred. T. 36. Mr. Lampignano testified that he supervised Petitioner from December 2010 until January 26, 2011. T. 37. On direct examination, the witness testified that on 1/26/11, Petitioner "... walked out of her job in the morning I think around 8:00 o'clock." He was asked his understanding of why Petitioner walked out and he responded, "That she couldn't handle the stress of her job and she didn't want to do the job anymore." T. 38. He further testified that Petitioner clocked out on 1/26/11. He further testified that Petitioner returned the next day on 1/27/11 with her daughter to report an injury she sustained to her back lifting a box. T. 39. Mr. Lampignano further testified that Petitioner never provided a date of her injury so he had no way to investigate the accident or look for accident footage on the store camera. T. 40. He testified that Petitioner did not state that she failed to report the accident earlier because she was afraid she would be fired. T. 41. Prior to 1/27/11, Petitioner made no complaints to the witness about back pain and she performed her normal job duties up to the day she quit. T. 41. Finally, on direct exam, the witness testified that Speedway had accident report procedures and that Petitioner was aware of those guidelines but did not comply. T. 42.

On cross-exam, Mr. Lamignano testified that Petitioner was made aware of the accident reporting procedures at monthly meetings. T. 43. He further testified that he recalled filling out an accident report but that he did not have the report with him at the trial. He testified that since Petitioner did not advise him of an accident date the date of accident on the report should be blank. T. 45. HE testified that he asked Petitioner for an accident date but that she had "no reply." T. 45. He explained to Petitioner that he needed the accident date to complete his investigation. T. 45. The witness agreed that he received an Application for Adjustment of claim filed by Petitioner with an accident date of 1/10/11 but he sent the document to the corporate office and did not complete an investigation after seeing the accident date alleged. T. 46. He testified that the corporate office would have done the necessary investigation and that once he completed the accident report his managerial job duties were done. T. 47. The witness was shown PX 15 which is the form 45 Employers First Report of Injury. He does not recall completing that report and does not recall the form he filled out with Petitioner on 1/27/11. T. 48-49. Mr. Lampignano again testified that if Petitioner would have told him an accident occurred on 1/10/11 he could have looked at surveillance footage to verify. He never looked at the film because he was not provided an accident date at any point. T. 49. Finally, he testified that he never told Petitioner to go to MacNeal Hospital. T. 55.

Despite the reference to the form 45 report as PX 15, the Arbitrator notes the report was admitted as PX 13. PX 13 is dated 2/15/11 and is signed by Erica Snow. The report lists the accident date as 1/10/11 at 9:00 am. The report further indicates that "EE went to subway side where freezers are located and retrieved a box of honey mustard chicken patties. As she went to place the box on the freezer table, she felt a pain in her lower back." The report further indicates that

Petitioner went to Herron Urgent Care at 10830 S. Halsted St. in Chicago. PX 13. Respondent submitted RX 10 which is an accident report entitled "Speedway Superamerica LLC Occupational Injury & Illness (OI&I) Report. The report was completed and signed by Nancy Marin as Petitioner's daughter and is dated 1/28/11. The report is stamped "SSA Jan 31 2011". The accident description reads the same as the description on PX 13 with the added detail that "upon placing the box on the table located where the freezers are I believe I pulled a lower back muscle. I had to place the box in a rapid motion because it was to [sic] heavy for me". RX 10. In detailing the injury Petitioner reported, "In the lower back pain has been getting worst after the incident not only does the lower back hurt but the legs get numb as well after the incident the pain came back but worst [sic]". RX 10. The accident was listed as reported to Lorenzo Lampignano on 1/28/11 at 5:00 pm. Under the date of incident is listed "unknown" and above the word "unknown" is "10-10 10-14." The time is listed as 9:00 am but then the box is checked for "time cannot be determined." Finally, the report indicates that Petitioner began work on the day of accident at 5- 6 am and that she worked 7 hours that day. Her last day worked was 1/26/11, two days before the report was signed on 1/28/11. RX 10. The report was signed in a printed signature of Maria Elena Gomez and is dated 1/28/11.

In the section of the report completed by the supervisor, Lorenzo Lampignano, he indicates that he disagrees with Petitioner's statements regarding an accident in the report because he is "unable to verify injury because date is unknown." RX 10.

Attached to the report at RX 10 is a second report entitled "Confidential SSA Workers' Compensation Investigation". Although this report is not dated, it references a completion date of 1/8/11 and 2/11/11 and is stamped received on 2/14/11. The report repeats verbatim Petitioner's provided accident description as contained in the RX 10 and PX 13 reports. Again, this report references that Petitioner could not provide an exact date of injury but rather stated that the accident happened on some date between 1/10/11 and 1/14/11 and that no injury was reported during that time period. The report indicates "We will go with 1/10/11 as the DOI, which is on the legal paper work." The report further states that according to Mr. Lampignano, Petitioner performed all of her job duties without perceived or reported problem up to the date she resigned without notice on 1/26/11. Mr. Lampignano further advised that Petitioner did not report an injury until 1/26/11 when she resigned without notice. However, contained on page 2 of the report is a section which reads "If another person completed OI&I identify by name, title, phone number and date: Nancy Mann, Daughter ... 1/28/11." RX 10. Finally the report indicates that Mr. Lampignano was advised by Petitioner that she sought medical treatment from Herron Medical Urgent Care but that Petitioner could not remember the date of care and that she was not provided copies of any medical reports. RX 10.

At trial, Petitioner testified that she went to MacNeal Hospital on 1/28/11. T. 16. She testified that she was given a 5 pound lifting restriction and that she "took the paper back to my boss and he told me that I no longer work there, but to go ahead and leave that paper, and I did that and I left." T. 17. The MacNeal records triage note dated 1/28/11 indicates "lower back pain x 2 weeks accident at work." PX 4. The history indicates, "Patient complains of having a twisting injury to the lower back 2 weeks prior to arrival. The pain radiates to the left posterior thigh to knee. No tingling. No numbness. No weakness. ... Pt was twisting placing box to the right when she got the pain." Petitioner was told to take Ibuprofen and follow up in 3 days if the pain did not stop. PX 4. Petitioner was told she could "work their next scheduled shift with the

following modification in their work: minimum bending or stooping work; no lifting over 10 pounds; no over the shoulder work; through Fri Feb 4, 2011 (1 week)." PX 4. Petitioner testified that she brought the work restrictions to Speedway and was told she no longer worked there. Petitioner left the work restrictions with Respondent.

Petitioner chose to treat with Alivio Physical Therapy Chiropractic on 1/31/11. PX 5. The records contain a consistent history of injury on 1/10/11 with continued pain in her lower back and numbness and tingling in her left leg. The history provided on this date further indicates that Petitioner "... told her boss on 1/28/11 she had not worked after 1/26/11. This injury. it happened about 9:30 am and told Lorenza the manager on 1/28/11." PX 5. Exam revealed limited range of motion and tenderness. The assessment was acute lumbar sprain/strain, lumbar spine radiculitis, lumbar disc displacement and lumbago. Dr. Barnabas recommended an MRI of the lower back, anti-inflammatories, physical therapy, electrical muscle stimulation, ultrasound and hot packs. On 2/1/11, Petitioner underwent an MRI of the lumbar spine at Lakeshore Open MRI and CT at the request of Dr. Barnabas. PX 6. Impression was "No significant spinal stenosis or foraminal stenosis is seen. No acute lumbar compression fracture deformity is seen. Mild left paracentral and foraminal disc protrusion is seen at the level of L1-2. Mild central disc protrusion is seen at L4-5". PX 6.

At her physical therapy visit of 2/3/11, Petitioner complained of low back pain 6-7/10 with "no radiation of pain." At her next visit on 2/11/11, Petitioner complained of low back pain with an increase of pain at night and pain radiating down into the buttocks and at times into her legs. Petitioner had already been to a consult with pain specialist Dr. Harsoor and was scheduled for an injection on 2/27/11. Physical therapy and medication was continued and Petitioner was taken off work. PX 6. While waiting for the injections, Petitioner continued at Alivio PT. On 3/14/11, Alivio assessed mild left paracentral and foraminal disc protrusion at L1-L2, mild central disc protrusion at L4-5 and lumbar sprain/strain. PX 6. Petitioner continued in PT thereafter through 6/6/11 on 15 visits each time receiving electrical muscle stimulation, hot packs, soft tissue massage and gentle mobilization. PX 6.

On 6/6/11, the Alivio notes indicate that Petitioner presented feeling improved with decreased pain noted in her low back. She states she feels no pain today. She has been performing range of motion exercises. Physical exam and testing elicited decreased pain. The notes of 6/6/11 indicate "From a conservative management point of view, the patient has reached maximum medical improvement. She is being discharged from care today. She was told if she does experience any exacerbation of her symptoms to use non steroidal anti-inflammatory medication, ice and moist heat and to continue with her range of motion and core exercises. The patient is working full duty." PX 5, p. 23.

One week later on 6/13/11, the Alivio notes that Petitioner returned and was administered more physical therapy. It was noted that "patient is working as tolerated and states that she feels pain in her low back at about 5-6/10 and radiates into the buttocks and sometimes into the legs. She is only taking Advil at this time when needed. She does have an appointment with Dr. Harsoor on 6/16/11." Petitioner received the same form of PT and was told to continue her range of motion exercises. PX 5, p. 24. Petitioner continued at another 13 visits until her "elective" surgery in October 2011. It was noted that although range of motion and strength had improved, Petitioner's level of pain remained the same as at initial evaluation 4 months earlier.

While treating at Alivio between February 2011 and October 2011, Petitioner also saw Dr. Harsoor. On 2/3/11, Dr. Harsoor noted that Petitioner gave a history of injuring herself at work on 1/10/11 when she went to place a box weighing approximately 30 pounds onto a table and felt a pain in her back. PX 6. Dr. Harsoor noted palpation of the lumbar intervertebral spaces reveals pain with palpable trigger points noted in the low back muscles and positive straight leg raise bilateral. Based on her review of Petitioner's symptoms and the diagnostic MRI showing disc protrusions at L1-2 and L4-5, the doctor recommended continued physical therapy and medications. On 2/17/11, Dr. Harsoor continued to note ongoing complaints of pain, palpation of the lumbar intervertebral discs, limited flexion, positive straight leg raise bilaterally and hyperalgesia. She noted that Petitioner was unable to work and ordered lumbar L4-5 injections. On 4/5/11, Petitioner underwent lumbar epidural steroid injections at L4-5. PX 6, PX 7. On 4/21/11, Dr. Harsoor noted Petitioner achieved moderate relief of pain following injections. She further noted continued left leg pain 3/10 and numbness. Dr. Harsoor diagnosed radiculopathy and recommended Petitioner continue physical therapies, medications. On 5/19/11 Petitioner reported pain 6/10 and continued left leg pain and numbness. PX 6. Again, injections and continued PT was recommended. On 5/20/11, Dr. Harsoor referred Petitioner to a spine surgeon for consult. PX 6, p. 26. On 6/2/11, Dr. Harsoor noted continued pain and left leg numbness and that Petitioner was waiting to see a spine surgeon. She further noted continued injections but that Petitioner wanted to wait until after she saw the spine surgeon. Petitioner was started on tramadol while waiting the surgical consult.

Again, on 6/6/11, the Alivio notes indicate that Petitioner presented feeling improved with decreased pain noted in her low back. She states she feels no pain today. She has been performing range of motion exercises. Physical exam and testing elicited decreased pain. The notes of 6/6/11 indicate "From a conservative management point of view, the patient has reached maximum medical improvement. She is being discharged from care today. She was told if she does experience any exacerbation of her symptoms to use non steroidal anti-inflammatory medication, ice and moist heat and to continue with her range of motion and core exercises. The patient is working full duty." PX 5, p. 23.

On 6/6/11, Petitioner saw Dr. Michael, spine surgeon. He noted the same history of accident 6 months earlier and that Petitioner underwent four months of physical therapy and one injection which failed to provide relief for her continued complaints. Specifically, Dr. Michael noted, "Her back pain is much, much worse than bilateral leg pain. Her pains are severe sitting, standing and walking. There is numbness and tingling bilaterally in the lower extremities. She has weakness bilaterally in the lower extremities." PX 8, p. 19. He recommended two additional injections while Dr. Michael awaited receipt of her MRI films.

One week later on 6/13/11, the Alivio notes that Petitioner returned and was administered more physical therapy. It was noted that "patient is working as tolerated and states that she feels pain in her low back at about 5-6/10 and radiates into the buttocks and sometimes into the legs. She is only taking Advil at this time when needed. She does have an appointment with Dr. Harsoor on 6/16/11."

On 6/16/11 Dr. Harsoor scheduled further injections and on 6/28/11, Petitioner underwent second set lumbar epidural injections with trigger point injections at three levels. PX 6, PX 7. On 7/7/11, Dr. Harsoor noted that the injections provided mild relief and that the low back pain and left leg pain and numbness continued. On 7/7/11, Dr. Harsoor noted "will schedule third

injection in 2 weeks if pain worsens with returning to work. She will be released to light duty work with 20 lb restriction and will consider releasing to full duty if she can handle this." PX 6, p. 45-46.

On 7/19/11, Petitioner underwent a third round of lumbar epidural injections. PX 7. Dr. Harsoor noted "she is doing light duty work with 20 lb restriction and will consider releasing to full duty if she can handle this." PX 6, p. 48. Petitioner was scheduled for follow up with Dr. Harsoor in 3 weeks. At a follow up upon 7/28/11, Dr. Harsoor noted that Petitioner was not working because her employer told her she could only work at 100%. PX 6, p. 57.

On 8/9/11, Petitioner underwent a lumbar discography with Dr. Harsoor at the request of Dr. Ronald Michael. Concordance of pain was noted most prominently at L4-5 being 10/10. PX 6, p. 63. Pain levels ranging from 1/10 to 8/10 were noted at L1-2 through L3-4. PX 6, p. 63. Petitioner underwent a post-discogram CT of the lumbar spine at Lakeshore Open MRI. PX 6, p. 70. Relevant findings showed multi-level annular tears with grade III annular tear at L4-5 with disc protrusion measuring 4mm, causing "overall" mild narrowing of the central canal and no significant narrowing of the foramina. PX 6, p. 70-71. No stenosis of the central canal or neural foramina was noted at any other level. The MRI of 2/1/11 showed mild central disc protrusion at L4-5. PX 6, p. 72.

On 8/29/11, having reviewed the discogram report, Dr. Michael diagnosed L4-5 diskogenic pain and offered Petitioner treatment options ranging from living with the pain and "accepting it" to posterior lumbar fusion surgery. Petitioner declined the offered disc decompression/bicuplasty and opted for the posterior lumbar fusion. Petitioner elected to proceed. *Id.* On 10/17/11, Dr. Michael reviewed the MRI of the lumbar spine and opined disk herniation at L4-5 and diskogenic pain at L4-5. Again, Petitioner as offered the option of living with her pain but advised Dr. Michael that she could not live with the pain and that she was "incapacitated by it." PX 8, p. 16.

On 11/10/11, Petitioner was admitted to Metro South Medical Center and underwent a posterior lumbar interbody fusion with hardware and discectomy. PX 8, PX 11, PX 9. The post-operative diagnosis was herniated nucleus pulposus at L4-5. On 11/11/11, a CT of the lumbar spine showed good alignment of fusion. PX 9. Petitioner was discharged home on 11/12/11.

On 11/21/11, Petitioner returned to Dr. Michael, who fit Petitioner with a bone growth stimulator to enhance bony fusion and healing for a minimum of 6 months after surgery. PX 8. At her exam on 1/21/11, Dr. Michael noted that Petitioner reported "her low back pain is gone. Her leg pain is better than 80% improved." PX 11, p. 8. On 1/16/12, Dr. Michael noted Petitioner's improvement with right leg pain and ordered post-operative physical therapy and a CT of the lumbar spine which showed normal post op changes. PX 11, p. 20.

On 2/13/12, Petitioner began physical therapy at Oak Park Medical Center. PX 10. Petitioner attended PT through 8/13/12.

On 7/24/12, Dr. Michael noted that Petitioner had 6 weeks of PT at that point and that she was 80% improved versus preoperatively. On 7/24/12, Dr. Michael recommended work conditioning. Petitioner returned to Dr. Michael on 8/21/12 when Dr. Michael noted, "the patient complains of low back pain with work conditioning. She has right leg pain. Overall and

in consideration of these complaints she remains at least 70% improved versus preoperatively." He further noted that Petitioner should "... maintain her current level of activity and restrictions. She has reached maximum medical improvement (MMI). I am willing to discharge her from my care. She may return to this office on an as needed basis." PX 11, p. 17.

In May 2011, well prior to her surgery, Petitioner attended a Section 12 exam with Dr. Goldberg on 5/13/11. Dr. Goldberg questioned Petitioner's credibility based on the fact that she did not immediately report the accident to her employer and that she continued working for Respondent full duty after the accident until the day she reported the accident 18 days later. RX 1. He further noted that Petitioner's exam was normal except for the subjective lumbar tenderness with full lumbar motion. Dr. Goldberg read the MRI to show no significant pathology and only mild disc protrusions at L4-5. He did not read the MRI to show evidence of disc herniation or stenosis. At most, he determined that Petitioner sustained a mild lumbar strain and that her continued chronic pain complaints are not supported by clinical or MRI evidence of anatomic changes to her spine. He found Petitioner to be at MMI as of 5/13/11.

On 9/16/11 Dr. Goldberg issued an addendum report after reviewing records from Alivio and from Dr. Harsoor. Based on his prior opinion, he did not feel that additional injections were medically necessary. His prior opinions remained unchanged. RX 2.

Dr. Michael responded to Dr. Goldberg's report with a letter dated 12/4/11. In it, Dr. Michael opined that Petitioner lifting a box of food is a credible mechanism of injury to the lower back. PX 8, PX 3. Specifically, he noted that patients who bend, lift and potentially twist can injure their lower backs. He reviewed the MRI personally and opined a disc herniation at L4-5. Dr. Michael noted failed conservative care and positive discogram result with concordant pain at L4-5. Dr. Michael explained that Petitioner's internal disc disruption can be associated with mechanical low back pain but that this condition is not traditionally associated with radiculopathy nor would she be expected to have neurological deficits. Dr. Michael opined that the MRI of the lumbar spine, the lumbar discogram and CT scan of the lumbar spine confirmed Petitioner's pathology. Dr. Michael noted that Dr. Goldberg, Respondent's section 12 doctors, had not yet reviewed these studies when he issued his medical report, as they had not yet occurred. Regarding credibility, Dr. Michael noted that he found Petitioner to be credible and that exaggeration should not be confused with cultural expression of pain. The doctor believed Petitioner's medical treatment to date had been reasonable and necessary and that surgery was indicated following six months of failed conservative care.

Petitioner attended a Section 12 exam with Dr. Graf on 2/27/12 after Petitioner's fusion surgery. Dr. Graf reviewed Petitioner's medical records in addition to examining Petitioner. RX 3. He opined that Petitioner's subjective complaints of back pain had little correlation to objective findings. He documented multiple inconsistencies and non-organic pain signs, and believed that her condition was not a direct result of her alleged work injury. Dr. Graf also noted that there were no disc herniations present on her MRI scan, and that the imaging studies did not demonstrate any acute findings. Dr. Graf stated that any and all care and treatment was not related to the alleged injury.

On 7/6/12, Dr. Michael issued a report in response to the Section 12 report authored by Dr. Graf. Dr. Michael disagreed that Petitioner showed only degenerative changes, that Petitioner was not truthful and that surgery was not necessary. In addressing fusion following Petitioner's surgery,

Dr. Michael opined that achieving fusion is a process rather than a discrete event with definitive time lines. Dr. Michael agreed that Petitioner did not suffer from nerve root impingement but rather mechanical low back pain, which could exist independently of impingement. The doctor continued to opine that Petitioner suffered a low back injury at work and following failed conservative care and proved to be a surgical candidate. Her noted improvement, he opined, was evidence of injury in the first place.

On 9/18/12, Dr. Graf completed an addendum report to respond to Dr. Michael's report of 7/6/12. RX 4. Dr. Graf again stated that neither he nor the radiologist saw disc herniation on the MRI. Further, Dr. Graf noted Dr. Michael's agreement that Petitioner did not have any nerve impingement. Finally, Dr. Graf disagreed with Dr. Michael and noted that Petitioner did not improve following surgery but rather continued with pain complaints thereby proving that the surgery was not necessary to alleviate Petitioner's condition.

Respondent produced utilization review reports certifying 10 physical therapy sessions beginning 1/31/11 and post operative physical therapy of 31 sessions between 2/14/12 to 5/3/12. All other treatment including injections, discogram, surgery and work conditioning was decertified. RX 5-RX 9.

CONCLUSIONS OF LAW

The above findings of fact are incorporated into the following conclusions of law.

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? E. Was timely notice of the accident given to Respondent?

After consideration of the record in its entirety, the Arbitrator finds Petitioner sustained accidental injuries arising out of and in the course of her employment by Respondent on 1/10/11 and that proper notice of the accident was provided to Respondent on 1/28/11. In so finding, the Arbitrator places greater weight on the testimony of the Petitioner and her daughter Nancy Marin than on the testimony offered by Mr. Lampignano on the issue of accident and notice. The Arbitrator also places great weight on the accident reports submitted in finding accident and notice.

Petitioner had no back problems prior to 1/10/11. Petitioner's testimony regarding the mechanism of injury, i.e. lifting and placing the frozen chicken on a table, is reiterated in every treating record history. Further, the history of accident is reflected on every written accident report. Minor inaccuracies in the date of accident or the date of reporting, i.e., 1/26/11 or 1/28/11 provide an insufficient basis to deny accident and notice. The Arbitrator further notes that the documentary evidence clearly supports a finding of accidental injuries on 1/10/11 and reported on 1/28/11, two days after Petitioner's last day worked for Respondent. It is not lost on the Arbitrator that Petitioner worked from 1/10/11 to 1/26/11 without reporting an accident and that she reported the accident only after she left her job on 1/26/11. However, the Arbitrator finds credible Petitioner's testimony that she was afraid to report the accident for fear of getting fired and only reported the injury after she left the job she was no longer able to perform because of the injury received on 1/10/11.

F. Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator finds that Petitioner sustained an aggravation of a pre-existing, asymptomatic degenerative low back condition as a result of the lifting incident at work on 1/10/11 and that Petitioner reached MMI for that causally related condition was reached on 6/6/11. In so finding, the Arbitrator notes that in May 2011, well prior to her surgery, Petitioner attended a Section 12 exam with Dr. Goldberg on 5/13/11. Dr. Goldberg noted that Petitioner's exam was normal except for the subjective lumbar tenderness with full lumbar motion. Dr. Goldberg read the MRI to show no significant pathology and only mild disc protrusions at L4-5. He did not read the MRI to show evidence of disc herniation or stenosis. At most, he determined that Petitioner sustained a mild lumbar strain and that her continued chronic pain complaints are not supported by clinical or MRI evidence of anatomic changes to her spine. He found Petitioner to be at MMI as of 5/13/11.

The Arbitrator further notes the physical therapy notes from Alivio dated 6/6/11 which indicate Petitioner, "... presented feeling improved with decreased pain noted in her low back. She states she feels no pain today. She has been performing range of motion exercises. Physical exam and testing elicited decreased pain" and that "From a conservative management point of view, the patient has reached maximum medical improvement. She is being discharged from care today. She was told if she does experience any exacerbation of her symptoms to use non steroidal anti-inflammatory medication, ice and moist heat and to continue with her range of motion and core exercises. The patient is working full duty." PX 5, p. 23. On the same day, 6/6/11, Petitioner saw Dr. Michael, spine surgeon. He noted the same history of accident 6 months earlier and that Petitioner underwent four months of physical therapy and one injection which failed to provide relief for her continued complaints. Specifically, Dr. Michael noted, "Her back pain is much, much worse than bilateral leg pain. Her pains are severe sitting, standing and walking. There is numbness and tingling bilaterally in the lower extremities. She has weakness bilaterally in the lower extremities." PX 8, p. 19. He recommended two additional injections while Dr. Michael awaited receipt of her MRI films. Dr. Michael subsequently reviewed the MRI and determined that Petitioner had low back pain without impingement.

The Arbitrator is unable to reconcile the information contained in the two medical notes of 6/6/11 which contain vastly different snapshots of Petitioner's condition on that day. One note reflects improvement to the point of MMI and the other reflects severe and debilitating pain. No explanation of these records was offered at trial. Based upon the opinion of Dr. Goldberg finding MMI as of 5/13/11, the questionable status of Petitioner's condition raised by the two records of 6/6/11 and the subsequent opinions on the necessity of Petitioner's treatment after 6/6/11, including surgery, offered by Dr. Graf, the Arbitrator finds no causal connection for Petitioner's condition of ill-being after 6/6/11.

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? O. Is Petitioner entitled to prospective medical care? K. What temporary benefits are in disputed – TTD?

Based on the Arbitrator's findings of the issue of causal connection, the Arbitrator further finds that Respondent is to pay to Petitioner reasonable and necessary medical expenses incurred prior to 6/6/11 in the care and treatment of the casually related injuries prior to that date. Respondent

shall receive credit for amounts paid, including credit under Section 8(j) of the Act, if any. Further, Respondent is to pay Petitioner temporary total disability benefits for a period of 18-3/7 weeks commencing 1/29/11 through 6/6/11. Respondent shall receive credit for amounts paid, if any.

Based on the Arbitrator's finding of causal connection through 6/6/11 and MMI on that date, the Arbitrator further finds that Petitioner is not entitled to prospective medical care to the extent any such request was made at trial. No such request is noted on the Amended Request for Hearing Form.

M. Should penalties or fees be imposed upon Respondent?

Based upon the record as a whole and upon the Arbitrator's foregoing findings, the Arbitrator further finds that Respondent's conduct in refusing to pay either TTD or medical benefits was not so unreasonable or vexatious so as to justify the imposition of fees or penalties under Sections 19(k), 19(l) or 16 of the Act in this matter.

STATE OF ILLINOIS)

) SS.

COUNTY OF LAKE)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="checkbox"/> up	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRIAN FIENE,

Petitioner,

vs.

NO: 11 WC 47182

CITY OF ZION POLICE DEPARTMENT,

14IWCC0445

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issue of the permanent partial disability benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator awarded Petitioner 10% loss of the person as a whole. We modify the Arbitrator's decision and increase Petitioner's award to 15% loss of the person as a whole.

According to Section 8.1(b) of the Act, for injuries that occur after September 1, 2011, in determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

- 1) The reported level of impairment pursuant to the AMA Guidelines;
- 2) The occupation of the injured employee;
- 3) The age of the employee at the time of the injury;
- 4) The employee's future earning capacity; and

- 5) Evidence of disability corroborated by the treating medical records.
- 1) The reported level of impairment pursuant to the AMA Guidelines.

Dr. Vitello assessed Petitioner's impairment rating at 1.2% person as a whole. However, impairment does not equal disability. The impairment rating is part of the determination for permanent partial disability benefits but is not the sole or main factor. Impairment ratings have limited use and Dr. Vitello testified that he would only consider such ratings in a worker's compensation situation and would not use it when treating other patients. During his exam, Dr. Vitello recorded that Petitioner complained of pain with prolonged use of his arms overhead and pain in his right shoulder when attempting to throw. He also noted pain when reaching for his work belt and trying to put his right arm behind his back to fasten and secure his gun in his holster. Petitioner also told Dr. Vitello that he had pain on several occasions when forcefully reaching in front of himself when attempting to apprehend or combat a suspect. Yet Petitioner had a normal physical exam and Dr. Vitello opined Petitioner could work full, unrestricted duty as a police officer without further treatment. Dr. Vitello explained that he started at a 3% impairment rating and reduced it because Petitioner's physical exam was normal. In this case, this factor would suggest that Petitioner's permanent partial disability benefits be slightly reduced since his physical exam is normal.

- 2) The occupation of the injured employee.

Petitioner's occupation is a street sergeant. Petitioner testified that he is on the street and will help fellow officers with arrests and in situations where back up is necessary. Petitioner is also a member of the voluntary SWAT unit at Respondent. Petitioner is right handed and his job requires strength and physical ability to apprehend suspects. The functional capacity evaluation determined Petitioner's job demand was heavy and he was able to meet the requirements. Petitioner's job requires a lot of upper extremity use and he needs a highly functioning right shoulder to complete his job tasks. Petitioner testified his shoulder has not inhibited his ability to perform his job but knows it is a weak point and keeps his shoulder issues in mind when he enters an altercation. This factor is highly relevant.

- 3) The age of the employee at the time of the injury.

Petitioner was 38 at the time of the injury. Petitioner has a heavy demand job and will have to live with this injury for several years while working as a police officer. This injury also affects his personal life as he is no longer able to play softball, which he played frequently before his injury. But no evidence was offered as to how his age would impact his disability.

14IWCC0445

- 4) The employee's future earning capacity.

Petitioner's earning capacity has not been affected by this injury. Petitioner is a union employee and has received all contractual raises since the injury and anticipates receiving all future raises. Petitioner's additional stipend as a member of the SWAT team has also not been affected by this injury.

- 5) Evidence of disability corroborated by the treating medical records.

Finally, the medical records corroborate Petitioner's disability. Petitioner had an MRI in October 2011. Dr. Chams' impression after the MRI was right shoulder labral rotator cuff tear. Petitioner underwent surgery in January 2012 where his SLAP tear was repaired, and debridement of his distal clavicle removed a large amount of boney tissue. Petitioner then had physical therapy for several months to restore his shoulder to as normal function as possible.

Petitioner told Dr. Chams he was doing well in July 2012. Dr. Chams found Petitioner to be at maximum medical improvement and released him to full duty without restrictions. Petitioner has not sought additional medical treatment since that time. The functional capacity evaluation also found Petitioner capable of working at the heavy physical demand level.

At the same time, Petitioner testified to continued pain in his right shoulder. He occasionally takes over the counter medications. He is also restricted in his recreational activities as he is no longer capable of playing softball. Petitioner cannot work out and lift weights like he did before the accident; he is unable to physically perform some exercises and physically limits himself with other exercises. Petitioner's right shoulder is highly functional yet still has some lingering issues that will likely affect him for the rest of his life.

While Petitioner suffered a severe shoulder injury, he underwent surgical intervention and has since had a successful recovery. Petitioner has gained almost full function back in his shoulder; he does still have continuing complaints when using and raising his right arm for extend periods of time and can no longer play softball. However, Petitioner has returned to work full duty and has "muscled" through any continuing complaints so they do not affect his work ability. Therefore, we award Petitioner 15% loss of the person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is modified as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$695.78 per week for a period of 75 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the 15% loss of use of the person as a whole.

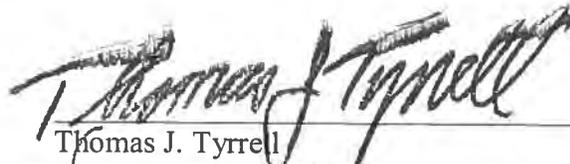
14IWCC0445

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

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

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

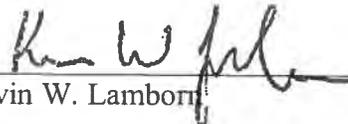
DATED: JUN 06 2014
TJT: kg
O: 5/6/14
51



Thomas J. Tyrrell



Michael J. Brennan



Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

FIENE, BRIAN

Employee/Petitioner

Case# **11WC047182**

CITY OF ZION POLICE DEPT

Employer/Respondent

14IWCC0445

On 10/3/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.04% 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:

1858 MARKHAM M JEEP & ASSOC PC
200 N MARTIN L KING JR AVE
FIRST FLOOR
WAUKEGAN, IL 60085

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD
KISA P STHANKIVA
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

14 IWCC0445

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Brian Fiene
Employee/Petitioner

Case # 11 WC 47182

v.
City of Zion, Police Department
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Douglas J. Holland**, Arbitrator of the Commission, in the city of **Waukegan**, on **8-27-13**. By stipulation, the parties agree:

On the date of accident, **9-24-11**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned **\$78,073.84**, and the average weekly wage was **\$1,501.42**.

At the time of injury, Petitioner was **38** years of age, *married* with **3** dependent children.

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

Respondent shall be given a credit of **\$7,721.60** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$7,721.60**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

14 IWCC0445

ORDER

Respondent shall pay Petitioner the sum of **\$695.78/week** for a further period of **50 weeks**, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **10% loss of use of the man as a whole**.

Respondent shall pay Petitioner compensation that has accrued from **9-24-11** through **8-27-13**, and shall pay the remainder of the award, if any, in weekly payments.

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

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



Signature of Arbitrator

9-30-13

Date

OCT 3 - 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRIAN FIENE,)
)
Petitioner,)
)
vs.)
)
CITY OF ZION POLICE DEPT.)
)
Respondent.)

14IWCC0445

IWCC No.: 11 WC 47182

FINDING OF FACTS

Petitioner is right-handed and was 38 years of age on date of loss. He has been a police officer with the city of Zion since June 16, 1997.

Petitioner had no injuries to his right shoulder prior to September 24, 2011. On that date he assisted other officers in the course of making a traffic stop. The subject of the traffic stop began to flee and jumped a fence. Sergeant Fiene grabbed onto the fleeing subject with his right arm and hand. A fight ensued. Sergeant Fiene testified that as he was placing the suspect into handcuffs he noted a sharp pain in his right shoulder.

Petitioner was treated at St. Catherine's Hospital in Kenosha, Wisconsin where x-rays were performed. Petitioner complained of difficulty raising his arm and pain in the posterior portion of his right shoulder. The emergency room assessment was "possible rotator cuff injury" and he was released for further follow-up. PX1. Petitioner was seen by Dr. Roger Chams on September 29, 2011. PX2. The initial impression of Dr. Chams was that Petitioner had suffered a right shoulder labral tear. PX2. He was placed on light duty and given a prescription for physical therapy and an MR Arthrogram. On October 18, 2011, review of the MRI previously obtained revealed a "partial intra-substance tear of his rotator cuff ... [and] may have a superior labrum anterior and posterior tear as well as a possible anterior labral tear." PX2, at page 5. A cortisone injection was given to Petitioner on that date. On November 8, 2011, a prescription for surgery was given to Petitioner and he was continued on light duty. PX2, at page 7.

Finally, on January 18, 2012, Petitioner was taken to the operating room by Dr. Chams and underwent right shoulder arthroscopy with superior labrum anterior and posterior (SLAP) reconstruction, subacromial decompression, distal clavicle resection as well as debridement of articular side rotator cuff tear. PX2, at page 8. Review of the Operative Report reveals "an

obvious Type 2 SLAP tear which extended from the anterior portion all the way to the posterior portion of the superior labrum.” PX2, at page 9. Further review of the Operative Report reveals placement of at least one double-loaded anchor and three single-loaded anchors to repair the SLAP lesion. PX2, at page 9. Further review of the Operative Report reveals that Petitioner had a “severe AC joint osteolysis.” PX2, at page 9.

A lengthy period of physical therapy began following the first post-surgical office visit on January 26, 2012. PX2, at page 11. Sergeant Fiene described a painful course of stretching and strengthening therapy. He was released to do desk work under a light duty restriction beginning on March 12, 2012. Ultimately, he was discharged without formal restrictions and with return to full activities following an office visit with Dr. Chams on July 16, 2012. He was instructed to continue with his home exercise program and to avoid painful positions and activities and to follow up on an as-needed basis. PX2, at page 20. Examination of the right shoulder on that date revealed equal findings on the left and right with slight motor deficits in elevation, abduction, external rotation and internal rotation, being 4+/5 on the right and 5 on the left. PX2, at pages 17 and 18.

Sergeant Fiene testified that he engages in “working out” several days a week and that his workout schedule has not changed from before the accident. He was told, however, to avoid stressing his shoulder with “dips,” “flies,” and bench-pressing weights to a point where the bar comes closer than three or four inches from his chest. These weightlifting restrictions were provided to him in order to avoid stressing his injured right shoulder.

Sergeant Fiene testified that he has no formal restrictions and conducts himself on the job carefully. He has participated in all contractual pay increases. He testified that he declined to apply for a position as lieutenant on the Zion Police Department. He stated that becoming a lieutenant would involve switching to day shift from his current night shift position and would impair his ability to provide child care to his children during the day. This decision was not based in any way upon his shoulder injury.

Sergeant Fiene testified that he does work “on the road,” but more as a supervisor than a frontline police officer. He will assist in arrests if called upon to do so. He testified that he is a member of the police department Special Weapons and Tactical Unit (SWAT Team) and engages in firearms training. He demonstrated during the course of testimony that he shoots in the “isosceles” position. He demonstrated that his handgun-shooting position forms an isosceles triangle between his shoulders, extended arms and hands, with the apex of the triangle being the weapon. He testified that training of this nature causes fatigue and stiffness in his right shoulder. He testified that he uses Ibuprofen on a sporadic basis for right shoulder pain and feels an increase in right shoulder pain related to activity. The principal activities he identified as causing shoulder pain were wrestling with subjects, training with firearms, and anything involving overhead reaching. He also testified that cold and damp weather will cause an increase in pain

which he characterized as a “dull ache,” being 2 to 3 on a scale of 1 to 10. He also testified that he has difficulty sleeping on his right shoulder due to pain and that pain in his right shoulder disrupts his sleeping and causes him to wake up nightly. He had no similar problems prior to the accident of September 24, 2011.

Sergeant Fiene testified that he is no longer able to throw as a result of the injury suffered in this accident. He had previously been an avid softball player and was engaged in several softball leagues prior to the accident. Prior to the accident, Sergeant Fiene played in softball leagues a minimum of one day a week during the softball season. He testified that he tried to improve his throwing abilities by engaging in a “throwing program” during physical therapy, but has been unable to regain the comfortable use of his right arm and shoulder for that activity. He no longer plays softball as a consequence of his right shoulder injury.

Sergeant Fiene has not suffered any injury to his right arm or shoulder since the accident of September 24, 2011.

Sergeant Fiene participated in a Functional Capacity Evaluation which was deemed to be valid and during which he made full effort to perform the activities requested of him. As a result of the FCE, he was cleared for full duty and heavy work.

Sergeant Fiene testified that any modifications to the way that he performs his work are self-imposed and are not formal restrictions. He was taught techniques during physical therapy to “lock” muscles in order to avoid re-injury.

Testimony of Lieutenant Kirk Henderson

Lieutenant Kirk Henderson testified for Respondent. Lieutenant Henderson has been with the Zion Police Department for 21.5 years. He is Sergeant Fiene’s direct supervisor. He testified that the physical requirements necessary to be chosen as a member of the SWAT Team for the City of Zion are only part of the initial selection process. Further physical testing after selection is not required. Petitioner was a member of the SWAT Team before the September 24, 2011 accident. Lieutenant Henderson testified that Sergeant Fiene has been able to perform all of the duties of his job, including participating in the occasional calls of the SWAT Team. Lieutenant Henderson testified the Petitioner has lost no time from work as a result of his right shoulder injury and has had no decrease in his hours. Lieutenant Henderson testified that Petitioner’s ability to advance within the department has not been affected by his work injury. Lieutenant Henderson testified that Sergeant Fiene is a very fit man who works hard to maintain his physical condition. He is also the kind of individual to “muscle through” any physical pain or difficulty.

OPINION AND ORDER

The only issue in dispute is the nature and extent of Petitioner's injuries. According to Section 8.1(b) of the Act, for injuries that occur after September 1, 2011, 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) [AMA Guidelines];
 - (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.
- 1) The reported level of impairment pursuant to subsection (a) [AMA Guidelines].

Respondent tendered the evidence deposition and report of Dr. William Vitello. Dr. Vitello examined Petitioner on September 24, 2012. RX1.

Dr. William Vitello endeavored to apply the AMA Guidelines of permanent impairment which resulted in an "algorithm was used to compute his right upper extremity impairment at 2% right upper extremity, which equals 1.2% whole body." Under cross-examination, Dr. Vitello stated that he has performed approximately four times as many hand surgeries as shoulder surgeries during the year preceding his deposition. RX1, at page 17. He stated that 10 to 15% of his practice involves treatment to the shoulder. RX1, at page 18. It was unclear whether Dr. Vitello ever saw the Operative Report in assessing Sergeant Fiene. RX1, at page 19. The performance of an AMA impairment rating is not concerned with the number of sutures and anchors utilized to repair an injury in Dr. Vitello's opinion. RX1, at page 20. However, the number of sutures and anchors utilized to repair an injury could reflect upon the severity of the injury. RX1, at page 20. Dr. Vitello admitted that he had been certified in the performance of AMA impairment ratings during the month preceding his evaluation of Sergeant Fiene and that he was "relatively new to this business of doing AMA Guideline certification or evaluations." RX1, at page 21. He had only done about a half-dozen AMA impairment ratings prior to doing the impairment rating on Sergeant Fiene. RX1, at page 21. He found that Sergeant Fiene "is about as credible and as straightforward and pleasant as anyone I have examined in a long time." RX1, at page 25.

Dr. Vitello recited in his physical examination of Sergeant Fiene that the patient complained of pain with prolonged overhead use and with attempts at throwing. He complained of pain putting on his work belt and trying to move his right arm behind his back, fastening and securing his gun in holster. He also stated that Sergeant Fiene complained of pain with forceful forward reaching, such as when apprehending or

combatting a suspect. The physical exam was largely normal. Vitello report September 24, 2012, at page 2.

Dr. Vitello admitted that as a practicing orthopedic surgeon he would not use the AMA Guidelines for permanent impairment in his practice. In treating patients there is "no use to it." It has more to do with the medical legal world than with the clinical practice of medicine. RX1, at page 32.

Dr. Vitello stated that the AMA Guidelines as a measure of impairment does not necessarily equate with industrial or workforce disability. The definition of impairment and disability are different. RX1, at page 35.

With regard to subsection i of Section 8.1(b) of the Act, the Arbitrator notes that impairment does not equate to permanent partial disability under the Workers' Compensation Act. The Arbitrator notes the findings made by Dr. Vitello during his physical examination and the subjective complaints of the Petitioner. The Arbitrator bases his decision upon this factor, as well as other factors, in rendering his decision.

2) The occupation of the injured employee.

The evidence at trial reveals that as a frontline police officer, Sergeant Fiene is called upon to demonstrate physical prowess and strength, particularly with his dominant arm. He is called upon to wrestle with subjects and utilize firearms. As a member of the SWAT Team for the City of Zion he is put into situations of high risk, both to himself and his fellow officers. The work is of a heavy and occasionally hazardous nature. Based upon that evidence, the Arbitrator finds that the physical demand level of the Petitioner's occupation is heavy.

Accordingly, the Arbitrator concludes that Petitioner's occupation has a very significant bearing upon the determination of permanent partial disability in this case.

3) The age of the employee at the time of the injury.

The evidence at trial and agreed upon by the parties is that Petitioner was 38 years old on the date of accident. The Arbitrator finds that Petitioner is relatively young. There was no evidence offered indicating the degree of likelihood as to how his age would impact his disability. However, the Arbitrator concludes that as a younger worker the pain testified to by Petitioner will persist for a longer time and throughout the duration of his career and that this is a significant basis for determining the extent of his disability.

- 4) The employee's future earning capacity.

The evidence adduced at trial concludes that Sergeant Fiene has participated in all contractual pay raises, has missed no time from work and has no decrease in his hours of employment as a result of injuries suffered on September 24, 2011. Therefore, the Arbitrator finds that this factor is not a significant basis for determining disability.

- 5) Evidence of disability corroborated by the treating medical records.

The Arbitrator finds that the shoulder injury suffered by Sergeant Fiene was very significant and required the placement of multiple anchors and sutures to repair the complete SLAP tear suffered on September 24, 2011. A significant amount of boney tissue was removed from the distal clavicle.

The Arbitrator relies upon the credible testimony of Sergeant Fiene, wholly corroborated by the examination of Dr. Vitello, concerning limitations on overhead movement and extended forceful reaching. The Arbitrator notes that the Petitioner is no longer able to throw and that he has discontinued playing softball as a result of the injuries suffered. The Arbitrator also notes the credible testimony concerning limitations on weightlifting activities and overhead reaching. The Arbitrator notes that Petitioner utilizes over-the-counter pain relieving and anti-inflammatory medications on an occasional basis and that pain in the right shoulder is exacerbated by activities.

The Arbitrator notes that Petitioner has been released to full duty without formal restrictions and that the valid FCE released Petitioner to heavy duty work.

Based on the aforementioned evidence and findings, and relying upon the *Will County Forest Preserve* case, 2012 IL App (3rd) 1100077WC (Feb. 17, 2012), the Arbitrator determines the injuries sustained by Petitioner has caused the permanent partial disability of 10% of a person as a whole. In reaching this decision, the Arbitrator has relied to a major extent upon the factors set forth in 2, 3 and 5 above and to a lesser extent, 1 above. The Arbitrator does not find that loss of future earning capacity plays any role in the assessment of industrial disability in this case.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Brian Kirchner,
Petitioner,

vs.

NO: 11WC 25168

The American Coal Company,
Respondent,

14IWCC0446

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, temporary total disability, 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.

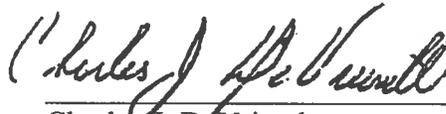
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 17, 2013, is hereby affirmed and adopted.

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

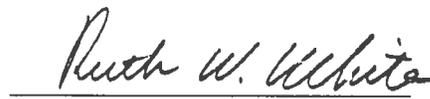
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

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

DATED: JUN 09 2014
o052714
CJD/jrc
049


Charles J. DeVriendt


Daniel R. Donohoo


Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KIRCHNER, BRIAN

Employee/Petitioner

Case# **11WC025168**

THE AMERICAN COAL COMPANY

Employer/Respondent

14IWCC0446

On 6/17/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

2500 WOMICK LAW FIRM CHTD
CASEY VANWINKLE
501 RUSHING DR
HERRIN, IL 62948

0299 KEEFE & DEPAULI PC
GREGORY KELTNER
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
)SS.
 COUNTY OF WILLIAMSON)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

Brian Kirchner
 Employee/Petitioner

Case # 11 WC 25168

v.

The American Coal Company
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Joshua Luskin, Arbitrator of the Commission, in the city of Herrin, on April 18, 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 Number of provider choices per Section 8(a) of the Act

14IWCC0446

FINDINGS

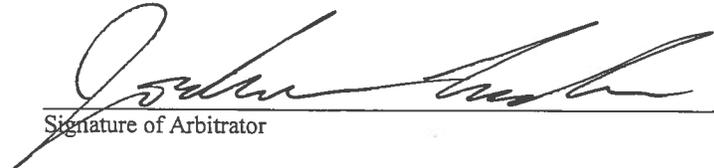
On 12/28/10, Respondent *was* operating under and subject to the provisions of the Act.
On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.
On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.
Timely notice of this accident *was not* given to Respondent.
Petitioner's current condition of ill-being *is not* causally related to the accident.
The parties' dispute as to average weekly wage under Section 10 is moot given the above findings.
On the date of accident, Petitioner was 38 years of age, *married* with 2 dependent children.

ORDER

For reasons set forth in the attached decision, benefits under the Act are denied.

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

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



Signature of Arbitrator

June 13, 2013
Date

JUN 17 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRIAN KIRCHNER,)	
)	
Petitioner,)	
)	
vs.	)	No. 11 WC 25168
)	
AMERICAN COAL COMPANY,)	
)	
Respondent.)	

ADDENDUM TO ARBITRATION DECISION

STATEMENT OF FACTS

The petitioner was employed by the respondent as a Unit Mechanic. His job involved maintaining and repairing equipment for the mine. He carried tools on his belt and had a box for additional tools and equipment. He had worked for the respondent in that capacity beginning in approximately July 2010, less than one year at the time of the asserted accident, December 28, 2010.

The petitioner testified that on December 28, 2010, items were blocking his access to the gang box, so he moved them out of the way and bent over to unlock the box. When he stood up after unlocking the box, he felt pain in his low back. The petitioner asserted that he reported the injury that day to his foreman and that he completed his shift. He further stated that he worked for several months thereafter before eventually ceasing work for the respondent. At the time of the trial he was receiving unemployment benefits and does airbrush motorcycles. He testified that he had no prior low back pain and denied intervening accidents, though he stated that after December 28, 2010, sometimes he had low back symptoms that were provoked by activity.

The petitioner presented to Zimmerman Chiropractic Clinic on December 29, 2010. He reported pain in the low back radiating down the left leg. He reported an injury the day before, but did not state it was at work; the history notes "Patient states last night he twisted wrong and got sharp pains in his low back with radiating pain down the left leg to the knee." However, he was assessed with a cumulative trauma injury to the low back, not an acute injury. See PX1. On January 3, 2011, he reported some improvement. He was told to follow up later in the week, and if symptoms had not improved, x-rays and diagnostic testing would be ordered. The petitioner never returned there. PX1.

On February 22, 2011, the petitioner presented to Teel Chiropractic Clinic. See PX2. Notably, the petitioner had first treated at Teel Chiropractic Clinic in 2003 and had seen them periodically for low back pain since November 2005. At this time, he reported a history of three to four weeks back pain which had begun while bent over putting a key

into his tool box at work. Dr. Teel noted low back tension and ordered X-rays, and advised the petitioner to consider seeing his medical doctor.

On March 3, 2011, the petitioner presented to the VA in Marion. He reported to them that he injured his back at work while lifting a heavy object approximately one month ago, and that that morning he had a spike in symptoms. X-rays of the lumbar spine noted general diffuse osteoarthritic changes. See PX4.

The petitioner spoke with Dr. Teel on March 3, 2011 regarding the VA presentation, and Dr. Teel suggested the petitioner secure an MRI. The petitioner did not return to Dr. Teel, but a handwritten note from Dr. Teel notes that they did send the X-rays to Shawnee Clinic for review on March 11, 2011.

Later in the day on March 3, 2011, the petitioner was seen at Murphysboro Health Center. He complained of low back pain of one month's duration which had begun when he bent over to pick up a tool. See PX3. He was placed on light duty on March 7; the disability statement that day noted an accident date of February 3, 2011.

On March 22, March 29, and April 12, 2011, the petitioner returned to Murphysboro Health Center. He described slow improvement during that time. On April 20, 2011, he underwent a lumbar MRI scan; the history shows low back pain radiating into the left leg of one month's duration following a bending and pulling injury. The MRI showed disk bulges at L4-5 and L5-S1 with foraminal stenosis. See PX4.

On April 27, 2011, the petitioner returned to Murphysboro Health Center and reported some improvement. On May 18, 2011, the petitioner noted a recurrence in symptoms over the prior three weeks and he was referred to a specialist. PX4.

On May 20, 2011, he presented to Good Samaritan Regional Health Center with complaints of exacerbation of chronic low back pain of three months duration. PX7.

On May 24, 2011, the petitioner saw Dr. Michael Templer, an orthopedist. He reported a three and a half month history of low back and left leg pain with a gradual onset and progressively worsening symptoms. Dr. Templer noted the MRI results and recommended epidural injections. The next day the petitioner advised Dr. Templer that he was not interested in epidural injections and requested a surgical consult.

The petitioner returned to Good Samaritan on May 28, 2011, at which time he reported back pain of five months duration. PX7. The emergency room nursing record of that date reflects an onset 180 days prior. RX5.

The petitioner was seen by Dr. Kovalsky, Dr. Templer's partner, on June 1, 2011. The petitioner reported an accident date of December 28, 2010 while pushing and pulling machinery at work. Dr. Kovalsky noted the lumbar MRI was of poor quality and recommended diagnostic injections and medication.

On June 7, 2011, Dr. Templer saw the petitioner and noted the injection series prescription. PX5.

Dr. Kovalsky noted in deposition (PX9) the injection series was not performed. The petitioner returned on August 10, 2011, and reported some improvement. Dr. Kovalsky recommended therapy. On September 21, 2011, the petitioner had improved significantly with home exercise. The petitioner returned on October 19, 2011. At that time the petitioner reported that the buttock and leg pain were effectively gone and he had no significant findings on physical examination. Dr. Kovalsky released him to full duty and discharged him from care. See PX9.

On April 17, 2012, the petitioner was examined by Dr. James Coyle, an orthopedist, pursuant to Section 12 of the Act. The petitioner stated at that time that his symptoms began when he moved materials away from his tool box, and then bent over and unlocked it. The petitioner denied any other injury to his low back. However, Dr. Coyle further noted that the petitioner completed an intake form on which he indicated that the accident date was in January 2011 and denied prior low back treatment. Dr. Coyle opined the disk pathology was degenerative and longstanding and was prone to flare-ups in conjunction with non-vigorous activity, but could not identify any anatomic pathology associated with an acute event. Dr. Coyle reiterated these findings and opinions in his deposition. See RX1.

Joe Zertuche, the petitioner's foreman at the time of the alleged accident, testified that the petitioner never advised him of an injury on December 28, 2010 or any date thereafter. Mr. Zertuche testified that the petitioner had stated that he had previously injured his back while working at his prior employer, Peabody Mining. He testified that there is a protocol for reporting work accidents and that the petitioner would have been advised of that protocol during orientation.

Maintenance Supervisor Kirby Smith testified the petitioner would have been under his direct supervision to some degree at the time of the alleged accident. He testified that the petitioner never advised him of a specific injury of December 28, 2010. He stated that he recalled the petitioner complained about back pain and that the petitioner had stated when initially hired that he had been injured at a prior employer.

OPINION AND ORDER

A claimant has the burden of proving by the preponderance of credible evidence all elements of the claim, including that the alleged injury arose out of and in the course of employment. The petitioner failed to do so. He asserted a lack of prior back problems or complaints. However, this testimony was revealed to be false, as his treating providers' records indicate ongoing periodic care for low back symptoms with radiating pain. This lack of candor and credibility informs the Arbitrator's findings on all issues in dispute which rely on the petitioner's testimony.

The medical records submitted reflect multiple versions of the mechanism of injury and multiple dates of symptom onset. The Zimmerman Chiropractic note relates the December 28 date of loss, but only states a twisting injury and does not relate it to work. The Teel Chiropractic clinic records indicate bending to put a key into a lock, but relate to a date of loss of approximately the beginning of February. The VA records indicate lifting a heavy object, also at the beginning of February. The Murphysboro records seem to corroborate an injury at the beginning of February, but indicate he was bending over to retrieve a tool. The MRI radiologist suggests an injury at the end of February or at some point in March, following a bending and pulling injury. The Good Samaritan records initially reflect an injury in mid-February, and then later reflect an injury in November or December. Dr. Templer, the initial orthopedist, noted a history which would corroborate a date at the beginning of February, with a gradual onset rather than an acute one. Accordingly, the Arbitrator cannot rely on the medical records to corroborate the petitioner's version of events in his testimony.

Moreover, the petitioner's testimony is further undermined by the credible testimony of Joe Zertuche and Kirby Smith, who both noted the petitioner never related a workplace accident but did note that he related a history of chronic back pain and a prior workplace injury with a previous employer.

The Arbitrator finds a lack of credible evidence to sustain proof of a workplace accident. Issues of notice, causal connection, average weekly wage, medical expenses, physician choice, and nature and extent are rendered moot by the above findings.

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Ricky Wieland,
Petitioner,

vs.

County of Peoria,
Respondent,

NO: 11WC 42764

14IWCC0447

DECISION AND OPINION ON REVIEW

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

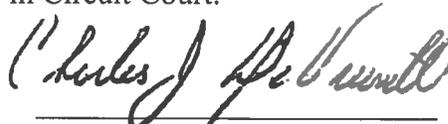
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 14, 2013, is hereby affirmed and adopted.

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.

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

DATED: JUN 09 2014
o052714
CJD/jrc
049


Charles J. DeVriendt


Daniel R. Donohoo


Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

WIELAND, RICKY

Employee/Petitioner

Case# **11WC042764**

COUNTY OF PEORIA

Employer/Respondent

14IWCC0447

On 3/14/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.11% 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:

1004 BACH, ROBERT W
110 S W JEFFERSON ST
SUITE 410
PEORIA, IL 61602

1337 KNELL & KELLY LLC
SYEPHEN P KELLY ESQ
504 FAYETTE ST
PEORIA, IL 61603

14IWCC0447

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

RICKY WIELAND

Employee/Petitioner

Case # 11 WC 42764

v.

Consolidated cases: _____

COUNTY OF PEORIA

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen Mathis**, Arbitrator of the Commission, in the city of **Peoria**, on **December 21, 2012**. 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 _____

FINDINGS

On **3/10/11**, 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 **\$47,372**; the average weekly wage was **\$911.00**.

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.

FINDINGS OF FACT

The Arbitrator finds the following facts with regard to (F) Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner is a 49 year old corrections officer who has worked for Respondent for 25 years. He testified that on March 10, 2011, he and his supervisor were interviewing inmates when an inmate attacked the supervisor. Petitioner wrestled the attacker to the ground, falling to the concrete floor on his right hip. The inmate, estimated to weigh 300 pounds, landed on top of him.

Petitioner was immediately sent by Respondent to its doctor at IWIRC. Petitioner reported that he was unable to walk without severe pain in the right hip (Petitioner's Exhibit 1). He was placed on restricted duty and taken to OSF St. Francis Hospital for x-rays of the hip, which revealed a possible fracture. Petitioner was referred by IWIRC to an orthopedic surgeon, Dr. Jeffrey Akeson for further evaluation and treatment.

A CT Scan performed on March 14, 2011 indicated that there was no fracture and revealed arthritis in the hip joint. Due to Petitioner's inability to put weight on his right leg he was prescribed aquatic therapy. From April to September 2011, the Petitioner participated in aqua therapy and was off work unable to walk without a crutch. He testified that he was essentially bed ridden. Even laying on his right side elicited severe pain, and the only relief came during therapy when he was in the deep end of the pool with no weight on his leg. In

September, 2011, Petitioner asked to attempt land based therapy. This lasted only a few weeks before it was halted due to Petitioner's inability to put weight on his leg without severe pain.

At an office visit on October 26, 2011, Dr. Akeson recommended that Petitioner undergo a hip replacement. Dr. Akeson's note stated that Petitioner "has had a clear deterioration in terms of his radiographs and physical findings since the injury..." (Petitioner's Exhibit 2). Respondent sent Petitioner to Dr. Joseph Williams in St. Louis for a Section 12 examination.

Dr. Williams' report indicated that while a hip replacement was reasonably necessary for proper treatment, it was not causally related to Petitioner's injury in March 2011. Dr. Williams opined that Petitioner had reached maximum medical improvement "within a few weeks", of his injury and that all of his current problems were related to his severe pre-existing osteoarthritis.

Petitioner underwent a right hip arthroplasty on January 23, 2012 by Dr. Akeson, which was paid for by the group health insurance. He testified that within weeks he noticed a reduction in his right hip pain and was able to put weight on his right leg for the first time since his injury. Petitioner underwent physical therapy for approximately five weeks and was released to return to work on March 27, 2012, with no restrictions.

Prior to his injury, Petitioner was an avid outdoorsman participating in hunting and fishing through the year. He climbed deer stands, used "waders" in the water, hiked in and out of hunting areas, and launched and retrieved his boat as part of these activities. In addition, Petitioner testified that he worked overtime on a regular basis, took care of his home and yard without assistance, and walked for long distances without pain.

No medical records of any prior treatment or problems related to Petitioner's right hip were introduced. The Petitioner testified he was having no problems whatsoever with hip pain prior to his injury.

On cross examination, Petitioner was asked about an IWIRC office note which stated "...he does note that he has had some pain in the right hip in the past ..." In response, Petitioner denied making the statement and noted that he had had "some pain" in several parts of his body in the past. Petitioner was also questioned about two post-injury incidents in which he experienced increased pain; one involving slamming the brakes of his car

and the other involving getting up from the couch. Petitioner explained each incident was temporary in nature. No medical opinion was offered indicating that either or both of these incidents had any significant impact on his condition.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to **(F) Is Petitioner's current condition of ill-being causally related to the injury?**, the Arbitrator makes the following conclusions of law:

The petitioner has the burden to prove that his employment was a causative factor of his physical disability. He does not have to prove, however, that his employment was the sole causative factor or even that it was the principal causative factor. The aggravation of a preexisting condition may be an accidental injury and compensable under the Workmen's Compensation Act so long as the occurrence is traceable to a definite time, place and cause.

In this case, it is undisputed that Petitioner was involved in an altercation at work while coming to the aid of a fellow officer. It is likewise undisputed that following the injury, he was unable to work and required a crutch to walk due to the inability to put weight on his right leg.

The treater, Dr. Akeson supports the finding of a causal relationship between the incident and the resulting surgery and disability suffered by Petitioner. In October 2011, Dr. Akeson noted that Petitioner's objective findings on x-ray as well as his physical findings had deteriorated since his injury. In addition, he stated:

"... Although I cannot say that this injury was the sole cause of his problems, it seems fairly clear that it exacerbated them significantly..."

The arbitrator finds Dr. Akeson's opinion as to causation to be supported by the record, consistent with Petitioner's testimony, and credible.

For instance, the evidence is clear that Petitioner was leading an abnormally active physical lifestyle involving substantial work hours and as well as recreational activities prior to the injury. Subsequent thereto, he

was unable to work, unable to walk without a crutch, and suffering from constant hip pain. The testimony further established that Petitioner was essentially bedridden, unable to care for his home, and dependent upon the aid and assistance of his parents in doing the daily chores of housekeeping from the time of the accident until his surgery. The testimony of Petitioner and his medical records of treatment are consistent and show an ongoing and severe disability which began immediately after his injury and did not abate until his hip was replaced in January 2012.

For these reasons, the Arbitrator finds that the injury of March 11, 2011 aggravated any pre-existing condition present in Petitioner's right hip.

In support of the Arbitrator's decision relating to **(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?**, the Arbitrator finds the following facts and conclusions of law:

The Arbitrator finds that the evidence shows an aggravation of the preexisting arthritic condition of Petitioner's right hip which required a total hip replacement as reasonable and necessary treatment. Both the treating and examining doctors agreed that a total hip replacement was reasonable and necessary. Therefore, the following medical bills, set for in Petitioner's Exhibit 4 are awarded. Respondent is ordered to pay each of the following:

<u>PROVIDER</u>	<u>AMOUNT</u>
OSF St. Francis Medical Center	\$1,153.00
Central IL Pathology	\$57.00
Central IL Radiological	\$49.00
Methodist Medical Center	\$567.00
Central IL Pathology	\$70.40
**Midwest Orthopaedic Center	\$12,176.50
Methodist Medical Center	\$72,099.65
Central IL Pathology	\$64.00
Methodist Medical Center	\$362.00
Methodist Medical Center	\$137.00
Methodist Medical Center	\$97.00
Methodist Medical Center	\$17.00

Methodist Medical Center	\$36.00
DJO LLC	\$22.63
Walgreens	\$105.68
	\$87,003.86

In Support of the Arbitrator's decision relating to **(K) What temporary benefits are in dispute?**, the Arbitrator finds the following:

Petitioner is entitled to temporary total benefits from March 12, 2011 through March 27, 2012, for the reasons set forth above.

In Support of the Arbitrator's decision relating to **(L) What is the nature and extent of the injury?**, the Arbitrator finds the following facts and conclusions of law:

Petitioner testified that while he has returned to work on a full duty basis, he notices a substantial decrease in his physical abilities relating to his right hip. He testified that when he sits for any extended period of time, his hip begins to ache and he needs to shift positions. Likewise, if he stands for too long, he has pain in his hip and while he is able to walk without assistance, any substantial distance causes his hip to ache. He notices that changes in weather cause pain in his hip, and that he has pain and stiffness in the morning which

Petitioner's testimony about his hip is credible and substantiates a permanent partial disability of 50% loss of use of the right leg minus a credit for 12.78% paid previously.

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

 Date

3-4-13

MAR 14 2013

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Caughey,

Petitioner,

14IWCC0448

vs.

NO: 11 WC 30809

P.J. Hoerr,

Respondent.

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 causal connection, medical expenses, prospective medical expenses, temporary total 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 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 4, 2013 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.

14IWCC0448

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 \$16,500.00. 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.

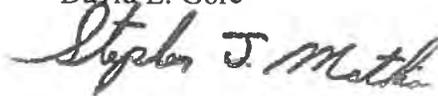
DATED:

JUN 13 2014

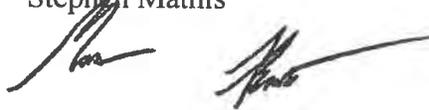
DLG/gaf
O: 5/29/14
45



David L. Gore



Stephen Mathis



Mario Basurto

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

CAUGHEY, ROBERT

Employee/Petitioner

Case# **11WC030809**

12WC002619

14IWCC0448

PJ HOERR

Employer/Respondent

On 10/4/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.04% 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:

1824 STRONG LAW OFFICES
SEAN OSWALD
3100 N KNOXVILLE AVE
PEORIA, IL 61614

0358 QUINN JOHNSTON HENDERSON ET AL
CHRIS CRAWFORD
227 N E JEFFERSON ST
PEORIA, IL 61602

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0448

Case # 11 WC 30809

Consolidated cases: 12 WC 02619.

ROBERT CAUGHEY,
Employee/Petitioner

v.

P.J. HOERR,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was consolidated with claim no. 12 WC 02619 and heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Rock Island**, on **March 12, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

14IWCC0448

FINDINGS

On the date of accident, **January 17, 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 **\$42,185.00**; the average weekly wage was **\$811.25**.

On the date of accident, Petitioner was **39** years of age, *married* with **no** dependent children.

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

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

Respondent shall be given a credit of \$ **37,317.27** for TTD, \$ **0.00** for TPD, \$ **0.00** for maintenance, and \$ **68,180.30** for other benefits, for a total credit of \$ **105,497.57**. This credit is by the stipulation of the parties and also applies to the companion file No. 12 WC 02619, which was consolidated and heard with this matter.

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 **\$540.83/week** for **19** weeks, commencing **February 23, 2011** through **July 5, 2011**, as provided in Section 8(b) of the Act.

Respondent shall pay to Petitioner reasonable and necessary medical services in the amount of **\$38,042.45**, pursuant to the medical fee schedule as created by Section 8(a), and Section 8.2 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 JOANN M. FRATIANNI

September 27, 2013
Date

OCT 4 - 2013

14IWCC0448

F. Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner testified he worked for Respondent performing concrete and demolition. He is a member of Local 165 of the Laborer's Union. On January 17, 2011, he was injured while carrying cabinets. At that time he experienced pain in his back that radiated down his left leg. Following this, Petitioner reported the injury to his supervisor then sought medical treatment.

Petitioner sought treatment with Dr. Baylor, who referred him to see Dr. Dinh. A CT scan performed on February 14, 2011 revealed a herniated disc at L5-S1. Following the CT scan, Dr. Dinh prescribed surgery.

On March 29, 2011, Dr. Dinh performed surgery in the form of a microdiscectomy at L5-S1. Post surgery, Dr. Dinh prescribed physical therapy, and Petitioner was later released to return to work effective June 20, 2011. Petitioner then made a successful return to his regular job duties.

Petitioner later sustained a second work related injury on September 19, 2011, which is the subject matter of case no. 12 WC 02619, which was consolidated with this matter.

At issue is the existence of a pars defect and subsequent surgery after September 19, 2011. The treating medical records in evidence along with the findings of Respondent's examining physician all indicate that the pars defect did not exist subsequent to the accident of January 17, 2011. Also, the pars defect did not appear on the CT scan performed on February 14, 2011.

Therefore, the Arbitrator finds that the herniated disc at L5-S1 and subsequent surgery is causally related to the accidental injury of January 17, 2011.

The Arbitrator further finds that the pars defect is not causally related to the accidental injury of January 17, 2011, based on the medical evidence presented.

Petitioner sustained a second work accident on September 19, 2011, which the subject matter of case no. 12 WC 02619, and which was consolidated and heard with this matter. Any causal relationship, if any, of the diagnosed pars defect shall be addressed in case no. 12 WC 02619.

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?

Petitioner introduced into evidence the following unpaid medical charges that were incurred after the January 17, 2011 accident:

Illinois Neurological Institute	\$ 6,270.69
Methodist Medical Center	\$ 2,722.00
OSF St. Francis Medical Center	\$28,745.76
Central Illinois Radiological Services	\$ 304.00

These charges total \$38,042.45.

14IWCC0448

Based upon the findings of this Arbitrator in "F" above, the above charges represent reasonable and necessary medical services designed to relieve or treat the condition of ill-being caused by this accidental injury. Respondent is found to be liable to Petitioner for the above charges, subject to the medical fee schedule.

L. What temporary benefits are in dispute?

See findings of this Arbitrator in "F" above.

Petitioner was off work as a result of this accidental injury, medical treatment and surgery in the form of a microdiscectomy commencing February 23, 2011 through his release to return to work and his return to work on July 5, 2011.

Petitioner testified he was not able to return to work until July 5, 2011 due to scheduling issues with Respondent. Petitioner did return to his regular job at that time and continued working until sustaining a second accidental injury at work on September 19, 2011, which is the subject matter of case no. 12 WC 03619, which was consolidated and heard with this matter.

All other periods of temporary total disability benefits claimed by Petitioner will be addressed in the consolidated case no. 12 WC 02619.

N. Is Respondent due any credit?

The parties have stipulated that Respondent has paid to Petitioner \$37,317.27 in temporary total disability benefits and \$68,180.30 in other benefits for both cases, this one and case no. 12 WC 02619.

The parties shall be responsible for determining appropriate credits to Respondent in both cases under these circumstances.

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Caughey,

Petitioner,

14IWCC0449

vs.

NO: 12 WC 02619

P.J. Hoerr,

Respondent.

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 causal connection, medical expenses, prospective medical expenses, temporary total 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 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 4, 2013 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.

14IWCC0449

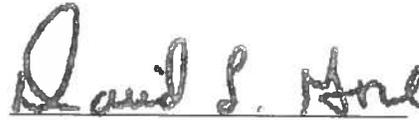
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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: JUN 13 2014

DLG/gaf
O: 5/29/14
45



David L. Gore



Stephen Mathis



Mario Basurto

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

14IWCC0449

CAUGHEY, ROBERT

Employee/Petitioner

Case# **12WC002619**

11WC030809

PJ HOERR

Employer/Respondent

On 10/4/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.04% 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:

1824 STRONG LAW OFFICES
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CHRIS CRAWFORD
227 N E JEFFERSON ST
PEORIA, IL 61602

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0449

Case # 12 WC 02619

Consolidated cases: 11 WC 30809.

ROBERT CAUGHEY,
Employee/Petitioner

v.

P.J. HOERR,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was consolidated with claim no. 11 WC 30809 and heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Rock Island**, on **March 12, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

14IWCC0449

FINDINGS

On the date of accident, **September 19, 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 **\$42,185.00**; the average weekly wage was **\$811.25**.

On the date of accident, Petitioner was **39** years of age, *married* with **no** dependent children.

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

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

Respondent shall be given a credit of **\$ 37,317.27** for TTD, **\$ 0.00** for TPD, **\$ 0.00** for maintenance, and **\$68,180.30** for other benefits, for a total credit of **\$105,497.57**. This credit is by the stipulation of the parties and also applies to the companion file No. 11 WC 30809, which was consolidated and heard with this matter.

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 **\$540.83/week** for **77** weeks, commencing **September 20, 2011** through **March 12, 2013**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the reasonable and necessary medical services of **\$155,332.26**, as provided in Section 8(a) of the Act, and subject to the medical fee schedule of Section 8.2.

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 JOANN M. FRATIANNI

September 27, 2013
Date

OCT 4 - 2013

F. Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner testified he worked for Respondent performing concrete and demolition. He is a member of Local 165 of the Laborer's Union. On January 17, 2011, he was injured while carrying cabinets. At that time he experienced pain in his back that radiated down his left leg. This is the subject matter of case no. 11 WC 30809, which was consolidated and heard with this matter. Following this, Petitioner reported the injury to his supervisor then sought medical treatment.

Petitioner sought treatment with Dr. Baylor, who referred him to see Dr. Dinh. A CT scan performed on February 14, 2011 revealed a herniated disc at L5-S1. Following the CT scan, Dr. Dinh prescribed surgery.

On March 29, 2011, Dr. Dinh performed surgery in the form of a microdiscectomy at L5-S1. Post surgery, Dr. Dinh prescribed physical therapy, and Petitioner was later released to return to work effective June 20, 2011. Petitioner then made a successful return to his regular job duties. Petitioner then worked his regular job commencing July 5, 2011 through September 19, 2011. This work included concrete work, demolition, using a jack-hammer, digging and other general labor activities.

Petitioner then sustained a second work related injury on September 19, 2011, which is the subject matter of this case. On that date he was working with a co-employee jack-hammering and removing the broken concrete pieces. While lifting one of those pieces, Petitioner experienced immediate pain in his lower back that radiated down his left leg. Petitioner reported the incident and was advised to go see his doctor.

Petitioner returned to see Dr. Dinh the next day who took him off work. Dr. Dinh prescribed physical therapy and a series of injections to the back, which he underwent. Dr. Dinh did not prescribe any additional surgery.

Petitioner then saw Dr. VanFleet at the request of Respondent. Petitioner saw Dr. VanFleet on May 2, 2012. Dr. VanFleet concurred with the treatment and was of the opinion the condition of ill-being he found was related to the work injury in so much that both injuries have contributed to the cause of his current symptoms. Dr. VanFleet felt continuing physical therapy followed by a work-conditioning program would be advisable, and felt Petitioner was not a surgical candidate. He also felt a functional capacity evaluation (FCE) would ultimately determine whether Petitioner could return to work as a laborer.

Petitioner remained under the care of Dr. Dinh. Dr. Dinh referred him to Dr. Moody to oversee work hardening. Petitioner first saw Dr. Moody on July 25, 2012. Dr. Moody, following work hardening, prescribed a return to work without a FCE. Dr. Moody did prescribe continuing medications.

Petitioner testified he continued to experience pain in his low back and down his leg at that time. He sought a second opinion with Dr. Kube before considering a return to work.

Petitioner first saw Dr. Kube on August 7, 2012. Dr. Kube issued restricted work duties and noted a fracture in the lower back after reviewing the CT scans dated February 14, 2011, September 26, 2011 and October 17, 2011, known as a pars defect. Dr. Kube prescribed surgery and on February 18, 2013, surgery was performed to correct the pars defect.

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Dr. VanFleet at the request of Respondent authored an addendum to his report. The addendum was dated February 1, 2013. Dr. VanFleet indicated that no pars defect was noted on the CT scan of February 4, 2011. Dr. VanFleet also changed his opinion and indicated that he felt that Petitioner would be at maximum medical improvement (MMI) following an FCE. Dr. VanFleet also concurred with the work release issued by Dr. Moody dated July 25, 2012. Dr. VanFleet did not review the two later CT scans.

Dr. Kube did mark the CT scans to indicate the location of the pars defect. Dr. VanFleet did acknowledge the existence of the pars defect, but felt it was chronic in nature. He did indicate that he did not know how to explain the fact the pars defect was not present during the CT scan performed on February 14, 2011.

Respondent then sought additional opinions from Dr. VanFleet, who authored another report dated March 7, 2013. In that report, Dr. VanFleet indicated he felt the pars defect was chronic appearing and was not causally related to either accident. He further testified by evidence deposition that he did not believe the surgery performed by Dr. Kube was necessary and felt Petitioner has a non-specific diagnosis of chronic low back.

This Arbitrator finds the opinions and findings of Dr. VanFleet to be extremely confusing. Dr. VanFleet appears often to have difficulty explaining his opinions.

Dr. Kube testified by evidence deposition that he first examined Petitioner on August 7, 2012. Noted were pertinent findings of paresthesia in the left S1 nerve root with positive Phalen sign on the right. Also noted were lower extremity sensory deficits at L5-S1, which the doctor felt was essentially where the radicular pain was created.

Dr. Kube felt the second (September 19, 2011) work accident caused the pars defect. Noted was the CT scan performed September 26, 2011 was only 7 days after the September 19, 2011 accident.

Given the information provided to Dr. VanFleet and Dr. Kube along with the credible testimony of Petitioner who indicated a positive outcome following the pars defect surgery, the Arbitrator gives more weight to the testimony of Dr. Kube. Dr. Kube reviewed all three CT scans and had multiple examinations with Petitioner, including surgery.

Based upon the above, the Arbitrator finds the pars defect to be causally related to the accidental injury of September 19, 2011, and not the accidental injury of July 17, 2011 (see findings of this Arbitrator in case no. 11 WC 30809, which was consolidated and heard with this matter).

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 care?

Petitioner introduced into evidence the following unpaid medical charges that were incurred after this accidental injury:

OSF St. Francis Medical Center	\$ 2,883.00
Central Illinois Radiological Services	\$ 6,117.00
Advanced Rehabilitation and Sports Medicine	\$ 9,398.00

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Prairie Spine & Pain Institute
Prairie Surgicare

\$ 4,263.00
\$124,196.26

These charges total \$155,332.26.

See findings of this Arbitrator in "F" above.

Having found causal connection in this matter, the Arbitrator further finds the above medical charges represent reasonable and necessary medical and surgical care designed to cure or relieve the condition of ill-being caused by this accidental injury. Respondent found to be liable to Petitioner for the above charges, subject to the provisions of the medical fee schedule.

L. What temporary benefits are in dispute?

See findings of this Arbitrator in "F" above.

Dr. Kube has not released Petitioner to return to work in this matter, since his fusion surgery.

Based upon said findings, the Arbitrator further finds that as a result of this accidental injury, Petitioner became temporarily and totally disabled from work commencing September 20, 2011 through March 12, 2013, and is entitled to receive benefits from Respondent for this period of time.

N. Is Respondent due any credit?

The parties have stipulated that Respondent has paid to Petitioner \$37,317.27 in temporary total disability benefits and \$68,180.30 in other benefits for both cases, this one and case no. 11 WC 30809.

The parties shall be responsible for determining appropriate credits to Respondent in both cases under these circumstances.

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

John D. Bloodworth,

Petitioner,

vs.

14IWCC0450

NO: 10 WC 21698

Boesdorfer Trucking,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, prospective medical expenses, notice, causal connection, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 21, 2013 is hereby affirmed and adopted.

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.

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:

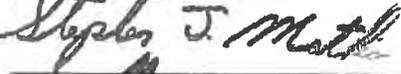
JUN 13 2014

DLG/gaf

O: 5/28/14

45


David L. Gore


Stephen Mathis



Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BLOODWORTH, JOHN D

Employee/Petitioner

Case# **10WC021698**

10WC019471

14IWCC0450

BOESDORFER TRUCKING

Employer/Respondent

On 11/21/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

1157 DeLANO LAW OFFICES LLC
PATRICK JAMES SMITH
ONE S E OLD STATE CAPITOL PLZ
SPRINGFIELD, IL 62705

3150 JAMES M KELLY LAW FIRM
4801 N PROSPECT RD
SUITE 832
PEORIA HEIGHTS, IL 61616

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14IWCC0450

JOHN D. BLOODWORTH

Employee/Petitioner

v.

BOESDORFER TRUCKING

Employer/Respondent

Case # 10 WC 21698

Consolidated case: 10 WC 19471

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 **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Springfield**, on **September 18, 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

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FINDINGS

On **October 20, 2009**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this alleged accident *was not* given to Respondent.

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

In the year preceding the injury, Petitioner earned **\$33,800.00**; the average weekly wage was **\$650.00**.

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

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

Because Petitioner failed to prove that an accident arose out of and in the course of his employment, that there was any causal relationship between his work duties and his condition of ill being, and further for lack of proper notice, all claims for compensation are denied.

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

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


Signature of Arbitrator

11/13/2013
Date

NOV 21 2013

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

14IWCC0450

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JOHN D. BLOODWORTH
Employee/Petitioner

v.

Case # 10 WC 21698
Consolidated Case: 10 WC 19471

BOESDORFER TRUCKING
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, John Bloodworth, testified that he is currently a self-employed truck driver. Petitioner has been a truck driver for approximately 29 years. Petitioner drove both over-the-road and locally. On March 2, 1999, Petitioner began working for Respondent, Boesdorfer Trucking. Petitioner testified that he drove a Kenworth tractor for Respondent. In 12 ½ years, he drove three different tractors. Petitioner's job duties involved taking care of his equipment, keeping it clean, loading products for the customer and delivering loads. Petitioner hauled primarily for a company called Nudo Products. Petitioner's over-the-road trips varied from 3-5 days. At times, he would bring a load back. The location of his routes varied; sometimes he would go north and sometimes south. Petitioner testified that his tractor handled like every other vehicle, in that he would feel vibrations off the steering wheel. Other than that, Petitioner testified that it rode "pretty nice." Petitioner's tractor had power steering, which Petitioner testified was the same type of power steering someone would have in his/her motor vehicle. Respondent also put a spinner knob on Petitioner's steering wheel to assist with turning so Petitioner did not have to grip the steering wheel. Petitioner generally drove with two hands. He testified he had an armrest that he would rest his right or left elbow "on and off." Petitioner indicated that when he was driving, his hands would go numb. Petitioner testified that he told Respondent's owner and President, Dennis Boesdorfer, that he was having some problems with his hands. When Petitioner was having problems, he would rest his hands.

On October 20, 2009, Petitioner was at Nudo Products in Springfield, Illinois. Petitioner testified that he had pulled his trailer outside to strap and tarp his load. Petitioner's brother-in-law, James Woods, came out and assisted him in tying down the load. Petitioner testified that he was pulling the curtain to tighten it down when he stepped on the safety bumper. There was another step behind the wheels, and as his left foot went over the step, Petitioner stated that he reached for a ratchet and the step broke off the trailer. Petitioner testified that he was wearing gloves that caught on the ratchet. Petitioner indicated he was hanging free for 5-10 seconds. Mr. Woods came and assisted Petitioner.

Petitioner testified the protocol for advising Respondent of an accident was to notify someone there as soon as possible. Petitioner testified he spoke with Kevin Montgomery, who Petitioner believed was the safety director or head office person. Petitioner indicated he also told Tom Doolen, the maintenance person, because the step broke off the trailer.

After Petitioner's incident, he indicated he took a nap and then proceeded later on his trip. Petitioner testified he immediately had a lot of pain in his elbow, shoulder and neck. Petitioner did not seek any medical treatment on the accident date. Petitioner testified he tried to make an appointment later with his primary care physician, Dr. Snowden, but that Dr. Snowden was apparently ending his practice. Petitioner subsequently got an appointment with Dr. J. Eric Bleyer in December 2009. Petitioner stated he continued to work because he needed the income. Dr. Bleyer referred Petitioner to Dr. Christopher Maender and Dr. David Gelber. Petitioner testified he probably took 2-3 days off work between the accident date and seeing Dr. Bleyer, but he could not recall specific dates. Petitioner testified he had three surgeries with Dr. Maender, which included operations on both wrists and the left elbow. Petitioner then was referred by Dr. Maender to Dr. Joseph Williams. Petitioner treated with Dr. Williams in 2005 for a low back fusion. Post-accident, Petitioner first saw Dr. Williams on May 2, 2011, which was 8 months after Dr. Maender released Petitioner from care and almost two years after the October 2009 accident. Petitioner then underwent surgery by Dr. Williams. Petitioner testified he also underwent examinations with Dr. Evan Crandall and Dr. Frank Petkovich pursuant to Section 12 of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act"). Dr. Petkovich performed x-rays. Petitioner subsequently had a second surgery with Dr. Williams, which consisted of a cervical spine fusion. Petitioner testified he did not undergo physical therapy because he needed to get back to work. Petitioner indicated that after Dr. Gelber's examination, he spoke with Dennis Boesdorfer and told Mr. Boesdorfer that he had carpal tunnel syndrome in both hands, and that he "smashed a nerve or something" in his elbow. Petitioner could not give a date that he talked to Mr. Boesdorfer.

At the time of trial, Petitioner indicated he had probably lost 40% of his grip and was still having neck spasms and pain. Petitioner takes Vicodin for pain and rests as needed. Petitioner indicated that he does not have much problem with his elbow any longer. Petitioner continues to work as a truck driver and currently drives an older model Ford dump truck. Petitioner says it does not compare to the truck he drove for Respondent. Respondent's truck was a "nice" truck with air-ride suspension. Petitioner indicated Respondent kept his truck maintained for him. He never had any problems with the truck. Petitioner never reported it was too bumpy.

Petitioner clarified that he did not actually have to physically load and unload loads. Petitioner indicated a forklift was used to load the truck but it was his responsibility to put the sticks down for them to put the load onto his trailer. Petitioner agreed that he was essentially a long-haul driver that would pick up a load and his primary duty involved driving. In terms of a normal week, Petitioner indicated that he would pick up a load and essentially be gone the rest of the week. Petitioner would tarp a load and then drive long-haul to his destination. Petitioner indicated, in the absence of a problem, there would be no reason to be dealing with the fifth-wheel, lines or any other physical activity. Petitioner agreed that if he brought a load back with him on the return trip he also would not have to perform any type of unloading, "messing" with the lines, dropping the fifth-wheel or any other physical duties on the route home. Petitioner indicated that his tractor had a knob on the steering wheel to help him steer. He also had armrests. Petitioner agreed that when he was driving long-haul he could maneuver his hands however he liked. Petitioner could change his grip at his leisure. Other than stopping, he did not have to engage in repetitive shifting. Petitioner could take his own breaks. Petitioner also indicated he could bring meals with him or stop when he wanted to eat. He also could eat food and drink beverages while he driving the truck.

Leading up to Petitioner's October 20, 2009 alleged accident date, Petitioner indicated he was having a number of health related issues. Petitioner was having circulation problems involving the feeling in his extremities. Petitioner had high blood pressure and he was taking a number of medications before the accident. Petitioner also had cardiac disease which led to Petitioner having numbness and tingling in his upper arms, and that said numbness radiated. Petitioner also felt like needles were poking him in his arms. Petitioner also agreed that his physicians asked him to stop smoking, but he continued to smoke despite their recommendations. Petitioner also had a prior lumbar spine fusion that caused him complaints. Petitioner also had stents placed into his heart and arteries prior to the accident. Petitioner continued to smoke at least 1-2 packs of cigarettes per day.

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Petitioner testified that his Application for Adjustment of Claim with an accident date of October 20, 2009 caused the numbness and tingling problems in his left elbow. Petitioner indicated that when he had the October 20, 2009 incident, his left elbow symptoms began. Petitioner agreed that the first medical treatment he received due to the October 20, 2009 accident was in December 2009, with Dr. Bleyer. Petitioner admitted that he did not go to the prompt care, emergency room or ask for a company doctor when he had his October 2009 accident. Petitioner indicated that when he saw Dr. Bleyer, he told him about the October 20, 2009 incident in which he slipped off a broken step at work, even though it is not contained in the doctor's notes. Petitioner admitted on cross-examination that he did not really remember the dates of any days he missed from work between the accident date and seeing Dr. Bleyer. Petitioner indicated he would rely on the medical records rather than his own recollection as to any dates off work. Petitioner admitted that he did not have any maintenance performed on the truck where the trailer supposedly broke. Petitioner claimed he took pictures of the broken step on his old cellular phone, but he did not give them to anyone, and no longer has those photographs. Petitioner indicated that he showed those photographs to Tom Doolen approximately a week after the alleged accident. Petitioner admitted that he did not fill out any kind of accident report for the employer. Petitioner also did not fill out any accident report after he allegedly told Mr. Boesdorfer about his problems with his hands and arms. However, Petitioner admitted that his signature is on Respondent's Exhibit 10, which was an accident report. Petitioner did not remember the document or signing the document.

Petitioner admitted that after he left employment with Respondent, he continued to have symptoms in his hands. Petitioner stated that he still has "funny" feelings of numbness in his hands and arms at night. Petitioner also admitted that Dr. Williams' July 5, 2012 record was accurate, in that it indicates that Petitioner does better in the morning but as the day progresses he tends to have an increase in his neck symptoms. Petitioner also agreed that he still complains of paresthesias or numbness in the bilateral hands and arms at night even after leaving employment with Respondent. Petitioner agreed with the quote by Dr. Williams that Petitioner stated he had to continually move his arms around when lying in bed to try to stop the "funny" feelings. Petitioner also agreed that he was having symptoms, even though he had stopped truck driving and was only doing odd jobs at the time of Dr. Williams' June 5, 2012 record. Petitioner indicated that he has returned back to truck driving at the time of trial, and he was still continuing to have symptoms even after he left employment with Respondent. Petitioner agreed that the reason he left Respondent's employment was because he was terminated for failing a drug test.

Petitioner admitted that he could not state when he advised Dennis Boesdorfer of having any problems with his hands. Petitioner indicated he just remembers being in his office one day. Petitioner does not remember talking to anyone else at the employer about having problems with his hands at work. Petitioner stated that he had to pass a physical exam both before and after his October 20, 2009 accident, stating he was physically fit to drive.

Dennis Boesdorfer testified that he is the owner and president of Respondent. He has been in the trucking industry for 40 years. Mr. Boesdorfer had experience with driving and loading and unloading. Mr. Boesdorfer was familiar with Petitioner's job duties. Petitioner had to supervise loading and unloading, hook up the hoses, perform pre-trip inspections and check to make sure his truck was in working order. Mr. Boesdorfer indicated that Petitioner did not have to do any physical loading as all of the materials Petitioner hauled were palletized and loaded and unloaded with a forklift. Other than the pre-trip inspection, Petitioner did not have to do any physical duties. Petitioner's tractor/trailer was an air-ride system with an air-ride cab and seats. Mr. Boesdorfer testified that with an air-ride cab, the vehicle rides as good as driving a pick-up truck as far as physical labor. Mr. Boesdorfer testified that his company prides itself in maintaining its vehicles. He indicated that during Petitioner's tenure, Petitioner never made any complaints about the truck being too rough or having any maintenance issues. Petitioner also had to pass a physical exam every two years, so he would have had a physical in 2010 and 2012, indicating that he was able to drive pursuant to DOT regulations. Mr. Boesdorfer testified that Petitioner would only have to shift his truck when he was starting and stopping, and once he was at a set speed out on the open road he would not have to do any repetitive shifting. Petitioner also had an arm rest in his truck that would allow him to rest his arms on the arm rest rather than putting his arm on the window or door. Petitioner also did not have to use two hands to turn his steering

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wheel, and he could move his hands around the truck at his leisure. Petitioner also was able to take breaks on his own schedule and for his own comfort.

Mr. Boesdorfer remembered talking to Petitioner about having some problems with Petitioner's hands going to sleep. Mr. Boesdorfer indicated it would be protocol to fill out an accident report if Petitioner mentioned his complaints were work related. Once it was reported as work related, an accident report would have been filled out. According to Mr. Boesdorfer, when Petitioner reported he injured himself when a step broke, an accident report would have been filled out. Mr. Boesdorfer indicated that Respondent's Exhibit 10 would have been filled out when Petitioner first gave notice of any work-related claim. Mr. Boesdorfer agreed that said report was silent as to the October 20, 2009 incident. He indicated that Respondent was a small company with less than 15 employees. If Petitioner had reported a step had broken, someone would have documented it in a report. Respondent had no report of any accident on October 20, 2009, or record of a broken trailer step.

Mr. Boesdorfer testified that prior to October 20, 2009, Petitioner had a number of health problems with his back and heart. Petitioner would call on a given day or on a Sunday night and indicate that he did not think he could perform his duties. Mr. Boesdorfer testified that he was in the office every day if he was not out driving or talking to a customer. Mr. Boesdorfer indicated that James Woods never reported there was a step broken to anybody at Respondent. Mr. Boesdorfer testified that Kevin Montgomery was in charge of completing accident reports. Mr. Montgomery was Respondent's office manager since December 2001. Mr. Montgomery testified that he handles the accounts receivable, payroll, personnel issues, reports, health, liability and workers' compensation insurance matters for Respondent. Mr. Montgomery is responsible for filling out accident reports and Form 45's. It is Respondent's policy that when employees are hurt, a report is prepared. Mr. Montgomery testified that Petitioner was in poor health prior to 2009. Petitioner had back and circulation issues with his legs requiring him to miss time from work prior to October 20, 2009. Mr. Montgomery testified that he became aware of Petitioner's October 20, 2009 injury when he received notice from the workers' compensation administrator after Petitioner received medical treatment in May 2010. Mr. Montgomery specifically denied that Petitioner called him on October 20, 2009 to report an incident involving a step breaking. Mr. Montgomery did not find out about that incident until approximately June 2010, when he was notified by the workers' compensation administrator. Mr. Montgomery also denied that Mr. Woods came in and indicated that Petitioner had a work accident in October 2009. Mr. Montgomery testified that there were no accident reports completed for an incident of October 20, 2009. Mr. Montgomery received notice in January 2010 that Petitioner was experiencing issues with his elbows and hands. At that point, Mr. Montgomery had Petitioner prepare Respondent's Exhibit 10, which was an Employee's Injury Report. From that information, Mr. Montgomery prepared the Form 45. Petitioner signed Respondent's Exhibit 10, but it stated nothing about an October 20, 2009 incident or a broken step. Mr. Montgomery testified that there was no notice given to Mr. Montgomery or the company of the October 20, 2009 incident. Mr. Montgomery indicated that neither Mr. Woods nor Petitioner came in and reported the incident of a step being broken on the truck. Mr. Montgomery prepared the Form 45 (Respondent's Exhibit 10). Mr. Montgomery indicated that the Form 45 does not reference anything about an accident on October 20, 2009 from a slip on a broken step injuring Petitioner's left arm. Mr. Montgomery testified that the notice for that accident occurred approximately seven months later. None of the documents that were shown to Mr. Montgomery have any indication of an incident on October 20, 2009 that was received prior to the first notice seven months after the accident. Mr. Montgomery indicated that the Form 45 that was prepared dealt with Petitioner indicating that he had problems holding the steering wheel in the truck.

Petitioner was re-called to the stand on rebuttal and indicated that there was some vibration in his truck but it depended on the road and he imagined it was like all trucks. Petitioner indicated that he did not remember signing or remember the employee injury report that contained his signature. Petitioner did admit it was his signature and that he did not sign a blank form. Petitioner did not remember who asked him to sign the form. Petitioner agreed he would have passed a physical exam prior to the October 20, 2009 incident as well as passing another one in 2010,

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indicating that he was physically fit to drive. Petitioner also said he had yearly physicals, so he would have also had another physical that he passed in 2012.

Petitioner testified that James Woods witnessed his October 20, 2009 accident. Mr. Woods testified at trial. Mr. Woods testified that he is Petitioner's brother-in-law. He was working as a truck driver for Respondent at the time of Petitioner's alleged accident. Mr. Woods testified that the protocol regarding an accident was to call the office immediately following said accident. Mr. Woods indicated he was working for Respondent on October 20, 2009, at Nudo Products. Mr. Woods testified that their trucks would be loaded and then they would pull outside to strap the load. Mr. Woods testified that one straps his load with 2-3 straps per section, tightens them, closes his curtains and gets his paperwork and bill and lading. He testified that on October 20, 2009, Petitioner was in the truck in front of him and pulled out to throw his straps and secure his load. Mr. Woods put his truck into the pit to be loaded and came back out to help strap down Petitioner's load. Mr. Woods was tightening down the straps when Petitioner was closing the curtain. Petitioner was standing on a step that was approximately a foot wide and 2 ½ to 3 feet off the ground. The step was used to draw the curtain back with ratchets. Mr. Woods was on the driver's side of the truck when the step broke, and Petitioner came around the trailer hanging by his glove. Mr. Woods indicated he pushed Petitioner in the small of his back so Petitioner could get his foot on the DOT bumper. Mr. Woods indicated Petitioner was hanging there for a few seconds. Mr. Woods testified that within a matter of minutes when Petitioner got his bearings back, he was on the phone and said "Kevin," but he did know he may have called Tom Doolen. Mr. Woods only heard one side of the conversation. Mr. Woods indicated that he cannot say actually what all was said because he had just finished tightening the trailer down, and then it was not very long until Petitioner made a second call, and Mr. Woods assumed it was to Tom Doolen. Mr. Woods also did not hear that conversation. Mr. Woods also admitted that he had lived with Petitioner and that they engaged in social activities together. Mr. Woods also admitted that after he witnessed the incident of Petitioner allegedly hanging from the truck, he did not report the incident to anyone at the company. Mr. Woods testified that the following Monday, he believed he told Kevin Montgomery that the step broke, and he helped push Petitioner back over the DOT bumper. He believed it was the following Monday. Mr. Woods testified that immediately after the alleged incident, Petitioner was complaining of pain in his neck, shoulder and elbow. Mr. Woods noticed that Petitioner was holding his breath like he was hurting. He also observed Petitioner away from work moving slowly when he tried to get up or move. He also observed Petitioner inside sitting on a couch, and it would not be like Petitioner to sit around. Mr. Woods testified Petitioner continued to handle his duties the same way he did before the accident. On the accident date, he verified that Petitioner continued on with his load. He also indicated that after Petitioner's fall, Mr. Woods did not call any medical personnel, and that Mr. Woods continued on with his load before Petitioner left.

Petitioner's first medical treatment was with Dr. Bleyer on December 14, 2009. Dr. Bleyer does not have a history of the work accident. (PX 2). Dr. Meander first treated Petitioner on January 18, 2010, on referral from Dr. Bleyer, Petitioner's primary care physician. (PX 4, p. 5). Dr. Meander diagnosed bilateral carpal tunnel syndrome and left cubital tunnel syndrome with lateral epicondylitis. (PX 4, pp. 5-6). Dr. Meander recommended and performed surgery. (PX 4, p. 9). On May 18, 2010, Dr. Meander performed left cubital and carpal tunnel surgery. (PX 4, p. 9). On June 1, 2010, Dr. Meander performed right carpal tunnel surgery. (PX 4, p. 10). Dr. Meander, when asked in his deposition about whether the cubital tunnel syndrome was caused by a fall on October 20, 2009, stated: "With cubital tunnel we don't know what necessarily causes it. We don't have great literature to say that. I think falls like that can aggravate cubital tunnel." (PX 4, p. 13). When asked about causation for carpal tunnel syndrome as a truck driver, Dr Meander responded: "On causation it is difficult to say, but with [Petitioner's] work activities I believe that those would be aggravating factors." (PX 4, p. 13).

With regard to the left lateral epicondylitis, Dr. Meander testified that Petitioner improved with conservative care. (PX 4, pp. 15-16). Dr. Meander testified that the left lateral epicondylitis had no relation to Petitioner's left cubital tunnel syndrome. (PX 4, p. 15). Dr. Meander testified that when Petitioner originally presented he did not mention his work in any capacity – either the fall or potential repetitive duties. (PX 4, p. 18). Dr. Meander further

admitted on cross-examination that he knew Petitioner was a truck driver, but did not know any details of his duties, including whether he was long haul or short haul. (PX 4, pp. 19-20). Dr. Meander indicated that for carpal tunnel syndrome to be caused or aggravated by truck driving, the literature requires placing the wrist in more extreme positions or gripping the steering wheel in a heavy fashion. (PX 4, p. 23). Dr. Meander admitted that he did not ask Petitioner specific questions about his job duties. (PX 4, pp. 23-24, 29). Dr. Meander admitted that he did not form a causal connection opinion until a year after seeing Petitioner, and it was then done at the request of Petitioner's attorney. (PX 4, pp. 29-32).

Petitioner was evaluated by Dr. Crandall at Respondent's request pursuant to Section 12 of the Act. (RX 2). Dr. Crandall is a board-certified surgeon specializing in upper extremity surgery for workers' injuries. (RX 2, pp. 4-6). Dr. Crandall reviewed a job description for Petitioner. (RX 2, p. 26). Dr. Crandall testified that Petitioner's carpal tunnel syndrome was not related to his truck driving duties. (RX 2, pp. 26-28). Dr. Crandall testified that Petitioner potentially had a contusion to his left elbow, which resulted in resolution with conservative treatment. (RX 2, p. 28). Dr. Crandall also testified that Petitioner's cubital tunnel syndrome could have been completely explained by the carpal tunnel syndrome symptoms, and the fact that his symptoms abated are consistent with his opinion. (RX 2, pp. 28-29). Dr. Crandall agreed with Dr. Meander that Petitioner had a number of pre-disposing risk factors for carpal tunnel syndrome, including his age, high body mass index, high blood pressure, cardiac disease, and multiple medications that can affect and cause carpal tunnel syndrome (including Norvasc and Amlodipine). (RX 2, p. 29). Dr. Crandall further indicated that Petitioner did not have to perform physical activities in his work that can injure the flexor tendons or the median nerve. (RX 2, pp. 29-30).

Dr. Williams is a board-certified orthopedic spine surgeon. (PX 13, Pet. Dep. Exh. 1). Dr. Williams medically treated Petitioner from August 22, 2006 intermittently until May 2, 2011, for Petitioner's low back. (PX 13, pp. 7-8). Dr. Williams first saw Petitioner on May 2, 2011 for complaints of axial neck pain. (PX 13, p. 8). On May 2, 2011, Dr. Williams prescribed an MRI. He testified the MRI showed degenerative disc disease at C3-4 and a disc herniation at C4-5. (PX 13, p. 8). Dr. Williams recommended surgery that was performed on September 8, 2011, consisting of a C3-4 and C4-5 discectomy and fusion. (PX 13, pp. 10-11). In his deposition, Dr. Williams was asked by Petitioner's attorney if Petitioner's October 2009 work accident could have caused his condition. Dr. Williams responded: "To the extent that it caused the degeneration, I don't think it caused the degeneration in his neck. That pre-dated his actual alleged injury that occurred while tying down the strap. Whether or not it caused any herniation, it could conceivably cause a herniation." (PX 13, p. 15).

Dr. Williams indicated on direct examination that the accident of October 2009 could have aggravated Petitioner's condition, but Petitioner did not make any neck complaints prior to May 2011 to his knowledge. (PX 13, p. 18). Petitioner was asked to fill out a patient "Spine Sheet" as to whether the primary problem was caused by an injury or accident. Petitioner failed to identify that he had any injury or accident. (PX 13, pp. 20-21). Dr. Williams also admitted that when he saw Petitioner on May 2, 2011, he never received a history consistent with a hypothetical question given by Petitioner's attorney that Petitioner was injured hanging from a strap sometime at work, injuring his cervical spine. (PX 13, p. 21). Dr. Williams further admitted that the first time he was presented with the history of an accident when Petitioner fell holding onto a strap was during the deposition. (PX 13, pp. 21-22). Dr. Williams admitted that it was "Medical School 101" that if a patient tells the doctor a history, the doctor records it in his/her records, and in this case it was not recorded. (PX 13, p. 22). Dr. Williams further indicated that in terms of causation, Petitioner's degenerative disc disease pre-dated the accident and in terms of the herniation, Dr. Williams stated: "In regards to the degenerative disc disease, that's long-standing. In regards to that herniation, when that occurred, I would not be able to state specifically with any medical certainty." (PX 13, p. 22).

Dr. Williams testified that if Petitioner had a herniated disc caused by the work accident in 2009, he would have had contemporaneous symptoms that would manifest themselves within 24 to 48 hours in most cases. (PX 13, p. 23). Dr. Williams further testified he could not say with a reasonable degree of medical and surgical certainty

that Petitioner's degenerative condition was aggravated by the alleged October 2009 work accident. The following exchange took place:

- Q. In the absence of some contemporaneous complaints by the patient, with somebody who has a degenerative spine, like this gentleman had, and the myriad of ways that you could aggravate that, it would be impossible to pin this herniation on any specific event without those contemporaneous symptoms; correct?
- A. It would be difficult.
- Q. And you certainly couldn't do it to a reasonable degree of medical and surgical certainty with those facts; correct?
- A. Correct.

(PX 13, pp. 23-24).

Dr. Williams further stated that Petitioner had a long history of degenerative disc disease and was a cigarette smoker, and that would have facilitated the drying of his discs. (PX 13, pp. 24-25). Dr. Williams further testified that there were myriad ways a person could aggravate degenerative disc disease, including any strenuous activity, sneezing or simply bending over. (PX 13, pp. 25-26). Dr. Williams specifically stated he could not say to a reasonable degree of medical and surgical certainty what, if any, exacerbation caused any change in Petitioner's underlying spine prior to seeing Petitioner in May 2011. (PX 13, p. 26). Dr. Meander also testified that Petitioner could have had his symptoms and resulting surgery even in the absence of the work accident given that Petitioner's spine was degenerating. Dr. Williams testified that Petitioner's degenerative condition could have become painful without an accident. (PX 13, p. 29). Dr. Williams also testified that it would have been helpful to see whether there were any cervical spine symptoms on the EMG prior to Petitioner being seen by Dr. Williams in 2011. (PX 13, pp. 29-30). The EMG performed on December 29, 2009 was negative for cervical radiculopathy. (PX 6). Dr. Williams indicated he would expect that test would have showed evidence of symptoms if Petitioner had a traumatic exacerbation, aggravation or acceleration. (PX 13, p. 30).

Dr. Petkovich performed an examination at Respondent's request pursuant to Section 12 of the Act. Dr. Petkovich issued a written report and testified by evidence deposition. Dr. Petkovich testified that Petitioner's cervical condition was not related to an October 20, 2009 work accident. (RX 4, p. 32). Dr. Petkovich indicated that Petitioner had pre-existing degenerative cervical disc disease at C3-4 and C4-5, and that the alleged work injury did not cause or aggravate the condition. (RX 4, pp. 32-33). Dr. Petkovich indicated that after the October 20, 2009 incident, Petitioner did not see anyone for several months for treatment to his cervical spine. (RX 4, pp. 31, 36-37).

CONCLUSIONS OF LAW

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

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

Petitioner did not receive any medical treatment following his alleged October 2009 accident until December 2009 with Dr. Bleyer, in which there is no reference to the alleged October 20, 2009 accident. Petitioner continued to work his regular duties on the date of the claimed accident, and leading up to his first doctor's

appointment. Additionally, Respondent only had 15 employees and the two primary employees that deal with injuries and personnel issues indicated they knew nothing about this incident. Also, there were no reports or maintenance records to support that Petitioner had a fall on a broken step in October 2009. Petitioner alleged he injured his elbow, and treated with Dr. Meander. Dr. Meander testified that when Petitioner presented to him on January 18, 2010, Petitioner did not state anything about a work fall or work incident. Dr. Meander testified that all of Petitioner's complaints could have been present in the absence of the work accident. Dr. Crandall, Respondent's examining physician, agreed, and denied causation to Petitioner's alleged work injury and his symptoms.

Petitioner is also alleging that he suffered a neck injury as a result of the October 20, 2009 accident. Petitioner did not make any neck complaints until May 2011. Petitioner failed to give a history to Dr. Williams of injuring himself in a work incident on October 20, 2009. Petitioner failed to identify a work related injury on the patient spine sheet. Dr. Williams admitted that the first he was presented with the history of the fall holding onto a strap was during his evidence deposition almost a year and a half later. Dr. Williams highlighted that "Med School 101" would require any physician to have put that history in his records if it was provided by Petitioner. Dr. Williams specifically indicated that Petitioner had a degenerative long-standing condition that could have been present in the absence of any work injury. Additionally, Dr. Williams indicated that the herniation could not have been stated with medical certainty as to when it occurred. Further, Petitioner's Application for Adjustment of Claim mentions nothing about an injury to his cervical spine. (See PX 1). Accordingly, Petitioner failed to prove a compensable accident or a causal connection to his work.

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

Petitioner testified he believed his left elbow problems were caused by hitting his elbow on October 20, 2009. Petitioner did not receive immediate medical care, nor did he stop working. Petitioner did not give Dr. Bleyer or Dr. Meander a history of that incident when he first saw both doctors in December 2010 and January 2011, respectively. Dr. Meander's records do not contain a history of the alleged incident. There was no accident report from the employer indicating the existence of any October 20, 2009 incident in which a step broke causing Petitioner an injury. In fact, Respondent's Exhibit 10 was prepared in January 2010, when Petitioner first gave Respondent notice of having problems with his hands and arms, which is the subject of the consolidated claim (10 WC 19471). However, there is no reference to the incident of October 20, 2009. Petitioner's memory of signing Respondent's Exhibit 10 was vague, and calls into question his memory dating back to 2009 and early 2010. Mr. Woods testified he observed Petitioner making two phone calls on the accident date, but he did not hear any of the details of either phone call, and could not verify who Petitioner was talking to or the contents of those discussions. Both Dennis Boesdorfer and Kevin Montgomery testified they received no notice of any incident involving Petitioner having an accident on October 20, 2009 within the 45 day period for giving proper notice. Mr. Montgomery testified the first knowledge they have of the incident was several months later. The Arbitrator finds the testimony of Mr. Boesdorfer and Mr. Montgomery more credible in this regard. Accordingly, Petitioner has failed to give proper notice as to an October 20, 2009 incident. Therefore, all claims for compensation are denied.

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?;

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

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

Based on the Arbitrator's findings with regard to accident, causal connection and notice, the Arbitrator finds that Petitioner is not entitled to medical expenses, temporary total disability benefits, and permanent partial disability benefits.

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

John D. Bloodworth,

Petitioner,

vs.

14IWCC0451

NO: 10 WC 19471

Boesdorfer Trucking,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, prospective medical expenses, notice, causal connection, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 21, 2013 is hereby affirmed and adopted.

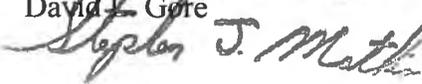
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 13 2014

DLG/gaf
O: 5/28/14
45


David L. Gore


Stephen J. Mathis

Stephen Mathis


Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0451

BLOODWORTH, JOHN D

Employee/Petitioner

Case# **10WC019471**

10WC021698

BOESDORFER TRUCKING

Employer/Respondent

On 11/21/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

1157 DeLANO LAW OFFICES LLC
PATRICK JAMES SMITH
ONE S E OLD STATE CAPITOL PLZ
SPRINGFIELD, IL 62701

3150 JAMES M KELLY LAW FIRM
4801 N PROSPECT RD
SUITE 832
PEORIA HEIGHTS, IL 61616

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

JOHN D. BLOODWORTH

Employee/Petitioner

v.

BOESDORFER TRUCKING

Employer/Respondent

Case # 10 WC 19471

Consolidated case: 10 WC 21698

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 **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Springfield**, on **September 18, 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

14IWCC0451

FINDINGS

On **December 22, 2009**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the alleged injury, Petitioner earned \$33,800.00; the average weekly wage was \$650.00.

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

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.

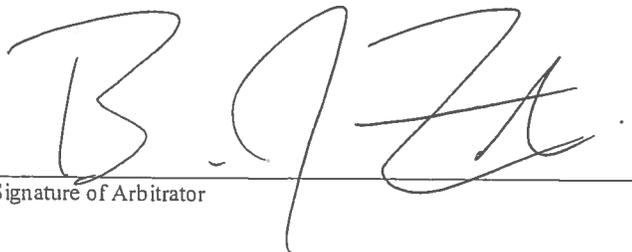
Respondent is entitled to a credit of \$0 under Section 8(j) of the Act.

ORDER

Because Petitioner failed to prove that an accident arose out of and in the course of his employment and that there was any causal relationship between his work duties and his condition of ill being, all claims for compensation are denied.

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

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



Signature of Arbitrator

11/13/2013
Date

NOV 21 2013

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

14IWCC0451

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

JOHN D. BLOODWORTH
Employee/Petitioner

v.

Case # 10 WC 19471
Consolidated Case: 10 WC 21698

BOESDORFER TRUCKING
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, John Bloodworth, testified that he is currently a self-employed truck driver. Petitioner has been a truck driver for approximately 29 years. Petitioner drove both over-the-road and locally. On March 2, 1999, Petitioner began working for Respondent, Boesdorfer Trucking. Petitioner testified that he drove a Kenworth tractor for Respondent. In 12 ½ years, he drove three different tractors. Petitioner's job duties involved taking care of his equipment, keeping it clean, loading products for the customer and delivering loads. Petitioner hauled primarily for a company called Nudo Products. Petitioner's over-the-road trips varied from 3-5 days. At times, he would bring a load back. The location of his routes varied; sometimes he would go north and sometimes south. Petitioner testified that his tractor handled like every other vehicle, in that he would feel vibrations off the steering wheel. Other than that, Petitioner testified that it rode "pretty nice." Petitioner's tractor had power steering, which Petitioner testified was the same type of power steering someone would have in his/her motor vehicle. Respondent also put a spinner knob on Petitioner's steering wheel to assist with turning so Petitioner did not have to grip the steering wheel. Petitioner generally drove with two hands. He testified he had an armrest that he would rest his right or left elbow "on and off." Petitioner indicated that when he was driving, his hands would go numb. Petitioner testified that he told Respondent's owner and President, Dennis Boesdorfer, that he was having some problems with his hands. When Petitioner was having problems, he would rest his hands.

On October 20, 2009, Petitioner was at Nudo Products in Springfield, Illinois. Petitioner testified that he had pulled his trailer outside to strap and tarp his load. Petitioner's brother-in-law, James Woods, came out and assisted him in tying down the load. Petitioner testified that he was pulling the curtain to tighten it down when he stepped on the safety bumper. There was another step behind the wheels, and as his left foot went over the step, Petitioner stated that he reached for a ratchet and the step broke off the trailer. Petitioner testified that he was wearing gloves that caught on the ratchet. Petitioner indicated he was hanging free for 5-10 seconds. Mr. Woods came and assisted Petitioner. The case number for the claimed October 20, 2009 injury is 10 WC 21698.

Petitioner testified the protocol for advising Respondent of an accident was to notify someone there as soon as possible. Petitioner testified he spoke with Kevin Montgomery, who Petitioner believed was the safety director or head office person. Petitioner indicated he also told Tom Doolen, the maintenance person, because the step broke off the trailer.

After Petitioner's incident, he indicated he took a nap and then proceeded later on his trip. Petitioner testified he immediately had a lot of pain in his elbow, shoulder and neck. Petitioner did not seek any medical treatment on the accident date. Petitioner testified he tried to make an appointment later with his primary care physician, Dr. Snowden, but that Dr. Snowden was apparently ending his practice. Petitioner subsequently got an appointment with Dr. J. Eric Bleyer in December 2009. Petitioner stated he continued to work because he needed the income. Dr. Bleyer referred Petitioner to Dr. Christopher Maender and Dr. David Gelber. Petitioner testified he probably took 2-3 days off work between the accident date and seeing Dr. Bleyer, but he could not recall specific dates. Petitioner testified he had three surgeries with Dr. Maender, which included operations on both wrists and the left elbow. Petitioner then was referred by Dr. Maender to Dr. Joseph Williams. Petitioner treated with Dr. Williams in 2005 for a low back fusion. Post-accident, Petitioner first saw Dr. Williams on May 2, 2011, which was 8 months after Dr. Maender released Petitioner from care and almost two years after the October 2009 accident. Petitioner then underwent surgery by Dr. Williams. Petitioner testified he also underwent examinations with Dr. Evan Crandall and Dr. Frank Petkovich pursuant to Section 12 of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act"). Dr. Petkovich performed x-rays. Petitioner subsequently had a second surgery with Dr. Williams, which consisted of a cervical spine fusion. Petitioner testified he did not undergo physical therapy because he needed to get back to work. Petitioner indicated that after Dr. Gelber's examination, he spoke with Dennis Boesdorfer and told Mr. Boesdorfer that he had carpal tunnel syndrome in both hands, and that he "smashed a nerve or something" in his elbow. Petitioner could not give a date that he talked to Mr. Boesdorfer.

At the time of trial, Petitioner indicated he had probably lost 40% of his grip and was still having neck spasms and pain. Petitioner takes Vicodin for pain and rests as needed. Petitioner indicated that he does not have much problem with his elbow any longer. Petitioner continues to work as a truck driver and currently drives an older model Ford dump truck. Petitioner says it does not compare to the truck he drove for Respondent. Respondent's truck was a "nice" truck with air-ride suspension. Petitioner indicated Respondent kept his truck maintained for him. He never had any problems with the truck. Petitioner never reported it was too bumpy.

Petitioner clarified that he did not actually have to physically load and unload loads. Petitioner indicated a forklift was used to load the truck but it was his responsibility to put the sticks down for them to put the load onto his trailer. Petitioner agreed that he was essentially a long-haul driver that would pick up a load and his primary duty involved driving. In terms of a normal week, Petitioner indicated that he would pick up a load and essentially be gone the rest of the week. Petitioner would tarp a load and then drive long-haul to his destination. Petitioner indicated, in the absence of a problem, there would be no reason to be dealing with the fifth-wheel, lines or any other physical activity. Petitioner agreed that if he brought a load back with him on the return trip he also would not have to perform any type of unloading, "messing" with the lines, dropping the fifth-wheel or any other physical duties on the route home. Petitioner indicated that his tractor had a knob on the steering wheel to help him steer. He also had armrests. Petitioner agreed that when he was driving long-haul he could maneuver his hands however he liked. Petitioner could change his grip at his leisure. Other than stopping, he did not have to engage in repetitive shifting. Petitioner could take his own breaks. Petitioner also indicated he could bring meals with him or stop when he wanted to eat. He also could eat food and drink beverages while he driving the truck.

Leading up to Petitioner's October 20, 2009 alleged accident date, Petitioner indicated he was having a number of health related issues. Petitioner was having circulation problems involving the feeling in his extremities. Petitioner had high blood pressure and he was taking a number of medications before the accident. Petitioner also had cardiac disease which led to Petitioner having numbness and tingling in his upper arms, and that said numbness radiated. Petitioner also felt like needles were poking him in his arms. Petitioner also agreed that his physicians asked him to stop smoking, but he continued to smoke despite their recommendations. Petitioner also had a prior lumbar spine fusion that caused him complaints. Petitioner also had stents placed into his heart and arteries prior to the accident. Petitioner continued to smoke at least 1-2 packs of cigarettes per day.

Petitioner testified that his Application for Adjustment of Claim with an accident date of October 20, 2009 caused the numbness and tingling problems in his left elbow. Petitioner indicated that when he had the October 20, 2009 incident, his left elbow symptoms began. Petitioner agreed that the first medical treatment he received due to the October 20, 2009 accident was in December 2009, with Dr. Bleyer. Petitioner admitted that he did not go to the prompt care, emergency room or ask for a company doctor when he had his October 2009 accident. Petitioner indicated that when he saw Dr. Bleyer, he told him about the October 20, 2009 incident in which he slipped off a broken step at work, even though it is not contained in the doctor's notes. Petitioner admitted on cross-examination that he did not really remember the dates of any days he missed from work between the accident date and seeing Dr. Bleyer. Petitioner indicated he would rely on the medical records rather than his own recollection as to any dates off work. Petitioner admitted that he did not have any maintenance performed on the truck where the trailer supposedly broke. Petitioner claimed he took pictures of the broken step on his old cellular phone, but he did not give them to anyone, and no longer has those photographs. Petitioner indicated that he showed those photographs to Tom Doolen approximately a week after the alleged accident. Petitioner admitted that he did not fill out any kind of accident report for the employer. Petitioner also did not fill out any accident report after he allegedly told Mr. Boesdorfer about his problems with his hands and arms. However, Petitioner admitted that his signature is on Respondent's Exhibit 10, which was an accident report. Petitioner did not remember the document or signing the document.

Petitioner admitted that after he left employment with Respondent, he continued to have symptoms in his hands. Petitioner stated that he still has "funny" feelings of numbness in his hands and arms at night. Petitioner also admitted that Dr. Williams' July 5, 2012 record was accurate, in that it indicates that Petitioner does better in the morning but as the day progresses he tends to have an increase in his neck symptoms. Petitioner also agreed that he still complains of paresthesias or numbness in the bilateral hands and arms at night even after leaving employment with Respondent. Petitioner agreed with the quote by Dr. Williams that Petitioner stated he had to continually move his arms around when lying in bed to try to stop the "funny" feelings. Petitioner also agreed that he was having symptoms, even though he had stopped truck driving and was only doing odd jobs at the time of Dr. Williams' June 5, 2012 record. Petitioner indicated that he has returned back to truck driving at the time of trial, and he was still continuing to have symptoms even after he left employment with Respondent. Petitioner agreed that the reason he left Respondent's employment was because he was terminated for failing a drug test.

Petitioner admitted that he could not state when he advised Dennis Boesdorfer of having any problems with his hands. Petitioner indicated he just remembers being in his office one day. Petitioner does not remember talking to anyone else at the employer about having problems with his hands at work. Petitioner stated that he had to pass a physical exam both before and after his October 20, 2009 accident, stating he was physically fit to drive.

Dennis Boesdorfer testified that he is the owner and president of Respondent. He has been in the trucking industry for 40 years. Mr. Boesdorfer had experience with driving and loading and unloading. Mr. Boesdorfer was familiar with Petitioner's job duties. Petitioner had to supervise loading and unloading, hook up the hoses, perform pre-trip inspections and check to make sure his truck was in working order. Mr. Boesdorfer indicated that Petitioner did not have to do any physical loading as all of the materials Petitioner hauled were palletized and loaded and unloaded with a forklift. Other than the pre-trip inspection, Petitioner did not have to do any physical duties. Petitioner's tractor/trailer was an air-ride system with an air-ride cab and seats. Mr. Boesdorfer testified that with an air-ride cab, the vehicle rides as good as driving a pick-up truck as far as physical labor. Mr. Boesdorfer testified that his company prides itself in maintaining its vehicles. He indicated that during Petitioner's tenure, Petitioner never made any complaints about the truck being too rough or having any maintenance issues. Petitioner also had to pass a physical exam every two years, so he would have had a physical in 2010 and 2012, indicating that he was able to drive pursuant to DOT regulations. Mr. Boesdorfer testified that Petitioner would only have to shift his truck when he was starting and stopping, and once he was at a set speed out on the open road he would not have to do any repetitive shifting. Petitioner also had an arm rest in his truck that would allow him to rest his arms on the arm rest rather than putting his arm on the window or door. Petitioner also did not have to use two hands to turn his steering

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wheel, and he could move his hands around the truck at his leisure. Petitioner also was able to take breaks on his own schedule and for his own comfort.

Mr. Boesdorfer remembered talking to Petitioner about having some problems with Petitioner's hands going to sleep. Mr. Boesdorfer indicated it would be protocol to fill out an accident report if Petitioner mentioned his complaints were work related. Once it was reported as work related, an accident report would have been filled out. According to Mr. Boesdorfer, when Petitioner reported he injured himself when a step broke, an accident report would have been filled out. Mr. Boesdorfer indicated that Respondent's Exhibit 10 would have been filled out when Petitioner first gave notice of any work-related claim. Mr. Boesdorfer agreed that said report was silent as to the October 20, 2009 incident. He indicated that Respondent was a small company with less than 15 employees. If Petitioner had reported a step had broken, someone would have documented it in a report. Respondent had no report of any accident on October 20, 2009, or record of a broken trailer step.

Mr. Boesdorfer testified that prior to October 20, 2009, Petitioner had a number of health problems with his back and heart. Petitioner would call on a given day or on a Sunday night and indicate that he did not think he could perform his duties. Mr. Boesdorfer testified that he was in the office every day if he was not out driving or talking to a customer. Mr. Boesdorfer indicated that James Woods never reported there was a step broken to anybody at Respondent. Mr. Boesdorfer testified that Kevin Montgomery was in charge of completing accident reports. Mr. Montgomery was Respondent's office manager since December 2001. Mr. Montgomery testified that he handles the accounts receivable, payroll, personnel issues, reports, health, liability and workers' compensation insurance matters for Respondent. Mr. Montgomery is responsible for filling out accident reports and Form 45's. It is Respondent's policy that when employees are hurt, a report is prepared. Mr. Montgomery testified that Petitioner was in poor health prior to 2009. Petitioner had back and circulation issues with his legs requiring him to miss time from work prior to October 20, 2009. Mr. Montgomery testified that he became aware of Petitioner's October 20, 2009 injury when he received notice from the workers' compensation administrator after Petitioner received medical treatment in May 2010. Mr. Montgomery specifically denied that Petitioner called him on October 20, 2009 to report an incident involving a step breaking. Mr. Montgomery did not find out about that incident until approximately June 2010, when he was notified by the workers' compensation administrator. Mr. Montgomery also denied that Mr. Woods came in and indicated that Petitioner had a work accident in October 2009. Mr. Montgomery testified that there were no accident reports completed for an incident of October 20, 2009. Mr. Montgomery received notice in January 2010 that Petitioner was experiencing issues with his elbows and hands. At that point, Mr. Montgomery had Petitioner prepare Respondent's Exhibit 10, which was an Employee's Injury Report. From that information, Mr. Montgomery prepared the Form 45. Petitioner signed Respondent's Exhibit 10, but it stated nothing about an October 20, 2009 incident or a broken step. Mr. Montgomery testified that there was no notice given to Mr. Montgomery or the company of the October 20, 2009 incident. Mr. Montgomery indicated that neither Mr. Woods nor Petitioner came in and reported the incident of a step being broken on the truck. Mr. Montgomery prepared the Form 45 (Respondent's Exhibit 10). Mr. Montgomery indicated that the Form 45 does not reference anything about an accident on October 20, 2009 from a slip on a broken step injuring Petitioner's left arm. Mr. Montgomery testified that the notice for that accident occurred approximately seven months later. None of the documents that were shown to Mr. Montgomery have any indication of an incident on October 20, 2009 that was received prior to the first notice seven months after the accident. Mr. Montgomery indicated that the Form 45 that was prepared dealt with Petitioner indicating that he had problems holding the steering wheel in the truck.

Petitioner was re-called to the stand on rebuttal and indicated that there was some vibration in his truck but it depended on the road and he imagined it was like all trucks. Petitioner indicated that he did not remember signing or remember the employee injury report that contained his signature. Petitioner did admit it was his signature and that he did not sign a blank form. Petitioner did not remember who asked him to sign the form. Petitioner agreed he would have passed a physical exam prior to the October 20, 2009 incident as well as passing another one in 2010,

indicating that he was physically fit to drive. Petitioner also said he had yearly physicals, so he would have also had another physical that he passed in 2012.

Petitioner testified that James Woods witnessed his October 20, 2009 accident. Mr. Woods testified at trial. Mr. Woods testified that he is Petitioner's brother-in-law. He was working as a truck driver for Respondent at the time of Petitioner's alleged accident. Mr. Woods testified that the protocol regarding an accident was to call the office immediately following said accident. Mr. Woods indicated he was working for Respondent on October 20, 2009, at Nudo Products. Mr. Woods testified that their trucks would be loaded and then they would pull outside to strap the load. Mr. Woods testified that one straps his load with 2-3 straps per section, tightens them, closes his curtains and gets his paperwork and bill and lading. He testified that on October 20, 2009, Petitioner was in the truck in front of him and pulled out to throw his straps and secure his load. Mr. Woods put his truck into the pit to be loaded and came back out to help strap down Petitioner's load. Mr. Woods was tightening down the straps when Petitioner was closing the curtain. Petitioner was standing on a step that was approximately a foot wide and 2 ½ to 3 feet off the ground. The step was used to draw the curtain back with ratchets. Mr. Woods was on the driver's side of the truck when the step broke, and Petitioner came around the trailer hanging by his glove. Mr. Woods indicated he pushed Petitioner in the small of his back so Petitioner could get his foot on the DOT bumper. Mr. Woods indicated Petitioner was hanging there for a few seconds. Mr. Woods testified that within a matter of minutes when Petitioner got his bearings back, he was on the phone and said "Kevin," but he did know he may have called Tom Doolen. Mr. Woods only heard one side of the conversation. Mr. Woods indicated that he cannot say actually what all was said because he had just finished tightening the trailer down, and then it was not very long until Petitioner made a second call, and Mr. Woods assumed it was to Tom Doolen. Mr. Woods also did not hear that conversation. Mr. Woods also admitted that he had lived with Petitioner and that they engaged in social activities together. Mr. Woods also admitted that after he witnessed the incident of Petitioner allegedly hanging from the truck, he did not report the incident to anyone at the company. Mr. Woods testified that the following Monday, he believed he told Kevin Montgomery that the step broke, and he helped push Petitioner back over the DOT bumper. He believed it was the following Monday. Mr. Woods testified that immediately after the alleged incident, Petitioner was complaining of pain in his neck, shoulder and elbow. Mr. Woods noticed that Petitioner was holding his breath like he was hurting. He also observed Petitioner away from work moving slowly when he tried to get up or move. He also observed Petitioner inside sitting on a couch, and it would not be like Petitioner to sit around. Mr. Woods testified Petitioner continued to handle his duties the same way he did before the accident. On the accident date, he verified that Petitioner continued on with his load. He also indicated that after Petitioner's fall, Mr. Woods did not call any medical personnel, and that Mr. Woods continued on with his load before Petitioner left.

Petitioner's first medical treatment was with Dr. Bleyer on December 14, 2009. Dr. Bleyer does not have a history of the work accident. (PX 2). Dr. Meander first treated Petitioner on January 18, 2010, on referral from Dr. Bleyer, Petitioner's primary care physician. (PX 4, p. 5). Dr. Meander diagnosed bilateral carpal tunnel syndrome and left cubital tunnel syndrome with lateral epicondylitis. (PX 4, pp. 5-6). Dr. Meander recommended and performed surgery. (PX 4, p. 9). On May 18, 2010, Dr. Meander performed left cubital and carpal tunnel surgery. (PX 4, p. 9). On June 1, 2010, Dr. Meander performed right carpal tunnel surgery. (PX 4, p. 10). Dr. Meander, when asked in his deposition about whether the cubital tunnel syndrome was caused by a fall on October 20, 2009, stated: "With cubital tunnel we don't know what necessarily causes it. We don't have great literature to say that. I think falls like that can aggravate cubital tunnel." (PX 4, p. 13). When asked about causation for carpal tunnel syndrome as a truck driver, Dr. Meander responded: "On causation it is difficult to say, but with [Petitioner's] work activities I believe that those would be aggravating factors." (PX 4, p. 13).

With regard to the left lateral epicondylitis, Dr. Meander testified that Petitioner improved with conservative care. (PX 4, pp. 15-16). Dr. Meander testified that the left lateral epicondylitis had no relation to Petitioner's left cubital tunnel syndrome. (PX 4, p. 15). Dr. Meander testified that when Petitioner originally presented he did not mention his work in any capacity – either the fall or potential repetitive duties. (PX 4, p. 18). Dr. Meander further

admitted on cross-examination that he knew Petitioner was a truck driver, but did not know any details of his duties, including whether he was long haul or short haul. (PX 4, pp. 19-20). Dr. Meander indicated that for carpal tunnel syndrome to be caused or aggravated by truck driving, the literature requires placing the wrist in more extreme positions or gripping the steering wheel in a heavy fashion. (PX 4, p. 23). Dr. Meander admitted that he did not ask Petitioner specific questions about his job duties. (PX 4, pp. 23-24, 29). Dr. Meander admitted that he did not form a causal connection opinion until a year after seeing Petitioner, and it was then done at the request of Petitioner's attorney. (PX 4, pp. 29-32).

Petitioner was evaluated by Dr. Crandall at Respondent's request pursuant to Section 12 of the Act. (RX 2). Dr. Crandall is a board-certified surgeon specializing in upper extremity surgery for workers' injuries. (RX 2, pp. 4-6). Dr. Crandall reviewed a job description for Petitioner. (RX 2, p. 26). Dr. Crandall testified that Petitioner's carpal tunnel syndrome was not related to his truck driving duties. (RX 2, pp. 26-28). Dr. Crandall testified that Petitioner potentially had a contusion to his left elbow, which resulted in resolution with conservative treatment. (RX 2, p. 28). Dr. Crandall also testified that Petitioner's cubital tunnel syndrome could have been completely explained by the carpal tunnel syndrome symptoms, and the fact that his symptoms abated are consistent with his opinion. (RX 2, pp. 28-29). Dr. Crandall agreed with Dr. Meander that Petitioner had a number of pre-disposing risk factors for carpal tunnel syndrome, including his age, high body mass index, high blood pressure, cardiac disease, and multiple medications that can affect and cause carpal tunnel syndrome (including Norvasc and Amlodipine). (RX 2, p. 29). Dr. Crandall further indicated that Petitioner did not have to perform physical activities in his work that can injure the flexor tendons or the median nerve. (RX 2, pp. 29-30).

Dr. Williams is a board-certified orthopedic spine surgeon. (PX 13, Pet. Dep. Exh. 1). Dr. Williams medically treated Petitioner from August 22, 2006 intermittently until May 2, 2011, for Petitioner's low back. (PX 13, pp. 7-8). Dr. Williams first saw Petitioner on May 2, 2011 for complaints of axial neck pain. (PX 13, p. 8). On May 2, 2011, Dr. Williams prescribed an MRI. He testified the MRI showed degenerative disc disease at C3-4 and a disc herniation at C4-5. (PX 13, p. 8). Dr. Williams recommended surgery that was performed on September 8, 2011, consisting of a C3-4 and C4-5 discectomy and fusion. (PX 13, pp. 10-11). In his deposition, Dr. Williams was asked by Petitioner's attorney if Petitioner's October 2009 work accident could have caused his condition. Dr. Williams responded: "To the extent that it caused the degeneration, I don't think it caused the degeneration in his neck. That pre-dated his actual alleged injury that occurred while tying down the strap. Whether or not it caused any herniation, it could conceivably cause a herniation." (PX 13, p. 15).

Dr. Williams indicated on direct examination that the accident of October 2009 could have aggravated Petitioner's condition, but Petitioner did not make any neck complaints prior to May 2011 to his knowledge. (PX 13, p. 18). Petitioner was asked to fill out a patient "Spine Sheet" as to whether the primary problem was caused by an injury or accident. Petitioner failed to identify that he had any injury or accident. (PX 13, pp. 20-21). Dr. Williams also admitted that when he saw Petitioner on May 2, 2011, he never received a history consistent with a hypothetical question given by Petitioner's attorney that Petitioner was injured hanging from a strap sometime at work, injuring his cervical spine. (PX 13, p. 21). Dr. Williams further admitted that the first time he was presented with the history of an accident when Petitioner fell holding onto a strap was during the deposition. (PX 13, pp. 21-22). Dr. Williams admitted that it was "Medical School 101" that if a patient tells the doctor a history, the doctor records it in his/her records, and in this case it was not recorded. (PX 13, p. 22). Dr. Williams further indicated that in terms of causation, Petitioner's degenerative disc disease pre-dated the accident and in terms of the herniation, Dr. Williams stated: "In regards to the degenerative disc disease, that's long-standing. In regards to that herniation, when that occurred, I would not be able to state specifically with any medical certainty." (PX 13, p. 22).

Dr. Williams testified that if Petitioner had a herniated disc caused by the work accident in 2009, he would have had contemporaneous symptoms that would manifest themselves within 24 to 48 hours in most cases. (PX 13, p. 23). Dr. Williams further testified he could not say with a reasonable degree of medical and surgical certainty

that Petitioner's degenerative condition was aggravated by the alleged October 2009 work accident. The following exchange took place:

- Q. In the absence of some contemporaneous complaints by the patient, with somebody who has a degenerative spine, like this gentleman had, and the myriad of ways that you could aggravate that, it would be impossible to pin this herniation on any specific event without those contemporaneous symptoms; correct?
- A. It would be difficult.
- Q. And you certainly couldn't do it to a reasonable degree of medical and surgical certainty with those facts; correct?
- A. Correct.

(PX 13, pp. 23-24).

Dr. Williams further stated that Petitioner had a long history of degenerative disc disease and was a cigarette smoker, and that would have facilitated the drying of his discs. (PX 13, pp. 24-25). Dr. Williams further testified that there were myriad ways a person could aggravate degenerative disc disease, including any strenuous activity, sneezing or simply bending over. (PX 13, pp. 25-26). Dr. Williams specifically stated he could not say to a reasonable degree of medical and surgical certainty what, if any, exacerbation caused any change in Petitioner's underlying spine prior to seeing Petitioner in May 2011. (PX 13, p. 26). Dr. Meander also testified that Petitioner could have had his symptoms and resulting surgery even in the absence of the work accident given that Petitioner's spine was degenerating. Dr. Williams testified that Petitioner's degenerative condition could have become painful without an accident. (PX 13, p. 29). Dr. Williams also testified that it would have been helpful to see whether there were any cervical spine symptoms on the EMG prior to Petitioner being seen by Dr. Williams in 2011. (PX 13, pp. 29-30). The EMG performed on December 29, 2009 was negative for cervical radiculopathy. (PX 6). Dr. Williams indicated he would expect that test would have showed evidence of symptoms if Petitioner had a traumatic exacerbation, aggravation or acceleration. (PX 13, p. 30).

Dr. Petkovich performed an examination at Respondent's request pursuant to Section 12 of the Act. Dr. Petkovich issued a written report and testified by evidence deposition. Dr. Petkovich testified that Petitioner's cervical condition was not related to an October 20, 2009 work accident. (RX 4, p. 32). Dr. Petkovich indicated that Petitioner had pre-existing degenerative cervical disc disease at C3-4 and C4-5, and that the alleged work injury did not cause or aggravate the condition. (RX 4, pp. 32-33). Dr. Petkovich indicated that after the October 20, 2009 incident, Petitioner did not see anyone for several months for treatment to his cervical spine. (RX 4, pp. 31, 36-37).

CONCLUSIONS OF LAW

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

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

Based on the factual testimony, Petitioner was a long-haul driver and did not have to perform repetitive duties that would lead to a repetitive trauma injury. Petitioner had an air-ride truck, specific arm rests for his arms/elbows and a knob on his steering wheel to avoid having to grip the steering wheel to turn. There was no

evidence that Petitioner had any vibration problems or other maintenance issues with his truck. Petitioner was a long-haul driver, so he would only have to shift when starting and stopping. Petitioner was allowed to take his own breaks and move his hands around at his leisure which allowed him not to have his hands in a flexed or extended position on a repetitive or prolonged basis. In terms of medical opinions, Dr. Meander attempted to associate Petitioner's cubital tunnel syndrome with a fall. Dr. Meander did not give an opinion to a reasonable degree of medical and surgical certainty that Petitioner's repetitive work duties caused a permanent aggravation leading to the need for Petitioner's cubital tunnel syndrome condition or surgery. Dr. Meander also indicated that "with cubital tunnel we do not know what necessarily causes it." With regard to carpal tunnel syndrome, again Dr. Meander indicated "on causation, it is difficult to say." Dr. Meander indicated that the literature requires that for carpal tunnel syndrome to be linked to duties involving truck driving, the wrists must be placed in a more extreme position or gripping of the steering wheel in a heavy fashion must be present. Petitioner testified he had a knob on his steering wheel that prevented him from having to perform excessive gripping while turning. Petitioner did not present any evidence that he had to keep his wrists in an extreme position for any extended period of time. Dr. Meander also admitted he had very limited knowledge of Petitioner's job duties.

Dr. Crandall, Respondent's examining physician regarding Petitioner's hand and arm injuries, specializes in work-related upper extremity injuries. Dr. Crandall testified that Petitioner's cubital and carpal tunnel syndromes were not caused by Petitioner's work duties. Dr. Crandall agreed with Dr. Meander that Petitioner had a number of pre-disposing risk factors for carpal tunnel syndrome, including his age, high body mass index, high blood pressure, cardiac disease, and multiple medications that can affect and cause carpal tunnel syndrome, including Norvasec and Amalodephine. Dr. Crandall further indicated that Petitioner did not have to perform physical activities at work that would have caused cubital or carpal tunnel syndromes. The Arbitrator adopts the opinions of Dr. Crandall with regard to causation concerning the claimed hand/wrist and elbow injuries.

With regard to Petitioner's cervical spine, there was no evidence presented that Petitioner's job duties led to his cervical spine condition. Petitioner did not make any significant neck complaints until May 2011. Petitioner did not see Dr. Williams until over a year after the accident. Petitioner failed to indicate on Dr. Williams' patient spine sheet that he had any type of work accident or injury. Dr. Williams indicated that all of Petitioner's complaints could have been explained by the natural degenerative process. Petitioner had a long history of degenerative disc disease. Petitioner also was a cigarette smoker, and the evidence at issue shows that said smoking would have facilitated the drying of his cervical discs. Dr. Petkovich, Respondent's examining physician regarding Petitioner's cervical spine injuries, issued a report and testified by deposition. Dr. Petkovich testified that Petitioner's cervical condition was not related to his work duties. The Arbitrator adopts the opinions of Dr. Petkovich with regard to causation concerning the claimed cervical spine injury.

Based on the foregoing, the Arbitrator finds that Petitioner has failed to prove an accident that arose out of and in the course of his employment, and further failed to prove a causal connection between his injuries and work duties. All claims for compensation are denied.

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

Respondent's Exhibit 10 is an accident report that was signed by Petitioner in January 2010, which indicates he was having problems with his hands. Kevin Montgomery indicated he prepared a Form 45 based on that report. Therefore, Petitioner has given proper notice of the alleged accident with a manifestation date of December 22, 2009. (Case number 10 WC 19471).

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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?;

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

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

Based on the Arbitrator's findings with regard to accident and causal connection, the Arbitrator finds that Petitioner is not entitled to medical expenses, temporary total disability benefits, and permanent partial disability benefits.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Donna Greer,

Petitioner,

14IWCC0452

vs.

NO: 12 WC 43523

Bravo, Inc. d/b/a Rosewood Care Center,

Respondent.

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 medical expenses, prospective medical expenses, causal connection, temporary total 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 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 13, 2013 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.

14IWCC0452

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 \$11,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 13 2014

DLG/gaf
O: 5/29/14
45



David L. Gore



Stephen Mathis



Mario Basurto

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

14IWCC0452

GREER, DONNA

Employee/Petitioner

Case# **12WC043523**

**BRAVO INC D/B/A ROSEWOOD CARE
CENTER**

Employer/Respondent

On 12/13/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0487 SMITH ALLEN MENDENHALL ET AL
DOUG MENDENHALL
PO BOX 8248
ALTON, IL 62002

2593 GANAN & SHAPIRO PC
AMANDA WATSON
411 HAMILTON BLVD SUITE 1006
PEORIA, IL 61602

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0452

Donna Greer
Employee/Petitioner

Case # 12 WC 43523

v.

Consolidated cases: _____

Bravo, Inc. d/b/a Rosewood Care Center
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on October 29, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

14IWCC0452

FINDINGS

On the date of accident, November 23, 2012, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned \$n/a; the average weekly wage was \$688.58.

On the date of accident, Petitioner was 54 years of age, single with 0 dependent child(ren).

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

Respondent shall be given a credit of \$10,689.47 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$10,689.47.

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

ORDER

Respondent shall pay for reasonable and necessary medical services as identified in Petitioner's Exhibit 5, excluding the bill for the in-patient hospitalization at Alton Memorial Hospital from November 23, 2012, through November 25, 2012, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit as provided in Section 8(j) of the Act.

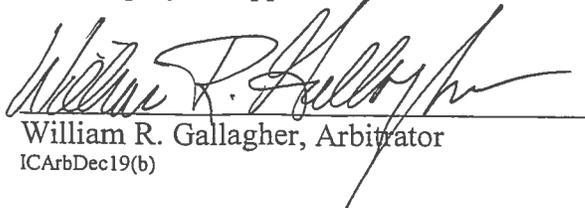
Respondent shall authorize and make payment for prospective medical treatment as recommended by Dr. Gornet, including, but not limited to, fusion surgery.

Respondent shall pay Petitioner temporary total disability benefits of \$459.05 per week for 47 6/7 weeks commencing November 29, 2012, through October 29, 2013, as provided in Section 8(b) 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.


William R. Gallagher, Arbitrator
ICArbDec19(b)

December 6, 2013
Date

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment for Respondent on November 23, 2012. According to the Application, Petitioner slipped and fell on water on a floor and sustained injuries to the neck, back and body as a whole. There was no dispute that Petitioner sustained a work-related accident; however, Respondent disputed liability on the basis of causal relationship. This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills and temporary total disability benefits as well as prospective medical treatment.

Petitioner was hired by Respondent in 2008 and worked as an LPN. Petitioner's job duties required her to care for residents/patients in the nursing home. This was a physically demanding job which required a significant amount of lifting.

In July and August, 2011, Petitioner sustained work-related low back injuries. Subsequent to these prior injuries, Petitioner received some conservative treatment including some injections and physical therapy. Petitioner was able to return to work for the Respondent with some lifting restrictions and was working in a full-time capacity on November 23, 2012. At that time, Petitioner was in the process of inspecting a room and when she was exiting the room, she slipped on some water on the floor falling backwards on her buttocks. When Petitioner was falling, she raised her left arm to prevent her head from striking the frame of the door. When she fell, Petitioner experienced an immediate onset of low back and left arm pain and two of her co-workers assisted her up from the floor.

Following the accident, Petitioner was sent home by Respondent and when she attempted to drive to her residence, she began to experience facial and left arm numbness. She went to the ER of Alton Memorial Hospital where she was hospitalized for two days. During this hospitalization, Petitioner had diagnostic tests performed to rule out a stroke. It was determined that Petitioner did not sustain a stroke. The hospital records included a history of the work-related accident; however, the purpose of the inpatient hospitalization was for evaluation of a suspected stroke.

Petitioner sought medical treatment from Dr. Matthew Gornet, an orthopedic surgeon, on November 29, 2012. At that time, Petitioner informed Dr. Gornet of the work-related injury of November 23, 2012, and that she had increased low back, bilateral buttocks and leg pain with tingling in her feet. Dr. Gornet opined that Petitioner had aggravated her prior back condition and authorized her to be off work.

Dr. Gornet previously treated Petitioner for her prior low back injuries of July and August, 2011, initially seeing her on September 15, 2011. At that time, Petitioner complained of low back and leg pain, but with more leg symptoms in the left leg than the right. She also informed Dr. Gornet that she had a prior low back problem which had developed in April, 2010, and that she had undergone pain management and had an MRI performed in June, 2010. The earlier back problem had resolved and Petitioner had no significant problems until the accidents that occurred in July and August, 2011. Dr. Gornet treated Petitioner conservatively with some physical therapy and

injections. Dr. Gornet ordered an MRI scan which was performed on March 15, 2012, which revealed a disc bulge and spondylolisthesis at L3-L4 and small central disc herniations at L4-L5 and L5-S1. When Dr. Gornet saw Petitioner on June 18, 2012, he noted that she continued to have significant symptoms and that further treatment, including surgery, was a possibility.

When Dr. Gornet saw Petitioner on October 1, 2012, he noted that Petitioner had significant neck symptoms and an MRI revealed disc herniations at C5-C6 and C6-C7. This neck problem was not work-related and Petitioner ultimately had neck fusion surgery performed in December, 2012, by Dr. Neill Wright. This surgery was scheduled prior to the accident of November 23, 2012. When Dr. Gornet saw Petitioner on November 29, 2012, he noted in his record that Petitioner was scheduled to have the cervical fusion surgery performed on December 3, 2012.

Dr. Gornet saw Petitioner on February 4, 2013, and ordered an MRI scan which was performed that same day. Dr. Gornet opined the MRI scan revealed an increased size of the central left disc herniation at L3-L4 but that the disc pathology at L4-L5 and L5-S1 was unchanged. He recommended that Petitioner undergo some steroid injections and authorized her to remain off work. Dr. Gornet referred Petitioner to Dr. Kaylea Boutwell, who saw her on February 11, 2013, and gave her two epidural steroid injections at that time. At trial, Petitioner testified that she did not experience any relief of her symptoms following those injections.

Dr. Gornet saw Petitioner again on April 1, 2013. Given Petitioner's ongoing significant complaints and the failure of conservative treatment, he recommended that Petitioner have surgery consisting of a multilevel fusion from L3 to S1.

At the direction of the Respondent, Petitioner was examined by Dr. Timothy VanFleet, an orthopedic surgeon, on April 12, 2013. Dr. VanFleet reviewed medical records provided to him as well as various x-rays and MRI films from 2009 through 2013. Dr. VanFleet reviewed the MRIs of June 3, 2010, March 15, 2011, and February 24, 2013. He opined that they all revealed three level degenerative disc disease but no significant acute changes. He also reviewed an x-ray of May 20, 2010, which he opined revealed osteoarthritis of the left hip. Dr. VanFleet opined Petitioner had degenerative disc disease at L3-L4, L4-L5 and L5-S1, exacerbated by left hip osteoarthritis. He also opined that Petitioner was at MMI in regard to the work-related injury and that a three level fusion procedure was not indicated. He did recommend Petitioner undergo an FCE to determine her work restrictions; however, he also opined that any such restrictions would be due to the underlying degenerative condition and not to the work-related accident.

The medical records revealed Petitioner was previously treated for low back and left hip pain in January, 2004, and November, 2006, by Dr. Todd Stewart. An MRI of September 30, 2003, revealed degenerative changes in the lumbar spine. Another MRI performed November, 2006, revealed small central disc bulges at L4-L5 and L5-S1 without significant neural impingement.

Petitioner was seen again by Dr. Gornet on June 17, 2013, and Dr. Gornet reviewed the report of Dr. VanFleet. Dr. Gornet agreed that Petitioner had pre-existing degenerative disc disease; however, he again opined that Petitioner's accident was the cause of her current symptomatology. Dr. Gornet also specifically noted that Petitioner was working full duty prior to the accident of November 23, 2012. On clinical examination, there was no restriction of motion of the left hip

but there were multiple symptoms in regard to the low back with bilateral buttock/hip pain that was consistent with a low back problem.

Dr. Gornet was deposed on September 19, 2013, and his deposition testimony was received into evidence at trial. Dr. Gornet's testimony was consistent with his medical records and he reaffirmed his opinions that the accident of November 23, 2012, aggravated Petitioner's low back condition, in particular, that it caused a new disc injury at L3-L4 as evidenced by the increased size of the disc herniation at that level. He also noted that there was a drastic change in Petitioner's symptomatology subsequent to the fall of November 23, 2012. In regard to his surgical recommendation, Dr. Gornet testified that he hoped that this would improve Petitioner's condition so that she would be able to return to work, but that some restrictions would be required. Subsequent to his being deposed, Dr. Gornet saw Petitioner on October 17, 2013, and in his office record of that date he restated his surgical recommendation and opined that Petitioner still remained temporarily totally disabled.

Dr. VanFleet was deposed on October 9, 2013, and his deposition testimony was received into evidence at trial. Dr. VanFleet restated the opinions contained in his narrative medical report, specifically, that Petitioner's condition was of a long-standing nature, that there were no appreciable differences between the MRI scans and Petitioner's primary problem was a degenerative hip condition. On cross-examination, Dr. VanFleet agreed that there was an exacerbation of Petitioner's low back condition as a result of the fall of November 23, 2012. He also opined that this exacerbation was temporary and that Petitioner should have returned to a baseline within two to three months post-accident.

At trial Petitioner testified that the symptoms she experienced after the fall of November 23, 2012, were much different than the ones that she had experienced previously. She stated that she has constant pain in her low back and that her activities are markedly limited, namely, she is unable to engage in any lifting at all, refrains from performing virtually any household tasks, uses a motor driven scooter when she shops, and while she can walk, she is in constant pain. She wants to proceed with the surgery that has been recommended by Dr. Gornet.

Conclusions of Law

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

The Arbitrator concludes that Petitioner's current condition of ill-being is causally related to the accident of November 23, 2012.

In support of this conclusion the Arbitrator notes the following:

There was no dispute that Petitioner sustained a work-related accident on November 23, 2012, and that she was working in a full-time capacity for Respondent immediately prior to that time.

While there is no question that Petitioner had significant pre-existing low back symptoms and degenerative changes, the accident of November 23, 2012, exacerbated that pre-existing condition.

14IWCC0452

Dr. Gornet treated Petitioner both before and after the accident of November 23, 2012, and reviewed MRIs taken before and after and opined that there was a worsening of the disc pathology at L3-L4.

Dr. VanFleet agreed that there was an exacerbation of Petitioner's low back condition; however, in spite of Petitioner's ongoing symptomatology, he opined that the exacerbation was a temporary one and that Petitioner should have returned to a baseline in two to three months time. If that was the case, Petitioner would have been able to return to work sometime within that period of time.

The Arbitrator finds the opinion of Petitioner's treating physician, Dr. Gornet, to be more credible and persuasive than that of Respondent's Section 12 examiner, Dr. VanFleet.

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

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical bills incurred therewith. This specifically excludes the medical charges for the in-patient hospitalization of Petitioner at Alton Memorial Hospital from November 23, 2012, through November 25, 2012, when she was evaluated for a possible stroke.

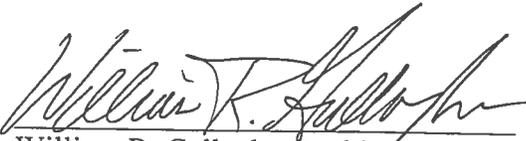
Respondent shall pay medical bills identified in Petitioner's Exhibit 5, excluding the bill for the in-patient hospitalization at Alton Memorial Hospital from November 23, 2012, through November 25, 2012, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

The Arbitrator concludes Petitioner is entitled to prospective medical treatment including, but not limited to, the fusion surgery recommended by Dr. Gornet.

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

The Arbitrator concludes Petitioner is entitled to payment of temporary total disability benefits of 47 6/7 weeks commencing November 29, 2012, through October 29, 2013.


William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Angel Everage,

Petitioner,

vs.

Olin Winchester,

Respondent.

14IWCC0453

NO: 10 WC 03513

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 22, 2013 is hereby affirmed and adopted.

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

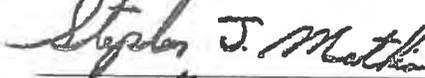
No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 13 2014

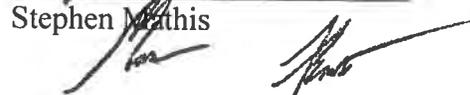
DLG/ gaf
O: 5/28/14
45



David L. Gore



Stephen Mathis



Mario Basurto

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

EVERAGE, ANGEL

Employee/Petitioner

Case# 10WC003513

OLIN WINCHESTER

Employer/Respondent

14IWCC0453

On 4/22/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

4463 GALANTI LAW OFFICES PC
LESLIE N COLLINS
PO BOX 99
EAST ALTON, IL 62024

0299 KEEFE & DEPAULI PC
NEIL A GIFFHORN
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
)SS.
COUNTY OF Madison)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

19(b)

14IWCC0453

Angel Everage

Employee/Petitioner

Case # 10 WC 3513

v.

Consolidated cases: ___

Olin Winchester

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Granada**, Arbitrator of the Commission, in the city of **Collinsville**, on **March 25, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **October 22, 2009**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned **\$48,027.20**; the average weekly wage was **\$923.60**.

On the date of accident, Petitioner was **36** years of age, *married* with **1** dependent children.

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

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

Respondent is entitled to a credit of **\$3,949.27** under Section 8(j) of the Act.

ORDER

Petitioner failed to meet her burden of proof regarding the issue of accident. Therefore her claim is hereby denied.

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

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



Signature of Arbitrator

4/17/13
Date

APR 22 2013

Findings of Fact

Petitioner, Angel Everage, was first employed with Respondent, Olin Winchester, on February 14, 2003. Beginning in July 2004, she worked in the Ballistics Department first as janitor, but then extensively as a tester. She testified that her job varied widely and included driving material from the production lines to the testing center, shooting firearms, shooting mechanical guns, and inspecting product. She testified that a DVD put into evidence showed her various jobs and she was filmed for the DVD. It was the testimony of the Petitioner that she did a lot of different jobs and they changed daily.

Petitioner then came under the care of Dr. Rotman on January 15, 2009. She reported her job duties to Dr. Rotman who recorded them in great detail in his office notes. He also recorded the Petitioner's onset of complaints in 2006 and Petitioner's comment "She feels that her work is repetitive." (Rx2 at 1) Dr. Rotman did not think she had carpal tunnel and provided an injection to the right palm. Dr. Rotman did not believe her complaints were caused by her work. On February 24, 2009, Petitioner returned to Dr. Rotman who noted non-physiologic findings and subjective complaints without clinical correlation. Dr. Rotman did a formal Independent Medical Examination on May 10, 2010, in which he reviewed a full set of medical records and a Physical Demands Analysis. Based upon the most recent nerve studies, Dr. Rotman felt Petitioner's symptoms were not carpal tunnel, she required no treatment, and her complaints were not work-related. In addition, on June 1, 2010, Dr. Rotman reviewed the DVD of Petitioner's work duties and again confirmed that her work was varied and not heavy. Then on April 30, 2012, Petitioner underwent an additional Independent Medical Exam with Dr. Rotman wherein he reviewed updated medical records and examined Petitioner again. Dr. Rotman again stated that because of a job change, her work was now less intense and her complaints had not changed. This supported his opinion that her work was not the cause of her complaints and she required no invasive treatment.

Petitioner went to Dr. Beatty on January 20, 2010, again reporting that her complaints started in 2006 and were initially intermittent, and then in 2007 it worsened and became more intense. He reviewed the prior EMGs and diagnosed her with bilateral carpal tunnel. She was to follow-up, but was listed as a no show for several visits. Dr. Beatty was deposed on January 12, 2011. In that deposition he admitted he had a limited understanding of Petitioner's job duties, but that he felt her work was the cause of her symptoms. Petitioner returned to Dr. Beatty on February 17, 2011, to review the DVD job video with the doctor. Petitioner last saw Dr. Beatty on January 26, 2012, with continued complaints and Dr. Beatty recommended surgery.

Based upon the foregoing facts, the Arbitrator makes the following conclusions:

1. Petitioner failed to prove that she sustained accidental injuries arising out of and in the course of her employment with Respondent as a result of repetitive trauma on October 22, 2009. In reviewing the Petitioner's job description as set forth in both her testimony and the job video, there appears to be very little repetition in her job. Petitioner's job as a ballistics tester was by her own admission diverse. The Arbitrator finds persuasive the opinions of Dr. Rotman. The facts in evidence are consistent with Dr. Rotman's opinions and understandings of Petitioner's jobs which provide the basis for his opinion that her complaints were not related to her employment. Dr. Rotman had more information than Petitioner's treating physician, Dr. Beatty in the form of prior medical records, prior nerve studies, and complete job information to form the basis of his opinions. Accordingly, Dr. Rotman's opinion are given more weight in this regard.

14IWCC0453

2. Based on the findings regarding the issue of accident, all other issues are rendered moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Nicki Nast,

Petitioner,

14IWCC0454

vs.

NO: 12 WC 38431

Eye Specialists of Chicago & Highland Park,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 24, 2013 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.

14IWCC0454

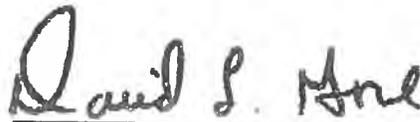
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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.

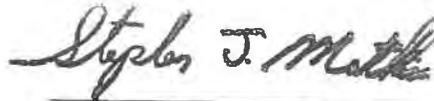
Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$30,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 13 2014

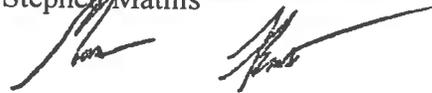
DLG/gal
O: 5/8/14
45



David L. Gore



Stephen Mathis



Mario Basurto

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

NAST, NICKI

Employee/Petitioner

Case# 12WC038431

14IWCC0454

**EYE SPECIALISTS OF CHICAGO &
HIGHLAND PARK**

Employer/Respondent

On 9/24/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% 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:

2739 SMOLER LAW OFFICE PC
ROBERT J SMOLER
415 N LASALLE ST SUITE 402
CHICAGO, IL 60654

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
ROBERT HARRINGTON
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14 IWCC0454

Case # 12 WC 38431

Nicki Nast
Employee/Petitioner
v.

Eye Specialists of Chicago & Highland Park
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Anthony C. Erbacci**, Arbitrator of the Commission, in the city of **Waukegan**, on **July 30, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

14 IWCC0454

On the date of accident, **October 11, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did* 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 **\$46,072.00**; the average weekly wage was **\$886.00**.

On the date of accident, Petitioner was **54** years of age, *married* with **0** dependent children.

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

Respondent is entitled to a credit of **\$39,446.66** under Section 8(j) of the Act.

ORDER

Respondent shall be given a credit of **\$39,446.66** for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **\$590.67/week** for **37** weeks, commencing **November 14, 2012** through **July 30, 2013**, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of **\$8,327.07**, as provided in Sections 8(a) and 8.2 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.


Arbitrator Anthony C. Erbacci

September 17, 2013
Date

SEP 24 2013

14IWCC0454

FACTS:

On October 11, 2012, the Petitioner was employed by the Respondent as an ophthalmic technician, having been so employed since July of 2004. The Petitioner testified that on October 10, 2012, she was instructed by the office manager, Debra Condrin, to clean the office refrigerator the next day, as there were no appointments scheduled and none of the doctors would be in the office.

The Petitioner testified that she felt fine when she arrived at work on October 11, 2012, and that she had brought cleaning supplies, a cooler, and some ice with her so that she could empty and clean the refrigerator. The Petitioner testified that she began cleaning the refrigerator around 11:00 am and that she first emptied the freezer and cleaned the shelves while standing. She then got on all fours and used a spray cleaner, paper towels and a knife to clean the bottom of the refrigerator which was stained with dried up soda pop. She testified that after she had completed the cleaning on her hands and knees, she began to stand up. She testified that as she started to get up, she reached for a co-worker's chair and, with her hands on the chair, she attempted to stand up. She testified that the chair was on wheels and that, as she began standing, the chair rolled away from her and her arms became outstretched as she was in a squatting position. She testified that as the chair rolled away from her, she felt a sharp shooting pain in her left groin. The Petitioner testified that she was able to stand up without falling and she then went to her office and sat down. She testified that she told a co-worker "Zoe" that she had hurt herself and she then returned to the refrigerator to return the items that she had placed in the cooler back into the refrigerator and freezer. The Petitioner testified that she then returned to her desk and continued to work for the rest of her work day.

The Petitioner testified that she returned home in pain and that her husband called Ms. Condrin, the Respondent's office manager, to report the injury and advise that she would not be coming to work the next day. The Petitioner testified that she stayed home that Friday, Saturday and Sunday, October 12th, 13th and 14th of 2012 and that she stayed in bed or on the couch and doubled up on her anti-inflammatory medications.

On Monday, October 15, 2012, the Petitioner presented to her primary care physician, Dr. Carl Lang, of the Northwest Community Healthcare Group. Dr. Lang referred her to her orthopaedic physician, Dr. Richard Sherman, for follow up for the left hip. The Petitioner then saw Dr. Sherman on October 19, 2012. She provided Dr. Sherman with a history of the accident and the left hip injury and, after an examination and x-rays, he recommended left hip replacement surgery.

The Petitioner testified that she continued working until just before the surgery and that, on November 5, 2012 she underwent a pre-operative examination which was performed by Dr. Gupta. On November 14, 2012, the Petitioner underwent a left total hip replacement at Highland Park Hospital, Northshore University Healthsystem. She remained in-patient until November 17, 2012 at which time she was released to the Whitehall Nursing Home for rehabilitative care where she underwent a course of physical therapy. The Petitioner testified that immediately after the surgery she noticed pain in her left thigh, which continued and

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complicated her physical therapy. She remained at Whitehall until she was discharged home on December 1, 2012. The Petitioner's post-surgical course was also complicated by a possible UTI infection from her antibiotics and Dr. Lang referred her to Northwest Community Hospital for tests on December 10, 2012.

The Petitioner then began a course of physical therapy at Athletico on December 17, 2012. Her therapy was again complicated by continuing complaints of left lateral thigh pain. She was prescribed Celebrex for the pain but reported that it didn't help. Dr. Sherman ordered an MRI of the Petitioner's left thigh and lumbar spine to investigate the continuing pain complaints and the Petitioner was prescribed an epidural steroid injection which she underwent on January 23, 2013 at Lutheran General Hospital. The Petitioner also underwent a Bone Scan on February 5, 2013.

At the request of the Respondent, the Petitioner was examined by Dr. Michael Stover on February 13, 2013. Dr. Stover issued a report and his deposition testimony was admitted into the record as Respondent's Exhibit 1. Dr. Stover testified that it was his opinion that the Petitioner's accident at work was a temporary aggravation of a pre-existing condition and that it could have been treated with conservative measures before proceeding to surgery. He opined that the Petitioner had a pre-existing symptomatic arthritis of the left hip and that the groin pain she experienced after the work incident was new, but was only a temporary exacerbation of her symptoms. He testified he would have prescribed a course of injections, anti-inflammatories or pain medications, physical therapy and other things to decrease the inflammation and stave off a total hip replacement surgery. Dr. Stover agreed that the complication of the left thigh pain the Petitioner complained of would be a barrier for her return to work.

On March 6, 2013 the Petitioner saw a neurosurgeon, Dr. Harel Deutsch, on referral from Dr. Lang. Dr. Deutsch found no spine issues causing the Petitioner's left thigh pain and he noted that it was probably from her hip surgery.

On April 9, 2013 the Petitioner saw Dr. Sherman who advised that the left thigh pain could take up to a year post-surgery to resolve. Dr. Sherman continued the Petitioner off work, as she could not stand for the prolonged periods of time her job duties as an ophthalmic technician required, and he advised her to return in six months. The Petitioner continued under the care of Dr. Lang and she returned to Dr. Sherman on May 9, 2013 with complaints of left thigh, knee and ankle pain. He performed an examination and x-rays and he injected the Petitioner's left knee. The Petitioner last saw Dr. Sherman on June 26, 2013 at which time he referred her for a rheumatology consult. She presented to the Rheumatologist, Dr. Patrick Schuette on July 2, 2013. He prescribed another course of physical therapy which the Petitioner is currently attending. The Petitioner testified that she is scheduled to see her primary care doctor, Dr. Lang in October, 2013 and her surgeon, Dr. Sherman, in September, 2013. She testified that she is currently on pain and anti-inflammatory medications and that she does home exercises in addition to the physical therapy she is attending.

The Petitioner testified that she had been maintained off of work until July 12, 2013 when she called Dr. Sherman and requested to be released to sedentary work in order to

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apply for a desk job as a receptionist for the Respondent. Dr. Sherman issued a disability note returning her to light duty sedentary work only as of July 15, 2013. The Petitioner testified that she applied for the position with the Respondent but was not given the job. In addition, she testified that she had previously been advised by the Respondent that they only wanted her back full duty in her position as a full time ophthalmic technician. The Petitioner testified she has not returned to any other work and intends to begin a job search for light duty work.

The testimony of Dr. Sherman was admitted into the record as Petitioner's Exhibit 17. Dr. Sherman testified that he saw the Petitioner for her left hip condition on October 19, 2012 and that the Petitioner provided a history of her work accident on October 11, 2012. Dr. Sherman testified that during the year prior to the accident of October 11, 2012 he saw the Petitioner on numerous occasions and that she only complained about her left hip one time on July 18, 2013. Dr. Sherman testified that although he had diagnosed the Petitioner with arthritis prior to October 11, 2012 there was no treatment rendered for her left hip nor was there any plan for surgery. He testified that the Petitioner's presentation after the work injury was markedly different than before the injury and that he found her arthritis had been dramatically aggravated by the work injury. Dr. Sherman opined that the left hip replacement surgery he performed on the Petitioner was causally related to her October 11, 2012 work injury. Dr. Sherman further opined that the Petitioner's disability through the date of his testimony was causally related to the October 11, 2012 work injury and he testified that he has maintained the Petitioner off of work mainly due to the persistence of the left thigh pain.

CONCLUSIONS:

In Support of the Arbitrator's Decision relating to (C.), Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds and concludes as follows:

The Arbitrator notes that the Petitioner's testimony as to what occurred on October 11, 2012 was credible, uncontradicted and unrebutted. The Petitioner testified that when she arrived at work on October 11, 2012, she was feeling fine and had no pain in her left hip or groin. She testified that she was directed by the Respondent's office manager to clean the office refrigerator and that doing so required her to get down on the floor on her hands and knees so that she could clean the bottom of the refrigerator. She testified that as she attempted to get up from the floor, she reached for a chair to assist her and the chair rolled away from her. She testified that as she was getting up, she experienced a severe sharp shooting pain in her left groin. She reported her injury to a co-worker at that time, and the injury was reported to the Respondent's office manager that evening.

That the Petitioner experienced an onset of pain while getting up from her hands and knees after cleaning the office refrigerator, is not contested. Rather, the Respondent argues that the Petitioner's injury did not arise out of any increased risk associated with her employment since the act of standing up from a squatting position did not expose her to a risk beyond that to which she would be exposed in her normal daily living. In the instant case, the Arbitrator does not agree.

The Petitioner was assigned to perform a specific task which was not within her normal job duties. That task, cleaning the refrigerator, required her to get down on her hands and knees, a position which she would not have otherwise had to assume in the performance of her normal job duties. As she was getting up from that position, she attempted to utilize an office chair to assist her in getting up. That chair was on wheels and rolled away from her. In the Petitioner's normal daily living, the Petitioner could choose not to engage in any activity which would cause her to have to get down on the floor on her hands and knees. Similarly, in the Petitioner's normal daily living she could choose to have more appropriate assistive devices available should she choose to get down on the floor on her hands and knees and require help getting up. Here, the Petitioner did not have such choices and, thus, the Petitioner's employment subjected her to a risk greater than that to which she would be exposed in her normal daily living.

Dr. Stover, the Respondent's examining physician, testified that the groin pain the Petitioner experienced after the work incident was "new" but he opined that the Petitioner's accident at work resulted in only a temporary aggravation of a pre-existing condition. Dr. Sherman, the Petitioner's treating surgeon, testified that the Petitioner's presentation after the work injury was markedly different than before the injury and that her arthritis had been dramatically aggravated by the work injury.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that on October 11, 2012, an accident occurred which arose out of and in the course of the Petitioner's employment by the Respondent.

In Support of the Arbitrator's Decision relating to (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

Following her injury on October 11, 2012, the Petitioner sought medical treatment from her primary care physician, Dr. Lang, on October 15, 2012. Dr. Lang referred the Petitioner to her orthopaedic physician, Dr. Sherman, whom she saw on October 19, 2012. Dr. Sherman noted a consistent history of the accident and the left hip injury and, after an examination and x-rays, he recommended left hip replacement surgery. On November 14, 2012, the Petitioner underwent a left total hip replacement surgery. The Petitioner testified that immediately after the surgery she noticed pain in her left thigh, which continues through the present time.

Dr. Sherman, the Petitioner's treating surgeon, testified that the Petitioner's presentation after the work injury was markedly different than before the injury and that her arthritis had been dramatically aggravated by the work injury. Dr. Sherman opined that the left hip replacement surgery he performed on the Petitioner was causally related to her October 11, 2012 work injury. Dr. Sherman further opined that the Petitioner's disability through the date of his testimony was causally related to the October 11, 2012 work injury and he testified that he has maintained the Petitioner off of work mainly due to the persistence of the left thigh pain. While the Arbitrator notes the testimony and opinions of Dr. Stover, the Respondent's examining physician, the Arbitrator finds the opinions of Dr. Sherman to be sufficiently credible, reliable, and persuasive to satisfy the Petitioner's burden of proof. In so finding, the

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Arbitrator notes that the Petitioner credibly testified that she was not experiencing any symptoms in her left hip before she started working on October 11, 2012 and that, immediately following her injury at work, she began a continuous course of medical care and treatment related to her left hip which continued through the date of Arbitration.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner's current condition of ill-being is causally related to the work injury of October 11, 2012.

In Support of the Arbitrator's Decision relating to (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, the Arbitrator finds and concludes as follows:

The Respondent submitted evidence that it has paid \$39,446.66 in medical bills through its group medical plan on behalf of the Petitioner for which it is entitled to credit under Section 8(j) of the Act. The Petitioner submitted evidence of the following unpaid medical expenses:

Dr. Richard Sherman	\$2,679.40
Athletico	\$1,031.03
Advocate Lutheran General Hospital	\$2,710.50
Northwest Community Healthcare	\$402.00
Advanced Radiology Consultants, S.C.	\$36.00
North Shore Medical LTD	\$194.52
North Shore Medical LTD	\$606.15
North Shore University HealthSystem (Dr. Perlman)	\$328.47
NCH Medical Group (Dr. Lang)	\$339.00

These unpaid medical expenses, totaling \$8,327.07, were supported by the testimony of the Petitioner and the treating doctors and their treating medical records. The Respondent contested liability for payment of the Petitioner's medical expenses based upon the disputed issues of accident and causal connection. As the Arbitrator has concluded that the Petitioner did sustain a compensable accident, and that her present condition of ill-being is causally related to that injury, the Respondent is liable for the Petitioner's medical expenses. The Respondent shall, therefore, pay the appropriate amount to the Petitioner concerning these medical bills submitted into evidence, which are allowed pursuant to the medical fee schedule provided for in Section 8.2 of the Act.

In Support of the Arbitrator's Decision relating to (L.), What temporary benefits are due, the Arbitrator finds and concludes as follows:

The Petitioner did not work the day after the accident, October 12, 2012, but she did not seek medical treatment until October 15, 2012. The Petitioner testified that, following her

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injury, she continued working her regular duty position until just before her surgery, which occurred on November 14, 2012. She remained off of work under full disability from Dr. Sherman until he authorized her return to sedentary work only as of July 15, 2013. The Petitioner was not offered a job within those restrictions and she remained off of work as of the date of Arbitration. Dr. Stover, the Respondent's examining doctor, agreed the Petitioner could not return to her regular work. Since the Arbitrator has concluded that the Petitioner did sustain a compensable accident, and that her condition is causally related to that injury, the Respondent is liable to pay Temporary Total Disability benefits to the Petitioner.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner is entitled to Temporary Total Disability benefits from November 14, 2012 through the date of arbitration, July 30, 2013, a period of 37 weeks.

In Support of the Arbitrator's Decision relating to (M.), Should penalties or fees be imposed upon Respondent, the Arbitrator finds and concludes as follows:

The Arbitrator notes that the Respondent disputed the compensability of the Petitioner's claim for benefits based upon the issues of whether a compensable accident occurred and whether the Petitioner's condition of ill-being was causally related to the alleged accident. The Respondent contended that the mere act of getting up from a squatting position did not create a risk which was unique to the Petitioner's employment and that the Petitioner had a pre-existing condition which, at most, was only temporarily aggravated by the alleged accident. The Respondent's defense as to the issue of accident finds some support in the applicable case law and its defense as to the issue of causation was supported by the findings and opinions of Dr. Stover. Thus, the Arbitrator finds that the Respondent's refusal to pay benefits to the Petitioner was not objectively unreasonable nor was it vexatious or merely for the purpose of delay. The Arbitrator notes, in addition, that while the Respondent did not provide Temporary Total Disability benefits to the Petitioner, the majority of the Petitioner's medical expenses were paid through the Respondent's group medical plan.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator declines to award penalties or fees in the instant matter.

In Support of the Arbitrator's Decision relating to (N.), Is Respondent due any credit, the Arbitrator finds and concludes as follows:

The Respondent submitted their Respondent's Exhibit Number 2, being a spreadsheet of the group medical expenses paid on behalf of the Petitioner and the amount of the claimed credit calculated pursuant to Section 8(j) of the Act. The Respondent is awarded credit in the amount of \$39,446.66 for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Edward Costello,

Petitioner,

14IWCC0455

vs.

NO: 13 WC 02014

Complete Car Center,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 18, 2013 is hereby affirmed and adopted.

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.

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No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:

JUN 13 2014

DLG/gal
O: 5/8/14
45



David L. Gore



Stephen Mathis



Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

COSTELLO, EDWARD

Employee/Petitioner

Case# 13WC002014

COMPLETE CAR CENTER

Employer/Respondent

14IWCC0453

On 7/18/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0062 TEPLITZ AND BELL
JOEL BELL
221 N LASALLE ST SUITE 1900
CHICAGO, IL 60601

0532 HOLECEK & ASSOCIATES
LAUREN ZIMMER
161 N CLARK ST SUITE 800
CHICAGO, IL 60601

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

14IWCC0455

Edward Costello
Employee/Petitioner

Case # **13 WC 02014**

v.

Consolidated cases: _____

Complete Car Center
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **May 3, 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 _____

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FINDINGS

On 1/07/13, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was not* given to Respondent.

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

In the year preceding the injury, Petitioner earned \$37,310.00; the average weekly wage was \$717.50.

On the date of accident, Petitioner was 39 years of age, *single* with 1 dependent child.

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.

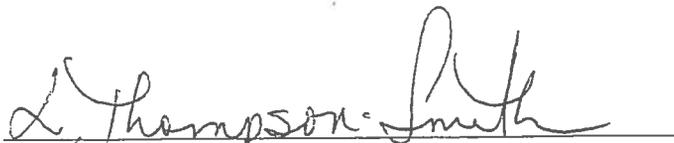
Respondent is entitled to a credit of \$0 under Section 8(j) of the Act.

ORDER

Petitioner has failed to prove, by a preponderance of the evidence, that he sustained an accident that arose out of and in the course of his employment with Respondent; therefore no benefits are awarded, pursuant to 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

July 18, 2013

JUL 18 2013

STATEMENT OF FACTS

The disputed issues in this matter are: 1) accident; 2) notice; 3) causal connection; 4) medical bills; and 5) temporary total disability. *See*, AX1.

It is not disputed that the petitioner was rehired by the respondent in December of 2012 and was employed as a mechanic. The petitioner reported to work on the morning of January 7, 2013. At that time, customers were waiting at the shop for oil changes and the parties agree that it was company policy to give priority to waiting customers over other work. *See*, Tr. pg. 52.

The petitioner testified that he went to work on January 7, 2013 and changed into his uniform. He testified that his manager, Scott, directed him to move two batteries (one located in the front of the shop and the other located in the back of the shop) to the core room. He did not know why the batteries were in the shop, but testified that he moved the batteries because he was told to do so. *See*, Tr. pg. 55.

The petitioner testified that, as he bent down to stack the battery, he felt pain in “the small of his back and down his left leg”, which caused him to fall onto the floor of the core room. The petitioner testified that he was found on the floor, after his fall, by a co-worker named Scott. *See*, Tr. pgs. 12-13.

The petitioner’s father picked him up from work and took him to St. Margaret’s Hospital. At that time, he complained of lumbar spine pain, which radiated into his left thigh, after picking up car batteries at work. He did not report that a fall taking place. According to the report of this visit, he was given pain medication and left feeling much better. *See*, PX1.

The petitioner testified that he next sought medical treatment on January 30, 2013 from Ingalls Hospital in Calumet City, at the direction of his attorney. According to the petitioner’s discharge paperwork, he petitioner was diagnosed with sciatica. The reports of this visit submitted into evidence do not contain a history, evaluation or treatment plan. The petitioner testified that he was given pain medication and referred to Southland Bone & Joint. *See*, Tr. pgs. 18-19, & 56; & PX2.

Dr. Casini examined the petitioner on February 16, 2013. At that time, he complained of low back pain with pain radiating into his left lower extremity for one month. He reported, “injuring his back at work on January 3, 2013, while lifting car batteries” Nothing in this report indicates that the petitioner fell at work. The petitioner’s physical

examination revealed good lumbar spine range of motion and the petitioner was able to heel and toe walk and heel-toe tandem walk satisfactorily. His straight leg and Spurling's tests were negative. A review of his lumbar spine x-rays revealed a loss of lordosis, with disc degeneration and facet arthropathy noted at L5-S1. *See*, PX3.

The petitioner testified that Dr. Casini gave him light duty restrictions and prescribed physical therapy. The petitioner testified that he underwent a physical therapy evaluation. The petitioner further testified that he did not have health insurance and has not received any additional treatment for his injuries because treatment was denied by workers' compensation. He testified that he took Advil, but continued to have pain in his lower back and left leg. *See*, Tr. pgs. 21-23; PX3.

The petitioner, on cross-examination; admitted that he had injured his low back in May of 2012, requiring him to seek treatment from St. Margaret Mercy. The petitioner testified that he was injured after falling in the shower at that time. During his testimony, he denied having experienced chronic back pain prior to that time, which was contrary to the information documented in his medical records. According to his ER report from May 7, 2013, the petitioner had a previous back injury and an MRI, which showed a herniated disc at L5-S1. The petitioner was diagnosed with "chronic back pain with an acute exacerbation". The petitioner was shown a record from an office visit with Dr. Dwight Tyndall on May 9, 2012. According to the report, the petitioner was at work on May 5 when he was loading a metal into a machine when he has sudden onset of left leg and back pain. He complained of low back pain with radicular pain into his left leg. Dr. Tyndall wrote that the petitioner had "no history of back pain" and that his symptoms were consistent with "an L5-S1 disk herniation on the left". *See*, RX3; Tr. pgs. 27-28.

The petitioner testified that he injured himself in the shower causing back and left leg pain, which required him to seek treatment in May of 2012. He testified that, despite injuring himself in the shower, he filed a workers' compensation claim, claiming that he was injured at work on May 5, 2012. *See*, Tr. pgs. 28-29.

The petitioner testified that he lived with his parents at 3518 192nd Street, Lansing, Illinois. He denied repairing cars as a side business out of his residence. He testified that E&J Auto was a company that he created in order to obtain a commercial parts account at various auto part stores, including Advanced Auto. The petitioner testified that commercial accounts allow companies to get a discount on auto parts that a normal customer would not receive. He testified that solo mechanics are not given commercial accounts; these accounts are only given to commercial businesses. *See*, Tr. pgs. 30-41.

The petitioner testified that E&J Auto used his home address, but was not incorporated and did not hold a business license. He testified that E&J Auto did not have a tax ID number and that it did not file taxes. The petitioner denied that E&J Auto was a sham business. *See*, Tr. 31-42.

The petitioner was shown Respondent's Exhibit 1, which contained 11 invoices from purchases he made at Advanced Auto, from January 24, 2013 through March 16, 2013, using his corporate account. According to the information contained in these invoices, 28 different auto parts were purchased during this period. The petitioner admitted that the invoices contained his signature and were purchases he made using his corporate account of E&J Auto. The petitioner testified that he would purchase parts for friends on his corporate account at discount and he accepted money in return for using his discount to obtain parts from Advanced Auto. *See*, Tr. pgs. 36-43.

The petitioner testified that he has not worked since the accident. After being shown his invoices from Advanced Auto, the petitioner testified to performing one side job repairing an automobile since the work accident. Later in his testimony, he admitted to having "done minimal work to keep myself afloat." When pressed, he admitted to repairing approximately 10 cars after the work accident. The petitioner testified that he earned between \$100 and \$150 during this period, which he testified was only \$10 to \$15 per vehicle. The petitioner testified that he performed very limited activities at home, but that his condition has not improved at all. *See*, Tr. pgs. 24, 32, 36, 43, 44 & 51.

The respondent presented testimony from Scott Kraft, the auto mechanic manager for Respondent. Mr. Kraft testified that, as an auto mechanic manager, he was responsible for managing the front of the shop, checking the mechanics' work and interacting with customers. Mr. Kraft testified that jobs were assigned to the mechanics in the order of priority, with priority given to waiting customers. He testified that the shop had a rack, which was numbered and jobs were placed in order on the rack for the mechanics to complete. *See*, Tr. pgs. 60-62.

Mr. Kraft opened the shop on January 7, 2013 between 7:30 am and 8:00 am. Mr. Kraft testified that he walked around the entire shop on the date and saw one battery out of place, which was located in the front of the shop on a toolbox. He testified that it was obvious that the battery had been placed there on Saturday, but that he did not know why the battery was in the shop. Mr. Kraft testified that he planned to leave the battery alone until he could speak to the owner to determine why it was in the shop. He testified that he did not instruct the petitioner to touch or move the battery. *See*, Tr. pgs. 6-76.

Mr. Kraft testified that he noticed that none of the customers' vehicles had been pulled into the shop so he went to the back of the shop to find the petitioner. He found him on the floor in the back of the compressor room, with a pan on top of him. Mr. Kraft used a visual aid consisting of pictures of the compressor room to illustrate where the petitioner was located. According to Mr. Kraft, the petitioner was wedged into the far corner of the compressor room, near the green tank. Mr. Kraft testified that he found this to be unusual because he had no idea why the petitioner would have been in the compressor room; and why he would be in the far corner of the room. Mr. Kraft testified that he had thought the petitioner was working on customer vehicles and that he had no reason to be in the compressor room at that time. Mr. Kraft further testified that he next saw the petitioner about one to two weeks later, when he came to the shop to pick up his paycheck. Mr. Kraft testified that at that time, he observed the petitioner jump out of a pick-up truck and move with no apparent difficulty. See, Tr. pg. 71 & RX2.

CONCLUSIONS OF LAW

C. Did an accident occur that arose out of and in the course of Petitioner's employment with Respondent?

Under the provisions of the Illinois Workers' Compensation Act (the "Act"), the Petitioner has the burden of proving, by a preponderance of credible evidence, that the accidental injury both arose out of and occurred in the course of employment. *Horath v. Industrial Commission*, 96 Ill. 2d 349, 449 N.E. 2d 1345 (1983). An injury arises out of the Petitioner's employment if its origin is in the risk connected with or incidental to employment so that there is a causal connection between the employment and the accidental injury. See, *Warren v. Industrial Commission*, 61 Ill. 2d 373, 335 N.E. 2d 488 (1975). See also, *Technical Tape Corp. v. Industrial Commission*, 58 Ill.2d 226 (1974). The mere fact that the worker is injured at a place of employment will not suffice to prove causation. The Act was not intended to insure employees against all injuries. *Quarant v. Industrial Commission*, 38 Ill. 2d 490, 231 N.E. 2d 397 (1967). The burden is on the party seeking an award to prove, by a preponderance of credible evidence, the elements of the claim; particularly the pre-requisite that the injury complained of arose out of and in the course of employment. *Hannibal, Inc. v. Industrial Commission*, 38 Ill. 2d 473, 231 N.E. 2d 409, 410 (1967).

After hearing and reviewing the evidence presented, the Arbitrator finds that the petitioner has failed to prove, by a preponderance of the evidence, that he had an accident that arose out of and in the course of his employment.

The Arbitrator finds Mr. Kraft testified in a credible manner when he reported that he opened the shop on January 7, 2013 and found saw one battery out of place, which was placed on a toolbox. Further, the Arbitrator finds Mr. Kraft to be credible when he testified that he did not instruct the petitioner to touch or move the battery and that he found it unusual that the petitioner fell in the far corner of the compressor room, because he was not supposed to be there.

The Arbitrator further notes that, even if one accepts that the petitioner was injured at work on January 7, 2013, the petitioner never provided any of his doctors with an accurate history of accident or mechanism of injury. The Arbitrator notes that none of the petitioner's reports indicates that he fell at work. The Arbitrator further notes that the petitioner has a documented history of back pain with radicular symptoms into his left leg.

The Arbitrator further finds that the petitioner's claim that he was unable to work from January 8, 2013 through May 3, 2013 to be incredible, as his testimony revealed that he was both providing auto parts at a discount for money and repairing vehicles during this period.

Arbitrator finds that the petitioner has not proved by a preponderance of the evidence that the alleged accident of January 7, 2013, arose out of and in the course of his employment, therefore, no benefits will be awarded, pursuant to the Act. Having found that the petitioner has not carried his burden of proven, by a preponderance of the evidence, that he had an accident that arose out of and in the course of his employment, the remaining issues will not be addressed, as they are moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Phillip Hill,

Petitioner,

14IWCC0456

vs.

NO: 12 WC 25078

Dean's Ice Cream, Inc. - Midwest Distributing Center,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 18, 2013 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 shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

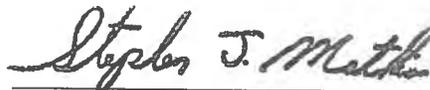
No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 13 2014

DLG/gal
O: 5/8/14
45



David L. Gore



Stephen Mathis



Mario Basurto

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

HILL, PHILLIP

Employee/Petitioner

Case# 12WC025078

14IWCC0456

DEANS ICE CREAM INC-MIDWEST
DISTRIBUTING CENTER

Employer/Respondent

On 10/18/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.15% 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:

0059 BAUM RUFFOLO & MARZAL LTD
HENRY C SZESNY
33 N LASALLE ST SUITE 1710
CHICAGO, IL 60602

0320 BRADY CONNOLLY & MASUDA
IVAN NIEVES
ONE N LASALLE ST SUITE 1000
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

19(b)

14 IWCC 0456
Case # 12 WC 25078

PHILLIP HILL
Employee/Petitioner

v.

Consolidated cases: _____

DEAN'S ICE CREAM, INC.-MIDWEST DISTRIBUTING CENTER
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **August 28, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

14IWCC0456

FINDINGS

On the date of accident, **Dean's Ice Cream, Inc.-Midwest Distributing Center**, 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$66,881.71**; the average weekly wage was **\$1364.93**.

On the date of accident, Petitioner was **58** years of age, *married* with **0** dependent children.

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

Respondent shall be given a credit of **\$19,368.93** for TTD, **\$0** for TPD, \$ for maintenance, and **\$12,739.30-PPD advance** for other benefits, for a total credit of **\$32,108.23**.

Respondent is entitled to a credit of **\$30,574.52** under Section 8(j) of the Act.

ORDER

The Arbitrator does not award medical benefits or TTD benefits after October 16, 2012, finding that petitioner did attain full-duty, maximum medical improvement status as of October 16, 2012. The Arbitrator does not award medical bills. The Arbitrator does not award maintenance benefits, vocational rehabilitation, work hardening, FCE or future medical treatment, finding that petitioner did attain full-duty, maximum medical improvement status as of October 16, 2012.

The Arbitrator finds that Respondent has paid all medical bills and temporary total disability benefits pursuant to Section 8(a) and 8(b) of the Act.

The Arbitrator does not award penalties and/or attorneys' fees.

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.

Findings of Fact

The disputed issues in this matter are: 1) causal connection; 2) medical bills after October 16, 2012; 3) \$12,739.30 advancement of permanency; 4) temporary total disability; 5) maintenance; 6) vocational rehabilitation; 7) penalties; and 8) attorney's fees. *See, AX1.*

Petitioner testified that he has worked for the employer almost sixteen (16 ½) and half years, and that his job consists of driving an 18-wheeler, making deliveries to retail stores. Petitioner testified that the whole tractor and trailer is air ride. Petitioner testified that on May 19, 2012, "I was on my way in, and my air bag and my seat pancaked out...it blew out and shot me straight to the floor...and as I was coming in, I called my dispatcher and told him what happened...he told me to try and get back safe, which... I didn't think it would be a problem with my back because this happened, like, two other times within that year." Petitioner testified that he took two Advil and kept working but the pain was in his back radiating to buttock, inner calf and toes. Tr. pgs. 18-20.

Petitioner sought initial medical treatment at Concentra Medical Center on May 21, 2012, where he was examined by Dr. Stanley Simon. He advised Dr. Simon that "my airbag in my seat blew out, which put my seat all the way to the floor and I drove going back to the barn sitting on the floor driving, hurting both sides of my back." Upon physical examination, Dr. Simon noted tenderness of the lumbar spine and both paraspinous muscles with decreased active range of motion. Flexion was 45 degrees with pain. Extension and side bending elicited pain. He had negative bilateral straight leg raising. He had normal strength in gait. He exhibited full range of motion of the bilateral hips. There was no pain with passive range of motion testing. X-rays of the lumbar spine confirmed no fracture with degenerative facet sclerosis from L3-S1 with minimal degenerative changes; with no spondylolisthesis or spondylolysis present. Dr. Simon's diagnosis was lumbar strain/sprain. He prescribed ibuprofen, Ultram and physical therapy three times a week for 1-2 weeks. He prescribed work restrictions of no lifting over twenty (20) pounds; no pushing/pulling over thirty (30) pounds; no bending more than three times per hour; and no driving of the company vehicle. *See, RX6, Tr. pg. 22.*

On May 23, 2012, Dr. Simon re-examined petitioner. Mr. Hill stated that his pattern of symptoms was stable, however, he continued to rate his lower back pain level at 7/10, sharp, exacerbated by prolonged sitting and walking. He advised that he walked a block the prior day and developed numbness in his legs, however, the numbness had since resolved. Dr. Simon's physical examination revealed tenderness of the lumbar spine, right more than left, paraspinous muscles. He had decreased active range of motion. Flexion was 45 degrees, with pain. Extension was 5 degrees, with pain. He had negative bilateral leg raises. He continued to exhibit full range of motion of the bilateral hips with a normal gait. Dr. Simon modified his prior diagnosis to suppose that the petitioner may have lumbar radiculopathy. Dr. Simon prescribed a Medrol dose pack and recommended that Mr. Hill continue physical therapy. He maintained the prior work restrictions.

On May 29, 2012, Petitioner was examined by Dr. Irene Baral, also at Concentra. He continued to complain of right-sided lower back pain that was not improving, as well as numbness in the second, third and fourth toes on the right. He denied radicular symptoms. Dr. Baral's physical examination revealed decreased lumbar range of motion, with pain. Palpation was positive for pain in paraspinous area L4-5. Dr. Baral prescribed Naproxen and recommended continued physical therapy. She

prescribed work restrictions of no lifting over 10 pounds; no pushing/pulling over 20 pounds of force; no bending; and sitting 70% of the time. *See*, RX6.

On June 1, 2012, Dr. Simon re-examined petitioner. Petitioner advised that his pattern of symptoms was stable; however, he continued to complain of lower back pain, 5-6/10. He continued to complain of numbness of the right foot exacerbated by prolonged walking. He advised that the medication and physical therapy was not improving his symptoms. Dr. Simon's physical examination revealed tenderness of the lumbar spine and right paraspinal muscles with decreased active range of motion. Flexion was 60 degrees, with pain, extension was 5 degrees, with pain and bilateral side bending elicited pain. Petitioner continued to have a negative bilateral straight leg raising. Dr. Simon recommended a lumbar MRI to rule out disc disease and continued physical therapy and maintained work restrictions. *See*, T. pg. 23; RX6.

A June 13, 2012, lumbar MRI confirmed no evidence of fracture or malalignment. There was high signal intensity in L2, which may have been due to trauma or indicated the presence of a hemangioma. There was no disc herniation or spinal stenosis. There was bilateral facet arthropathy at L3-4 through L5-S1, but with no significant foraminal stenosis. *See*, Rx. 6.

Dr. Simon re-examined petitioner on June 15, 2012 and reviewed the June 13, 2012 lumbar MRI. He referred Petitioner to an orthopedic surgeon. Dr. Simon recommended continued physical therapy and previously prescribed medications and he maintained the prior work restrictions. Dr. Simon's updated assessment remained lumbar strain.

Upon referral from Dr. Simon, petitioner was examined by the orthopedic surgeon, Dr. Charles Mercier, at Concentra, on June 22, 2012. Upon physical examination, petitioner had pain over the right posterior iliac crest and right sciatic notch. Forward flexion was to 45 degrees. Extension was painful. Lateral bending was equal, without muscle spasms. He continued to exhibit good range of motion of the hips, without pain. Straight leg testing was negative bilaterally. Motor strength was normal. Sensation in the lower extremities was intact. Deep tendon reflexes were zero for the patella and plus one for the Achilles. Dr. Mercier reviewed the June 13, 2012 lumbar MRI, confirming degenerative changes but no evidence of neural impingement at any level. Dr. Mercier's diagnosis was lumbosacral strain. He recommended injections for Petitioner's lower back and continued physical therapy. The respondent denied payment for the injections. Petitioner testified that his back pain worsened after three (3) months. *See*, Tr. pg. 23-24, RX6.

Petitioner elected to continue his medical treatment with Dr. Kevin Koutsky, at Elmhurst Orthopedics on July 16, 2012. Dr. Koutsky reviewed the June 13, 2012 lumbar MRI confirming no evidence of any large herniated disc, severe canal stenosis or fracture. He noted evidence of spondylotic changes and mild stenosis at multiple levels. Dr. Koutsky diagnosed lumbar spondylosis and stenosis with radiculopathy. Dr. Koutsky discussed with petitioner the importance of weight loss for his overall health and pain clinic evaluation for lumbar injection. Dr. Koutsky recommended continued physical therapy and restricted the petitioner off work. He also recommended injections for the low back, which were again denied by the insurer. Dr. Koutsky wrote an appeal to Respondent's insurer regarding the injections, which were again denied by utilization review. Tr. pg. 24 & PX3.

14IWCC0456

Thereafter, Petitioner used his union insurance and his wife's insurance to cover his medical expenses, i.e., for two (2) injections, which he testified were not helpful; and a second MRI.

In Dr. Howard Rosen's Pain Management/Anesthesia July 17, 2012, Utilization/Peer Review Report, he disagreed that a caudal lumbar steroid injection was medically necessary since petitioner had no objective findings on examination of radiculopathy; no neurological deficits. *See, RX4.*

Dr. Paul Lafavore, Board Certified in Anesthesiology and Sub Specialty Certificate in Pain Medicine, also prepared a Peer Review Report on July 21, 2012. He noted that petitioner had low back pain with radiation to the right lower extremity with examination, having shown a positive right-sided straight leg raise test, but the MRI did not show nerve root compression. Dr. Lafavore also opined that a lumbar epidural steroid injection was not medically necessary since there were insufficient objective findings of radiculopathy present. *See, RX5.*

On October 16, 2012, pursuant to Section 12 of the Act, Petitioner was examined by Dr. Thomas Gleason, at the Illinois Bone & Joint Institute. Dr. Gleason testified that he reviewed medical treatment records, diagnostic studies and obtained a complete history from Petitioner. Dr. Gleason testified that he knows Dr. Mercier on a professional level and that "I think he is a qualified orthopedic surgeon." Dr. Gleason testified that his physical examination revealed petitioner to be six feet, 255 pounds, which Dr. Gleason considered as obese stating that "His BMI would be greater than 30." Petitioner was able to stand and walk in a non-antalgic fashion; "in other words, with no evidence of limp secondary to pain." Petitioner reported a little tenderness on palpation; however, nonlocalized; it was diffuse throughout the lumbar and paralumbar tissues, right greater than left. Dr. Gleason explained that "in other words, there was no localized tenderness...Everywhere that I palpated, he reported ... a little tenderness. There was otherwise no paraspinal tenderness, and there was no evidence of any palpable spasm, tenseness, or asymmetry." "On active bending, he was able to bend with his knees extended...He was able to bend with his fingers to his knees, and he was able to extend 10 degrees, which would be normal...On further examination, low back tests were performed...there was no groin pain on gentle rotation of the lower extremities...The Britton test was negative...There was no evidence of radiculopathy or sciatica, but he complained of back pain, and yet he was able to have a negative Britton test... Again, an apparent contradiction, inconsistency...Deep tendon reflexes were present and symmetric...Sensation was intact...There was no evidence of any tests suggesting any spinal cord abnormality." *See, RX3, pgs. 9-16; & dep. exhibit 2.*

Dr. Gleason testified that x-rays were ordered and that "x-rays of the lumbar spine as well as the anteroposterior, the pelvis, demonstrated no evidence of fractures, dislocation, bone, or joint pathology." Dr. Gleason further testified that he reviewed the June 13, 2012 lumbar MRI report and that "review of the report reflected an impression of a high signal intensity at L2, which could be due to trauma or may indicate presence of a hemangioma...a benign accumulation of blood similar to the red blotches that people see sometimes on individuals on their skin, although this is in the spine...the paraspinal soft tissues were normal...there was no disc herniation or spinal stenosis...there was some degenerative arthropathy. In other words, arthritis of the facet joints, the joints between the different vertebrae at L3-4-5-S1, with no significant foraminal stenosis...In other words, no narrowing of any significance, and the scan was otherwise unremarkable." *See, RX3, p. 16-18.*

Dr. Gleason testified that based upon his October 16, 2012 physical examination, his review of the medical treatment records, and the diagnostic studies, he diagnosed “findings as reflected in the diagnostic studies, including a lumbar MRI scan of June 13th, 2012, and...no positive objective findings on physical examination relative to the low back and normal extremities.” Dr. Gleason testified that “no further additional institutionalized, formalized treatment or diagnostic tests would be recommended. A home exercise program was encouraged, an occasional use of over-the-counter medication or alternatively a nonsteroidal anti-inflammatory medication could be of benefit. Weight loss would be encouraged.” Dr. Gleason testified that “this individual could return to work, without restrictions.” *See*, RX3, p. 18.

Dr. Gleason further testified that he prepared a January 20, 2013 report after reviewing his original report and the original records that he had from before, additional records reviewed included those of Physio Sports & Rehabilitation, Elmhurst Orthopaedics, Dr. Kevin Koutsky, M.D., Quality Pain Management; and Elmhurst Memorial Hospital. He also had an opportunity to personally review CD-ROMS containing CT and MRI scans of the lumbar spine, one from June 13th, 2012 from Midwest Open MRI; as well as a CD-ROM containing an MRI scan of the lumbar spine from 10-26-2012 from Elmhurst Memorial Hospital. He also had an opportunity to review a report of a myelogram, post-myelogram CT scan performed December 14, 2012.” Dr. Gleason testified that the October 26, 2012 lumbar MRI scan “reflected findings virtually identical to those demonstrated on a prior, previously noted MRI scan of June 13, 2012.” Dr. Gleason testified that the December 14, 2012, myelogram and CT revealed “evidence of some mild bulging, but otherwise overall unremarkable. There was some mention ofa protrusion which might be affecting the L4 nerve root; however, there were no complaints consistent with L4 nerve root irritation, so that was not remarkable.” *See*, RX3, pgs. 20-21; dep. ex. 3.

Dr. Gleason testified that he reviewed the January 11, 2013 operative report, from Elmhurst Memorial Hospital; and that the petitioner did not have either examination findings or diagnostic study findings which would indicate a need for surgery to be performed; and that the petitioner's history, did not suggest any condition, in existence as of October 16, 2012, that was related to a reported incident of May 19, 2012. *See*, RX3, pgs. 21-22.

Dr. Koutsky testified regarding Dr. Gleason's report of October 16, 2012 that “Dr. Gleason states...that his MRI scan of the lumbar spine shows no disc herniation or stenosis but some degenerative changes of the facets. Obviously, that's inconsistent with what we know here through the CT myelogram and the MRI scan that he had subsequent to the one that he was reviewing...,” In response, Dr. Gleason testified “that the MRI scans still show no disc herniation or stenosis but only degenerative changes of facets...They showed that when I reviewed them. They showed that when I compared the two of them. They showed that when Dr. Mercier reviewed them, and furthermore, I don't think Dr. Koutsky even found a herniation on the operation that he performed, not to mention the fact that the level of the operation was different than what one might even expect if a person did have complaints to the S1 nerve root distribution that the patient was complaining about.” *See*, RX3, p. 23; & dep. ex.5

On or about August 21, 2013 Dr. Koutsky sends correspondence to Petitioner's counsel stating that the petitioner's MRI dated October, 2012 “showed evidence of intraforaminal right-sided disk herniation at L4-5”. In his deposition dated December 20, 2012, Dr. Koutsky testified, on cross-examination, that the diagnostic testing, i.e. “the scan looked identically the same”. The doctor

testified that he looked at the scan himself and the one taken in October was not significantly different from the one taken in June of 2012. *See*, PX2 pgs. 14-17 & PX5.

On January 11, 2013, Petitioner underwent an L4-5 laminectomy with foraminotomy, performed by Dr. Koutsky. Post-operative diagnosis was L4-5 spondylosis and stenosis, BMI 35. *See*, PX3.

Per Dr. Koutsky's August 19, 2013 examination, petitioner continued to complain of back and leg pain and Dr. Koutsky is now recommending work conditioning/work hardening followed by a functional capacity evaluation.

Petitioner testified that he currently has weakness and numbness in three (3) toes on his right foot; sciatic nerve pain and cannot walk, sit or stand for more than twenty (20) minutes.

Lastly, Petitioner took the deposition of Dr. Mark Lorenz, who had examined the petitioner at his attorney's request, on May 9, 2013. Dr. Lorenz conformed that the surgery performed by Dr. Koutsky was reasonable and necessary and that all of the diagnostic testing, i.e. the MRI, CT and myelogram showed the same thing; degenerative changes, predominantly at the L4-5 level. Dr. Lorenz also testified that the petitioner now has spondylolisthesis, which had not been reported anywhere in Petitioner's medical records. In addition, that it is conceivable that the laminectomy made the spine segment a bit more unstable, which may or may not cause long-term back pain. He said it was too early to tell in the petitioner's case. *See*, PX1 pgs. 13-17.

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Conclusions of Law

F. Is the Petitioner's present condition of ill-being causally related to the injury?

After evaluating the medical evidence, and the respective deposition testimonies of Dr. Gleason, Dr. Koutsky and Dr. Mark Lorenz (petitioner's independent medical expert), the Arbitrator gives greater evidentiary weight to the testimony of Dr. Gleason in finding that petitioner attained full-duty, maximum medical improvement status as of October 16, 2012, and therefore, petitioner's present condition of ill-being is not causally-related to the May 19, 2012 injury. The Arbitrator finds significant and persuasive the respective interpretations of the June 13, 2012 lumbar MRI by Drs. Mercier and Gleason of no disc herniation or stenosis and no evidence of neural impingement at any level, but rather degenerative changes. The Arbitrator finds that at most, petitioner sustained a lumbosacral strain, as originally diagnosed by Dr. Simon and subsequently confirmed by Dr. Mercier and Dr. Gleason. The Arbitrator finds persuasive Dr. Gleason's testimony that the October 26th, 2012 lumbar MRI scan "reflected findings virtually identical to those demonstrated on prior previously noted MRI scan of June 13th, 2012" and "this individual did not have either examination findings or diagnostic study findings which would indicate a need for any surgery to be performed...[and] this patient's history, do not suggest any condition in existence as of 10-16-12 related to a reported incident of 5-19-12." In finding Dr. Gleason's testimony to be most credible, the Arbitrator notes the testimony of petitioner's independent medical expert, Dr. Lorenz, regarding Dr. Gleason's professional background that he thought he is a good doctor.

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?

The Arbitrator finds that that the services provided to the petitioner by Respondent were reasonable and necessary. Those services, which Petitioner chose to pursue, i.e. injections and surgery, were not indicated by his diagnostic studies; and therefore are not the responsibility of the respondent.

K. Is Petitioner entitled to any prospective medical care?

The Arbitrator, having found that petitioner attained full-duty, maximum medical improvement status as of October 16, 2012, does not award medical charges incurred after October 16, 2012. The Arbitrator does not award medical benefits after October 16, 2012. The Arbitrator also finds that lumbar epidural injections were not reasonable or necessary per Dr. Howard Rosen's July 17, 2012 Utilization/Peer Review Report and per Dr. Paul Lafavore's July 21, 2012 Peer Review Report, and therefore, does not award petitioner medical bills incurred for lumbar epidural injections.

L. What temporary benefits are in dispute?

The Arbitrator, having found that petitioner attained full-duty, maximum medical improvement status as of October 16, 2012, does not award petitioner TTD benefits or maintenance benefits.

M. Should penalties or fees be imposed upon Respondent?

Per Illinois Workers' Compensation case law, penalties and attorney fees will not be imposed if the employer's nonpayment of benefits is based on a reasonable and good faith challenge to liability and if the employer acts in reliance on a qualified medical opinion. The Arbitrator agrees with the principle set forth by the Illinois Supreme Court in the case of *Avon Products, Inc. v. Industrial Commission*, 82 Ill. 2nd 297 412 NE 2nd 468 (1980). That is: "Penalties...are not intended to inhibit, contest of liability or appeals by employers who might well believe an employee is not entitled to compensation..." The *Avon* Court also noted that: "When the employer acts upon responsible medical opinion, or where there are conflicting medical opinions, penalties are not ordinarily imposed." Here, Respondent relied on the qualified medical opinions expressed by Dr. Gleason in not authorizing workers' compensation benefits after October 16, 2012. Therefore, the Arbitrator does not award petitioner penalties and attorney fees.

N. Is Respondent due any credit?

The Arbitrator finds that Respondent is entitled to a PPD advance credit in the amount of \$12,739.30 and 8(j) credit for \$30,574.52 as of July 12, 2013.

O. Vocational Rehabilitation, Work Hardening, Functional Capacity Evaluation

The Arbitrator, having found that petitioner attained full-duty, maximum medical improvement status as of October 16, 2012, does not award petitioner vocational rehabilitation, work hardening or FCE.

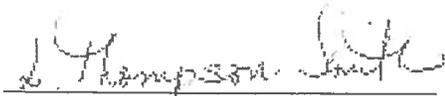
14IWCC0456

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

Case # 12WC25078

SIGNATURE PAGE



Signature of Arbitrator

October 18, 2013
Date of Decision

OCT 18 2013

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Bonnie Herron,
Petitioner,

14IWCC0457

vs.

NO: 10 WC 40305

State of Illinois, Dept. of Prof. & Fin. Regulation,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, 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.

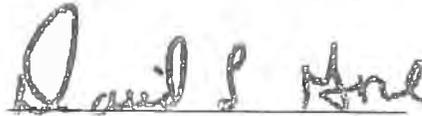
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 14, 2013 is hereby affirmed and adopted.

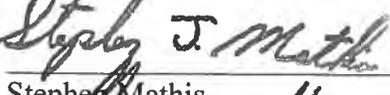
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

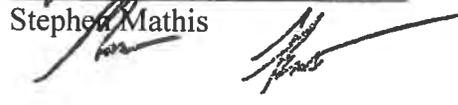
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: JUN 13 2014

DLG/gal
O: 6/5/14
45


David L. Gore


Stephen Mathis


Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HERRON, BONNIE

Employee/Petitioner

Case# 10WC040305

14IWCC0457

SOI DEPT OF PROF & FIN REGULATION

Employer/Respondent

On 11/14/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

4129 WOLFE LAW PC
KENNETH WOLFE
200 W ADAMS ST SUITE 2200
CHICAGO, IL 60606

5120 ASSISTANT ATTORNEY GENERAL
DAVID PAEK
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0499 DEPT OF CENTRAL MGMT SERVICES
WORKMENS COMP RISK MGMT
801 S SEVENTH ST 6 MAIN
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

NOV 14 2013



[Signature]
KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14IWCC0457

BONNIE HERRON
Employee/Petitioner

Case # 10 WC 40305

v.

Consolidated cases: _____

STATE OF ILLINOIS, DEPT. OF PROF. & FIN. REGULATION
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **DAVID KANE**, Arbitrator of the Commission, in the city of **CHICAGO**, on **10/01/13** and **10/29/13**. 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 _____

FINDINGS

On **11/19/08**, 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 **\$51,432.68**; the average weekly wage was **\$989.09**.

On the date of accident, Petitioner was **48** years of age, *married* with **3** 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 **\$3,673.83** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$3,673.83**.

Respondent is entitled to a credit of **\$4,404.11** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of **\$13,884.66**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit of **\$4,404.11** for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **\$659.39/week** for **6-4/7** weeks, commencing **April 9, 2010** through **May 24, 2010**, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of **\$3,673.83** for temporary total disability benefits that have been paid.

Respondent shall pay Petitioner permanent partial disability benefits of **\$593.45/week** for **34.85** weeks, because the injuries sustained caused the **15%** loss of the **right hand (30.75)** and **2%** loss of the **left hand (4.1 weeks)** 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

November 14, 2013
Date

NOV 14 2013

STATEMENT OF FACTS

Bonnie Herron ("Petitioner") is an employee of the State of Illinois in the Department of Professional and Financial Regulation ("Respondent") and has been since September 2001. She currently holds the position of Bank Examiner III. In 2008 Petitioner was diagnosed with bilateral carpal tunnel syndrome and reported same orally to her supervisor, William Jones. A written accident report was filled out on February 4, 2010 at the request of Mr. Jones.

Petitioner testified that her position as a bank examiner requires a lot of reporting, including approximately four to five hours of typing per day, some handwriting, interviewing, and reading, mostly on a computer. Petitioner is sent to work at assigned banks for a specified number of days. Petitioner uses a laptop issued to her by the Respondent that she takes to the bank assignment. On the final day in which the Petitioner finishes up her final report, she works from home. Petitioner testified that this final report may take 7.5 hours of typing. If the job is larger, this may take more than one work day.

Petitioner testified that she first noticed a problem with her hands in 2005 and sought treatment from her primary care physician, Dr. Bias. Dr. Bias prescribed pain relievers and gave Petitioner a glove for her right hand. This treatment relieved Petitioner's symptoms at that time and she did not pursue a workers' compensation claim.

By early fall of 2008, Petitioner testified that the tingling and pain had escalated in both of her hands. The symptoms were worse at night. At this time she was working full duty doing her regular pace of typing and writing.

Petitioner sought treatment with Dr. John Sonnenberg on October 31, 2008 and he recommended an EMG for both hands. The EMG was completed on November 11, 2008. At Petitioner's return visit on November 19, 2008, Dr. Sonnenberg discussed the findings of bilateral carpal tunnel syndrome gave the Petitioner the option of injections or surgery. Petitioner chose and underwent the injections which improved her symptoms. Dr. Sonnenberg recommended gloves for both hands and Petitioner wore them with some relief.

Petitioner returned to see Dr. Sonnenberg on August 3, 2009 indicating that she had done well for six months and then the pain began to escalate in both hands, more on the right. Dr. Sonnenberg performed another set of injections and the Petitioner's symptoms improved in the left hand but not the right.

Petitioner returned to Dr. Sonnenberg on January 20, 2010 and he recommended surgery for the right hand. Petitioner underwent pre-op clearance and on April 9, 2010 performed surgery on her right hand at Magna Surgical Center. Petitioner was off work through May 24, 2010. Petitioner returned to work on May 25, 2010 and was able to go back to her regular duties.

Petitioner was examined at her request by Dr. David Robertson on April 3, 2012. Dr. Robertson's examination noted current complaints of right hand pain when doing a lot of writing and mild carpal tunnel symptoms in the left hand. He opined that the Petitioner has bilateral carpal tunnel syndrome with a subsequent surgical decompression and that her condition was directly related to her work.

Petitioner was also examined at the request of Respondent on August 31, 2012 by Dr. Mark Cohen. Dr. Cohen stated that Petitioner's treatment had been reasonable and appropriate to date. He found mild left sided symptoms and a diagnosis of bilateral carpal tunnel syndrome. He felt Petitioner's condition was not related to her work duties.

Petitioner did receive temporary benefits from Respondent for all but one week that she was off and supplemental benefits from the State Employees Retirement System. Petitioner's medical bills were paid by the Respondent and the Respondent's health insurance plan. Petitioner had approximately \$160.00 in out-of-pocket co-pays.

Petitioner has had no further treatment. She testified that the surgery did improve the symptoms in her right hand but from time to time she still gets the tingling. She also stated that she has right sided pain when doing a lot of typing or writing. Petitioner testified that she also has some pain on the left but it is not as bad as the right. Petitioner is right-handed and still wears the prescribed gloves from time to time. She has had no new injuries since November 2008.

C) ACCIDENT

Petitioner worked as a bank examiner for the State of Illinois for approximately 12 years. Her job involved traveling to various banks and reviewing data and typing reports. She estimated that she spent about 90% of her work week at banks. Her job involved typing 3 to 4 hours a day on average, and she estimated that she spent 6 to 10 hours a week handwriting notes.

She testified that she noted pain and tingling in her hands in 2005 at which time she was treated with splinting and improved. Then in 2008 she began to have pain and numbness in her hands and on October 31, 2008 she saw Dr. John Sonnenberg, who recommended electrical testing. This was carried out on November 11, 2008 and on November 19, 2008 she returned to Dr. Sonnenberg, who confirmed her diagnosis and told her it was work related.

Petitioner's account of her work activities was confirmed by the testimony of her supervisor, William Jones. The Arbitrator finds that the Petitioner sustained accidental injuries to both hands in the form of repetitive trauma from her work activities up to and including November 19, 2008, the date of her definitive diagnosis.

E) NOTICE

The Petitioner testified credibly that she informed her supervisor, William Jones, that her doctor had advised her that she had carpal tunnel syndrome which was work related shortly after her visit of November 19, 2008.

This was corroborated by William Jones in his testimony. He recalled that she had so informed him around the time she had gotten injections in both hands. Respondent offered no rebuttal evidence regarding notice, although they did introduce a written report of injury which for some reason was not done until February of 2010. Supervisor Jones had no explanation for the delay in preparation of the written report.

The Arbitrator finds that Petitioner proved notice by a preponderance of the evidence.

F) CAUSAL CONNECTION

14IWCC0457

Respondent's examiner, Dr. Mark Cohen, opined that there was no causal relationship between Petitioner's job activities of extensive keyboarding, handwriting, and mouse work and the development of her bilateral carpal tunnel syndrome. He based his opinion on his belief that carpal tunnel syndrome is not caused by or specifically associated with data entry activities.

Conversely, Petitioner's treating and examining doctors felt otherwise, and their opinions are more in accord with past Commission precedent.

The Arbitrator finds that Petitioner proved by a preponderance of the evidence that there is a causal relationship between her work activities and the development of her carpal tunnel syndrome.

J) MEDICAL

As Respondent's objection to the claimed medical bills of \$13,884.66 was based on liability, and the Arbitrator having found same, said medical bills are hereby awarded subject to Sections 8a and 8.2 of the Act. Respondent is entitled to a credit under Section 8(j) of the Act for benefits paid pursuant to its group insurance plan in the amount of \$4,404.11.

The bills to be awarded pursuant to the medical fee schedule are Advocate Health Care (\$1,029.63); Ambulatory Anesthesiologists of Chicago (\$840.00); Magna Surgical Center (\$5,172.90); and Midland Orthopedics (\$6,842.13).

K) TEMPORARY TOTAL DISABILITY

14IWCC0457

Per Petitioner's unrebutted testimony and the treating medical records, she was temporarily and totally disabled from her job from April 19, 2010 through May 24, 2010, a period of 6-4/7 weeks. As Respondent's objection to the claimed lost time was predicated on liability and the Arbitrator having found same, the Petitioner is hereby awarded 6-4/7 weeks of T.T.D. at her rate of \$659.39 per week. Respondent is to receive credit for T.T.D. paid in the amount of \$3,673.83.

L) NATURE AND EXTENT

14IWCC0457

As a result of her workplace injuries, the Petitioner developed bilateral carpal tunnel syndrome. She had a successful carpal tunnel release surgery on her right hand and conservative treatment on her left hand. At present she complains of some pain in the right hand if she does a lot of writing and mild carpal tunnel symptoms remaining in her left hand.

The Arbitrator finds that, as a result of her accident, the Petitioner has sustained the permanent and complete loss of use of the right hand to the extent of 15% and of the left hand to the extent of 2%.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Francisco Moron,

Petitioner,

14IWCC0458

vs.

NO: 12 WC 01291

United Quick Transportation, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, prospective medical expenses, penalties and fees, temporary total 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 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 2, 2013 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.

14IWCC0458

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 \$700.00. 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: JUN 13 2014

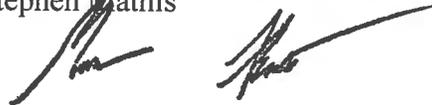
DLG/gaf
O: 6/5/14
45



David L. Gore



Stephen Mathis



Mario Basurto

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

14IWCC0458

MORON, FRANCISCO

Employee/Petitioner

Case# **12WC001291**

UNITED QUICK TRANSPORTATION INC

Employer/Respondent

On 12/2/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0391 THE HEALY LAW FIRM
PATRICK C ANDERSON
111 W WASHINGTON ST SUITE 1425
CHICAGO, IL 60602

3150 JAMES M KELLY LAW FIRM
THOMAS NORMAN
4801 N PROSPECT RD SUITE 832
PEORIA HEIGHTS, IL 61616

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Francisco Moron
Employee/Petitioner

14IWCC0458

v.

Case # 12 WC 01291

United Quick Transportation, Inc.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brian Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **April 17, 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: Is Petitioner entitled to prospective medical care, pursuant to Section 8(a) of the Act, in the form of left wrist surgery, as recommended by Dr. Carroll, and L4-L5 surgery, as recommended by Dr. Mirkovic?

14IWCC0458

FINDINGS

On **December 9, 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 an average weekly wage of **\$425.00**.

On the date of accident, Petitioner was **39** years of age, *married* with **0** dependent children.

Petitioner *has not* received all reasonable and necessary medical services.

Respondent shall be given a credit of **\$12,539.16** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance and **\$6,770.05** for medical benefits, for a total credit of **\$19,309.21**.

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 **\$283.33/week** for **70-2/7** weeks, commencing **December 12, 2011** through **April 17, 2013**, as provided in Section 8(b) of the Act.

Respondent shall authorize and pay for the left wrist surgery that Dr. Carroll has recommended, pursuant to Section 8(a) and subject to Section 8.2 of the Act. Respondent shall authorize and pay for the L4-L5 surgery that Dr. Mirkovic has recommended, pursuant to Section 8(a) and subject to Section 8.2 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.

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

December 2, 2013
Date

DEC 2 - 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

FRANCISCO MORON,)	
)	
Petitioner,)	
)	
)	
vs.	)	No. 12 WC 001291
)	
UNITED QUICK TRANSPORTATION,	)	Arbitrator Brian Cronin
INC.,)	
)	
Respondent.)	

ATTACHMENT

Findings of Fact:

Accident

On Friday, December 9, 2011, Petitioner, Francisco Moron, was working as a mechanic helper for Respondent, United Quick Transportation. On that particular day, he was stacking bus tires, each of which weighed approximately 120 pounds, into multiple stacks. He testified that his supervisor at United Quick had instructed him to perform this task. Petitioner was working with a co-worker, Jose Luna. Petitioner testified that as he finished the second row of tires, he felt a crackling or pulling in his back and a strain in his left wrist. He testified that when he began to feel pain in his back and wrist, he told Jose Luna. He also reported the injuries to his supervisor, Tony. After he finished the tire-stacking job, he changed his clothes and went home. He felt a slight pull in his mid-back and noticed that his left wrist/hand began to swell. In the late afternoon of December 9, 2011, he iced his back and elevated his left hand/wrist. That night, Petitioner's pain began to worsen in both his lower back and his left wrist. He took some Advil. Petitioner did not normally work weekends. Petitioner testified that on Monday morning, December 12, 2011, his back and left wrist were worse. Consequently, he called into work and

told them that his left wrist and back were not well. Respondent told him to come into work. Petitioner went into work that morning, and Respondent sent him to MercyWorks.

Medical treatment

Petitioner reported to MercyWorks as instructed on Monday, December 12, 2011. (PX1, pp. 53-56). He was evaluated by Dr. Steven Anderson. Petitioner provided a history of “stacking large school bus tires nine tires high in two rows. Following this work, he had some immediate pain in his wrist and lower back. The next morning the pain was worse.” (PX1, p. 53). Dr. Anderson recommended a splint and icing three times per day for the wrist, and application of heat three times per day for the back. (PX1, p. 54). Dr. Anderson also prescribed Naprosyn and placed Petitioner on limited duty with restrictions of no lifting greater than ten pounds, ground work only, no repetitive bending, limited use of the left hand and no overhead lifting. (PX1, p. 54). Respondent was not able to accommodate Petitioner’s restrictions.

Petitioner returned to Dr. Anderson as instructed one week later, on December 19, 2011. (PX1, p. 57). Dr. Anderson recommended the same work restrictions and medications, and recommended a home exercise program. (PX1, p. 57). At no point was Respondent able to accommodate Petitioner’s restrictions, and therefore, Petitioner remained off work.

On December 23, 2011, Petitioner reported to orthopedic surgeon, Dr. Charles Carroll. Dr. Carroll’s note reflects that Petitioner “was injured lifting bus tires. Has stack up to 6 feet. Felt a pull in the left wrist.” (PX2, p. 10). Dr. Carroll noted Petitioner’s prior history of prior surgery on the right wrist in 2009 and the left wrist in 2005, and indicated, “injury may have aggravated an underlying condition.” (PX2, p. 10). Examination of the left wrist showed decreased range of motion and pain over the radiocarpal and scaphoid joints. (PX2, p. 10). Dr. Carroll diagnosed an acute wrist sprain, in addition to a finding of an old scaphoid fracture and

radiocarpal arthritis. (PX2, p. 11). Dr. Carroll recommended a brace, occupational therapy, medications, and agreed with Dr. Anderson's work restrictions. (PX2, p. 11).

For his lower back pain, Petitioner was seen at Northwestern by Dr. Srdjan Mirkovic on January 10, 2012. (PX1, p. 25). Dr. Mirkovic noted a history of "stacking rows of 9-track tires overhead. This involved repetitive pulling, tugging, and lifting." (PX1, p. 26). Dr. Mirkovic noted Petitioner experienced pain while lifting a tire and stacking it overhead. (PX1, p. 26). Petitioner had pain in his lower back and his symptoms had "remained constant," were "persistent," and were radiating to his left buttock. (PX1, p. 26). Dr. Mirkovic noted that Petitioner "has been very restricted by his low back symptoms." (PX1, p. 27). Physical examination revealed a positive straight leg raise on the left. (PX1, p. 25). Dr. Mirkovic recommended an MRI of the lumbar spine to rule out a lumbar disc herniation. (PX1, p. 25). Dr. Mirkovic instructed Petitioner to remain off work pending MRI evaluation. (PX1, p. 25). That MRI, performed January 24, 2012, revealed a bulging disc at L3-4, and disc protrusions at L4-5 and L5-S1. (PX4, pp. 4-5).

On January 20, 2012, Petitioner returned to Dr. Carroll reporting that his left wrist was worse than on the previous visit and that his pain had increased. (PX2, p. 5). Dr. Carroll noted, "function has decreased." (PX2, p. 5). Dr. Carroll recommended occupational therapy for four-to-six weeks, and no use of the left wrist. (PX2, p. 6). Dr. Carroll's note states, "consider a full fusion left wrist and 6 to 12 months of follow up care. Could consider arthroscopy first but may not change outcome." (PX2, p. 6). Respondent did not authorize any further treatment for the wrist after the January 20, 2012 visit.

On January 31, 2012, Petitioner returned to Dr. Mirkovic for his back. (PX1, p. 12). He reported continued lower back pain, left buttock pain, and pain "radiating from the left side to the

midline.” (PX1, p. 12). Dr. Mirkovic reviewed the lumbar MRI films at that visit, and concluded that the MRI was consistent with “L4-5 disc herniation with foraminal stenosis compressing the exiting L4 nerve root.” (PX1, p. 12). In Dr. Mirkovic’s opinion, the MRI was “consistent with the patient’s current clinical presentation.” (PX1, p. 12). Dr. Mirkovic prescribed four weeks of physical therapy and an epidural steroid injection to be performed by Dr. Jeffrey Katz. (PX1, p. 12). Petitioner was to remain off work pending the outcome of therapy and the injection. (PX1, p. 12).

On March 5, 2012, Petitioner was evaluated by Dr. Katz at Northwestern prior to undergoing his first epidural steroid injection. (PX3, pp. 5-10). Petitioner reported a history to Dr. Katz of pain starting “about 3 months ago. The pain was precipitated by unloading a truck tire, pulling and lifting these tires caused a small pull.” (PX3, p. 6). He indicated that the “pain has been progressively getting worse and described as stabbing, radiating to the left buttock.” (PX3, p. 6). On that same day, Dr. Katz performed an injection of Kenalog and Lidocaine at the L4-5 level. (PX3, p. 6, 9).

On March 19, 2012, Petitioner returned to Dr. Katz reporting that his pain had been temporarily relieved by the first injection, but began to increase 2-3 days after the procedure. (PX3, p. 16). The pain gradually increased, and when Petitioner went to physical therapy for the first time after the injection, the pain returned to baseline. (PX3, p. 16). He performed a left L5-S1 injection of Depomedrol and Lidocaine. (PX3, p. 16).

On April 10, 2012, Petitioner returned to Dr. Mirkovic. (PX1, pp. 5-10). He reported that he had only temporary relief after his second injection with his pain returning after a few days. (PX1, p. 5). Dr. Mirkovic reiterated that Petitioner’s MRI was consistent with a left L4-5 disc herniation. (PX1, pp. 5-6). Dr. Mirkovic stated, “he responded well to the epidural steroid

injections transiently, confirming the pain source as being the disc herniation with nerve root compression.” (PX1, p. 6). Dr. Mirkovic also identified radicular symptoms in Petitioner’s left buttock and ankle (EHL). Specifically, Dr. Mirkovic’s note states:

His clinical presentation and MRI were also consistent with the physical examination, notably a positive straight-leg raise on the left and weakness in the left EHL which was confirmed on today’s examination.

(PX1, p. 6). Dr. Mirkovic recommended surgery in the form of a left L4-5 microdiscectomy and laminotomy. (PX1, p. 6).

Dr. Mirkovic’s note states, “It is my opinion that the patient’s current symptoms are work-related.” (PX1, p. 6).

Respondent refused to approve either the wrist surgery recommended by Dr. Carroll or the back surgery recommended by Dr. Mirkovic. In fact, no further treatment for Petitioner’s back was authorized after the April 10, 2012 visit. Petitioner testified that because he had no group health insurance and could not afford to pay his medical bills out of pocket, he could not obtain the treatment recommended by Dr. Carroll and Dr. Mirkovic in the absence of workers’ compensation approval.

At no time has Respondent approved additional treatment for Petitioner’s back or wrist.

Respondent’s §12 Examiner, Dr. Mark Cohen

Instead, on April 18, 2012, Petitioner was examined by Respondent’s §12 examiner, Dr. Mark Cohen with respect to his left wrist. (RX3). It is Dr. Cohen’s opinions that Petitioner’s current condition is related to the natural progression of Petitioner’s underlying radioscaphoid arthritis and scaphoid fracture. However, Dr. Cohen did not know whether Petitioner was experiencing symptoms in his left wrist immediately prior to the accident. Dr. Cohen concluded that, despite Petitioner’s reports of increased pain in his left wrist after stacking the tires on

December 9, 2011, the December 9, 2011 accident had no impact on accelerating or aggravating Petitioner's underlying condition. Dr. Cohen testified that he saw no documentation indicating Petitioner was having problems with his left wrist for at least one year prior to the December 9, 2011 accident. (RX13, p. 24). He had no way to determine whether Petitioner's left wrist was symptomatic during that timeframe. (RX13, p. 25). Dr. Cohen "presumed" that after the accident, Petitioner's left wrist symptoms were worse than prior to the accident. (RX13, p. 31). He presumed that the increase in wrist symptoms that Petitioner experienced after stacking tires was related to his work activities that day. (RX13, p. 31). His left wrist symptoms worsened on that day at work. (RX13, p. 33). Dr. Cohen did not review the June 11, 2012 note from Dr. Carroll or Dr. Carroll's deposition testimony. (RX13, pp. 34-35).

Respondent's §12 Examiner, Dr. Jesse Butler

On May 17, 2012, Petitioner was examined by Respondent's §12 examiner, Dr. Jesse Butler, for his lower back. Dr. Butler agreed with the diagnosis of a "foraminal disc herniation of the L4-5 level." (RX1). He agreed that there is a causal connection between the onset of Petitioner's symptoms and the described work activities of stacking tires. (RX1). Dr. Butler further concluded, "MMI is yet to be achieved." (RX1). Finally, Dr. Butler's May 17, 2012, report reflects, "the patient may have suffered some permanent disability as a result of the injury." (RX1). Dr. Butler indicated he could not quantify the degree of disability Petitioner may have suffered at that time. (RX1).

On July 11, 2012, Dr. Butler issued an addendum report. The only new information Dr. Butler had reviewed was the MRI films, which "confirm the presence of a large foraminal disc herniation on the left at L4-5." (RX2). Dr. Butler's opinions regarding diagnosis and causal connection remained unchanged, but Dr. Butler changed his opinions regarding MMI and

permanent disability. (RX2). In his July 11, 2012, report, Dr. Butler changed his opinion to state that Petitioner, “may have reached MMI for the injury.” (RX2). He indicated the disc is likely to reabsorb “with additional time.” (RX2). He opined that Petitioner may resume full duties when symptoms subside or he approaches nine months post injury. Dr. Butler also wrote that additional treatment would be related if the radiculopathy persists and requires surgery. (RX2).

Despite not having reviewed any sort of job description at any time, Dr. Butler’s new opinion was that Petitioner “may return to work with restrictions of 25 pounds lifting if there is still back pain.” (RX2). Dr. Butler conceded, “[a]dditional treatment would be related if the radiculopathy persists and requires surgery.” (RX2). Further, without explanation, Dr. Butler’s amended report changes his permanency opinion, stating, “the patient will not likely suffer permanent disability from this incident.” (RX2).

On December 14, 2012, Respondent presented Dr. Butler for deposition, for \$3,400.00. (RX12, pp. 42-43). Dr. Butler performs approximately 600 §12 examinations per year, all of which are on behalf of employers and insurance companies. (RX12, pp. 43-44). Dr. Butler agreed that Petitioner suffered a herniated disc at the L4-5 level as a result of the work accident with the tires. (RX12, p. 29, 32). Dr. Butler admitted that the only basis for changing his opinion from “MMI has yet to be achieved” to “the patient may have reached MMI for the injury,” was Petitioner’s supposed “lack of radicular symptoms.” (RX12).

He agreed, however, that Dr. Mirkovic identified radicular symptoms on all of his examinations of Petitioner. (RX12, p. 35). He admitted that he found no fault with Dr. Mirkovic’s recommendation for surgery, given his observation of radicular symptoms during his April 2012 visit. Dr. Butler agreed that if Petitioner was continuing to experience radicular

symptoms, then surgery would be appropriate. (p. 34, 35). While Dr. Butler opined that the disc is likely to “reabsorb with additional time,” he admitted at deposition that if the disc was going to reabsorb, it would do so within 12 months of an injury, and that he did not know whether or not the disc in Petitioner’s spine had, in fact, reabsorbed. He further admitted that he had no idea as to Petitioner’s current condition or symptoms or if Petitioner was currently experiencing radicular symptoms. (PX12, p. 41).

Opinions of Petitioner’s treating physician, Dr. Charles Carroll, regarding Petitioner’s left wrist

On June 11, 2012, Dr. Carroll provided a narrative report regarding his care and treatment of Petitioner, at Petitioner’s request. (PX2, pp. 12-13). Dr. Carroll is a board-certified orthopedic surgeon with an additional qualification in hand surgery. (PX5, pp. 9-10, Dep. Ex. 1). He has practiced orthopedic surgery specializing in hand surgery for 25 years, and has practiced continually at Northwestern Memorial Hospital and Evanston Hospital since beginning his practice. (PX5, pp. 7-8).

Dr. Carroll noted that Petitioner’s need for care with respect to the left wrist “is multifactorial in nature.” (PX2, p. 13). He indicated that the acute wrist strain suffered by Petitioner was directly related to his work injury of December 9, 2011, and that the work injury could be considered an aggravating factor that accelerated an underlying pre-existing arthritic condition in Petitioner’s left wrist. (PX2, p. 13).

Dr. Carroll indicated that “the injury of 12/09/2011 does restrict him from working his normal job” and that Petitioner should not return to work using his left wrist barring further evaluation. (PX2, p. 13). Dr. Carroll concluded, “the injury of 12/09/2011 is a factor in his need for care and an aggravating factor in the diagnosis of strain to the wrist, scaphoid fracture, and radiocarpal arthritis.” (PX2, p. 13).

Petitioner presented Dr. Carroll for deposition on November 15, 2012. (PX5). Dr. Carroll testified that the mechanism of injury described to him – stacking bus tires up to six feet high – was consistent with the “strain that was noted and the potential aggravation of his pre-existing condition.” (PX5, p. 14). He testified that the December 9, 2011 “strain or injury did accelerate or aggravate the condition that was laying beneath the surface.” (PX5, p. 18). Dr. Carroll testified that if Petitioner’s current condition continued to be as it was the last time he evaluated him, it remained his opinion that Petitioner cannot return to his normal job because of the condition in the left wrist. (PX5, p. 20). Dr. Carroll testified that his plan is to first perform an arthroscopic procedure on the wrist and then possibly to follow up with a fusion of the wrist. (PX5, p. 23). Dr. Carroll testified that both of those procedures would be required as a result of either the acute strain or an exacerbation of the underlying condition that occurred on December 9, 2011. (PX5, pp. 23-24).

Petitioner’s current condition:

Petitioner testified that the pain in his left wrist has not changed, or has gotten worse, since he last saw Dr. Carroll. He has pain in his left wrist and hand, numbness in the fingers on his left hand, and has difficulty grasping things, such as cups, papers and eating utensils.

Similarly, his lower back pain remains unchanged since Petitioner last saw Dr. Mirkovic. Petitioner testified that he continues to have pain in his lower back and numbness in his left buttock and down his left leg. He testified that he has difficulty putting on shoes and showering, and that he is in pain every day. Petitioner takes over-the-counter medications in an attempt to relieve his pain.

In August, 2012, Petitioner's temporary total disability ("TTD") was terminated despite being instructed to remain off work by both of his treating physicians. Petitioner last received TTD on August 24, 2012.

Testimony of Jose Luna

Respondent called Jose Luna to testify at trial. Luna is a current employee of Respondent and was working with Petitioner while stacking tires on the day of this occurrence. Luna confirmed that stacking tires was part of his job duties with Respondent, and that the tires he and Petitioner were stacking weighed over 100 pounds. Luna described the tires as "huge." Luna was called to testify that he does not recall hearing Petitioner make complaints about his left wrist or back during the tire stacking activity. However, Luna admitted that he was in a hurry on the day of this occurrence, and was not paying close attention to Petitioner or Petitioner's activities during this time. He testified that he did not have sufficient opportunity to observe Petitioner after the tire-stacking job was complete. He admitted that Petitioner may or may not have told him about the injury, but that he simply does not recall one way or the other.

Luna was also called to testify that he remembered Petitioner changing the brakes on his personal vehicle on the Respondent's premises at some point. However, Luna admitted that he does not recall whether it was before or after the tire stacking that he had observed Petitioner changing his brakes. Luna admitted that he did not even recall if his observation of Petitioner changing his brakes was on the same day as the tire-stacking incident, and conceded that it could have been the day before the accident.

Conclusions of Law:

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

The Arbitrator finds that on December 9, 2011, Petitioner sustained an accident that arose out of and in the course of his employment with Respondent. Respondent paid him TTD benefits from the time of the accident through August 24, 2012. Interestingly, Respondent placed the issue of “accident” in dispute at the time of trial.

Petitioner testified that on December 11, 2011, he suffered an injury to his low back and left wrist at work when he was unloading, lifting, stacking, aligning and pulling 120-pound bus tires. Petitioner testified that midway through this task, he experienced a crackling or pulling in his back. After finishing the task, he felt a pulling sensation in his mid-back and pain in his left wrist. His left hand/wrist later began to swell.

Petitioner further testified that at the time he sustained these injuries, he told his co-worker, Jose Luna, that he began to feel pain in his back and wrist.

Initially, Jose Luna testified that on December 11, 2011, Petitioner did not tell him anything about injuring himself while they were stacking tires. Later, Jose Luna testified that he did not recall Petitioner telling him on December 11, 2011 that he injured himself. Then, he testified that Petitioner may or may not have hurt himself that day, but he just did not recall.

Moreover, Petitioner provided un rebutted testimony that on December 9, 2011, he gave notice of these injuries to Tony, his supervisor. Petitioner further testified that Tony responded to his complaints by telling him that he is young, he will be okay, but that if he is not better by Monday, Tony will send him to a doctor.

Tony, Petitioner’s supervisor, did not testify.

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Petitioner's condition did not improve by Monday, December 12, 2011, so he reported to work and was sent MercyWorks. Dr. Steven Anderson evaluated him. Petitioner provided, in pertinent part, the following history:

“He describes stacking large school bus tires nine tires high in two rows. Following this work, he had some immediate pain in his wrist and lower back. The next morning the pain was worse.”

Based on the foregoing, the Arbitrator finds that on December 11, 2011, Petitioner sustained an accident that arose out of and in the course of his employment by Respondent.

F. Is Petitioner's current condition of ill-being causally related to the injury?

i. Petitioner's lower back condition

With respect to Petitioner's low back, the Arbitrator finds Petitioner's current condition is related to the December 9, 2011 injury. The Arbitrator notes that Petitioner reported a consistent history to Dr. Anderson, Dr. Mirkovic and Dr. Katz. However, Petitioner's testimony at trial is somewhat inconsistent with the medical histories on one point. Dr. Katz wrote that at the time of the injury, Petitioner felt a small pull, but “[n]o ‘pop.’” Petitioner testified that at the time of the injury, he experienced a “crackling or pulling” in his back.

Upon reviewing the MRI films, Dr. Mirkovic diagnosed an L4-5 disc herniation with impingement on the L4 nerve root. (PX1, p. 6). Dr. Mirkovic determined that Petitioner's symptoms of low back pain radiating into his left buttock and down into his left leg were consistent with the MRI findings. (PX1, p. 6). He determined that Petitioner's reaction to the epidural steroid injections clinically correlated to his symptoms and MRI findings. (PX1, p. 6).

In a letter dated April 10, 2012, to Ms. Ingram of CCMSI, Dr. Mirkovic wrote the "DOI" was "12/9/11" and concluded: "It is my opinion that the patient's current symptoms are work-related." (PX1, p. 6).

Moreover, even Respondent's own §12 examining physician, Dr. Jesse Butler, opined (in both his reports and at deposition) that there appears to be a causal connection between Petitioner's lower back injury and his work accident of December 9, 2011. (RX1, RX2, RX12).

Further, with respect to causation, proof of prior good health and change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. Granite City Steel Co. v. Indus. Comm'n, 97 Ill.2d 402 (1983), Land and Lakes Co. v. Indus. Comm'n, 359 Ill.App.3d 582 (2nd Dist. 2005).

In this case, there is no evidence that Petitioner has ever had any problems with his lower back or radicular symptoms into his legs. Petitioner had never sought treatment or been evaluated by any physician for lower back pain prior to the December 9, 2011 tire stacking injury. Before December 9, 2011, Petitioner was able to complete all of his job duties, including moving and lifting 120-pound bus tires without issue. All of the evidence in this case indicates Petitioner's low back and radicular symptoms began as a result of the December 9, 2011 accident. Petitioner testified that he had never previously experienced pain in his lower back, and when he reported to work on the morning of this occurrence, he did not have any pain in his back.

The Arbitrator finds the opinions of Dr. Mirkovic to be credible.

Petitioner testified that his condition has not changed since he last saw Dr. Mirkovic.

Based on the foregoing, the Arbitrator finds Petitioner's current low back condition to be causally related to the work accident of December 9, 2011.

ii. Petitioner's left wrist condition

It is axiomatic that employers take their employees as they find them. When workers' physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. Thus, even though an employee has a pre-existing condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being. Sisbro, Inc. v. Indus. Comm'n, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003)

The Arbitrator finds that the current condition of ill-being of Petitioner's left wrist is causally related to the December 9, 2011 work injury.

Petitioner seeks authorization for an arthroscopy to be performed on Petitioner's left wrist. Petitioner had a well-documented scaphoid nonunion fracture in his left wrist for several years prior to the accident. In fact, several doctors, including Petitioner's treating physician for the December 9, 2011 incident, documented the need for surgical intervention to repair Petitioner's left wrist prior to the December 9, 2011 incident. Dr. Welch stated in 2004 that a fusion is necessary to repair Petitioner's left wrist. Dr. Hartigan noted in 2007 that surgical intervention would be required to repair Petitioner's left wrist. In 2010, Dr. Carroll recommended an arthroscopy and possible fusion, which is the exact same recommendation Dr. Carroll made in 2012.

Petitioner's treating orthopedic hand and wrist specialist, Dr. Carroll, opined that Petitioner's left wrist injury is "multifactorial in nature." (PX2, p. 13). Dr. Carroll testified that Petitioner suffered an acute wrist strain as a result of the December 9, 2011, accident, along with

an aggravation or acceleration of Petitioner's underlying, longstanding radiocarpal arthritis and pre-existing scaphoid fracture in his left wrist and hand. (PX2, p. 13; PX5, p. 14). Dr. Carroll's conclusion was that "the injury of 12/09/2011 is a factor in [Petitioner's] need for care and an aggravating factor in the diagnosis of strain to the wrist, scaphoid fracture, and radiocarpal arthritis." (PX2, p. 13). At his deposition, Dr. Carroll testified that it was his opinion that the December 9, 2011 injury "did accelerate or aggravate the condition that was laying beneath the surface." (PX5, p. 18). He testified that the arthroscopy and potential fusion surgery he recommended were required as a result of either the acute strain or the exacerbation or aggravation of the underlying condition that occurred on December 9, 2011. (PX5, pp. 23-24).

The Arbitrator notes that Dr. Carroll is the same physician who previously treated Petitioner for his underlying radioscapoid arthritis and scaphoid non-union in the left wrist in 2009 and early 2010. (See RX 5). He diagnosed Petitioner's underlying injury. (RX5). Accordingly, the Arbitrator finds that Dr. Carroll is now in the best position to determine whether the December 9, 2011, accident aggravated or accelerated that underlying condition.

Dr. Carroll admitted that he did not conduct a forensic investigation of the pre-accident versus post-accident x-rays to determine whether or not the 12/9/11 accident resulted in a permanent change in Petitioner's left wrist condition. (PX5, pp. 29-30)

During the deposition of Dr. Carroll, the following exchanges took place:

Q: If we assume that he had subjective complaints predating the 12/9/11 accident, that would eliminate any remaining data that would support that he had any permanent change in his underlying condition caused by the 12/9/11 accident?

A: Other than he stated that he had increasing pain following the injury, that would be correct.

.....

Q: Has his attorney or the patient himself provided you records indicating that he had the scaphoid nonunion advanced collapse pattern of arthritis that his doctor was recommending back in 2004, that he have an excision of the scaphoid and a four-corner fusion; was that presented to you, those records?

A: I have not seen those.

.....

Q: So you don't know one way or the other whether between 2004 and 2011 Mr. Moron had any symptoms with the left wrist?

A: I don't have any opinion on that.

Q: Okay. An aggravation in the underlying arthritic condition, would that necessarily show up in changes on radiographs?

A: Not necessarily.

.....

Q: And if it turns out that the veracity of the patient is called into question or that the subjective history is inaccurate, that would obviously change your causation opinions, correct, Doctor?

A: That could change my opinion.

Respondent presented various medical records bearing dates ranging from August 27, 2004 to March 18, 2010. Respondent's Exhibit 4 is a single-page report from M&M Orthopedics from August 2004. That record bears a diagnosis of scaphoid nonunion and arthritis (RX4). No records were admitted reflecting treatment between August 27, 2004 and August 6, 2007, when Petitioner reported bilateral wrist pain after a fall at work. (RX10). The diagnosis contains handwritten corrections and cross-outs ("right" crossed out and replaced with "left" for example).

Respondent's Exhibit 7 is an EMG report from August 16, 2007, showing evidence of left carpal tunnel syndrome. (RX7). Respondent's Exhibit 11 is a note from Dr. Brian Hartigan dated August 26, 2007 and is a follow-up visit from the August 16, 2007 EMG. (RX11). That note contains a recommendation for surgery on the right wrist, and indicates that the left wrist is "a lower priority." (RX11, emphases added). Respondent did not offer into evidence any medical records for Petitioner between August 26, 2007 and January 13, 2010, a period of over two years.

Respondent's Exhibit 8 is a single-page note dated January 13, 2010, from a therapist at Northwestern Orthopedic Institute. (RX8). That note indicates that Petitioner sustained an injury to his right wrist for which he had been undergoing therapy. (RX8). The therapist indicated Petitioner was now having problems with pain in both wrists. (RX8).

Respondent's Exhibit 9 is another similar single-page report from the same therapist from January 27, 2010. (RX9).

Respondent's Exhibit 6 is another single-page therapy note, dated February 7, 2010. (RX6). Respondent did not offer into evidence a discharge note from Dr. Hartigan or from

physical therapy. Respondent did not call the therapist to testify, and only presented notes from two dates of therapy.

Finally, Respondent's Exhibit 5 is a note from Dr. Carroll from his treatment of Petitioner in 2010. That note, dated March 18, 2010, indicates Petitioner began to develop left wrist pain as a result of overuse during a period of time when Petitioner's right wrist was injured.

With regard to prior complaints to and treatment for his left wrist condition, Petitioner, on cross-examination, proved to be a poor historian. Petitioner testified via an interpreter. Petitioner testified that he "didn't have any problems with [his] left wrist before [his] accident on December 9th of 2011." Petitioner also testified that Dr. Carroll's surgical recommendation was the first time he was told that he needed surgery on his left wrist:

Q: Mr. Moron, you saw Dr. Carroll in 2012, correct?

A: Yes.

Q: And in 2012 you were informed that you needed surgery for your left wrist; is that correct?

A: That's correct.

Q: Was this the first time you heard such news?

A: Yes, full fusion by Dr. Carroll.

Q: Thank you, Mr. Moron, but I'm talking about any surgical procedure to your left wrist.

A: Just what we discussed in 2012.

.....

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Q: Prior to your visit with Dr. Carroll in early 2012, were you ever informed either by Dr. Carroll or by any other doctor of a need to have surgery on your left wrist?

A: Just by Dr. Carroll.

Q: Just by Dr. Carroll?

A: Yes, sir.

On redirect examination, Petitioner testified that he stated on direct examination that he had problems with his left wrist from 2005-2007. Petitioner had a 2005 wrist injury. Petitioner agreed with Petitioner's Counsel that he would not dispute a 2007 work accident, but did not recall the specifics. He testified that did suffer a work accident to both wrists in 2007, and underwent surgery for his left wrist. After the surgery, Petitioner continued, his left wrist got better. Petitioner further testified that in the months before the tire-stacking incident, his left wrist did not bother him and that whatever problems he had with his left wrist resolved by December 2011.

There is no evidence in the record that Petitioner underwent any treatment for his left wrist between March 18, 2010 and December 9, 2011, which is a period of nearly 21 months.

At his deposition, Dr. Cohen, Respondent's §12 physician, testified that upon comparing the pre-injury radiographs with the post-injury radiographs, he was unable to appreciate a difference or a change. During such deposition, the following exchange took place:

Q: Okay. Very good. Thank you, Doctor. Doctor, after reviewing the radiographs, conducting your examination and all the other information, history and everything you were provided, did you form a diagnosis, Doctor?

A: Yes.

Q: And what was your diagnosis?

A: Mr. Moron had chronic left wrist arthritis on the basis of a longstanding wrist fracture that had not healed.

A: And, Doctor, did you form an opinion to a reasonable degree of medical and surgical certainty as to whether the work accident that he described to you of stacking the tires on 12/9/11 caused or aggravated that condition?

A: I did form an opinion.

Q: And what was your opinion, Doctor?

A: I do not believe that that event or activity in any way caused or changed the natural history of his wrist condition. (RX13, pp. 15-16)

However, Dr. Cohen “presumed” that Petitioner’s increase in left wrist symptoms on 12/9/11 was related to his work activities that day. (RX13, pp. 30-31)

Based on Petitioner’s testimony, the mechanism of injury (unloading, stacking, pushing and pulling 120-lb. tires), the medical records, the opinions of Dr. Carroll, the fact that Petitioner was able to perform the duties of mechanic helper for Respondent for nine months prior to the accident with no complaints of left wrist pain, the lack of evidence in the record that Petitioner underwent any treatment for his left wrist between March 18, 2010 and December 9, 2011 and the Court’s holding in Sisbro, Inc. (supra), the Arbitrator finds that Petitioner’s current condition of ill-being of his left wrist is causally related to the December 9, 2011, accidental injury.

K. What temporary benefits are in dispute? TTD

The Arbitrator finds that Petitioner is entitled to TTD benefits from December 12, 2011, the date Dr. Anderson released Petitioner to limited-duty work, through April 17, 2013, the trial date.

When Petitioner's doctors initially recommended restricted-duty work for Petitioner, Respondent was unable to accommodate Petitioner's restrictions. On April 10, 2012, Dr. Mirkovic recommended Petitioner remain completely off work pending surgery due to the condition of his lower back. (PX1, pp. 5-6). Dr. Carroll repeatedly indicated that Petitioner is unable to work using his injured left wrist and hand, and Dr. Carroll testified Petitioner should remain off work if his condition remains as it was when he last saw Petitioner. Even Dr. Butler admitted in his first report that Petitioner could not work due to the condition of his back. (RX1). In July 2012, Dr. Butler imposed a 25-pound lifting restriction.

Respondent could not and did not accommodate such restriction.

The Arbitrator finds that Petitioner is entitled to TTD benefits beginning December 12, 2011 through the date of trial, April 17, 2013, a period of 70-2/7 weeks. Respondent is entitled to a credit of \$12,539.16 for TTD previously paid.

O. Is Petitioner entitled to prospective medical care, pursuant to Section 8(a) of the Act, in the form of left wrist surgery, as recommended by Dr. Carroll, and L4-L5 surgery, as recommended by Dr. Mirkovic?

The Arbitrator finds the opinions of Dr. Mirkovic to be more persuasive than those of Dr. Butler and further finds the opinions of Dr. Carroll to be more persuasive than those of Dr. Cohen.

As the Arbitrator has found that the conditions of ill-being of Petitioner's left wrist and low back are causally related to the accident of December 9, 2011, as Petitioner wishes to undergo the surgeries recommended by Dr. Carroll and Dr. Mirkovic for his left wrist and low back conditions, respectively, and as the Arbitrator finds that such surgeries are reasonable and necessary, the Arbitrator orders Respondent to authorize and pay for the left wrist surgery that Dr. Carroll has recommended and to authorize and pay for the L4-L5 surgery that Dr. Mirkovic has recommended, pursuant to Section 8(a) and subject to Section 8.2 of the Act.

M. Should penalties or fees be imposed upon Respondent?

The Arbitrator finds that neither penalties nor attorneys' fees are warranted in this case.

Petitioner is not claiming any unpaid medical bills.

Moreover, there is a bona fide dispute as to whether or not Petitioner's current condition of ill-being of his left wrist is causally related to the accident of December 9, 2011.

Respondent paid \$12,539.16 in TTD benefits. The parties stipulated that Petitioner's average weekly wage was \$425.00. Therefore, Petitioner's TTD rate was \$283.33. It follows that Respondent paid $\$12,539.16 / \$283.33 = 44.256$ weeks of TTD benefits to Petitioner. Such TTD period would run from December 12, 2011 through October 16, 2012.

Dr. Butler conducted a Section 12 examination on May 17, 2012, and authored a report. In such report, Dr. Butler opined, *inter alia*, that Petitioner should remain off work pending review of the films.

In a July 12, 2012, addendum report, without having re-examined Petitioner, Dr. Butler opined, *inter alia*, as follows:

“The patient may return to work with restrictions of 25 pounds lifting if there is still back pain. The patient may resume full duty when symptoms subside or he approaches 9 months post injury. Additional treatment would be related if the radiculopathy persists and requires surgery.”

The Arbitrator notes that nine months post-injury would be September 9, 2012.

At his deposition, Dr. Butler admitted that he was not provided with a job description of
Petitioner’s work.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Patrice Smith,

Petitioner,
vs.

14IWCC0459

NO: 13 WC 03570

Chicago Transit Authority,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 29, 2013 is hereby affirmed and adopted.

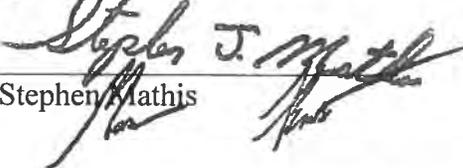
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 13 2014

DLG/gaf
O: 6/5/14
45


David S. Gore


Stephen Mathis

Mario Basurto

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

SMITH, PATRICE

Employee/Petitioner

Case# 13WC003570

CTA

Employer/Respondent

14IWCC0459

On 8/29/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% 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:

1658 SAUNDERS CONDON & KENNY PC
GREGORY J SAUNDERS
111 W WASHINGTON ST SUITE 1001
CHICAGO, IL 60602

0515 CHICAGO TRANSIT AUTHORITY
ARGY KOUTSIKOS ESQ
567 W LAKE ST 6TH FL
CHICAGO, IL 60661

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0459

Patrice Smith
Employee/Petitioner

Case # 13 WC 3570

v.

Consolidated cases: N/A

CTA
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Chicago**, on **June 25, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

14IWCC0459

On the date of accident, **January 20, 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 *did not* 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 not* causally related to the accident.

In the 28 weeks preceding the injury, Petitioner earned **\$21,672.00**; the average weekly wage was **\$774.00**. See AX1.

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

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

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$0**.

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

ORDER

As explained in the Arbitration Decision Addendum, the Arbitrator finds that Petitioner failed to prove that she sustained a compensable injury arising out of and in the course of her employment with Respondent as claimed. By extension, all other issues are rendered moot and all requested compensation and benefits are denied.

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

August 28, 2013

Date

AUG 29 2013

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*
19(b)

Patrice Smith

Employee/Petitioner

Case # **13 WC 3570**

v.

Consolidated cases: **N/A**

CTA

Employer/Respondent

FINDINGS OF FACT

Petitioner testified that she was employed by Respondent as a full time rail operator on January 20, 2013 and had been so employed since July 9, 2012. Her duties required her to operate a train from one end of the line to the other and to stop at intervals, pick up passengers, open/close train doors, and trouble shoot various problems (i.e., doors and wire problems) in transit. Petitioner testified that prior to January 20, 2013 she never had anxiety problems or medication prescriptions similar to the ones she has now.

January 20, 2013

Petitioner testified that she was operating a train leaving the Monroe station heading southbound on January 20, 2013. She testified that she was in the Jackson station and there is a line of passengers that she needed to stop and pick up. On cross examination, Petitioner testified that this was her first run of the day and that the incident occurred on a Sunday at approximately four o'clock in the afternoon. Petitioner acknowledged that the distance from the Monroe station to the Jackson station is approximately 6-8 car lengths long or so.

Petitioner testified that, as she was coming into the Jackson station, she noticed a man "jumping off" of the platform so she "stopped" the train. She added that she started slowing the train down because she saw the man "jump" in the air. Petitioner testified that she paused and when she looked she was about one car length (maybe 50 feet) from the man.

By contrast, on cross examination Petitioner testified that she could not recall where she was exactly between the Monroe station and the Jackson station before she saw the man jump. Petitioner added that she thought that she remembered being in the station at the time the man jumped. Petitioner maintained that she was in motion at the time of the incident, but she could not recall what speed she was traveling between the Monroe station and the Jackson station. Petitioner further testified that, when she first saw the man jump, she was going "and not slowly." However, Petitioner testified that she was not going so fast that she needed to use the train's "brake four" (i.e., emergency brake).

Petitioner testified that the man was on the tracks and it looked like he fell on the [third] rail, but she could not see that far. Petitioner testified that she did not know whether the man was ok. She added that the guy "appeared lifeless." Petitioner testified that she thought the man was dead.

Petitioner testified that she was in shock, but she was able to call control and tell them to cut the power. She testified that she picked up her radio and called the control center asking them to cut the power. She did not get a response so she took out a cell phone to call the control center and told them to cut the power at Jackson.

Petitioner testified that she felt like she was doing everything in slow motion. After that her whole body started shaking. She testified that she was crying and hyperventilating.

On cross examination, Petitioner conceded that she saw the man get up and put his hand on the platform. Petitioner testified that she does not know what happened to him. Petitioner also testified that on cross examination that she did not know whether the delay in train service [as a result of this incident] was approximately nine minutes.

Petitioner testified that someone took over the train for her and the paramedics took her via ambulance to a hospital. There, Petitioner testified that she was asked what happened, but she could not talk so she wrote down what happened on a piece of paper. Petitioner testified that she saw a doctor who gave her a valium to calm her down and she was referred for “psych” to a Dr. Kelly. Petitioner testified that the pill calmed her down and a relative picked her up. Petitioner testified that she did not see Dr. Kelly and she was given another referral to see a neuropsychological services person, Dr. Bylsma.

Reports

Respondent offered a Rail Control Record into evidence reflecting that at 17:17 hours, “K347 (Julun) received a telephone call from Operator 126 (52068), southbound approaching Jackson, reporting an unauthorized person had entered the right of way ahead of the train. The operator stated she made a break for application and did not make contact with the person. She stated the offender then got off the right-of-way and fled the station. The operator could not determine if the person was injured nor what caused the person to enter the right-of-way. The operator is shaken and is not able to continue with the train.” RX3.

Respondent also offered a “Special Occurrence Report – Injured Employee – 10-61¹ (Final Report)” (hereinafter referred to as “incident report”) into evidence dated January 20, 2013. RX2. The incident report reflects a summary of facts indicating that Petitioner “reported southbound approaching Jackson of an unauthorized person at track level. Per K347 the operator stated that she had to stop the train utilizing the break for and did not make contact with the person however, was to [sic] shaken to continue in service. The operator declined medical attention.” *Id.* In the manager comment section of the incident report, the manager noted that “Operator 126 stated that the person got off the right of way back onto the platform and fled the scene. It is unknown if the person sustained any injuries or what caused the person to enter onto the right of way. Operator 126 was informed that due to the nature of the incident and the claim of injury she will have to submit to CTA'S drug testing procedures and complete the necessary reports. She was made aware of the consequences of a refusal and complied.” *Id.* The incident report indicates that another operator took over Petitioner's train at 17:26 hours and that at 17:31 Petitioner “now requests medical attention upon her arrival to Forest Park Terminal.” *Id.*

Video Surveillance

On cross examination Petitioner acknowledged that Respondent's rail stations have video surveillance cameras. Respondent offered video footage of the incident at issue on January 20, 2013, which was admitted into evidence. RX4. Petitioner declined to remain in the courtroom at the time that the video was viewed by the Arbitrator and the parties' counsel.

¹ On cross examination Petitioner identified her train as 10-61.

The video footage reflects an unidentified male who entered the rail track bed wearing dark clothing and a jacket with a hood pulled over his head, light brown shoes and a backpack on his back. *Id.* At approximately 5:16:37 the male appears mid-screen on the video and walks to the edge of the platform and stands; at this time, lights in the tunnel can be seen from the Petitioner's train which is further down the tracks and not yet near the male or the passengers at the Jackson stop. *Id.* At 5:16:46 the male backs away from the platform edge. *Id.* At 5:16:56 the male walks to the platform edge again and steps out with one leg then collapsing down onto the track bed.

The male does not jump out onto the tracks as described by Petitioner, but rather simply, and oddly, steps out and collapses at a time that the Arbitrator notes the Petitioner's train was stopped at the far other end of the station and was not in motion. *Id.* The Arbitrator further notes that other passengers standing on the platform near the male at this time did not appear to notice that the male stepped out onto the tracks despite their close proximity to him. *Id.*

Approximately 30 seconds later, at 5:17:09-5:17:14, the male gets up and off the track bed and climbs back onto the platform. *Id.* The male did not require any assistance to do so. *Id.* Then, this unidentifiable male with his hoodie pulled over his head simply walks away from the middle of the platform away from Petitioner's train and out of view of the camera at approximately 5:17:42. *Id.* The Arbitrator notes that Petitioner's train remained in the distance and did not move. *Id.* At approximately 5:27:08 the waiting passengers at the Jackson station platform in view start to walk/run south out of view towards the train. *Id.*

Medical Treatment

The medical records reflect that Petitioner was released from the emergency room on January 20, 2013 with a diagnosis of "UNSPECIFIED ACUTE REACTION TO STRESS" and released to return to work without restrictions effective January 28, 2013. PX-A.

The following day, Petitioner went to Concentra. RX1. Petitioner reported that "A man jumped in front of my train and I have been having chest pains and headaches." *Id.* Petitioner also reported that she witnessed "a man commit suicide by jumping in front of her train yesterday she complains of constant crying with diffuse headaches." *Id.* Petitioner further reported constant crying, feeling very nervous, feeling like her heart is pounding, poor appetite, replaying the incident in her mind, trouble concentrating without suicidal or homicidal ideation, and feeling very fearful. *Id.* Petitioner was diagnosed with grief/anxiety reaction and referred to Dr. Kelly for counseling. *Id.*

On January 23, 2013, Petitioner saw Maryjo Liszek, M.D. ("Dr. Liszek") Nr Medicine Pediatrics for "extreme anxiety and to follow-up with psychiatry. She needs release from psychiatry before return to work. She needs counseling for PTSD symptoms." PX-A. In a progress note, Dr. Liszek noted "Pt says she is very stressed over near miss driving train on Sunday, someone jumped in front of her, but she was able to miss him due to she was driving slowly. Pt is seen company doctor and was given prescription for ativan three times a day. Pt is doing better with ativan three times a day. Some head ache and cp with hyperventilating." *Id.* Dr. Liszek diagnosed Petitioner with anxiety and PTSD, recommended that she continued to follow up with psychiatry and take ativan 1 mg at night and one in the morning, and noted that Petitioner had a referral for psychiatry and that she would follow up with workers' comp. *Id.*

On January 28, 2013, Petitioner saw Frederick Bylsma, Ph.D. ("Dr. Bylsma") for a neuropsychological assessment at the request of her employer after an incident at work. PX-B. Petitioner reported "a history of

seeing a man jumped in front of her train in an apparent suicide attempt (Sunday January 20, 2013), though he [sic] was able to stop the train. She experienced considerable psychological distress immediately after the event, and has persisting symptoms at this time.” *Id.*

Specifically, Petitioner reported “persisting psychological distress with anxiety, sleep disruption, intrusive thoughts, increased emotional reactivity, and avoidance of trains and the event on 01/20/13.” *Id.* “She reports that a man jumped on to the tracks in front of the train she was operating, but she was able to stop the train before hitting him. He laid on the tracks for about 5 minutes (her estimation) without moving and she thought he had died due to striking his head on the rail or after touching the electrically charged “third rail”. While she was speaking to her supervisor at the CTA, he apparently got up from the rail, jumped back onto the platform (she is not sure if he was helped up or not), and disappeared. She does not know his fate.” *Id.* Petitioner further reported “vivid dreams of the event and she wakes up with high anxiety after the events, intrusive thoughts about the event during the day, being able to visualize the event clearly, increased arousal levels and startle reactions, feeling sensitive and psychologically unbalanced & weak, as well as nervous, anxious in moody. She becomes anxious at the thought of writing a train and has not done so since the event; even hearing trains makes her feel on edge.”

Dr. Bylsma noted that Petitioner's presentation change dramatically when asked about why she had come to the office into describing the events of January 20, 2013 when she became tearful, obviously anxious and had some difficulty speaking about what happened. *Id.* Dr. Bylsma diagnosed Petitioner with posttraumatic stress reaction, recommended a course of individual psychotherapy with a clinical psychiatrist (Dr. Dorota Domanski-Erdman) that Dr. Bylsma noted “should not require prolonged interventions,” kept Petitioner off work as a rail operator, and scheduled a reassessment in one month. *Id.*

On February 14, 2013, Petitioner saw Petitioner saw Viji Susarla, Ph.D. (“Dr. Viji”)² for an initial visit. PX-B. Dr. Viji noted that Petitioner was extremely anxious, unable to speak, and had a severe emotional reaction to talking about the event on January 20, 2013. *Id.* Dr. Viji also noted that Petitioner was avoidance of trains, unable to think, see or hear trains without an overly whelming emotional reaction. *Id.* Dr. Viji began relaxation and visualization techniques to calm Petitioner down and indicated that she would likely require several treatment visits over the next 12 to 18 weeks. *Id.* Dr. Viji diagnosed Petitioner with acute posttraumatic stress disorder and placed her off work. *Id.*

Petitioner returned to Dr. Viji from February 21, 2013 through March 21, 2013, who noted Petitioner's continued reports of intrusive flashbacks and intense psychological distress. *Id.* Petitioner also reported a conversation with a co-worker about a similar (and worse) event leading to an increase in flashbacks. *Id.* Petitioner further reported stressors including workers' compensation and short term disability issues. *Id.* She continued to instruct Petitioner on relaxation techniques and assigned “homework” to acclimate Petitioner back to functioning near trains. *Id.* Dr. Viji maintained Petitioner's diagnosis and kept her off work. *Id.*

In the interim, on February 25, 2013, Petitioner saw Dr. Liszek for follow-up “anxiety that occurred since she was driving CTA and nearly hit man who was trying to commit suicide. Pt has not been working. Pt is following with psychiatrist Dr Bylsma - and psychologist Viji seeing once a week. Pt does not feel like she can work due to even sound of trains scares her. ... Pt is still seeing him jump in front of the train. Pt feels embarrassed about her sx and they are saying she does not qualify for workers comp. She says she has only been to 2 sessions so far with therapist. Pt is behind in her bills. Pt says she was not given medicine by psychiatrist. She says she is on

² To maintain continuity in the record, the Arbitrator refers to Dr. Susarla as Dr. Viji, the name by which Petitioner knows her.

no medicine.” PX-A. Dr. Liszek diagnosed Petitioner with anxiety/depression/PTSD and noted that Petitioner did have a diagnosis “of PTSD by neuropsychologist who thought she should improve rapidly several weeks, event occurred on Jan 3.” *Id.*

Petitioner also saw Dr. A. Halaris (“Dr. Halaris”) on March 20, 2013 for a psychiatric evaluation at which time she was diagnosed with acute posttraumatic stress disorder. PX-B. In an extensive initial assessment, Dr. Halaris noted that Petitioner was referred by her primary care physician and therapist. *Id.* In part, Petitioner “explained that in Jan 2013, she was at work, driving a CTA train, and up ahead, a person jumped onto the tracks in a suicide attempt. She saw a person in good time to stop the train so no injury resulted. However, the pt was very shocked and upset and hasn't been able to return to work since. She has developed PTSD sx's and work referred her to a Dr. Bylsma for an evaluation and then this doctor (pt doesn't think he's a psychiatrist because she said that he cannot rx medication) referred her to begin psychotherapy with a Dr Viji.” *Id.* Petitioner also reported that she “has ‘slow-motion’ flashbacks of the person jumping, several times per week. She experiences psychomotor retardation at times, ‘like I'm moving in slow motion.’ Sound has become magnified. She can no longer drive or ride trains. She has anxiety attacks even when she sees or hears a train. She had difficulty speaking about the incident during today's interview, and she said its like ‘something is choking me’ and she had facial grimaces and a kind-of stutter when trying to get words out, so progress in speaking on this topic was very slow.” *Id.*

Dr. Halaris diagnosed Petitioner with PTSD, anxiety NOS, and depression NOS. *Id.* Dr. Halaris prescribed Sertraline (Zoloft) 50 mg daily and Klonopin 0.5 mg, referred Petitioner to a psychiatrist Dr. Alvi, and recommended that Petitioner continue with psychotherapy with Dr. Viji which Petitioner indicated she intended to continue to see. *Id.*

On March 25, 2013, Petitioner saw Dr. Liszek “for stress disorder related to train- pedestrian near miss collision and has some improvement of mood and sleep, but continues to have some anxiety and memories of incidents that cause anxiety and physical symptoms of stomach pain and speech difficulty and also still with poor appetite.” PX-A. In a progress note, Dr. Liszek noted that Petitioner returned for follow up “depression and anxiety and doing much better since on ZOLOFT and able to sleep better and able to talk and not crying and no pain in stomach and eating some. Pt still with poor appetite - - did lose weight in the last month. Pt still with stress from Worker’s Compensation.” PX-A. Dr. Liszek diagnosed Petitioner with anxiety and depression noting that she was doing better but continued to have stress due to financial problems due to lack of work and not receiving workers compensation with continued appetite problems. *Id.* Dr. Liszek recommended that Petitioner continue with counseling and psychiatry. *Id.*

Petitioner continued to see Dr. Viji from April 4, 2013 through April 25, 2013. PX-B. Petitioner reported increased ability to come near trains with some anxiety and then travel on the train with her boyfriend as assigned although she experienced intense anxiety while her boyfriend helped her by talking her through the journey. PX-B. Petitioner reported that her medications were working well and decreased symptoms. *Id.* Dr. Viji maintained Petitioner's diagnosis and kept her off work. *Id.*

On April 18, 2013 and, Petitioner saw Dr. Viji reporting that she was unable to do her homework assignments as she was very anxious and agitated during the week with a major stressor interfering with her PTSD therapeutic work being the uncertainty regarding her Worker's Compensation and disability benefits. *Id.* Petitioner reported that the fact that she did not have any money was adding significant stress and that her dog was ill and needed surgery that she could not afford. *Id.* Dr. Viji noted that Petitioner's symptoms had increased, maintained Petitioner’s diagnosis and kept her off work. *Id.*

14IWCC0459

On May 2, 2013, Petitioner saw Dr. Viji reporting ability to perform her homework of riding a train and doing well after some initial anxiety that reduced. *Id.* Petitioner also reported major stressors including not having any money or receiving benefits from work. *Id.* Dr. Viji maintained Petitioner's diagnosis and kept her off work. *Id.*

On May 9, 2013, Petitioner saw Dr. Viji reporting ability to ride trains, including one on her line, with some difficulty that was manageable using the distraction techniques that she learned. *Id.* Dr. Viji noted that Petitioner was crying in her session because she had to give away her cat because she could not afford food for it and she was unable to pay rent for her apartment. *Id.* "She also asked her boy friend/fiancé to leave, which is causing her sadness. She is trying to prepare for the court date on Monday, which is very stressful for her." *Id.* Dr. Viji maintained Petitioner's diagnosis and kept her off work. *Id.*

On May 23, 2013, Petitioner saw Dr. Viji reporting continued significant anxiety with the thought of returning to work and, although she is riding trains with much less anxiety, she continues to choke up with the idea of going back to work. *Id.* Petitioner also reported that her fiancé moved out of the apartment as he did not want to contribute financially towards rent or other expenses which was a significant stressor. *Id.* Dr. Viji maintained Petitioner's diagnosis and kept her off work. *Id.*

On May 30, 2013, Petitioner returned to Dr. Viji who noted that Petitioner seemed to be doing much better although she reported high levels of anxiety. *Id.* Petitioner also reported that she "got back with her fiancé, although they are still living separately." *Id.* Dr. Viji maintained Petitioner's diagnosis and kept her off work. *Id.* Petitioner returned three more times from June 6, 2013 through June 20, 2013 reporting ability to ride a train, significantly less anxiety, continued cheerfulness and frustration with her Worker's Compensation situation, and moderate levels of depression. *Id.* Dr. Viji continued to reinforce relaxation and visualization techniques to address Petitioner's symptoms and projected Petitioner's return to work on June 24, 2013. *Id.*

In the interim, on June 11, 2013, Petitioner saw Nadia Alvi, D.O. ("Dr. Alvi") in the department of psychiatry at Loyola. *Id.* In a progress note, Dr. Alvi indicated that Petitioner was last seen on April 16, 2013 at which time her medications were adjusted to include an increase in sertraline from 50 mg to 100 mg in addition to clonazepam 0.5 mg for anxiety/PTSD/depression. PX-A. Petitioner reported that she was doing well since her last visit until approximately 2 weeks ago. *Id.* She reported feeling nausea from her medication and that she was receiving treatment for fibroids and she believed that she was pregnant although a pregnancy test was negative. *Id.* Petitioner also reported:

"In terms of mood, she stated she 'feels good', 'much better', she has ridden on the track back and forth a couple of times now. She will be released in two weeks from her psychologist to drive the train again. She states she feels 'fine', and that she misses operating the train. She denied crying spells, denied depression or sadness, energy/motivation has improved overall. However, she does report she feels sleepy 'a lot', sometimes during the day, often falls asleep early around 9 p.m. she takes the Zolofit at bedtime. She has not taken clonazepam for two weeks. She is currently off of her medication legally. She reports being stressed because of not being able to pay rent but denied anhedonia. Over the past two weeks, her mood has been anxious at times, but she states she is working on this with her therapist. Her mood has been 'whiny' and 'crazy', 'irritable'. She reports she does not feel worse off of medication. She wants to wait for her U/S results before she returns any medications. She reported she has leaked

maintenance and early-morning awakenings. She reports she has been getting hot flashes. Educated her about potential possibility of pre-menopausal symptoms.” *Id.*

Dr. Alvi diagnosed Petitioner with PTSD and depression NOS. *Id.* Dr. Alvi discontinued Petitioner's sertraline and clonazepam given Petitioner's self discontinuation of the medications and encouraged Petitioner to continue with weekly therapy with Dr. Viji. *Id.*

In a letter dated June 24, 2013, Dr. Alvi noted that Petitioner had been in treatment for PTSD with Dr. Alvi and that Petitioner was stable in regards to mood symptoms. *Id.* Dr. Alvi also noted that Petitioner continued to follow up in psychology therapy for anxiety symptoms and had improved significantly in that regard. *Id.* Dr. Alvi indicated that Petitioner was suitable to return to work as long as she continued to follow up with medication management appointments in routine psychotherapy. *Id.*

ISSUES AND CONCLUSIONS

The Arbitrator hereby incorporates by reference the Findings of Fact delineated above and the Arbitrator's and parties' exhibits are made a part of the Commission's file. After reviewing the evidence and due deliberation, the Arbitrator finds on the issues presented at trial as follows:

In support of the Arbitrator's decision relating to Issue (C), whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds the following:

In view of the record as a whole, the Arbitrator finds that Petitioner did not sustain an accident that arose out of and in the course of her employment with Respondent on January 20, 2013 as claimed. In so concluding, the Arbitrator does not find the Petitioner's testimony to be credible particularly in light of various inconsistencies between her testimony at trial and the medical record and when compared to the video recording of the purportedly shocking incident spawning Petitioner's claimed psychological injury.

The seminal case addressing "mental-mental" claims under the Illinois Workers' Compensation Act is *Pathfinder v. Industrial Commission*, 62 Ill. 2d 556, 343 N.E. 2d 913 (1976). In that case, the Illinois Supreme Court allowed recovery for psychological injury in the absence of any physical trauma to the Petitioner wherein the claimant alleged a psychological injury after pulling a co-worker's severed hand out from a punch press machine and fainting at the sight of it. *Pathfinder*, 62 Ill. 2d at 563. The Court noted that the claimant fainted following a "gruesome" experience and, after considering medical treatment, ultimately concluded "that an employee who, like the claimant here, suffers a sudden, severe emotional shock traceable to a definite time, place and cause which causes psychological injury or harm has suffered an accident within the meaning of the Act, though no physical trauma or injury was sustained." *Pathfinder*, 62 Ill. 2d at 563.

However, not every claimed psychological injury is compensable and the Arbitrator finds no credible evidence in this case to support Petitioner's claim that she sustained a "sudden, severe emotional shock" as a result of the incident on January 20, 2013 resulting in a compensable accident. To the contrary, where Petitioner would have others believe that she witnessed and nearly missed a suicide attempt when she stopped a moving train to avoid a man on the tracks, video footage of the actual incident shows a considerably milder, albeit odd, occurrence. The Arbitrator declines to infer about the motives of the hooded man that stepped off of the platform and relies on the Petitioner's testimony, the inconsistencies between her testimony at trial between direct and cross examination and in comparison to the documentary evidence submitted, and the stark contrast between Petitioner's description at trial about the incident and the video footage of the occurrence itself.

At trial, Petitioner testified that the man "jumped" off the platform. Respondent's incident and record control reports reflect that Petitioner reported that she utilized the train's emergency brake to prevent hitting the man while operating a train that she testified at trial was not "moving slowly" and that she nearly missed the man's "suicide attempt." The video shows no such speed, if any movement whatsoever of Petitioner's train, at the time the man stepped off of the platform a significant distance of several or more train car lengths from Petitioner's position on the tracks. However, Petitioner's reports of the incident as reflected in the medical records paints a different and more dramatic picture.

On January 21, 2013, Petitioner reported that she witnessed "a man commit suicide by *jumping in front of her* train yesterday...." On January 23, 2013, Petitioner reported that she was "very stressed over near miss driving train on Sunday, someone jumped in front of her, but she was *able* to miss him due to she was driving slowly." On January 28, 2013, Petitioner reported "a history of seeing a man *jumped in front of her train* in an apparent

suicide attempt (Sunday January 20, 2013), *though [she] was able to stop the train.*” Specifically, she reported “that a man jumped on to the tracks in front of the train she was operating, but she was able to stop the train before hitting him. He laid on the tracks for about 5 minutes (her estimation) without moving and she thought he had died due to striking his head on the rail or after touching the electrically charged ‘third rail.’” By February 25, 2013, Petitioner continued to report that she “nearly hit [a] man who was trying to commit suicide.” (*Emphasis added*).

Notably, while Petitioner testified at trial that she did not know what happened to the man and that she thought he was dead, on cross examination she acknowledged that she later saw the man come back up onto the platform. The latter acknowledgement is corroborated by the medical records. On January 28, 2013 Petitioner reported that “While she was speaking to her supervisor at the CTA, [the man] apparently got up from the rail, jumped back onto the platform (she is not sure if he was helped up or not), and disappeared.”

The Arbitrator finds that Petitioner’s dramatic portrayal of the type of incident that may certainly give rise to a compensable injury if it were supported by credible evidence as iterated in *Pathfinder* and its progeny³ is simply lacking in this case. Petitioner’s version of a shocking suicide attempt that she nearly missed while operating a moving train (whether the train was proceeding in a slow, moderate, or fast speed) on January 20, 2013 is wholly undermined by video footage of the actual event reflecting a mild, albeit odd, occurrence where a hooded man simply extends his leg forward and collapses onto the train tracks many train car lengths away from the Petitioner’s completely stopped train before he simply got back up onto the platform and walked away disappearing from view.

Based on the foregoing, the Arbitrator finds that Petitioner failed to prove that she sustained a compensable injury at work with Respondent as claimed. By extension, all other issues are rendered moot and all requested compensation and benefits are denied.

³ In the decades since the Supreme Court’s decision in *Pathfinder*, the Commission and Illinois courts have addressed psychological injuries in myriad cases and again recently in *Chicago Transit Authority v. The Illinois Workers' Compensation Commission*, 2013 IL App (1st) 120253 WC, 989 N.E.2d 608 (1st Dist. Ill. App. Ct., March 11, 2013); *see also Boyd v. CTA*, 13 IWCC 0628 (2013); *see also Dixon v. CTA*, 11 IWCC 1229 (2011); *see also Flock v. Yellow Transportation Inc.*, 08 IWCC 0225 (2008).

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Keith Warren,

Petitioner,

14IWCC0460

vs.

NO: 10 WC 25378

City of Chicago Heights,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 7, 2013 is hereby affirmed and adopted.

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

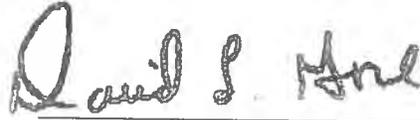
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0460

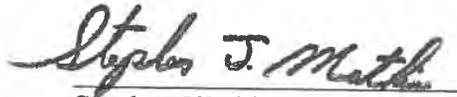
No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 13 2014

DLG/gal
O: 6/5/14
45



David L. Gore



Stephen Mathis



Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

WARREN, KEITH

Employee/Petitioner

Case# **10WC025378**

14IWCC0460

CITY OF CHICAGO HEIGHTS

Employer/Respondent

On 11/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

4788 HETHERINGTON KARPEL BOBBER ET AL
ANDREW PIPPIN
161 N CLARK ST SUITE 2080
CHICAGO, IL 60601

4217 DEL GALDO LAW GROUP LLC
GEORGE S SPATARO
1441 S HARLEM AVE
BERWYN, IL 60402

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14 IWCC0460

Case # 10 WC 25378

Keith Warren
Employee/Petitioner

Consolidated cases: _____

v.

City of Chicago Heights
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Svetlana Kelmanson**, Arbitrator of the Commission, in the city of **Chicago**, on **October 17, 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 _____

14IWCC0460

FINDINGS

On **9/30/2009**, 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 **\$60,000.00**; the average weekly wage was **\$1,153.85**.
On the date of accident, Petitioner was **28** years of age, *married* with **1** dependent child.
Petitioner *has* received all reasonable and necessary medical services.
Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.
Petitioner was temporarily totally disabled from **October 1, 2009**, through **October 5, 2009**.
Respondent shall be given a credit of **\$219.77** for TTD benefits, for a total credit of **\$219.77**.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of **\$664.72/week** for **51.25** weeks, because the injuries sustained caused the **25%** loss of use 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

11/6/2013

Date

NOV - 7 2013

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner testified that he worked as a firefighter paramedic for 12 years, the last seven for Respondent. Petitioner denied prior problems with his dominant right hand.

Petitioner further testified that on September 30, 2009, while fighting a fire, he needed to break a glass window. As he was breaking the window with a firefighting axe, he sustained a deep cut to the top of his right hand. There was an ambulance at the scene, which transported him to St. James Hospital and Health Center (St. James).

The medical records from St. James show that Petitioner complained of being unable to extend the right fifth finger and only minimally extending the right fourth finger. The staff noted a 6 cm laceration on the dorsal aspect of the hand, diagnosed extensor tendon involvement, and referred Petitioner to Dr. Brown for treatment. The same day, Dr. Brown performed surgery to repair the extensor tendons. Postoperatively, Petitioner followed up with Dr. Brown.

Petitioner testified that on October 6, 2009, he returned to work on light duty. At some point, he became dissatisfied with the progress of his recovery and switched his care to Dr. Primus, another orthopedic surgeon. The medical records from Dr. Primus show that on November 19, 2009, Petitioner complained of constant, severe pain with swelling and inability to fully flex the fourth and fifth fingers. Dr. Primus recommended continuing physical therapy. Petitioner underwent physical therapy at Athletico from November 5, 2009, through December 15, 2009. At the time of his discharge on December 15, 2009, Petitioner reported significant improvement in the range of motion, and felt his strength was close to normal. Petitioner elaborated that he had no difficulty with everyday or strenuous tasks, and could lift weights at the gym without a problem. The physical therapist noted that Petitioner had achieved all the physical therapy goals. However, his grip strength on the right (85 pounds average) was significantly less than his grip strength on the left (115 pounds average). On December 17, 2009, Petitioner followed up with Dr. Primus, reporting doing well. Physical examination was unremarkable. Dr. Primus released Petitioner to return to work full duty and instructed him to perform home exercises. On January 21, 2010, Petitioner followed up with Dr. Primus, reporting being able to work without any problems. Dr. Primus instructed Petitioner to follow up as needed.

Petitioner testified that he received no further treatment for his injuries. Regarding his current condition, Petitioner testified that he has pain along the scar, which is worse when the scar is squeezed. He also has residual numbness on the lateral side of the fifth finger, some lagging with extension of the fourth and fifth finger, and slight loss of the range of motion. Sometimes, the right hand swells, and he puts ice on it. Petitioner further testified that the right hand "cramps up," with a pins and needles sensation, when he uses a firefighting axe or a fire hose. The right hand is now significantly weaker than the left hand. Although Petitioner is able to lift weights and play basketball, he now lifts 25 pound or lighter weights with his right arm, whereas he used to lift 50 pound weights, and he plays basketball once a week instead of twice because he wants his right hand to rest. He uses his left hand more to compensate.

14IWCC0460

In support of the Arbitrator's decision regarding (F), is Petitioner's current condition of ill-being causally related to the injury, and (L), what is the nature and extent of the injury, the Arbitrator finds as follows:

Having carefully considered the entire record, the Arbitrator finds that the injuries sustained caused loss of use of the right hand to the extent of 25 percent thereof.

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Edith Garrett,

14IWCC0461

Petitioner,

vs.

NO: 11 WC 12553

Lakeland Rehab & Healthcare Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, causal connection, medical expenses, prospective medical expenses, law of the case doctrine, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

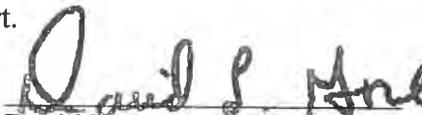
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 10, 2013 is hereby affirmed and adopted.

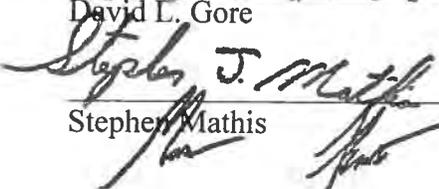
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 13 2014

DLG/gaf
O: 5/29/14
45


David L. Gore


Stephen Mathis

Mario Basurto

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

GARRETT, EDITH

Employee/Petitioner

Case# 11WC012553

14IWCC0461

LAKELAND REHAB & HEALTHCARE
CENTER

Employer/Respondent

RECEIVED
6-14-13

On 6/10/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

0465 SCHEELE CORNELIUS & HARRISON
DAVID C HARRISON
7223 S ROUTE 83 PMB 228
WILLOWBROOK, IL 60527

1337 KNELL & KELLY LLC
MATTHEW A BREWER
504 FAYETTE ST
PEORIA, IL 61603

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0461

EDITH GARRETT
Employee/Petitioner

Case # 11 WC 12553

v.

Consolidated cases: N/A

LAKELAND REHAB & HEALTHCARE CENTER
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **April 4, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

14IWCC0461

On the date of accident, **9/4/2010**, 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$7,635.68**; the average weekly wage was **\$146.84**.

On the date of accident, Petitioner was **36** years of age, *married* with **2** dependent children.

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

ORDER

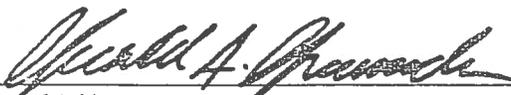
The Petitioner has failed to meet her burden of proof in regards to TTD benefits and all issues in dispute for her second 19(b) hearing. Accordingly, Petitioner's claim for additional benefits is denied.

Petitioner's claim is also denied pursuant to the Law of the Case Doctrine.

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

6/7/13
Date

JUN 10 2013

14IWCC0461

Mr. Hopkins sent the Petitioner a letter documenting the conversation and informing the Petitioner that failure to return to work on October 3, 2011 would result in her voluntary resignation.

Mr. Hopkins confirmed the Petitioner did not report to work on October 3, 2011, and therefore she was considered to have voluntarily resigned from her employment. Mr. Hopkins testified he sent a certified letter to the Petitioner showing that she has voluntarily resigned. Mr. Hopkins confirmed that Respondent's Exhibit 3 was the letter he sent to the Petitioner. Mr. Hopkins testified that as of October 3, 2011 the Petitioner was no longer considered an employee of the Respondent. Mr. Hopkins testified the Petitioner has never re-applied for employment and would need to do so in order to be offered work of any kind by the Respondent. He confirmed his meeting with the Petitioner on January 9, 2013. He believed that the Petitioner's request for light duty at that time was not related to her incident of September 4, 2010 based upon the IME report of Dr. Williams he had previously received. Mr. Hopkins testified that light duty is available for current employee's who have suffered a work comp injury.

CONCLUSIONS OF LAW

1. Petitioner failed to meet her burden of proof regarding the issue of TTD and Causal Connection. Dr. Williams' report and testimony are clear that as of August 1, 2011 she was at MMI and could return to work without restrictions. (Resp. Ex.'s 4-5). Furthermore, the Petitioner has presented no medical evidence to substantiate her claim for TTD benefits. The Petitioner submitted one office visit from January 30, 2013 wherein her primary care physician diagnosed low back pain. There is no reference in the January 30, 2013 note that this condition is in anyway related to her September 4, 2010 incident. The Arbitrator finds it highly suspicious that the Petitioner is claiming to have substantial ongoing problems with her back yet has only sought treatment once in over a year and half. The Arbitrator also notes this treatment was conveniently sought soon after she requested work from the Respondent, something she had not done in almost two years. The Petitioner's claim for TTD, prospective medical treatment, medical expenses, vocational rehabilitation and all other benefits are hereby denied.

2. Petitioner's claim for benefits is also denied under the Law of the Case Doctrine. Under the law-of-the-case doctrine, a court's un-reversed decision on an issue that has been litigated and decided settles the question for all subsequent stages of the action. *Miller v. Lockport Realty Group, Inc.*, 377 Ill.App.3d 369, 374, 315 Ill.Dec. 945, 878 N.E.2d 171 (2007). The principles underlying the law-of-the-case doctrine should be applied to matters resolved in proceedings before the Commission. Once a finding by the Commission becomes a final judgment, it also becomes the law of the case and is not subject to further review. *Irizarry v. Industrial Commission*, 337 Ill.App.3d 598, 271 Ill.Dec. 960, 786 N.E.2d 218 (2003). Section 19(b) of the Act states that decisions rendered in a 19(b) hearing "shall be conclusive as to all other questions except the nature and extent of the claimants disability." In the present case, the prior arbitration decision was affirmed in its entirety by the Commission. (Arbitrator's Ex. 3). Therefore, the above issues including entitlement to TTD, the need for prospective medical treatment, and the Petitioner's placement at MMI are final and became the law of the case when no appeal was made of the Commission's decision. The present case is an attempt to relitigate those issues which were previously decided by the arbitrator and made final by the Commission. As such, Petitioner's claim for additional TTD, medical expenses and prospective medical treatment is denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lisa Gates,

Petitioner,

vs.

Paris Community Hospital,

Respondent.

14IWCC0462

NO: 12 WC 23997

DECISION AND OPINION ON REVIEW

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

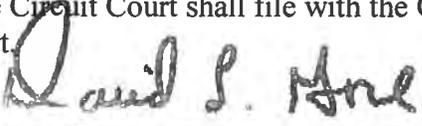
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 29, 2013 is hereby affirmed and adopted.

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.

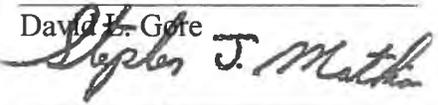
No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 13 2014

DLG/gaf
O: 5/28/14
45



 David L. Gote



 Stephen Mathis



 Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GATES, LISA

Employee/Petitioner

Case# 12WC023997

14IWCC0462

PARIS COMMUNITY HOSPITAL

Employer/Respondent

On 7/29/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0157 ASHER & SMITH
CRAIG SMITH
P O BOX 340
PARIS, IL 61944

0481 MACIOROWSKI SACKMANN & ULRICH LLP
ROBERT B ULRICH
10 S RIVERSIDE PLZ SUITE 2290
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION **14 IWCC0462**

Lisa Gates
Employee/Petitioner

Case # 12 WC 23997

v.

Consolidated cases: _____

Paris Community Hospital
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **McCarthy**, Arbitrator of the Commission, in the city of **Urbana**, on **06/21/2013**. 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 _____

FINDINGS

On 06/19/2012, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned \$54,645.76; the average weekly wage was \$1,050.88.

On the date of accident, Petitioner was 41 years of age, *married* with 2 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 \$ for TTD, \$ for TPD, \$ for maintenance, and \$ for other benefits, for a total credit of \$.

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

ORDER

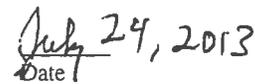
The Arbitrator hereby finds that the Petitioner failed to prove that she sustained an accident that arose out of and in the course of her employment and she failed to prove a causal connection between her employment and the right carpal tunnel syndrome.

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



 Date

JUL 29 2013

Statement of Facts

The Petitioner has been employed by the Respondent as a surgical nurse for seven years working about 35 hours a week, four days a week.

In 2010 and 2011 the Respondent had two operating rooms staffed by 5 full time surgical nurses and 2 part time surgical nurses. In addition, the Respondent employed 2 ENT physicians, an orthopedic physician, Dr. Haskell, Dr. Gilbert and an obstetrician. Some of those physicians only worked once or twice a month. In addition, the Respondent hired a new orthopedic surgeon in January 2012.

In 2011 the Respondent averaged about 2.3 surgeries a day and in 2012 the Respondent averaged about 2.8 procedures a day.

Here, the Petitioner is alleging that she developed right carpal tunnel syndrome from working as a surgical nurse for the Respondent. Surgical nurses working for the Respondent fall into one of four different classifications, (1) Circulating nurses, (2) outpatient nurses, (3) scrub nurses and (4) post anesthesia care unit nurses. Each Classification has different responsibilities and physical job duties.

The Petitioner, like the other surgical nurses, rotated among the different classifications. This rotation was tracked by the Respondent. According to the Petitioner the Respondent kept records on what classification each nurse had during each surgery. For example, if the Petitioner was participating in a surgical procedure as a scrub nurse that would be entered into the system and reflected in the Respondent's records.

Kim Vester testified for the Respondent. She looked at those records and testified that in 2011 and the first 6 months in 2012 the Petitioner's individual statistics were:

The Petitioner worked as a circulating nurse in 159 surgical procedures.

The Petitioner worked as a scrub nurse in 8 surgical procedures.

The Petitioner worked as a PACU nurse in 55 surgical procedures.

The Petitioner worked as an outpatient/admission nurse in 321 surgical procedures.

The Petitioner also testified to other aspects of her job that did not fall directly into one of the foregoing classifications. For example, she testified that she was occasionally on an "on call" rotation from 3:00 A.M. to 7:00 A.M. On cross examination she testified that while on call, she would actually be at home but available if her services were needed. She also worked occasionally in central supply where she would collect and wrap surgical instruments to be used in upcoming surgeries.

At arbitration, the Petitioner described some examples of hand use. For example, the Petitioner testified that during some orthopedic surgeries, she would have to work with "5,000 bags" changing approximately 8 bags per surgery. According to the Petitioner changing these bags required a forceful twisting and pushing motion in order to insert the tube into the IV bag.

The Respondent challenged that assertion. According to Kim Vester she has performed that identical procedure and very little force is involved.

The Petitioner also testified to pushing and pulling patients to and from the operating room. She described in some detail pushing the cart with her wrist in extension and flexion while pulling and pushing the handle in order to maneuver into the operating room. During the course of her Section 12 examination with Dr. Naam, she told the doctor that each trip involved making four turns with the cart and that she made five stops along the way.

The Petitioner also testified that this activity only involves a distance of about 150 feet and that 70 feet was on tile. She testified that she pushed patient carts when performing the job of circulating nurse, as well as outpatient nurse and post anesthetist nurse.

The Petitioner also testified that after transporting the patient onto the operating room, she would have to move the patient from the cart onto the operating table. On cross examination she testified that patients were awake before the surgery and were generally capable of moving from the cart to the operating table without assistance. The Petitioner testified that the distance from surgery to recovery was about 45 feet.

On direct examination the Petitioner testified that after the surgery she would lift the patient from the operating table back onto the cart and transport the patient to recovery. On cross examination she testified that post operative patients were actually moved with the help of three other medical personnel and the patient was rolled back to recovery with the help of anesthesia.

The Petitioner also testified that sometimes during surgical procedures she would have to scrub in and while participating in surgeries she would have to get instruments and retract patients. This testimony appears to be describing the nursing classification of a "scrub nurse." According to the Petitioner retracting was difficult, sometimes requiring her to keep her hand and wrist in a flexed and extended position for long periods. The Petitioner wasn't clear on how often she did this, but Kim Vester testified that in 2011 and the first 6 months in 2012 the Petitioner worked as a scrub nurse only eight times.

The Petitioner also testified that in 2010 and 2011 the computer in outpatient was on a rolling cart and because of its height she had a difficult time keyboarding into the symptoms. She said that the keyboard was at chest height, causing her to type with her wrist in an extended position. She testified that she used the keyboard four to seven hours per shift. However, she acknowledged that her typing was on forms represented by Respondent's Exhibits 5 through 7, and that the typing involved filling in boxes with check marks and completing short narratives in answer to specific questions.

The Petitioner also testified that the Hospital would have "eye" days (referred to as cataract days by Kim Vester) approximately twice a month. According to the Petitioner she would also have to push and pull patients into the surgical room on those days. Kim Vester testified that in 2011 and 2012 the Petitioner did not work on any "eye days."

In support of her claim, the Petitioner called Dr. Haskell to testify on her behalf. He testified that she has been a surgical nurse in some of the surgeries that he has performed. He testified that he was familiar with the petitioner's job duties as he had worked with her during surgery, and was familiar with the job duties of surgical nurses at the Paris Hospital. He also testified that she was primarily a circulating nurse and occasionally a scrubbing nurse and that her duties included pushing and pulling patients on carts, grasping, typing reports and nursing notes. He testified that her activities would be somewhat strenuous because the activities would require a lot of gripping, pushing and pulling.

In regard to causal connection, Dr. Haskell testified that it was his opinion that there was a causal connection between the Petitioner's work activities as a circulating nurse and the right carpal tunnel syndrome. On cross-examination, Dr. Haskell testified that he did not know how often the Petitioner would participate in surgeries, nor did he know how much pushing, pulling or typing she would have to do.

The Respondent called Dr. Naam as an expert witness. He also was aware of the job duties of a surgical nurse based on his many years as a surgeon at a hospital in Effingham, Illinois. He also had a good understanding of the Petitioner's job duties, as she explained them to him and also gave him a two page summary of those duties. He testified that the Petitioner's work as a surgical nurse did not cause or aggravate the right carpal tunnel syndrome because she did a variety of tasks and that her job was not repetitive or forceful and that her wrist was not held in an awkward position for a protracted period of time. He described such a time period as one exceeding four hours on a continuous basis.

Conclusions of Law

In a repetitive trauma case, the issues of whether an accident arose out of one's employment and whether an accident is causally related to that employment are intertwined. The question is whether the evidence supports a finding that the Petitioner's work activities either caused or aggravated her condition of ill being.

Both doctors had a good understanding of the job duties of a surgical nurse and of the Petitioner's job duties. The Arbitrator believes that both doctors would agree that if the Petitioner worked mainly as a surgical scrub nurse, assisting in 2.3 to 2.8 surgeries a day, her carpal tunnel syndrome would be work related. She would, in that position, have to work with her hands and wrists in a protractedly awkward position while holding instruments onto patients at the direction of the surgeon. She would have to continuously hand the surgeon instruments throughout the course of surgeries which would certainly be considered repetitive hand activity.

The problem is that the Petitioner only served as a surgical nurse occasionally, with records showing her in that position only eight days during 2011 and the first half of 2012. Instead she worked as a circulating, post anesthetist and post admission nurse. The job involved moving patient carts, transferring patients to and from an operating table with the help of others, changing and adding to IV bags while in surgery, entering data onto a computer, and cleaning up the surgical rooms after a procedure.

Dr. Haskell testified that the work involved a lot of gripping with force along with keyboarding, and was causally connected to her condition. He said that the fact that she reported symptoms while performing her varies duties supported his opinion. Dr. Naam said that the Petitioner's job duties did not require forceful gripping and were not repetitive as they were varied throughout the course of the work day. He said that her testimony that her symptoms were worse when using her hands at work meant simply that she had severe carpal tunnel, and did not imply that the work was a causative factor in its development.

The Arbitrator believes the evidence supports the opinions of Dr. Naam.

Paris Hospital is a small hospital, performing a limited number of surgeries per month. The averages are referenced above, but the Petitioner also testified that only three orthopedic surgeries were performed in a month, and, while there were five obstetric surgeries done in one day, that only occurred once a month. Accordingly, the Petitioner would not have to transfer patients onto and off of the operating table on a repetitive basis. She would not have to change IV bags on a regular basis, and, as stated above, her pushing and pulling of patient's in carts was limited by distance and duration. Her testimony that her wrists were in an extended position while typing was basically un rebutted. It is clear, however, that the typing was not the continuous stenographic typing which would meet the durational requirements discussed by Dr. Naam. Also, the Arbitrator questions how she could be typing four to seven hours a day while performing all of her other job duties.

Based on the above, the Arbitrator finds that the Petitioner has not proven that her work activities were causally related to her carpal tunnel syndrome. Accordingly, the claim is denied.

J. Were the medical services that were provided to petitioner reasonable and necessary?

Because of the Arbitrator's findings on the threshold issues of accident and causal connection this issue is now moot.

K. What amount of compensation is due for temporary total disability?

Because of the Arbitrator's findings on the threshold issues of accident and causal connection this issue is now moot.

L. What is the nature and extent of the injury?

14IWCC0462

Because of the Arbitrator's findings on the threshold issues of accident and causal connection this issue is now moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input checked="" type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Eddie Wilson, Jr.,

Petitioner,

14IWCC0463

vs.

NO: 11 WC 49142

CDJ Auto & Tow, and Illinois State Treasurer
as Ex-Officio of Injured Workers' Benefit Fund,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 26, 2013 is hereby affirmed and adopted.

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.

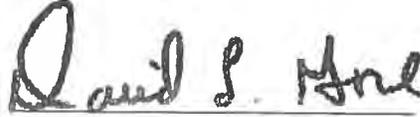
14IWCC0463

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$1,100.00. 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.

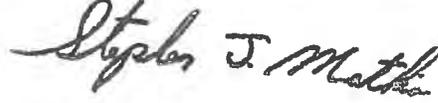
DATED:

JUN 13 2014

DLG/gaf
O: 5/29/14
45



David L. Gore



Stephen Mathis



Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

WILSON JR, EDDIE

Employee/Petitioner

Case# 11WC049142

14IWCC0463

CDJ AUTO & TOW & ILLINOIS STATE
TREASURER AS EX-OFFICIO OF INJURED
WORKERS' BENEFIT FUND

Employer/Respondent

On 11/26/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

1824 STRONG LAW OFFICES
HANIA SOHOUL
3100 N KNOXVILLE AVE
PEORIA, IL 61603

2187 HEIPLE LAW OFFICES
JEREMY HEIPLE
7620 N UNIVERSITY SUITE 203
PEORIA, IL 61614

0988 ASSISTANT ATTORNEY GENERAL
BRETT KOLDITZ
500 S SECOND ST
SPRINGFIELD, IL 62706

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

<input checked="" type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION **14 IWCC0463**

EDDIE WILSON, JR.,

Employee/Petitioner

Case # 11 WC 49142

v.

Consolidated cases: _____

CDJ AUTO AND TOW and ILLINOIS STATE TREASURER
AS EX-OFFICIO OF INJURED WORKERS' BENEFIT FUND,

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **10/30/13**. 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 _____

FINDINGS

On **12/14/11**, 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.

In the year preceding the injury, Petitioner earned **\$N/A**; the average weekly wage was **\$250.00**.

On the date of accident, Petitioner was **35** years of age, *single* with **1** 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 **\$00.00** for TTD, **\$00.00** for TPD, **\$00.00** for maintenance, and **\$00.00** for other benefits, for a total credit of **\$00.00**.

Respondent is entitled to a credit of **\$00.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary partial disability benefits of \$250.00/week for 0 weeks, as provided in Section 8(a) of the Act. The arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that he was temporarily totally disabled. The petitioner's claim for temporary total disability benefits is denied.

Respondent shall pay reasonable and necessary medical services of Methodist Medical Center on 12/19/11, Comprehensive Emergency Solutions on 12/19/11, the Illinois Eye Center from 12/19/11-12/27/11, and IWP from 12/23/11 and 1/7/12 pursuant to Sections 8(a) and 8.2 of the Act as provided in Sections 8(a) and 8.2 of the Act. The arbitrator denies the bill from Illinois Eye Center for services rendered on 5/18/12.

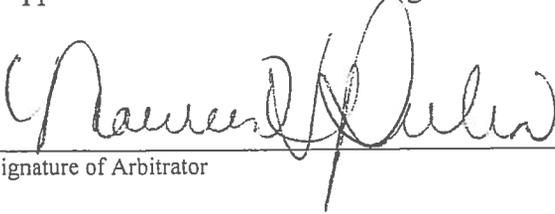
Respondent shall pay Petitioner permanent partial disability benefits of \$250.00/week for 3.24 weeks, because the injuries sustained caused the 2% loss of the left eye, as provided in Section 8(e) of the Act.

The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of this Act. In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner pursuant to Section 5(b) and 4(d) of this Act. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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.

14IWCC0463

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

11/14/13
Date

ICArbDec p. 2

NOV 26 2013

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 35-year-old mechanic, alleges he sustained an accidental injury to his left eye that arose out of and in the course of his employment by respondent on 12/14/11. Prior to 12/12/11 petitioner gave a history of working at Speed Lube in Peoria in 2012, and working as a factory mechanic for two years for Caterpillar.

Petitioner testified that he talked to Chris Shelton, the owner of CDJ Auto and Tow, on 12/12/11, on the referral of a friend, Lacey Kaag. Petitioner testified that Kaag told him that respondent was looking for a mechanic. Petitioner testified that on 12/12/11 he went to respondent's place of business and talked to the owner Chris Shelton about the mechanic position. He testified that he applied for the position on that date. Petitioner then testified that Shelton told him that he would need to talk it over with his wife and that he would call him later in the day. Petitioner stated that later on 12/12/11 Shelton called him and told him to come to work on 12/13/11. Petitioner testified that no formal contract was signed, but wages were discussed. He testified that he was told he would be paid a certain percentage of the labor charges for each auto that he worked on. Petitioner testified that the actual percentage was never discussed. Shelton testified that previously hired mechanics were paid 20% of the labor rate on the cars on which they did maintenance.

Shelton, in an affidavit, testified that on or about 12/6/11 petitioner stopped by his shop to inquire about employment opportunities, and after a brief verbal interview, he told petitioner to return to his shop on another day in order to continue the interview.

Petitioner testified that there were never any discussions between him and Shelton that the six days he worked for respondent would constitute a six day interview. Shelton testified that he did not tell petitioner how long he had to demonstrate his skills. Shelton testified that he has mechanics demonstrate their skills to him for anywhere from 3 days to 2 weeks and does not pay them during this period. Debbie Shelton, Shelton's wife and coowner, testified that the period a potential mechanic has to demonstrate his ability is less than a week. Petitioner stated that there was no discussion that his employment was based on the work he performed during that period.

Shelton testified that he is a mechanic and has been in business for about five years. He testified that his business does towing and auto repair. He had a prior location that he lost due to eminent domain. His present location has 2 bays, and no other employees other than himself and his wife.

Shelton testified that petitioner came in on 12/12/11 and handed him a resume. He testified that petitioner told him about all the side work he had done on other peoples cars. He stated that since petitioner mostly did manufacturing mechanic work, he was skeptical of his ability as an automotive mechanic. Shelton asked

petitioner to do a trial or "show me" of some basic skills. He stated that he wanted petitioner to show him what he knew before talking to him about hiring him.

On 12/13/11 petitioner presented to respondent's place of business to begin work as a mechanic. Petitioner testified that he was never told that the work he was performing was considered an "interview" for the mechanic job. Petitioner testified that he never had any discussions with Shelton that he had to prove himself before he was "hired". He believed he was hired based on the interview on 12/12/11. Petitioner testified that he worked on two cars on 12/13/11, four cars on 12/14/11, three cars on 12/15/11, five cars on 12/16/11, one car on 12/17/11, and four cars on 12/21/11. Petitioner testified that he did all the work on the cars himself, except for one. On that car he asked Shelton for help. Shelton testified that the work petitioner alleges he did was far more work than he could do.

Shelton disputes petitioner's history of what happened on 12/13/11. He stated that on 12/13/11 and all week he had petitioner demonstrate specific tasks, and he was unable to do any of them. He testified that there were many instances where petitioner did not know how to do the assigned job. Shelton testified that petitioner did not prove himself to him. He stated that petitioner "did not pass the test".

Petitioner testified that he worked for respondent for about 5 to 6 days. He stated that he would arrive at work at 10 AM per Shelton's directive, and would not leave until he was told to. Petitioner further testified that Shelton would tell him which cars he was to work on, what work was to be done, and provided him with the tools that were needed to do the work he was directed to do. Petitioner testified that every piece of work that he did was at the direction of Shelton. Shelton agreed with this. Petitioner testified that on Friday 12/17/11 he was paid \$250 cash. The arbitrator notes that 12/17/11 was a Saturday. Shelton denied paying petitioner anything.

Shelton claims that petitioner voluntarily left work on 12/16/11. He stated that he never told petitioner he could not work there. Debbie Shelton testified that on 12/16/11 she heard Shelton ask petitioner to do a job on his own because he had to go do a tow. She stated that when petitioner asked for help Shelton told him he had to do it on his own. She stated that while she was in the office handling customer payments petitioner grabbed his things and left without a word and never came back.

Petitioner testified that on 12/14/11 while working on a 1991 Alero, which he later changed to Acura, a piece of metal flew into his eye. Petitioner testified that he was cutting a piece of metal in a confined space under the dash of the car and a piece of metal flew into the iris of his left eye. Petitioner stated that he did not notice anything at first, and then realized it about five minutes later. Petitioner testified that he then reported the

injury to Shelton. Shelton denied that petitioner reported any accident. No paperwork was filled out and Shelton did not send them for treatment. Instead he stated that Shelton sent him to his wife Debbie for Visine.

Petitioner did not seek treatment until 12/19/11. He stated that he waited until then hoping that the metal, that was in the corner of his eye, would work itself out.

On 12/19/11 petitioner presented to the emergency room at Methodist Medical Center of Illinois at 9:05 am complaining of eye pain and that the metal got in his eyes on Wednesday. He also gave a history that the reason he delayed treatment was because he thought it would come out on its own. He reported that when the pain worsened he decided to seek treatment. The hospital histories vary a bit as to when the injury actually occurred. Some records state it was four days ago, while others state it was five days ago. Another history in the medical records states that four days ago petitioner was working with aluminum and felt a piece fly into his left eye. Petitioner stated that he was doing okay with respect to pain until this morning when he began experiencing severe pain. He also stated that today he became very photophobic with light to left eye. Petitioner denied any problems seeing. An examination revealed a corneal foreign body. The foreign body was removed. Petitioner was discharged and referred to an ophthalmologist.

Later that day petitioner presented to the Illinois Eye Center. He was treated by Dr. Allen. Petitioner gave a history of a foreign body in his eye since last week. He stated that aluminum went in his eye while he was cutting. Dr. Allen put a contact in petitioner's eyes. He prescribed medications that petitioner stated were too expensive for him because he had no insurance.

Petitioner testified that on 12/21/11 when he presented the off work note to Shelton, Shelton blew up and told him he better not have a workers' compensation claim. He testified that Shelton got real angry and was belittling him all day. At that point petitioner had not filed a claim. Later that day petitioner sought legal representation. About two weeks later petitioner called Shelton about returning to work. He testified that Shelton told him he would have to talk to his wife and then get back to him. Petitioner testified that Shelton never got back to him.

On 12/23/11 petitioner called Dr. Allen and stated that he wanted his prescriptions canceled at CVS. He wanted them faxed to Worker's Compensation. Petitioner followed up with Dr. Allen through 12/27/11. Petitioner testified that currently his left eye itches 1-2 times a day, and the length of time it itches varies. He also reported that he has sensitivity to light, and when he has his picture taken it feels like a fire started in his left eye. Petitioner does not use any medications for his eye. Petitioner has not sought any follow-up treatment for his left despite these complaints.

Debbie Shelton, Chris Shelton's wife and co-owner of the business testified that she works in the front office and does all the paperwork for new hires and writes the paychecks. She denied that she did either for petitioner. Debbie testified that the purpose of petitioner doing the work on the cars for 6 days was for him to show Shelton his skills. She testified that Shelton had to finish everything petitioner started.

A. WAS RESPONDENT OPERATING UNDER AND SUBJECT TO THE ILLINOIS WORKERS' COMPENSATION OR OCCUPATIONAL DISEASE ACT?

Pursuant to Sections 3.8 and 3.15 the provisions of the Workers' Compensation Act shall apply automatically and without election to all employers and employees engaged in any department of enterprises or businesses which are declared to be extra hazardous including any enterprise in which sharp edged cutting tools, grinders or implements are used, and any business or enterprise in which electric, gasoline or other power driven equipment is used in the operation thereof. Given that Shelton's business is that of an auto repair and tow shop that uses electric, gasoline or other power driven equipment and sharp edged cutting tools, grinder or implements, the arbitrator finds the provisions of the Illinois Workers' Compensation Act shall apply automatically and without election to respondent CDJ Auto and Tow.

B. WAS THERE AN EMPLOYEE-EMPLOYER RELATIONSHIP?

The courts have often addressed the issue of whether or not an employee-employer relationship exists. In making this determination, the courts look to many factors including whether or not the employer had control over the work the employee did; how and when the employee performed it; how the employee was paid; whether or not the employer withholds taxes from petitioner's pay; whether or not the employer could discharge the employee at will; and whether or not the employer supplied the employee with the materials and equipment needed to perform the job. In many cases the control over the employee was the most significant factor the courts considered.

In the case at bar the arbitrator finds Shelton had total control over all the work the petitioner performed. Shelton identified which cars petitioner was to work on, and when he was to work on them. Shelton also testified that he would check all the work petitioner performed and had to redo it all himself. Shelton testified that he could discharge petitioner whenever he wanted. Shelton and petitioner also testified that Shelton supplied petitioner with all the materials and equipment he needed to perform the work Shelton directed him to perform each day. Although there is a dispute as to whether or not petitioner was paid \$250, both petitioner and Shelton agreed that a mechanic is paid a certain percentage of the labor cost associated with the vehicles the mechanic works on. The only factor that seems to be missing here is that Shelton did not withhold any taxes from petitioner's pay.

Despite having proven by a preponderance of the credible evidence that most of the factors that the courts look for in determining whether or not an employer-employee relationship exists with respect to this claim, the respondent argues that no employer-employee relationship existed because the courts have also held that an employee-employer relationship does not exist when the employee is performing pre-employment skills assessment activities. Shelton claims that on 12/14/11 petitioner was performing pre-employment skills assessment activities. The arbitrator finds the problem with this claim is that in order to claim the claimant was performing pre-employment skills assessment activities those assessment activities need to be specifically defined ahead of time and not just claimed after the injury occurred.

In the case at bar Shelton claims that activity petitioner was performing when he was injured was part of the "interview" process and therefore no employer-employee relationship existed. The arbitrator finds the respondent has failed to show that the period petitioner worked for him was an "interview" period. The arbitrator finds there was no consensus by even Shelton and his wife as to how long the alleged "interview" period was in that Shelton claimed the interview period would last from 3 days to 2 weeks, and his wife claimed the "interview" period was less than a week. Additionally, the arbitrator finds Shelton was unable to define what specific pre-employment skill assessment activities petitioner was to complete as part of this "interview" process, nor did he explain these requirements to petitioner. Absent any credible evidence that Shelton had identified what the specific pre-employment skills assessment activities were that the petitioner was to complete, and the length of the time petitioner had to complete these activities, the arbitrator finds the period petitioner worked for respondent was not a period of time in which the respondent was evaluating petitioner's pre-employment skills assessment activities so as to claim no employer-employment relationship existed.

Having found the period petitioner worked for respondent was not a period wherein petitioner's skills were being assessed, that Shelton had control over the work petitioner performed and the manner in which he performed it, that Shelton supplied petitioner with all the materials and equipment he needed to perform his job, and that Shelton could discharge petitioner at will, the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that an employer-employee relationship existed between petitioner and respondent CDJ Auto & Tow.

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

Petitioner alleges that he injured his left eye on 12/14/11 while working on a car in respondent's shop. Petitioner alleges that on 12/14/11 while working on a 1991 Alero, which he later changed to an Acura, a piece

of metal flew into his eye while he was cutting a piece of metal under the dash of the car. Petitioner testified that he reported the injury to Shelton. Shelton denied that petitioner reported any injury.

Shelton alleges that petitioner voluntarily left work on 12/16/11. Debbie Shelton testified that she heard Shelton ask petitioner to do a job on his own because he had to go do a tow. She stated that after Shelton left and she was in the office handling customer payments, petitioner grabbed his things and left without a word.

Petitioner did not seek treatment until 12/19/11. Although petitioner gave slightly different accident dates (12/14/11 and 12/15/11) petitioner did state the injury was caused when he was cutting aluminum and a piece flew into his eye. It is un rebutted that petitioner was working for respondent on various cars from 12/13/11 through 12/16/11. Shelton offered no evidence to rebut that history of injury petitioner performed. All Shelton testified to was that petitioner did not report any injury to him. He did not rebut that petitioner was performing the task he claimed he was performing when he was injured.

Based on the above, the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that he sustained an accidental injury that arose out of and in the course of his employment by respondent on 12/14/11.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE ALLEGED INJURY?

Having found the petitioner sustained an accidental injury to his left eye that arose out of and in the course of his employment by respondent on 12/14/11, the arbitrator finds petitioner's current condition of ill-being as it relates to his left eye is causally related to the injury he sustained on 12/14/11. The arbitrator finds the respondent offered no credible evidence to rebut petitioner's claim that the treatment he received for his left eye was related to the injury he sustained when a piece of metal flew into his eye while he was working for respondent on one of Shelton's customer's cars.

G. WHAT WERE PETITIONER'S EARNINGS?

Petitioner alleges that he was paid \$250 for the days of work he performed. He alleged that he was paid a percentage of the labor charges for each auto he worked on. Although Shelton denied he paid petitioner he agreed that other mechanics were paid 20% of the labor charges for each auto they worked on.

The arbitrator finds the petitioner was paid \$250 for the work he performed that week. As such the arbitrator finds the petitioner was paid an average weekly wage of \$250.

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?

Having found the petitioner sustained an accidental injury to his left eye that arose out of and in the course of his employment by respondent on 12/14/11, and that his current condition of ill-being as it relates to his left eye is causally related to the injury he sustained on 12/14/11, the arbitrator finds all treatment petitioner received at Methodist Medical Center of Illinois on 12/19/11, Comprehensive Emergency Solutions on 12/19/11, the Illinois Eye Center from 12/19/11-12/27/11, and IWP from 12/23/11-1/7/12 for his left eye was reasonable and necessary to cure or relieve petitioner from the effects of the injury he sustained on 12/14/11.

Based on the above, as well as the credible evidence, the arbitrator finds the respondent shall pay all bills for the reasonable and necessary treatment to petitioner's left eye from Methodist Medical Center on 12/19/11, Comprehensive Emergency Solutions on 12/19/11, the Illinois Eye Center from 12/19/11-12/27/11, and IWP from 12/23/11 and 1/7/12 pursuant to Sections 8(a) and 8.2 of the Act. The arbitrator denies the bill from Illinois Eye Center for 5/18/12 due to the fact that no medical records were offered into evidence to support a finding that this visit was causally related to the injury he sustained on 12/14/11. In fact no medical records for a visit to Illinois Eye Center on 5/18/12 were offered into evidence.

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Petitioner claims he was temporarily totally disabled from 12/21/11 to 1/3/12. Respondent claims the petitioner is not entitled any temporary total disability benefits based on liability due to the disputed issues.

Having reviewed the medical records of Methodist Hospital, as well as Illinois Eye Center, the arbitrator finds no specific off work authorizations issued by either healthcare provider. Dr. Hsu at Methodist Hospital gave petitioner instructions to not drive or operate machinery while his eye is patched, but also recommended that petitioner wear dark glasses for three days, and wear protective eye covering if his job or hobby involved the risk of eye injury, especially when working with high speed tools. He was also instructed to rest his eyes as much as possible for the next two weeks or while affected. Bed rest was recommended.

Petitioner was treated at Illinois Eye Center on 12/19/11 and 12/22/11. On 12/27/11 Dr. Allen noted that petitioner's left eye was healing well. Petitioner's bandage was removed. Petitioner was released on an as needed basis. The arbitrator finds there is nothing in Dr. Allen's records to support a finding that petitioner was ever authorized off work.

Based on the above, as well as the credible evidence the arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that he was temporarily totally disabled from 12/21/11 to 1/3/12. The arbitrator finds the petitioner's claim for temporary total disability benefits is denied.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

As a result of the injury petitioner sustained on 12/14/11 petitioner last received treatment for his injury on 12/27/11. At that time petitioner complained that his left eye was sensitive to cold, air and bright light. Dr. Allen noted that the redness was gone. Petitioner reported that his left eye felt slightly better. He complained that headlights irritate his eyes, and he complained of mild photophobia. Petitioner was prescribed Ocuflax and Ketorolac. He was prescribed one bottle and given 1 refill of each. Petitioner no longer takes this medication and has not followed-up with Dr. Allen since 12/27/11 despite some ongoing subjective complaints.

As a result of the accident on 12/14/11 the arbitrator finds the petitioner sustained a 2% loss of use of his left eye. Pursuant to Section 8.1b of the Act the arbitrator, in determining the level of permanent partial disability, bases her decision 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.

In the case at bar neither party offered into evidence the reported level of impairment pursuant to subsection (a). Petitioner is not currently employed, but has no restrictions that prevent him from pursuing work as a mechanic. Petitioner was 35 years old at the time of the injury. There is no credible evidence to support a finding that petitioner's future earning capacity was impacted by the injury on 12/14/11. When petitioner last saw Dr. Allen on 12/27/11 he complained that his left eye was sensitive to cold, air and bright light. Dr. Allen noted that the redness was gone. Petitioner reported that his eye felt slightly better. He complained that headlights irritate his eyes, and he complained of mild photophobia. Petitioner was prescribed Ocuflax and Ketorolac. He was prescribed one bottle and given 1 refill of each. He was instructed to follow-up as needed. Petitioner testified that he no longer takes this medication and has not followed-up with Dr. Allen since 12/27/11.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

James Vaughn,

Petitioner,

vs.

14IWCC0464

NO: 13 WC 08418

State of Illinois/ Shawnee Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, prospective medical expenses, causal connection, 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.

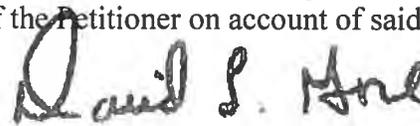
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 5, 2013 is hereby affirmed and adopted.

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

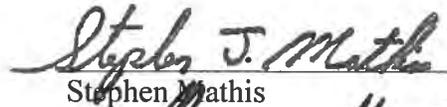
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the petitioner on account of said accidental injury.

DATED: JUN 13 2014

DLG/gaf
O: 5/28/14
45



David L. Gore



Stephen Mathis



Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

VAUGHN, JAMES

Employee/Petitioner

Case# 13WC008418

14IWCC0464

SOI/SHAWNEE CORR CTR

Employer/Respondent

On 12/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

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

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
FARRAH L HAGAN
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

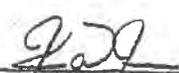
0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

DEC 5 2013




KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14 IWCC0464

James Vaughn

Employee/Petitioner

v.

State of Illinois/Shawnee Corr. Ctr.

Employer/Respondent

Case # **13** WC **8418**

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 **Gerald Granada**, Arbitrator of the Commission, in the city of **Herrin**, on **November 13, 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 ____

FINDINGS

14IWCC0464

On **September 24, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$58,080.00**; the average weekly wage was **\$1,116.92**.

On the date of accident, Petitioner was **35** years of age, *married* with **2** dependent children.

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

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical expenses as outlined in Petitioner's group exhibit. Respondent shall be given credit for any amounts previously paid through its group carrier and shall hold Petitioner harmless from any claims made by any healthcare providers for which it is receiving this credit, as provided in §8(j) of the Act.

Respondent shall pay Petitioner the sum of \$670.15/week for 3.34 weeks, because the injuries sustained caused the 2% loss of Petitioner's right foot, as provided in §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

11/25/13
Date

DEC 5 - 2013

FINDINGS OF FACT

At the time of the injury, Petitioner was a 35-year-old Correctional Officer at Shawnee Correctional Center. (AX1). On September 24, 2012, Petitioner was hurrying down the stairs to relieve another officer when he slipped and his right ankle rolled and popped. He stated: "I was moving, I mean, as fast as I could to get back down because, like I said, I've got two wings of 112 inmates each, and they're constantly out, and they're not the best guys in the world." He experienced immediate pain and suspected that his ankle was broken. He testified that the non-skid surface was long-ago worn off of the steps and that he did not indicate same on the incident report because it was common knowledge and he made only a brief statement on the report. He testified to no prior injury or treatment to his right foot or ankle.

Petitioner reported to Respondent's healthcare unit, who sent him to Heartland Regional. (PX3). X-rays showed no fracture. (PX3). Petitioner had a sprain.

Petitioner testified that he continues to experience pain and swelling in his ankle for which he takes over-the-counter medication. Changes in the weather and walking on concrete all day at work aggravate his symptoms.

CONCLUSIONS OF LAW

1. The Arbitrator finds that Petitioner sustained accidental injuries which arose out of and in the course of his employment with Respondent. Petitioner sustained injury on Respondent's premises due to a defective condition and was engaging in relied duties incidental to his employment at the time his injury occurred. There is no genuine dispute as to whether Petitioner was "in the course of his employment," as he was hurrying to relieve a fellow officer as required and return to his post. An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal relationship between the employment and the accidental injury. *Orsini v. Indus. Comm'n*, 509 N.E.2d 1005 (1987). Liability is imposed where an injury occurs as a direct result of a hazardous condition on the employer's premises. *USF Holland, Inc. v. Industrial Commission*, 357 Ill.App.3d 798, 829 N.E.2d 810 (1st Dist., 2005). citing *Caterpillar Tractor Co. v. Indus. Comm'n*, 541 N.E.2d 665 (Ill. 1989); see also *Archer Daniels Midland Co. v. Indus. Comm'n*, 437 N.E.2d 609, 610 (Ill. 1982); *Material Service Corp., Division of General Dynamics v. Industrial Commission*, 292 N.E.2d 367 (when conditions of the parking lot were a contributing cause to employee's death, employer was liable even though employee was not engaged in any work activity). Petitioner testified that the non-slip surface on Respondent's stairs had long been worn off, making them slippery and hazardous. The Arbitrator finds that this qualifies as a hazardous condition. Recovery is also permitted when the employee is exposed to a risk common to the general public to a greater degree than other persons. *Caterpillar Tractor Co. supra*. The Arbitrator notes that the particular prison stairs with the worn out non-slip surface are not a risk to which the public is equally exposed. Petitioner traverses this area daily during the course of his duties and is thereby exposed to this risk to a greater degree than the general public. Therefore the Arbitrator finds that Petitioner's injury "arose out of" his employment with Respondent. Based on the foregoing, Petitioner satisfies both the "arising out of" and "in the course of" requirements, and has met his burden in establishing accident.

2. The Arbitrator finds that Petitioner's current right ankle condition is causally related to his accidental injury. Petitioner testified to no prior injury or treatment to his right foot or ankle prior to the September 24, 2012 injury. Petitioner reported to Respondent's healthcare unit, who sent him to Heartland Regional. (PX 3). X-rays showed no fracture. Petitioner had a sprain. The Arbitrator notes that there is no medical testimony to establish

causation; however, a doctor's testimony is not required to establish causation and the extent of disability when there is a clear causal chain and the medical reports in the record corroborate the employee's testimony. *Gubser v. Industrial Commission*, 248 N.E.2d 75 (Ill. 1969); see also *Union Starch & Refining Co. v. Industrial Commission*, 224 N.E.2d 856, at 859. Here, the circumstantial evidence completely supports Petitioner's claim. There is no other evidence as Respondent did not have Petitioner examined or present any contrary medical evidence. The Arbitrator thus finds that Petitioner met his burden of proof on causation.

3. Based upon the above findings as to accident and causation, Petitioner is entitled to medical benefits under the Act. Petitioner received minimal medical care for his accidental injury, only one visit, thus there is no meritorious argument that such was unreasonable or unnecessary. Respondent shall therefore pay the medical expenses outlined in Petitioner's group exhibit. Respondent shall have credit for any benefits paid through group. Respondent shall indemnify and hold Petitioner harmless from any claims made by any healthcare provider for which it is receiving this credit.

4. Petitioner sustained serious and permanent injuries that resulted in the 2% loss of the right foot. No AMA impairment rating was submitted. Therefore, the Arbitrator considers the remainder of the factors pursuant to §8.1(b) of the Act: (i) the occupation of the injured employee - Petitioner is employed a Correctional Officer for Respondent at its Shawnee facility. Respondent's "Demands of the Job" form indicates that Petitioner climbs stairs for 4-6 hours per day and stands for 4-6 hours per day. (RX5). His job thus has a significant impact on his injury; (ii) the age of the employee at the time of the injury - Petitioner was 35 years old at the time of his injury; (iii) the employee's future earning capacity - there is no direct evidence of diminished future earning capacity in the record; and (iv) evidence of disability corroborated by the treating medical records - Petitioner sustained an ankle sprain, which is corroborated by the medical records and his testimony that he continues to experience pain and swelling in his ankle for which he takes over-the-counter medication.

Based upon the foregoing, Respondent shall pay Petitioner permanent partial disability benefits of \$670.15/week for 3.34 weeks, because the injuries sustained caused the 2% loss of Petitioner's right foot, as provided in §8(e) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input checked="" type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Verklan,

Petitioner,

14IWCC0465

vs.

NO: 05 WC 19198

Ahren's Concrete Paving, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, medical expenses, temporary total disability, vocational rehabilitation, permanent disability, and evidentiary rulings, hereby reverses the Arbitrator's Decision, and remands the case back to the Arbitrator for further proceedings consistent with this decision.

The Commission notes that at hearing, Respondent attempted to introduce into evidence surveillance videos taken of Petitioner. Petitioner objected and claimed that Respondent failed to lay a proper foundation for the videos. In response, Respondent provided the testimony of several employees of Factual Photo, the investigation firm hired to conduct surveillance of Petitioner. Daniel Lindblad (hereinafter "Lindblad") and Sam Carlman (hereinafter "Carlman"), the private investigators who took surveillance video of Petitioner, Michael Anderson (hereinafter "Anderson"), a field operations manager, and Betsy Bushre (hereinafter "Bushre"), a trial coordinator, testified regarding the surveillance videos taken of Petitioner and how videos are processed and prepared by Factual Photo.

In his decision, the Arbitrator granted Petitioner's objection and rejected the surveillance videos. The Arbitrator found that Respondent failed to establish a proper chain of custody and, as such, failed to lay a proper foundation for the admittance of the videos into evidence. The Arbitrator explained that:

“[h]aving reviewed both the courtroom testimony as well as subsequent deposition testimony from Respondent’s witnesses, it is clear that Respondent has not established a chain of custody as to the videos he wishes to enter into evidence. The object in question, a common videotape, CD, or DVD, is not an object that is fairly unique, readily identifiable and impervious to change. Although there are stickers affixed, no one has testified that the contents of the video are the same or unchanged from when they were originally shot. No one has testified that the stickers were not switched with some other video....A videotape or disc that is merely identified by a removable sticker is not unique, therefore Respondent must establish a chain of custody. This chain of custody must be of sufficient completeness to render it improbable that the object has either been exchanged with another or subjected to contamination or tampering. But in the present case, none of the witnesses could state with any certainty what chain of custody had been employed with these tapes and discs, nor could they verify that the contents had not been changed in some way.” (Arb.Dec.9)

The Arbitrator relied on *People v. Sanchez*, 363 Ill.App.3d 470 (2006), *People v. Irpino*, 122 Ill.App.3d 767, (1984), *People v. Winters*, 97 Ill.App.3d 288 (1981), and *Van Hattem v. Kmart Corp.*, 308 Ill.App.3d 121 (1999), in which the courts explained that an adequate foundation must be laid to establish that the item sought to be introduced into evidence is the actual item involved in the matter and that its condition is substantially unchanged. (Arb.Dec.8) The Arbitrator found that Respondent’s witnesses failed to establish with any certainty what chain of custody had been employed with the videos or verify that the contents of the videos were unchanged.

The Commission notes that the first three cases listed above are criminal cases. The Commission notes that in criminal cases, the chain of custody requirements are considerably stricter. Furthermore, the standard of proof in criminal cases is beyond a reasonable doubt.

The burden of proof for cases before the Commission is a preponderance of the evidence, a considerably less stringent burden of proof. Furthermore, as explained in *People v. Irpino*, 122 Ill.App.3d 767, 775 (1984), the court explained that:

“A sufficient chain of custody does not require every person involved in the chain to testify; nor must the State exclude all possibilities that the article may have been subject to tampering. (*People v. Winters* (1981), 97 Ill. App. 3d 288, 295, *cert. denied* (1982), 455 U.S. 923, 71 L. Ed. 2d 464, 102 S. Ct. 1282.) Where one link in the chain is missing but testimony describes the condition of the evidence when delivered which matches the description of the evidence when examined, the evidence suffices to establish a continuous chain of custody. (See *People v.*

14IWCC0465

Gustowski (1981), 102 Ill. App. 3d 750, 753; *People v. Tribett* (1981), 98 Ill. App. 3d 663, 674; *cf. People v. Maurice* (1964), 31 Ill. 2d 456, 458.) The State's burden only requires it to demonstrate a reasonable probability that the exhibit has not been changed in any important respect. (*People v. Stevenson* (1980), 90 Ill. App. 3d 903, 909; *People v. Valentin* (1978), 66 Ill. App. 3d 488, 492.)”

The Commission notes that in the case at bar, Lindblad and Carlman testified, in detail, as to their surveillance of Petitioner. The Commission further notes that they testified that the videos remained substantially unchanged from when they took them and accurately depict their surveillance of Petitioner. Lindblad and Carlman were also asked to review the markings they made on the videos and verified that they made the markings on the videos once they finished their surveillance assignment. The Commission further notes that Bushre and Anderson testified, also in detail, regarding the process involved at Factual Photo for preparing and preserving surveillance videos for trial.

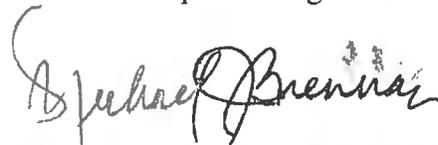
After reviewing the testimony of Lindblad, Carlman, Bushre, and Anderson, the Commission finds that there is nothing in the record to indicate that the videos have been tampered with or altered. The Commission further finds that the testimony of Lindblad and Carlman establish that the videos accurately depict their surveillance of Petitioner and what Petitioner did during the surveillance. Therefore, the Commission finds that the Arbitrator erred in not allowing the surveillance videos into evidence. The Commission further finds that because the causation of opinions of Dr. Skaletsky and Dr. Itkin, Respondent’s Section 12 examiners, relied, in part, on the surveillance videos, the Arbitrator’s decision to exclude the videos from consideration in the case constituted reversible error.

Therefore, based upon our finding of reversible error in this matter, the Commission hereby reverses the Arbitrator’s Decision and remands the case back to the Arbitrator for the sole purpose of admitting the surveillance videos into evidence. Once admitted, the Arbitrator shall reconsider the case and issue a decision considering all of the evidence in the record, including the surveillance videos. The Arbitrator will not take or consider any other new or different evidence.

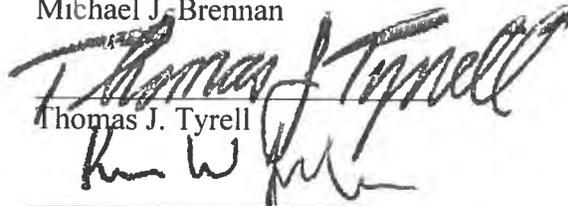
IT IS THEREFORE ORDERED BY THE COMMISSION that that the Decision of the Arbitrator is reversed and the case remanded for further proceedings consistent with this decision.

DATED: JUN 13 2014

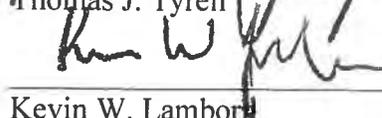
MJB/ell
o-05/20/14
052



Michael J. Brennan



Thomas J. Tyrell



Kevin W. Lamborn

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="checkbox"/> up	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

NOMA MELTON,

Petitioner,

14IWCC0466

vs.

NO: 10 WC 36370

CITY OF CHICAGO,

Respondent.

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 permanent partial disability 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.

The Commission modifies the Decision of the Arbitrator and finds that the Petitioner is entitled to a wage differential award commencing August 1, 2011, not August 1, 2012. The August 1, 2012 date was nothing more than a simple scrivener's error. The totality of the evidence supports August 1, 2011 as the commencement date for the wage differential award.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 24, 2013, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$807.78 per week for a period of 39-3/7 weeks from August 18, 2010 through May 20, 2011, 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 \$807.78 per week for a period of 10-2/7 weeks from May 21, 2011 through July 31, 2011, that being the period for which Petitioner is entitled to maintenance benefits under the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$542.66 per week, commencing August 1, 2011 and continuing for the duration of Petitioner's disability, as the injuries sustained caused a loss of earning, as provided in Section 8(d)(1) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$44.85 for medical expenses under §8(a) of the Act, and subject to the medical fee schedule.

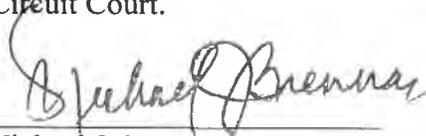
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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

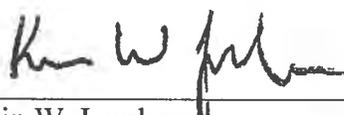
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 13 2014

MJB/tm
O: 5/20/14
052



Michael J. Brennan



Kevin W. Lamborn



Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

NOTICE OF ARBITRATOR DECISION

CORRECTED

14IWCC0466

Case# 10WC036370

MELTON, NOMA

Employee/Petitioner

CITY OF CHICAGO

Employer/Respondent

On 5/3/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

0154 KROL BONGIORNO & GIVEN LTD
GUY R SPAYTH JR
120 N LASALLE ST SUITE 1150
CHICAGO, IL 60602

0113 CITY OF CHICAGO-DEPT OF LAW
DANIEL NIXA
30 N LASALLE ST ROOM 800
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED DECISION
NATURE AND EXTENT ONLY

Noma Melton
Employee/Petitioner

Case # 10 WC 36370

v.

Consolidated cases: N/a

City of Chicago
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Chicago**, on **1/24/13**. By stipulation, the parties agree:

On the date of accident, **8/17/10**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned **\$63,005.80**, and the average weekly wage was **\$1,211.65**.

At the time of injury, Petitioner was **60** years of age, *single* with **0** dependent children.

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

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

The respondent has paid the petitioner temporary total disability benefits of \$ 807.78 / week for 39 3/7ths weeks, from 08-18-10 through 05-20-11 totalling \$ 31,843.85, which is the period of temporary total disability for which compensation is payable.

The respondent has paid the petitioner maintenance benefits of \$ 807.78 /week for 10 2/7ths weeks, from 05-21-11 through 07-31-11. Totalling \$ 8,308.90, which is the period of maintenance for which compensation is payable.

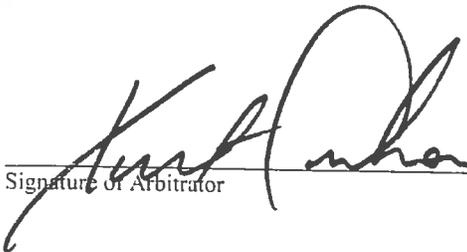
The respondent shall pay the petitioner the sum of \$ 542.66 week, commencing on 08-01-12 and continuing for the duration of the disability, because the injuries sustained caused a loss of earnings, as provided in Section 8(d)1 of the Act.

Necessary medical services have been paid by the respondent, except for the bill from CPR Medical Products totaling \$44.85 (PX #8), which petitioner paid for out of pocket. Respondent has agreed to reimburse petitioner for that bill. (AX #1)

Respondent shall pay Petitioner compensation that has accrued from 08-17-10 through 01-24-13, and shall pay the remainder of the award, if any, in weekly payments.

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

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



Signature of Arbitrator

05-02-13

Date

MAY - 3 2013

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

14IWCC0466

**BEFORE THE WORKERS' COMPENSATION COMMISSION
OF THE STATE OF ILLINOIS**

NOMA MELTON,)
)
 Petitioner,)
)
 vs.) No. 10WC 36370
)
 CITY OF CHICAGO,)
)
 Respondent.)

MEMORANDUM OF DECISION OF ARBITRATOR

The only issue in dispute between the Parties is the nature and extent of Petitioner's injuries. (Arb. Exh. 1.) The Parties agree that Petitioner, Noma Melton, was injured in an accident at work on August 17, 2010. (*Id.*) Petitioner filed her Application for Adjustment of Claim with the Commission on September 22, 2010 (*Id.*)

Findings of Fact

Petitioner, Noma Melton, is a 62 year old retired City of Chicago employee. On the date of the accident Petitioner was employed as a laborer for the City of Chicago's Streets and Sanitation Department. Petitioner was injured when the City truck she was driving in drove over a pot hole, which caused it to bounce up and down, injuring her lower back and right elbow.

Medical Treatment

Petitioner was treated at Mercy Works on the date of the accident. She saw Dr. Homer Diadula, and complained of lower back and elbow pain. She was diagnosed with lumbar strain and elbow contusion. Petitioner underwent five sessions of physical therapy at Mercy Works. She had an MRI of the lumbar spine on September 8, 2010. The MRI showed diffuse lumbar spondylolisthesis with associated degenerative disc disease. Petitioner continued with physical therapy.

Petitioner was referred to Dr. Fisher on September 30, 2010. Dr. Fisher saw Petitioner on October 20, 2010, and diagnosed her with spondylolisthesis, L5 bilateral para defect, lumbago, bilateral extremity radiculopathy. He recommended an epidural steroid injection, which Petitioner received on November 2, 2010. Petitioner received two additional epidural steroid injections, one on November 2, 2010 and March 3, 2011.

Dr. Fisher recommended lumbar fusion surgery; however, Petitioner decided she did not want to undergo any surgery.

On March 17, 2011, Petitioner followed up with Dr. Fisher, who recommended a functional capacity evaluation ("FCE"). She reported low back pain at 3.5 out of 10. Dr. Fisher's office notes indicate that Petitioner was at maximum medical improvement ("MMI") absent surgery. He indicated she was to remain off work pending the results of the FCE.

On April 5, 2011, Petitioner underwent an ("FCE"). The FCE was considered valid and Ms. Melton performed at the medium physical demand level. The FCE indicated that Ms. Melton could perform jobs that required occasional lifting of 35 pounds, with no repetitive bending, twisting, or lifting, and occasional walking.

Petitioner last saw Dr. Fisher on May 19, 2011. Dr. Fisher released Petitioner to return to work with restrictions of no lifting over 35 pounds occasionally, and no repetitive bending. Dr. Fisher also stated "see FCE." On the return to work form that Dr. Fisher signed, he did not prohibit Petitioner from "prolonged walking." And he did not indicate that Petitioner was required to do sedentary work. Dr. Fisher recommended that Petitioner follow up as needed.

Petitioner's Job Search

Petitioner was informed that the City would not be able to accommodate her restrictions.

Petitioner testified that from late May 2011 to late July 2011 she conducted her own, independent job search. During this time, she testified that she contacted a number of employers in person to ask if they were hiring, but only filled out one application. Petitioner submitted one job application to "Human Services" and was called back for an interview. Petitioner did not hear back after the interview.

Petitioner retired from the City after 25 years of service on July 31, 2011. She testified that she receives her pension from the City.

Petitioner testified that absent her work injury, she would have liked to work five more years. But she did not plan to work any longer than that.

Expert Rehabilitation Reports

Respondent admitted into evidence the vocational assessment of Natalie Maurin and a labor market survey demonstrating the wage Petitioner would be able to earn in the labor market given her restrictions. Petitioner introduced a vocational assessment, but did not introduce a labor market survey.

Respondent's Vocational Assessment

Respondent's vocational assessment was completed by certified rehabilitation consultant Natalie Maurin at MedVoc. It was completed on November 21, 2012. Ms. Maurin noted Petitioner's age and biographical information, which included completion of her G.E.D and security guard training in 1984. She further noted Petitioner's prior work history was as follows:

1. 1986 to 1990 - Security detail for the City of Chicago. Ms. Melton was promoted to sergeant. Per the Dictionary of Occupational Titles, this position is considered light demand and skilled in nature.
2. 1990 to 1998 - Watchman and Watchmen Supervisor. Ms. Melton worked as a patrol watchmen at Midway and O'Hare Airports. She went on patrols and did desk work. Per the Dictionary of Occupational Titles, this position is considered light in nature and unskilled.
3. 1998 to 2010 Laborer for City of Chicago Department of Streets and Sanitation. Ms. Melton performed a multitude of tasks including working parades, working behind garbage trucks, and picking up dead animals. Per the Dictionary of Occupational Titles, this would be considered medium demand and semi-skilled labor.

Ms. Maurin concluded that Petitioner would be a candidate for positions such as dispatcher, unarmed security and unarmed security supervisor. Ms. Maurin also stated that Petitioner would benefit from participating in some keyboarding and computer classes to develop her skills.

Labor Market Survey

Respondent introduced a labor market survey completed by Natalie Maurin at MedVoc. The Labor market survey indicated that 28 prospective employers

were contacted, 16 of which responded. Of the 16 that responded, 15 indicated that they would consider Ms. Melton for employment given her background, education, and physical capabilities. One employer indicated that it would not hire Ms. Melton.

The Labor Market Survey concluded that the wages ranged from \$8.25 per hour to \$20.25 per hour. The average wage range for these positions is \$12.10 per hour to \$14.10 per hour. The Mean wage is \$13.10 per hour. MedVoc noted that these were entry level wages, and that Ms. Melton could anticipate an increase with advancement and promotion.

Arbitrator's Conclusions

Petitioner Failed to Prove She Is Permanently and Totally Disabled Under 8(f) of the Act

While Petitioner argued for a finding of permanent and total disability under 8(f) of the Act, the Arbitrator finds she failed to meet her burden of proof.

If an employee can perform some form of employment without seriously endangering health or life, he or she is not entitled to a total disability award. *A.M.T.C. of Illinois, Inc. v. Industrial Commission*, 397 N.E.2d 804 (1979).

A petitioner can prove a total, permanent disability in one of three ways:

- 1.) If the petitioner's medical condition makes him or her obviously unemployable.
- 2.) If the petitioner's disability is limited in nature so that he or she is not obviously unemployable, or there is no medical evidence to support a claim of total disability, the burden is on the petitioner to establish the unavailability of employment to a person in his or her circumstances. If so proven, the burden shifts to the employer to demonstrate that suitable work is available on a regular and continuous basis.
- 3.) If the petitioner fails to make out a prima facie case of odd-lot total permanent disability, then the petitioner must demonstrate that given his or her condition and in light of his or her age, training, experience, and education, he or she is permanently and totally disabled. *This can be accomplished by a showing of diligent but unsuccessful attempts to find work.*

ABB C-E Services v. Industrial Commission, 316 Ill.App.3d 745 (emphasis added).

Here, Petitioner has failed to prove permanent and total disability under any of the three methods above. First, Petitioner did not prove by a preponderance of the medical evidence that her condition makes her obviously unemployable: The petitioner was released at maximum medical improvement with a 35 Pound lifting restriction, and is not medically permanently, totally disabled.

The appellate court has made it clear that “[i]f a claimant’s physical disability is limited in nature so that he is not obviously unemployable, then it is not unreasonable that the burden be upon him to establish the unavailability of work to a person in his circumstances. This burden can be met by showing that reasonable efforts were made to secure suitable employment.” *A.M.T.C* 397 N.E.2d at 807.

Here, the Arbitrator finds that Petitioner did not make reasonable efforts to find suitable employment. Rather, she chose to retire from the City and collected her Pension after 25 years of service. Indeed, she testified that had she not been injured, she only planned to work another five years. Petitioner also admitted that her job search consisted of visiting several employers in person, but she only submitted one actual job application. And, after she submitted this application, she actually obtained an interview (but not a job).

Both the labor market survey and Respondent’s vocational assessment demonstrate that Petitioner would be a candidate for several jobs, and therefore is not permanently disabled. Petitioner was released by her physician with a 35 pound lifting restriction, and no bending. Her physician did not restrict her from walking, and expressly declined on the work-release form to check “sedentary work only.” The vocational assessment completed by MedVoc concludes that Petitioner could perform work at a medium physical demand level, and recommended several jobs that would be considered light duty for which she would be qualified, including dispatcher, unarmed security, and unarmed security supervisor positions. Moreover, Petitioner has experience in these positions prior to her work as a laborer for the City. She attained the rank of sergeant as a security guard, and had training as well.

In so holding, the Arbitrator further finds that the labor market survey and Respondent’s vocational assessment are more credible than the vocational assessment submitted by Petitioner. Petitioner’s vocational assessment mistakenly states Ms. Melton can only perform sedentary work — an assumption that is not supported by the record and collides head-on with the written restrictions imposed by her physician. Moreover, Petitioner’s vocational

assessment fails to mention the training Ms. Melton received as a security guard, and glosses over her significant, prior work experience as a watchman and security guard. Accordingly, the Arbitrator finds the labor market survey and Respondent's vocational assessment to be more credible.

Petitioner is Entitled to A Wage Differential Award Under 8(d)1

When an employee has permanently reduced earnings, the Act favors wage differential claims under Section 8(d)1. Here, the Arbitrator finds that the evidence, including Petitioner's work restrictions, and the labor market survey and vocational reports, establish that Petitioner is entitled to a wage differential award.

The Arbitrator finds that Petitioner proved that her wage at the time of the hearing would be \$33.45. The Arbitrator further finds that based on the labor market survey, Petitioner would be able to earn \$13.10 per hour in suitable employment, resulting in a wage loss of \$814 per week. Under Section 8(d)1 of the Act, Petitioner would, therefore, be entitled to \$542.66.

was \$4,260.29. The Arbitrator found that in Px6, treatment for Petitioner's right knee amounted to \$3,854.84 and she awarded this amount subject to the medical fee schedule. The Arbitrator denied medical expenses for treatment of Petitioner's left knee condition. Regarding nature and extent of permanent disability, the Arbitrator noted that Petitioner had undergone two right knee surgeries, 1) arthroscopic repair of the torn right medial meniscus and patella chondromalacia shaving and 2) right total knee replacement. The Arbitrator awarded permanent disability of 65% loss of use of the right leg, 139.75 weeks at \$619.97 per week.

Petitioner filed a timely review of the Arbitrator's Decision. In a Decision and Opinion of Review dated September 13, 2011, the Commission affirmed and adopted the Arbitrator's Decision. Petitioner appealed to the Circuit Court of Lake County and Judge Starck issued his remand Order on January 23, 2013.

The Commission, after due consideration, affirms the Decision of the Arbitrator for the reasons set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner, a 67 year old salesman at the time of his accident, testified that he has been selling high-line motor homes for 37 years. At the time of the hearing he worked for Respondent and was so employed on July 15, 2006, a Saturday (Tr 8). On that date, Petitioner accompanied a customer on a test drive of a large used diesel motor home. As the customer drove into the driveway at the dealership, the motor home engine quit and was traveling 30 miles per hour with no power steering or power brakes. The motor home hit a building while traveling 25 miles per hour (Tr 9). As a result of this, Petitioner hurt his right knee (Tr 9). He was hoping the pain in his right knee would go away, but it did not (Tr 10).

Petitioner testified he saw Dr. Hall on Monday, July 17, 2006. Petitioner had previously treated with Dr. Hall (Tr 10). His right knee hurt and he could not bear weight on it (Tr 10-11). Dr. Hall examined his right knee and recommended a MRI be done (Tr 11). After undergoing the right knee MRI, Petitioner returned to Dr. Hall, who reviewed it and recommended arthroscopic surgery (Tr 11). From the time of the July 17, 2006 motor vehicle accident when he could not put weight on his right knee, Petitioner was not doing anything with his left knee and his left knee was fairly fine and he had no problem with it (Tr 11).

Petitioner testified he saw Dr. Hall on August 4, 2006 to have injections in his left knee (Tr 12). Petitioner testified, "Q And the reason you had injections in your left knee was because after the crash you were walking different, correct? A Yes, it was because I was favoring the right one, then the left one started to hurt a little bit. So Dr. Hall had recommended this product called Sinfed (phonetic) and it's series of injections into the joint. And he said it's not a cure-all, but it sometimes helps quite a bit." (Tr 12). Petitioner explained that as a result of the crash, his right knee was injured and he was favoring his right knee (Tr 13). As a result of that, he was walking differently with his left knee (Tr 13). Before he had right knee surgery, Dr. Hall

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recommended injections to his left knee because he was complaining of pain in his left knee also (Tr 14). Before the crash, he was not complaining of pain in his left knee (Tr 14).

Dr. Hall performed right knee arthroscopic surgery on August 8, 2006 at Northern Illinois Medical Center (Tr 14). He then was off work for a while and did not receive TTD benefits (Tr 15). On August 14, 2006, Petitioner followed up with Dr. Hall for his right knee and the doctor injected his left knee, the first in a series of three (Tr 16). Dr. Hall gave him the second left knee injection on August 21, 2006 and the third left knee injection on September 11, 2006 (Tr 17).

Petitioner testified regarding his left knee condition prior to the July 15, 2006 accident. In 2002, he underwent a left knee arthroscopy by Dr. Elstrom, Dr. Hall's partner (Tr 17). Petitioner stated that after this arthroscopy, his left knee seemed to work very well and did not give him much trouble (Tr 17). Petitioner did not recall having any left knee treatment after the 2002 arthroscopy and before the July 15, 2006 accident (Tr 18).

Petitioner returned to work 4 or 5 days after the August 8, 2006 right knee arthroscopy (Tr 18). He then periodically followed up with Dr. Hall (Tr 18). In December 2006, Dr. Hall recommended injections into his right knee and Petitioner agreed (Tr 19). Petitioner stated that Dr. Hall also recommended he undergo a right total knee replacement (Tr 19). Petitioner received right knee injections on December 4, 11, 18 and 26, 2006 (Tr 19). Each injection helped for a couple weeks, but then wore off and the pain came right back (Tr 20). It was then that Dr. Hall recommended a right total knee replacement (Tr 20).

On October 14, 2008, Petitioner underwent a right total knee replacement (Tr 20). He was off work from November 1, 2008 through November 14, 2008 (Tr 20). On November 14, 2008, Petitioner underwent a left total knee replacement performed by Dr. Hall (Tr 20-21). Petitioner testified he was off work another couple weeks (Tr 21). He returned to work on December 1, 2008 (Tr 21). He did not receive TTD benefits (Tr 22). Petitioner attended post-operative physical therapy and worked part-time during that time. Dr. Hall discharged Petitioner from his care on January 26, 2009 (Tr 24). Petitioner was shown medical bills from his surgeries, Px5. Petitioner testified those bills had been paid by his group health insurance provided through Respondent (Tr 25). Petitioner identified Px6 as medical bills paid out of his pocket totaling \$4,260.29 (Tr 25).

Petitioner testified that he currently noticed his right knee was sore and completely usable. If he was sedate for any period of time, the first 20 to 30 steps were extremely painful, but it was workable. It was a lot better than it was and was quite good (Tr 27). At night, he tossed and turned quite a bit from knee pain (Tr 28). He continually changed position in bed to get into a different position, but it was livable (Tr 28). In cold weather his right knee hurts (Tr 28). Doing stretching exercises helped quite a bit. Petitioner testified he walked every day for 35 or 40 minutes with his wife and he rode a bicycle for 20 minutes, which seemed to help quite a bit (Tr 28). It was very hard to cross his leg to tie his shoe (Tr 29). When he first awakened daily, his right leg was very stiff and it took 20 or 30 minutes to limber (Tr 29). He has never not had that limbering-up period since the right knee replacement (Tr 29).

Regarding his left knee, Petitioner noticed that it seemed to have a little more mobility than his right knee (Tr 29). The left knee has the same symptoms as the right knee, but not quite as severe (Tr 30). Regarding his sleeping ability, the left knee was the same as the right knee, but not quite as severe (Tr 30). The same was true for cold weather (Tr 30). Limbering-up in the morning was half as bad as the right knee (Tr 31). The left knee took about 15 minutes to limber-up in the morning (Tr 31). Since the left total knee replacement, Petitioner has not had a day without having to limber-up his left knee (Tr 31). Regarding both knees being replaced, it was not quite as easy as it used to be to do things that he once did (Tr 31). Petitioner has a sports car and it is hard to wash and wax it (Tr 31). He did this on the Monday before this hearing and was in great pain all day (Tr 31). It is discomfoting, but better than it was (Tr 31). Petitioner cannot run. He will be able to kneel in a couple years (Tr 33). He can kneel on a pillow, but it hurts to do so (Tr 33). There is some stiffness, but it is a lot better than it was (Tr 34).

On cross-examination, Petitioner testified he was 70 years old at the time of the hearing. He worked full time on July 15, 2006 (Tr 34). He has worked for Respondent for 37 years. The owner of Respondent is not a member of his family (Tr 34-35). Petitioner's son also works at Respondent (Tr 35). Petitioner testified he did sustained direct trauma to his right knee in the July 15, 2006 motor vehicle accident and also got a minor cut on his hand (Tr 35). He had no prior right knee injuries (Tr 35). He underwent a prior left knee surgery by Dr. Elstrom in 2002 (Tr 36). Dr. Elstrom and Dr. Hall are partners (Tr 36). The need for the 2002 left knee surgery might have been from arthritis (Tr 37). At that time, Petitioner was very active and liked to run (Tr 37). He did not run marathons (Tr 37). Petitioner then testified that he fell out of a motor home and twisted his left knee and over a long period of time his left knee got worse and it was arthroscoped in 2002 (Tr 37). Dr. Elstrom did not talk about any left knee total replacement in 2002 (Tr 38). After the 2002 surgery, Petitioner did not follow-up with Dr. Elstrom for periodic treatment (Tr 38). In March 2005, Petitioner sprained his right ankle and hurt his left knee a little bit. At that time, he saw Dr. Hall who prescribed medications (Tr 38).

Petitioner testified he received his first injection to his left knee after the right knee arthroscopy (Tr 39). Shortly after the right knee total replacement, Petitioner underwent the left knee total replacement surgery (Tr 40). He returned to work part-time after the knee replacement surgeries (Tr 40). A month before the arbitration hearing, Petitioner became eligible for Medicare (Tr 41). He does not have a pension (Tr 41). After the surgeries, he returned to work part-time for 2 or 3 weeks and then returned to full time at 52 hours a week. He currently works part-time at 4 or 5 days a month (Tr 41-42). About 6 months ago, he dropped from full time to part-time at 32 hours a week. He retired completely on December 11, 2009 (Tr 42). Petitioner does get called back to work about 4 to 6 days a month since retiring (Tr 42). Based on his age, Petitioner decided to go from full-time to part-time (Tr 42).

Petitioner testified he does not currently use a cane or a walker. He owns a sports car with a manual transmission stick shift and uses his left leg to work the clutch. The car is low to the ground and very hard to get in and out of (Tr 44). Petitioner thought Dr. Hall has discharged him from care (Tr 45). He last saw Dr. Hall in January 2010 (Tr 46). He takes medications prescribed by Dr. Hall and just refilled his medications the week before the hearing (Tr 46). Both knees were quite severe before the total knee replacements (Tr 46). He does not have arthritis in any other part of his body (Tr 47). As a salesman, Petitioner waits on an average of

two people a day (Tr 48). Once a day he would be moving and looking at the RVs on the 18 acre lot, which was very hard to do. He did not maintain or clean the RVs (Tr 49).

On re-direct examination, Petitioner testified that before the right knee arthroscopy, Dr. Hall had recommended left knee injections. He had left knee injections after the right knee arthroscopy (Tr 49). On re-cross examination, Petitioner testified that he did not sustain any direct trauma to his left knee in the July 15, 2006 motor vehicle accident (Tr 50).

2. According to the medical records of Dr. Elstrom and Dr. Hall, Px1, Petitioner was seen on January 10, 2002 by Dr. Elstrom, who noted Petitioner complained of left knee pain which began one month before this visit. Dr. Elstrom diagnosed a left knee medial meniscal tear and prescribed medications. Petitioner reported to Dr. Elstrom on February 25, 2002 that he had no improvement with prescribed medications. On examination, Dr. Elstrom found no effusion, but there was some tenderness in the medial joint line. Dr. Elstrom suspected a meniscal tear. X-rays were taken and showed some mild medial joint line narrowing. Dr. Elstrom injected Petitioner's left knee and noted he may need a left knee arthroscopy.

Petitioner saw Dr. Hall on March 8, 2002 and reported he had sustained an inversion injury to his right ankle on March 5, 2002 and that x-rays showed a fracture. Dr. Hall diagnosed a right lateral ankle sprain. Dr. Hall noted that Petitioner was scheduled to see Dr. Elstrom and he would be seen for his right ankle and left knee. Petitioner reported that after injections his left knee was doing quite well. On March 18, 2002, Dr. Elstrom noted that Petitioner wanted out of the equalizer boot. Petitioner walked with a normal gait. Dr. Elstrom discontinued use of the equalizer boot and prescribed physical therapy for strengthening. Dr. Elstrom noted Petitioner's left knee was improved with injections he had 3 weeks before, but if his symptoms flared-up, he would probably need an arthroscopy. On April 11, 2002, Petitioner reported to Dr. Elstrom that his left knee flared-up again. Dr. Elstrom aspirated and injected the left knee. Petitioner's right ankle was stiff and the fracture was healing. Dr. Elstrom aspirated his left knee again on June 25, 2002 and scheduled an arthroscopy. On October 10, 2002 Dr. Elstrom noted that a left knee arthroscopy, debridement and medial meniscectomy for a very complex tear of the medial meniscus was done on October 2, 2002. Petitioner reported his pain was greatly improved. He was using crutches. Dr. Elstrom noted that he told Petitioner that he may be able to avoid a left total knee replacement for some time to come. Dr. Elstrom prescribed medications and light exercises. On October 17, 2002, Dr. Elstrom noted that Petitioner reported being 50% better with arthroscopy. Petitioner walked with a normal gait. Dr. Elstrom noted that Petitioner did have substantial medial compartment wear and he may need a future Hyalgan or cortisone injection. Petitioner was to increase his exercises.

3. On March 7, 2005, Petitioner saw Dr. Hall for complaints of 1) pain in the mid tarsal region of right foot since March 2004 and 2) left knee pain primarily on the medial side. On left knee examination, Dr. Hall found extension to 0°, flexion to 110°, no effusion, tenderness along the medial joint line and the collateral ligaments were intact. Right foot x-rays were taken and showed severe degenerative arthritis within the mid tarsal region. Left knee x-rays were taken and showed severe degenerative arthritis with genu varum habitus. Dr. Hall recommended a series of Hyalgan injections for the left knee.

4. Petitioner did not see Dr. Hall again until July 17, 2006. On that date, Petitioner reported he had twisted his right knee on July 15, 2006 and had quite a bit of discomfort initially, but this had improved. Dr. Hall noted that Petitioner had underlying osteoarthritis of his right knee. On right knee examination, Dr. Hall found extension to 0°, flexion to 120°, no effusion, tenderness over the posteromedial joint line and his collateral ligaments were intact. Dr. Hall diagnosed a right knee strain and possible medial meniscus tear. Dr. Hall prescribed medications and noted that if Petitioner was no better, he would get x-rays and a MRI. There was no mention of Petitioner's left knee.

On July 29, 2006, Petitioner reported to Dr. Hall that he had improvement of his right knee through July 26, 2006, but that since then he had extreme pain in the right knee and difficulty extending it. On right knee examination, Dr. Hall found no effusion, a lack of 5° of full extension, flexion to 95° and pain along the posteromedial joint line. Dr. Hall ordered a right knee MRI. On August 2, 2006, Dr. Hall noted that he had reviewed the right knee MRI, which showed a tear within the posterior horn of the medial meniscus and a strain of the medial collateral ligament. Petitioner reported continued difficulty with his right knee. On examination, Dr. Hall found range of motion 0° to 100°, no effusion, tenderness along the MCL and along the posteromedial joint line. A right knee arthroscopy was scheduled for August 8, 2006. Petitioner was to return on August 4, 2006 for his pre-operative history and physical examination. There was no mention of Petitioner's left knee.

5. In a difficult to read handwritten note dated August 4, 2006, Dr. Hall noted Petitioner's right knee range of motion and listed his medications. Dr. Hall also noted Petitioner's left knee arthroscopy in 2002 and the words "Supartz left knee" were circled. The Commission notes that this is the first mention in the medical records of Petitioner's left knee after the July 15, 2006 accident and no history is noted of left knee involvement in that accident.

On August 8, 2006, Petitioner underwent a right knee arthroscopic debridement and medial meniscectomy. On August 9, 2006, the following is noted, "no preaut for Supartz pt notified will look at his schedule then call to schedule first shot/ can't be seen for wc injury & injection on same day wc won't pay if something else was done – pt notified of this."

On August 11, 2006, Dr. Hall noted that Petitioner was wearing a right knee immobilizer. Petitioner reported his right knee pain was improved. He was to bear weight as tolerated. There was no mention of Petitioner's left knee.

6. On August 14, 2006, Dr. Hall noted that Petitioner returned for his first Supartz injection to his left knee and was to return in one week for a second injection. On September 11, 2006, Dr. Hall noted that Petitioner returned for the fifth and final Supartz injection to his left knee. The injection was given. Dr. Hall noted that Petitioner was discontinued from care regarding this issue and he was to be seen as needed.

7. On October 11, 2006, Dr. Hall noted that Petitioner was two months post right knee arthroscopy. Petitioner reported he continued to have some medial right knee pain and increased warmth in that area and was tender along the medial joint line. X-rays showed mild diminishment of the medial joint line. Dr. Hall injected the right knee with DepoMedrol and

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Xylocaine. Dr. Hall noted, "With regard to the left knee, he is feeling much better having completed a Supartz injection series."

Petitioner reported to Dr. Hall on October 25, 2006 that his right knee was somewhat improved following the cortisone injection. On right knee examination, Dr. Hall found range of motion 0° to 120°, no effusion, mild joint line tenderness and some warmth. Dr. Hall again injected the right knee with DepoMedrol and Xylocaine. Petitioner was to follow-up in one month and if he still had right knee symptoms, he would start a series of Supartz injections to his right knee. Dr. Hall gave Petitioner Supartz injections to his right knee on December 4, 11, 18 and 26, 2006 and on January 2, 2007.

8. Petitioner did not see Dr. Hall again until June 9, 2008. In a Patient History form on that date, Petitioner wrote, "Complaint: Both knees to be replaced. Date of onset/injury: 3 years ago. Where?: work. How did the injury happen? Accident." In his office notes, Dr. Hall noted a history of the July 15, 2006 accident and his treatment of the right knee. Dr. Hall noted that Petitioner felt the accident aggravated an underlying arthritic condition within his right knee. Dr. Hall noted that Petitioner reported that prior to the accident he had unlimited ambulation that was comfortable and after the accident his ambulation was greatly decreased and he is now able to walk less than one block without incurring great discomfort. Right knee range of motion was more limited since the accident and sleeping was very difficult as the pain in the right knee periodically awakened him during the night. On right knee examination, Dr. Hall found extension 0°, flexion 105°, mild effusion and joint line tenderness both medially and laterally. Dr. Hall diagnosed right knee osteoarthritis. Dr. Hall recommended a right knee total replacement and scheduled this for October 14, 2008. In a To Whom it May Concern letter dated June 9, 2008, Px4, DepEx1, Dr. Hall opined that the July 15, 2006 accident aggravated Petitioner's underlying right knee arthritis and that a right knee total replacement was scheduled. In a telephone call on August 14, 2008, Petitioner complained of increased right knee pain. He was prescribed medications on this date and on September 2, 2008. Petitioner underwent a right knee total replacement on October 14, 2008.

9. Dr. Hall noted on October 29, 2008 that Petitioner was two weeks post right knee total replacement and the x-rays that were taken showed satisfactory alignment of the prosthesis. Petitioner reported he was nearly full weightbearing and Dr. Hall admonished him to not fully weightbear and continue to at least use a cane. Dr. Hall noted that Petitioner was scheduled for a left knee total replacement on November 12, 2008. On November 14, 2008, Petitioner underwent a left knee total replacement performed by Dr. Hall. On November 28, 2008, Dr. Hall continued physical therapy and use of a cane. Dr. Hall saw Petitioner on December 10, 2008 and noted he complained of pain in the posteromedial aspect of the left knee, especially with activity. It was worse at the end of the day with some swelling. Left knee range of motion was 0-105° and there was no effusion. Dr. Hall prescribed medications and continued physical therapy. Petitioner was to drop back his activity level. On January 8, 2009, Petitioner reported to Dr. Hall that overall he had noticed quite a bit of improvement and was particularly helped by post-operative physical therapy. On examination, Dr. Hall found range of motion for both knees extension 0°, flexion 120°, no effusion in either knee, but some tissue edema, left worse than right. Petitioner was to continue aqua therapy. At Petitioner's request, Dr. Hall discontinued his care and he was to return as needed.

McHenry County Physical Therapy records, Px3, indicate Petitioner attended physical therapy for both knees from December 4, 2008 through January 15, 2009.

10. In his December 15, 2009 deposition, Px4, Dr. Hall testified that he is a board certified orthopedic surgeon. Dr. Hall recited from his records. In his handwritten notes of August 4, 2006, it is noted in the upper right-hand corner about a Supartz injection of the left knee. Dr. Hall stated that August 4, 2006 was the first time Petitioner was complaining of his left knee to him after the July 15, 2006 accident (Dp 9). Dr. Hall opined that favoring the right knee with somebody that has a meniscus strain does cause more stress and pressure on the left knee (Dp 10). Dr. Hall opined that in some people, a torn meniscus alters their gait or walking and that an altered gait could put more pressure and stress on the left or other knee (Dp 10). That is particularly more susceptible in people that have arthritic left knee (Dp 10). Dr. Hall acknowledged that he did not document that Petitioner was altering the way he walked because of the injury to his right knee before the August 8, 2006 arthroscopy, but given Petitioner's injury it seems reasonable (Dp 10). Dr. Hall opined causal connection for the August 8, 2006 right knee arthroscopy to the July 15, 2006 accident (Dp 11). He was aware that Dr. Elstrom had performed a left knee arthroscopy on October 9, 2002 (Dp 14). Petitioner did complain of his left knee on March 7, 2005. Dr. Hall testified that it is fair to say after looking at his notes that Petitioner did not have any left knee treatment until August 14, 2006 when he received a Supartz injection (Dp 15-16). Dr. Hall opined that Petitioner had preexisting left knee arthritis on July 15, 2006 (Dp 16). Dr. Hall opined that it would be fair to say that Petitioner's left knee deterioration was accelerated because of the July 15, 2006 work injury because of his altered gait or stress or pressure from favoring his right knee (Dp 16). Dr. Hall opined that extra stresses on the left knee would exacerbate and accelerate the normal deterioration of an arthritic left knee (Dp 17-18). Based on Petitioner's complaints, Dr. Hall would opine that the extra stresses on his left knee exacerbated and accelerated the normal deterioration of his arthritic left knee (Dp 18). Dr. Hall opined that the July 15, 2006 accident was a contributing factor in Petitioner's need for a right knee total replacement (Dp 22). Dr. Hall opined causal connection for the right knee total replacement (Dp 23). Dr. Hall opined that the July 15, 2006 accident accelerated the need for a left knee total replacement (Dp 23). Dr. Hall opined all his treatment was necessary in treating Petitioner's condition of ill-being (Dp 24).

On cross-examination, Dr. Hall testified that genu varum is defined as bowleggedness (Dp 26). Supartz is the same substance theoretically as Hyalgan and is made by a different manufacturer. Dr. Hall testified he is aware of Petitioner's left knee condition prior to the July 15, 2006 accident and had reviewed Dr. Elstrom's records and his own. Petitioner had severe degenerative arthritis in his left knee on March 7, 2005 (Dp 27). Dr. Hall was not aware of any trauma to the left knee before July 17, 2006 and Petitioner did not complain of left knee pain on that date (Dp 27). It was not noted that Petitioner was using a cane on that date (Dp 27). Dr. Hall did not note that Petitioner was using a cane on August 11, 2006 (Dp 28-29). On that date he allowed Petitioner to weightbear as tolerated and this could include full weightbearing, but the suggestion is he would be using some sort of walking aid (Dp 29). Petitioner did not complain of his left knee on August 11, 2006 (Dp 30). On August 4, 2006, Dr. Hall noted a Supartz injection to the left knee. The presumption, although he did not record it, was that Petitioner was having left knee pain at that time, thus the recommendation (Dp 30). It does not say in his handwritten notes of August 4, 2006 that Petitioner was complaining of left knee pain

(Dp 31). Normally Dr. Hall would have noted pain with the left knee or stress of the left knee due to favoring his right knee, but he did not; perhaps it was an oversight on his part (Dp 34). Dr. Hall did not note on October 25, 2006 that Petitioner had an abnormal gait (Dp 35).

Dr. Hall opined that while the July 15, 2006 accident was a contributing factor in Petitioner's need for a right knee total replacement, it was not the sole factor. Another contributing factor was his right knee osteoarthritis (Dp 36). Dr. Hall opined Petitioner was tolerating his arthritic condition in his right knee until the July 15, 2006 accident and his arthritic condition became much worse after that accident (Dp 36-37). Dr. Hall opined that the accident aggravated the underlying condition of Petitioner's right knee (Dp 37). There were no restrictions for either leg from August 11, 2006 until surgery in October 2008 (Dp 39). Dr. Hall presumed he recommended a walking aid following Petitioner's surgery (Dp 40). His opinion that Petitioner's left knee condition was causally connected to the July 15, 2006 accident is based on Petitioner's history to him (Dp 42). There is no evidence of a left knee trauma (Dp 42).

Dr. Hall had not reviewed any other medical records (Dp 43). Dr. Hall has not seen Dr. Tonino's report (Dp 43). Dr. Hall was shown Dr. Tonino's report and read same (Dp 44). Dr. Hall noted that Dr. Tonino indicated that he had reviewed the medical records from other facilities (Dp 45). Dr. Hall acknowledged that Dr. Tonino opined causal connection for the right knee condition, but not for the left knee symptoms, treatment and surgery (Dp 45). Dr. Hall would disagree with Dr. Tonino's opinion about the left knee (Dp 46-47). Dr. Hall stated that he has a memory of Petitioner's discomfort in his left knee being worse after the accident (Dp 48). Dr. Hall testified he did consider that the right knee osteoarthritis would cause Petitioner to favor the right leg even before the July 15, 2006 accident, however, Petitioner had that condition for a long time and did not aggravate the condition, but the July 15, 2006 accident did (Dp 51). Dr. Hall opined that the left knee condition was not a direct result of the July 15, 2006 accident (Dp 51). Dr. Hall opined that after the July 15, 2006 accident, Petitioner favored his right leg and hence put more pressure and stress and altered his gait, which caused the discomfort in his left leg (Dp 51). Dr. Hall acknowledged that he did not note any altered gait (Dp 52).

11. Petitioner submitted medical bills and these were admitted into evidence as Px5, which consisted of the following: Dr. Hall: \$25,909.00; McHenry County Physical Therapy: \$2,349.00; Northern Illinois Medical Center: \$97,844.42. The parties acknowledged that the medical bills totaled \$126,102.42 and that Respondent is entitled to §8(j) credit for those (Tr 55).

Petitioner sought reimbursement for the following out of pocket medical expenses admitted into evidence as Px6: Prime Therapeutics: \$920.00; Dr. Elstrom: \$1,434.84; Centegra Health Systems: \$1,603.96; Centegra Primary Care, Dr. Anderson: \$20.00; Walgreens prescriptions: \$241.50; Osco Drug prescriptions: \$39.99. The total claimed was \$4,260.29. Of the above, the amount attributable to Petitioner's right knee treatment was \$3,854.84.

12. At Respondent's request, Petitioner saw Dr. Tonino on September 3, 2009 for a §12 evaluation. In his report of that date, Rx1, Dr. Tonino noted that he had reviewed medical records and examined Petitioner that day. Dr. Tonino noted Petitioner's past medical history and his job. Dr. Tonino noted the July 15, 2006 accident and Petitioner's treatment. Dr. Tonino noted that Petitioner had no initial complaints of his left knee after the accident. Dr. Tonino

noted the injection to his left knee, but there was no mention of why his left knee started hurting. Petitioner reported to Dr. Tonino that he was feeling great. It was Dr. Tonino's impression that Petitioner was status post bilateral total knee replacements. Dr. Tonino opined Petitioner was at maximum medical improvement and did not require further treatment for either knee. Dr. Tonino opined that Petitioner's treatment had been reasonable, necessary and appropriate for his clinical condition.

Dr. Tonino opined causal connection for Petitioner's right knee condition of ill-being. Dr. Tonino opined that the left knee condition is not related to the July 15, 2006 accident. The basis for his opinion is that Petitioner had a prior left knee arthroscopy in 2002 that revealed degenerative changes with Grade IV chondromalacia and there were no complaints of the left knee following the July 15, 2006 accident. Dr. Tonino noted that Petitioner's first complaint of his left knee was on August 14, 2006. Petitioner was not limited in his weightbearing ability prior to the August 8, 2006 right knee arthroscopy. Dr. Tonino opined that the disability of the right knee was not sufficient enough to aggravate his left knee condition. Dr. Tonino noted that Petitioner was ambulating and doing his normal work activities until the day of the August 8, 2006 right knee arthroscopy.

Based on the record as a whole, the Commission affirms the Decision of the Arbitrator finding that Petitioner failed to prove that a causal relationship exists between his left knee condition of ill-being and the accidental injury he sustained to his right knee on July 15, 2006. Following the July 15, 2006 accident, Petitioner did not mention his left knee to Dr. Hall until August 4, 2006. Dr. Hall testified that date was the first time Petitioner was complaining of his left knee to him. In his deposition, Dr. Hall opined that it would be fair to say that Petitioner's left knee deterioration was accelerated because of the July 15, 2006 work injury because of his altered gait or stress or pressure from favoring his right knee. However, there is no mention in Dr. Hall's records of Petitioner favoring his right knee and having an abnormal gait. Dr. Tonino opined no causal connection for Petitioner's left knee condition. Dr. Tonino noted Petitioner's left knee preexisting condition and that Petitioner had not mentioned any complaints of his left knee after the accident and that his weightbearing was not limited before the August 8, 2006 arthroscopy. The Commission finds Dr. Tonino's opinions more persuasive than those of Dr. Hall as there was no mention of abnormal gait or favoring of the right leg in the medical records and no mention of left knee complaints initially. The Commission notes that on October 10, 2002, Dr. Elstrom noted that he told Petitioner that he may be able to avoid a left total knee replacement for some time to come. The medical records show that the preexisting condition of Petitioner's for left knee was severely degenerative. The Commission also affirms the Arbitrator's finding of causal connection for Petitioner's right knee condition of ill-being, based on the medical records. The Commission affirms the Arbitrator's awards for TTD benefits, medical expenses and permanency for the right knee.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,120.87 per week for a period of 3-4/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

14IWCC0467

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$3,854.84 for medical expenses under §8(a) of the Act, subject to the Medical Fee Schedule under §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$619.97 per week for a period of 139.75 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the permanent loss of use of the right leg to the extent of 65%.

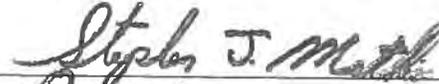
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

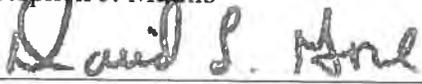
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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: JUN 16 2014
MB/maw
o05/08/14
43




Mario Basurto


Stephen J. Mathis


David L. Gore

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mark A. Smith,

Petitioner,

vs.

NO: 10 WC 41168

Springfield School District #186,

Respondent,

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 causal connection, medical treatment and expenses, prospective medical care and temporary total disability and being advised of the facts and law, corrects and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. In order to correct a clerical error on page four of the Decision of the Arbitrator, the Commission replaces "hands" with "heels" in paragraph five. All else is otherwise affirmed and adopted. 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 13, 2013 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

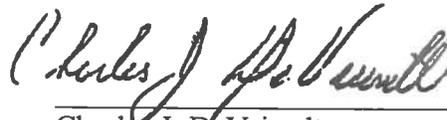
without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

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

DATED: JUN 16 2014
RWW/plv
o-4/22/14
46

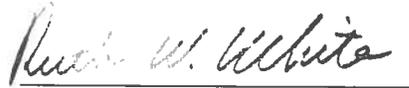

Charles J. DeVriendt


Daniel R. Donohoo

DISSENT

The majority affirms and adopts the decision of the Arbitrator. I cannot join the majority in this holding as I believe that Petitioner failed to prove by a preponderance of the evidence that prospective medical treatment by Dr. Gornet is necessary and causally related to the low back injury sustained on October 5, 2010. Petitioner has a history of two prior work-related injuries to his low back with reportedly prolonged recovery periods; he also has a congenital structural problem causing spinal stenosis, yet prior records are incomplete. After thorough diagnostic testing and treatment in the months following the accident Dr. Pineda, in consult with Dr. Narla, determined that surgery and invasive procedures such as a spinal cord stimulator were inadvisable. On March 14, 2011, Dr. Pineda recommended medical management and additional therapy but Petitioner testified that he was not satisfied with this course of treatment. In May of 2011, Petitioner was observed lifting bags of soil and working in a garden. Petitioner testified that he performed maintenance and landscaping work concurrent with his employment by Respondent; as a substitute janitor for the school district, Petitioner did not have a set work schedule. Petitioner denied performing any work or odd jobs since October 5, 2010, with the exception of the activities captured on surveillance. In June of 2011, Petitioner began travelling to St. Louis to treat with Dr. Gornet. Dr. Gornet opined that Petitioner is in need of further diagnostic and potentially surgical treatment as a result of the October 5, 2010 accident, but I would rely instead on the medical records in evidence and the opinion of Dr. Hauter that Petitioner reached maximum medical improvement from the October 5, 2010 accidental injury. I

would note that the only doctor to perform specific validity testing was Dr. Hauter, a specialist in occupational medicine; he documented signs of significant symptom magnification. I would reverse the decision of the Arbitrator. With respect, I dissent.

A handwritten signature in cursive script, reading "Ruth W. White". The signature is written in black ink and is positioned above a horizontal line.

Ruth W. White

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

SMITH, MARK A

Employee/Petitioner

Case# 10WC041168

14IWCC0468

SPRINGFIELD SCHOOL DISTRICT 186

Employer/Respondent

On 6/13/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

0834 KANOSKI BRESNEY
CHARLES EDMISTON
129 S CONGRESS
RUSHVILLE, IL 62681

0265 HEYL ROYSTER VOELKER & ALLEN
JOHN O LANGFELDER
3731 WABASH AVE
SPRINGFIELD, IL 62711

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

<input type="checkbox"/>	Injured Worker's Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKER'S COMPENSATION COMMISSION
ARBITRATION DECISION
19B

14YVCC0468

Mark A. Smith,
Employee/Petitioner
v.

Case # 10 WC 41168

Springfield School District 186,
Employer/Respondent

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Springfield**, on April 16, 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 Worker's 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 Prospective medical expenses; Mileage and Travel Expenses

FINDINGS

On **October 5, 2010**, 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 had an average weekly wage of \$ **206.80**.

On the date of accident, Petitioner was **45** years of age, *single* with **1** dependent child.

Petitioner *has not* received all reasonable and necessary medical services.

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

Petitioner was temporarily totally disabled from October 6, 2010 through January 7, 2011, a period of 14 1/7 weeks.

Respondent shall be given a credit of **\$2,924.70** in TTD, **\$0** in TPD, **\$0** in maintenance, **\$0** in non-occupational indemnity disability benefits and **\$0** in other benefits for which credit may be allowed under Section 8(j) of the Act.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$206.80/week for 132 weeks, commencing 10/6/10 through 4/16/13, as provided in Section 8(b) of the Act. Respondent shall be given a credit of \$2,924.70 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services of \$32,504.51, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for any medical bills previously paid. Respondent shall also pay the reasonable charges associated with further treatment recommended by Dr. Gornet, being a discogram and surgery, if recommended, based upon the result of the discogram.

Petitioner's request for mileage and travel (lodging and meals) expenses is denied.

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.

14 IWC 0468

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.

14 IWCC0468

Nancy Lindsay

Signature of Arbitrator

6.11.13

Date

ICArbDec p.2

JUN 13 2013

Mark A. Smith v. Springfield School District 186, 10 WC 041168

The issues in dispute are causal connection, medical expenses, temporary total disability benefits, prospective medical care, and mileage/travel expenses. Witnesses testifying at trial included Petitioner, Michael Morris, and Steven Bockler.

The Arbitrator finds:

On October 5, 2010 Petitioner was employed as a substitute janitor for Respondent. On that date Petitioner was involved in an undisputed accident when he was lifting a heavy bin to put recycling into a barrel and experienced a pop in his low back and the sudden onset of pain radiating down his left hip to his knee. Petitioner completed his shift as it was close to being over. He then went home. Petitioner called in the next day to report his injury after he awoke in considerable pain.

Petitioner was directed by Respondent to go to Midwest Occupational Health Associates (MOHA). (PX 1, pp. 124-125) Petitioner presented there on October 6, 2010. Petitioner reported he was throwing trash up into a dumpster when he felt a pop in his back along with left leg tingling and numbness. The discomfort then went away until he woke up the morning of the 6th and felt really bad. Petitioner had difficulty getting out of bed. Petitioner described most of the pain as being in his low back and he rated the pain at a 7/10. The nurse seeing Petitioner on that date noted a previous history of back injury while working for the Springfield Park District six years earlier, though Petitioner denied any ongoing back problems after he had undergone some epidural steroid injections by Dr. Narla in connection with that injury. On examination, Petitioner had discomfort in the low back, more on the right side than his left, with palpation, and limited range of motion. The nurse diagnosed a lumbar strain, prescribed Prednisone and Flexeril, and placed Petitioner on work restrictions of no lifting over 10 pounds and no repetitive bending at the waist. The nurse indicated that she called Respondent to provide an update and was informed that since Petitioner was a "sub-janitor" it would probably not be providing him with any light duty.

Petitioner returned for follow-up at MOHA on October 11, 2010, reporting that he was now experiencing pain radiating into his left leg that had started on Thursday evening (October 7th). (PX 1, pp. 117-118) He noted that he was not being provided with light duty work. Petitioner reported some pain and weakness in his left leg and did not feel that his symptoms were improving. Petitioner demonstrated minimal flexion and extension of his back and lateral flexion caused increased discomfort. He reported that his girlfriend had put his shoes/tie-up boots on him that morning. Petitioner was prescribed Tramadol as an additional pain medication and directed to pursue physical therapy. His work restrictions were continued.

Petitioner returned again to MOHA on October 18, 2010 reporting that he was feeling 20 to 25% better. (PX 1, pp. 110-111) He reported that physical therapy had not been approved, though he was scheduled to start it on October 22, 2010. Petitioner continued to complain of pain going down his left leg and continued to demonstrate limited motion in his low back. Ambulation was normal and Petitioner could walk on his hands and toes without difficulty. The nurse prescribed Voltaren in addition to the Ultram and Flexeril Petitioner was already taking. Her goal was for Petitioner to cut back on the pain medication with use of the anti-inflammatory. Petitioner's work restrictions were continued.

Petitioner signed his Application for Adjustment of Claim on October 18, 2010. (AX 2)

Petitioner returned to MOHA on October 25, 2010 reporting 25 to 30% improvement in his condition although he described his back as "still pretty sore." (PX 1, p. 103) He rated his pain at 6/10, and reported using heating pads and ice packs though nothing was helping. He reported increased pain with sitting for long periods or standing too long. Petitioner had started physical therapy on October 22, 2010 and was scheduled for six more sessions. Petitioner continued to show limited range of motion with discomfort. Medications were continued and his work restrictions were decreased somewhat from 10 to 20 pounds lifting and no repetitive bending at the waist.

Petitioner followed up again as directed on November 2, 2010, reporting an increase in pain after walking around Washington Park for exercise, as he had been instructed to do in physical therapy. (PX 1, pp. 97 - 100) Petitioner again had limited range of motion and discomfort with movement. He at this time had problems walking on his heels and toes as well and had positive straight leg raise bilaterally. Petitioner was diagnosed with "lumbar strain slow to improve." It was recommended that Petitioner see Dr. Narla as he had seen him in the past for epidural injections. Petitioner was continued on the same work restrictions. (RX 3)

Petitioner presented to Dr. Narla on November 3, 2010. (PX 1, pp. 49-50) Dr. Narla noted that he had previously seen Petitioner beginning in January 2007 for a history of lumbar back pain mostly radiating into the right leg more than the left leg secondary to a bulging disc at L5/S1 that he felt to be the cause of Petitioner's symptoms. He indicated that Petitioner had had excellent benefit from steroid injections, the last being given in December 2007 with complete relief of pain. Petitioner reported that his present pain had been precipitated by picking up recycling bins in October of 2010 with pain now radiating down the left leg. Petitioner reported that physical therapy had not been of benefit, nor had medication. After examination, Dr. Narla's impression was that Petitioner had either increased disc bulging or possibly a leak of chemicals producing an S1 radiculopathy on the left this time. Dr. Narla ordered a new MRI scan and prescribed Mobic, and Hydrocodone and directed Petitioner to continue use of Flexeril. (PX 1)

Petitioner underwent an MRI on November 11, 2010, was read by the radiologist to show multilevel degenerative changes resulting in severe central spinal stenosis at L3/4, moderate spinal canal stenosis at L4/5, and severe bilateral neuroforaminal stenosis at L5/S1. (PX 1, pp. 51-52)

Petitioner returned to MOHA on November 16, 2010. (PX 1, pp. 90-91) Petitioner was reporting that his pain at that point would range from 3 to 7/10. Petitioner reported that he had been to the emergency room on November 11, 2010, after his left leg had buckled on him while holding onto a hand railing with his right hand. The MOHA records include copies of records from Memorial Medical Center documenting that Petitioner was in the emergency room on November 11, 2010 reporting right arm pain. (PX 1, pp. 204-217) He reported that he had suffered a work-related back injury and that his leg had given away due to his back pain and he had to catch himself with his right arm. (PX 1, p. 208) No fracture was noted on x-rays. He was given a sling and advised to use ice and elevate the right elbow. Petitioner reported experiencing pain in his right forearm and antecubital space as a result of that fall. X-rays in the emergency room had not shown any fractures, but the doctor had expressed some concern about a torn tendon. Petitioner complained to MOHA of continued pain in his right forearm. Petitioner reported that had not been to therapy since November 5 as that was all that had been approved by the worker's compensation carrier. The nurse advised that daily therapy needed to be re-established. Petitioner continued to demonstrate limited motion, and his work restrictions were continued. Petitioner's MRI from November 11, 2010 showed a bulging disc at L3-4 as well as narrowing at L5-S1. Petitioner's prior

bulging disc was at L5-S1 and L3-4. Additional therapy was ordered to promote healing. (RX 3, pp. 30 - 31)

Petitioner presented for therapy on November 23, 2010. Petitioner reported having stopped his home exercises in early November. Petitioner did well with therapy and progressed with the sessions. During the December 8, 2010 session Petitioner reported it had taken him two years to recover from his last injury. The therapist noted Petitioner appeared to be developing a mindset that it would take a prolonged period of time to recover from this injury. (RX 3, pp. 98-99) As of December 14th the therapist noted Petitioner's pain rating and complaints of soreness seemed consistent with each session. (RX 3, p. 90)

Petitioner followed up again with MOHA on November 30, 2010, reporting that he was feeling no better, rating his pain at 7/10. (PX 1, p. 84; RX 3, p. 24) It was noted that Petitioner was scheduled for a second epidural on December 14, 2010 and had been attending daily therapy. Petitioner's MRI showed multilevel degenerative changes with mild diffuse disc bulging and some stenosis. He continued to demonstrate limited range of motion with discomfort on motion. His work restrictions and therapy was continued.

Petitioner underwent his second epidural steroid injection on December 14, 2010, again by Dr. Narla. (PX 1, p. 56) At that appointment, Petitioner also complained of right forearm pain that had begun when he fell on November 11, 2010. Dr. Narla noted some tenderness and swelling in the bicipital tendon and upper forearm muscle area that he thought might represent a bicipital tendon tear. He recommended that Petitioner see an orthopedic surgeon for that problem and commented that Petitioner would have difficulty lifting even 5 pounds.

On December 17, 2010, Petitioner was seen by Dr. Wolters on referral from Dr. Narla. (PX 1, pp. 45-46) Petitioner described his fall on November 11, 2010, resulting from pain shooting down his left leg, and described experiencing a pop and immediate pain in his right elbow at the time. Dr. Wottowa noted tenderness along the biceps tendon, pain to palpation and pain with resisted supination and pronation of his right elbow. Dr. Wolters felt that Petitioner may have a distal biceps tendon tear and recommended that he obtain an MRI of his right elbow.

Petitioner returned to MOHA on December 20, 2010, reporting that he was doing the same. (PX 1, p. 78) He reported that he felt better for a few days after the epidural injection on December 14, 2010, but then returned to his prior pain level.

Petitioner underwent his physical therapy throughout December of 2010. (RX 3) On December 28, 2010 Petitioner was noted to be moving easily during and between therapy exercises. (RX 3, p. 79) Petitioner presented for physical therapy on December 29, 2010 describing his pain as 6.5/10 and noting his back was "killing" him when he woke up that morning and was still sore in the afternoon. Petitioner was performing his home exercises about once a day and was scheduled to see a doctor in Peoria on January 6, 2011 at 9 o'clock in the morning. Petitioner's second injection was scheduled for January 4, 2011. Petitioner's therapy session lasted approximately 58 minutes. During the course of therapy Petitioner noted right forearm symptoms for the first time, stating he could feel it with material handling with the crates. The therapist noted Petitioner did well in therapy. (RX 3, pp. 74-75)

Petitioner had another epidural injection scheduled for January 4, 2011. Petitioner's work restrictions and medications were continued. Petitioner did undergo the injection by Dr. Narla on January 4, 2011. (PX 1, pp. 54-55) At that time, Dr. Narla indicated that Petitioner was to call in two weeks to report the result. He commented that the only option left was nerve conduction studies and a surgical opinion.

Dr. Hauter performed an examination pursuant to Section 12 of the Act on January 6, 2011. As part of the examination Petitioner underwent a physical examination which showed a hyper-exaggerated response to light touch, feigned collapse of the knees and withdrawal response. Dr. Hauter compared the 2006 and 2010 MRI findings and found no worsening or acute injury. Dr. Hauter believed Petitioner had a lumbar muscle sprain which had resolved and a pre-existing congenital spinal stenosis condition. Dr. Hauter was of the opinion Petitioner physical examination suggested symptom magnification and malingering. He expressed concern that Petitioner should undergo an examination with his primary care physician regarding a post herpetic neuralgia condition at the S1 dermatome pattern. Dr. Hauter also noted Petitioner was told by Dr. Pineda back in January of 2007 that he might need surgery. Dr. Hauter did not believe Petitioner needed any further treatment for his low back sprain. Any arm injury had resolved. (RX 5)

Petitioner had therapy sessions on January 7 and 10, 2011. (RX 4, pp.1, 7-11) Petitioner reported he was sore and gave a pain rating of 6.5; however, he completed all activities with good speed and no pain complaints. On January 10th Petitioner reported being sore but taking his pain medication as needed. (RX 4, pp. 7-11)

Respondent stipulated Petitioner was temporarily totally disabled through January 7, 2011. (AX 2)

Petitioner reported to physical therapy on January 10, 2011 stating he was sore but taking his pain medication only as needed. (RX 4, pp. 7-8)

Petitioner returned to MOHA on January 10, 2011, reporting no improvement. (PX 1, p. 72) He reported that when he coughs hard his left leg goes numb briefly. He reported no improvement from his last epidural injection on January 4. Petitioner was taking Norco every 4 hours as taking them every 6 hours was not providing sufficient relief. Petitioner reported pain at the level of 7/10 and his examination was unchanged with limited motion. Petitioner was referred to Dr. Pineda, an orthopedic surgeon, for evaluation.

Petitioner presented to Dr. Pineda on January 18, 2011. (PX 1, pp. 41-42) He noted that Petitioner had received treatment for his back in the past with 100% improvement after undergoing epidurals. Petitioner reported development of new back pain as well as left leg pain after lifting recycling bins at work. Dr. Pineda noted that therapy and epidurals had not provided relief, and a new MRI showed disc disease at L3/4, L4/5 and L5/S1, with L3/4 being the worst, though Dr. Pineda noted that he had foraminal narrowing at all three levels. Dr. Pineda recommended an EMG to determine where his symptoms were coming from and would consider surgery based on those results. Dr. Pineda's diagnosis was radicular pain after a work-related injury as described. (PX 1, p. 42)

Petitioner saw Dr. Narla on January 21, 2011 for an EMG that showed bilateral radiculopathy at L4 on the left and at L5 on the right. (PX 1, pp. 23-24)

Petitioner followed up with Dr. Pineda on January 25, 2011, who reviewed the MRI and EMG results. (PX 1, p. 22) In his office notes Dr. Pineda stated that "the difficulty is that 80% of his pain is in his back, 20% in his left leg" and a surgical decompression would only help the leg pain. Dr. Pineda felt that a more aggressive approach with be both a fusion and decompression which might provide better results, but indicated that a discogram would be required first.

Petitioner underwent a discogram on February 7, 2011. (PX 2, pp. 122-123) At the time of the test Petitioner reported he was still taking Mobic and Norco, as prescribed. (PX 2, p. 104) The report of the discogram indicated that contrast leaked out of annular tears in the discs at all three levels (L3/4, L4/5 and L5/S1) without any change in Petitioner's pain complaints. A post-procedure CT scan showed moderate to severe central spinal stenosis at L4/5, moderate central spinal canal stenosis at L3/4 and moderate bilateral neural foraminal stenosis at L5/S1. (PX 2, pp. 127-128)

Petitioner returned to Dr. Pineda on February 14, 2011, who commented that the discogram was "essentially negative" at all three levels of concern, and recommended medical management of Petitioner's pain. (PX 1, p. 21) He stated that a stimulator might be a better choice than surgery, and referred Petitioner to Dr. Narla for evaluation of that option.

Petitioner presented to Memorial Medical Center on February 10, 2011 and to Express Care Physicians on March 4, 2011 regarding a rash to his lower back and bilateral lower extremities. (PX 2)

Petitioner returned to Dr. Narla on March 11, 2011. (PX 1, p. 12) Dr. Narla's impression was "lumbar back pain following a work-related incident lifting heavy weight in October 2010." He noted that medications (hydrocodone and Mobic) were helping with pain. Dr. Narla expressed disagreement with Dr. Pineda regarding the appropriateness of a stimulator, believing that continued use of medication and therapy was more appropriate.

Respondent offered a videotape into evidence that showed Petitioner in early May of 2011 looking at a vehicle with another individual and going into a Menards store and purchasing some items including a bag of something. The video shows Petitioner bending to look at the vehicle and bending to put the contents of the bag onto the ground. (RX 8)

Petitioner testified that he found Dr. Gornet's name "on line" and contacted his office about scheduling an appointment.

Petitioner presented to Dr. Gornet's office on June 23, 2011. (PX 3, pp. 7-8) Dr. Gornet noted that Petitioner was reporting a chief complaint of low back pain to the left buttock, left leg, inner thigh to his knee, with numbness and tingling down both legs, worse with Valsalva or cough. Petitioner provided a consistent history of his onset with lifting on October 5, 2010. Dr. Gornet reviewed Petitioner's prior treatment and evaluation by other doctors, as well as his history of prior back problems four or five years ago which was followed by a good recovery and work for several years without restrictions. Petitioner was reporting constant pain, worse with bending, lifting, and prolonged sitting or standing. Dr. Gornet indicated that he reviewed Petitioner's treatment notes from Dr. Pineda and Dr. Narla, as well as MRI and CT discogram reports. He reviewed the MRI taken November 11, 2010, which he felt showed a foraminal disc herniation on the left at L4/5 and fairly significant severe foraminal stenosis at L5/S1, with moderate foraminal stenosis on the right at that level. Dr. Gornet opined that Petitioner's disc herniation at L4/5 correlated to his findings of left radiculopathy on his nerve study by Dr. Narla. Dr. Gornet recommended that Petitioner wean off of narcotics and recommended two transforaminal injections at L4/5 and L5/S1 on the left to see how much relief was obtained. Dr. Gornet believed that Petitioner's symptoms are causally connected to his work injury, and that he should be limited to 20 pounds lifting, no repetitive bending or lifting, and alternating sitting and standing. Records show that Petitioner underwent a transforaminal injection at L4/5 on the left with facet block on August 17, 2011 and a transforaminal injection at L5/S1 on the left on August 26, 2011.

(PX 3, pp. 10-11)

Dr. Hauter issued an addendum report on September 12, 2011 based upon a records review. (RX 6) Dr. Hauter noted the EMG and discogram results performed after his initial examination. Though Dr. Hauter recommended surgery for the structural problems in Petitioner's low back, he remained of the opinion that these problems were entirely congenital and degenerative and unrelated to Petitioner's work accident in October of 2010.

Petitioner returned to Dr. Gornet on September 22, 2011, at which time Dr. Gornet confronted Petitioner about his failure to wean off of narcotic drugs as previously recommended. (PX 3, p. 12) He advised Petitioner that if he did not get off of those medications, he would be considered at maximum medical improvement. Dr. Gornet continued Petitioner's light duty restrictions and told him to return in two months. (PX 3, p. 13) Petitioner returned on November 28, 2011, reporting that he was off of all narcotics at that time. (PX 3, p. 14) Dr. Gornet noted that the majority of Petitioner's symptoms were on the right side. Dr. Gornet recommended a discogram and commented that if he was found to have a three level problem, there was probably little he could do to help. He commented that a right-sided foraminal decompression would not help his low back pain. Dr. Gornet continued Petitioner's light duty restrictions. (PX 3, p. 15)

Petitioner returned to Dr. Gornet on January 30, 2012, who noted that the CT discogram had been denied by the workers' compensation carrier. (PX 3, p. 16) Dr. Gornet commented that he was able to confirm that Petitioner remained off of his narcotics. Dr. Gornet noted that he believed that Petitioner had severe foraminal stenosis bilaterally at L5/S1 but that his diagnostic workup was still not complete. He continued to wait for approval. Petitioner returned again on April 30, 2012, but treatment remained at a standstill pending approval of further diagnostic work-up. (PX 3, p. 18) Dr. Gornet commented again that he believed Petitioner's symptoms to be causally connected to his work injury of 10/5/10, and continued Petitioner's work restrictions. Petitioner testified and the records show that Petitioner has continued to follow up periodically with Dr. Gornet pending approval of the discogram that Dr. Gornet recommends. (PX 3, pp. 20, 23, 25)

Dr. Gornet and Dr. Hauter provided deposition testimony.

Petitioner offered the evidence deposition of Dr. Gornet taken on February 18, 2013. (PX 4) Dr. Gornet testified that after examining Petitioner and reviewing his past medical records and scans, he concluded that Petitioner had a structural problem in his spine. (PX 4, p. 9) He testified that he believed that Petitioner had a herniated disc at L4/5 on the left causing some nerve compression and maybe a structural injury at the L5/S1 level as well. (PX 4, p. 9) Dr. Gornet opined that Petitioner's symptoms were causally connected to his work-related accident. (PX 4, pp. 9-10) Dr. Gornet noted that Petitioner had had a problem with his back several years earlier but had been doing well working full duty with no restrictions up to the date of his accident. He noted that the medical records all documented the onset of Petitioner's current problem with his work-related accident. (PX 4, p. 10) Dr. Gornet recommended a new CT discogram though the test had been done before, noting that it appeared that Petitioner had been on narcotic medication at the time of his previous test so he wasn't sure that test was valid. (PX 4, p. 12) Dr. Gornet opined that if Petitioner has multiple levels of pain in the discogram, then he would not recommend a multi-level fusion because that may make Petitioner worse rather than better but may do a simple decompression. (PX 4, p. 13) Dr. Gornet testified that if the discogram showed one symptomatic disc, he would consider surgical treatment of that one level. (PX 4, p. 13) He testified that he was aware of the opinion of Dr. Hauter on causation and disagreed with his conclusion, noting that Petitioner had been working full duty with no restrictions for four years after his prior back problem. (PX 4, p. 15) Dr.

Gornet agreed that Petitioner had some disc degeneration that predated his work accident, but that he had aggravated that pre-existing condition to the point that he required his current medical care due to the accident of October 5, 2010. (PX 4, pp. 15-16) Dr. Gornet testified that he did not recall any signs of symptom magnification as alleged by Dr. Hauter and commented that Petitioner's success in weaning off of the substantial amounts of narcotics he had been taking demonstrated motivation and credibility to him. (PX 4, pp. 16-17) Dr. Gornet testified that Petitioner's symptoms had been completely consistent with the structural problems in his spine. (PX 4, pp. 17-18) Dr. Gornet commented that he is a spinal surgeon who actually treats the problems in question while Dr. Hauter is an occupational medicine doctor who does not. (PX 4, p. 18) In the course of his deposition, Dr. Gornet identified his bill and testified that the bills had been sent to the employer/insurer on a regular basis. (PX 4, p. 19) In commenting on Dr. Hauter's opinion that Petitioner had suffered only a temporary aggravation of his back problem that had resolved, Dr. Gornet testified that this opinion was "ludicrous" because Petitioner's symptoms began with a work accident and have been ongoing since that time. (PX 4, p. 37) On further questioning, Dr. Gornet testified that he believed that the accident caused the foraminal herniation that he observed on the scans and aggravated Petitioner's underlying condition of foraminal stenosis. (PX 4, p. 40)

On cross-examination Dr. Gornet confirmed that Petitioner remains off all medications. (RX 13, p. 21) Dr. Gornet did not review the MRI from 2006 and was under the impression Petitioner had been working full-time for Respondent for four years. (RX 13, pp. 25-26) Dr. Gornet testified Petitioner presented with left-sided symptoms in June of 2011 and right-sided symptoms in November of 2011. He agreed there was no concordant low back pain from the first discogram. He further testified that the results of the second discogram would determine treatment opinions. If it is negative, no treatment will be offered. (RX 13, pp. 28-31) Dr. Gornet acknowledged that Petitioner drove from Springfield to St. Louis and back for each visit but did not document or recall if Petitioner made any complaints about his back after the drives. (RX 13, p. 35; see also PX 6)

As of March 14, 2013, Petitioner's twenty pound restriction remained in effect. (PX 3, p. 25 and PX 7)

Respondent offered the evidence deposition of Dr. Hauter, Respondent's Section 12 examiner. (RX 7) Dr. Hauter is board certified in Occupational Medicine and his practice includes work injuries, pre-employment physicals, causation determinations, and drug testing. Dr. Hauter examined Petitioner at Respondent's request, obtaining both a history and performing a physical examination. His testimony was consistent with his written report discussed above. Dr. Hauter testified that Petitioner's physical examination and testing results were inconsistent with one another and there were no objective findings to correlate with Petitioner's symptoms. (RX 7, pp. 8-13) Dr. Hauter described the tests he performed on Petitioner, including a light touch (fingernail stroke) to the left paraspinal muscle area from which Petitioner reacted dramatically by collapsing at the knees; however, there was no response to deep pressure or stimuli in the same area on the right (RX 7, pp. 8-9) Dr. Hauter also described Petitioner inconsistencies with rotation/twisting, bracing of Petitioner's back, and reflexes when the bottom of Petitioner's feet were stroked. (RX 7, pp. 8-16)

Dr. Hauter was unable to state whether he had reviewed the actually MRI or post-discogram CT images as opposed to a report of a radiologist. (RX 7, p. 7, 26) Dr. Hauter opined that Petitioner had suffered a lumbar muscle sprain related to his work accident, but it had resolved. (PX 7, p. 13) Dr. Hauter testified that Petitioner had congenital spinal stenosis and degenerative joint disease that was not related to his work accident. (PX 7, p. 15) Dr. Hauter felt that surgery might be necessary for the latter condition but that it was not related to the work accident. (PX 7, p. 17)

Dr. Hauter affirmed on cross-examination that it was possible that a person with spinal stenosis might have symptoms brought on by lifting. (PX 7, p. 30) He also acknowledged that the symptoms that a patient suffers from that condition is one of the factors a doctor considers in deciding whether to perform surgery. (PX 7, p. 30) Dr. Hauter explained that spinal stenosis is a progressive disease. Dr. Hauter acknowledged that he is not a surgeon nor does he operate on the spine. (PX 7, p. 31) He testified that he is the director of the Illinois Work Injury Resource Center and that ninety percent of the patients he treats are sent by their employers. (PX 7, p. 32) He testified that there is one other doctor in the practice. (PX 7, p. 33) Dr. Hauter testified that the condition of Petitioner's back would require work restrictions which he described as sedentary in nature including, limited lifting to 10 pounds. (PX 7, p. 34-35)

Dr. Hauter also testified that he viewed the video surveillance of Petitioner as well as some additional records. He stated he did not view the video again before his deposition but was still of the opinion no further treatment was necessary as of January 6, 2011. (RX 7)

At arbitration Petitioner testified that he continues to experience constant pain in his low back to such a degree that he is unable to do as much as he used to do. Petitioner testified that he has experienced this pain ever since his work injury and that prior to that injury he was not experiencing any ongoing back pain. Petitioner acknowledged having suffered an injury in the past while working for the Springfield Park District but that that condition had resolved after injections from Dr. Narla and he had not been experiencing ongoing pain until this work injury. Petitioner testified that he must limit his sitting, standing and walking because these activities exacerbate his pain. Petitioner testified that he also experiences tingling in his left leg and if he coughs hard he loses feeling in his left leg.

Petitioner had an opportunity to view the surveillance video (RX 8) Petitioner testified that he was supporting himself by placing his hands on his knees or elbows on his thighs when he did this bending. He also testified that there was a wall of blocks that was obscured by a bush and he was resting his knees on that wall to support himself while bending. Petitioner testified that this was not what he had purchased that day. He testified that the bags he bought was soil rather than composted manure and weighed only 20 pounds. He testified that he was spreading this material on seeds he was planning for his mother and that spreading composted manure directly on seeds would have harmed them and prevented their growth.

Michael Morris testified on behalf of Respondent. He is assistant director of operations for Respondent and takes care of day to day maintenance for all school buildings. This includes supervising the custodians, including Petitioner. Petitioner was one of 38 substitute custodians. Petitioner reported his accident to Respondent. Petitioner had worked for Respondent "pretty steady" for two years before his accident in 2010. Petitioner worked every day in the summer. There is no light duty with Respondent so Petitioner doesn't need to call in.

Steven Bockler testified on behalf of Respondent regarding the videotape surveillance. Mr. Bockler is a private investigator who was retained by Respondent's third party administrator to conduct surveillance. RX 8 is the videotape he took of Petitioner based upon his observation of Petitioner. Mr. Bockler did not take any surveillance video of Petitioner while Petitioner was in Menards. He did, however, observe Petitioner in Menards and saw Petitioner lift the two bags of manure.

Petitioner sustained a lifting injury on October 23, 2006. He filed a claim against the Springfield Park District and he settled that claim on October 29, 2008 for approximately 8.5% of the body as a whole. (PX 15)

The Arbitrator concludes:

- 1. Causation:** Based upon Petitioner's testimony regarding the absence of symptoms prior to his accident, the onset of pain immediately thereafter and its persistence since that time, as well as the more credible opinion of Dr. Gornet, the Arbitrator concludes that Petitioner's current condition of ill-being in his lumbar spine is causally related to his work-related accident on October 5, 2010. In reaching this conclusion, the Arbitrator notes that Petitioner's description of persistent symptoms is consistent with the histories in the medical records and there are no records showing that Petitioner was seeking any treatment for his low back in the years prior to his accident. The Arbitrator carefully reviewed the medical records generated at the time of Petitioner's initial discogram (PX 2) and notes that there are a few entries listing medications prescribed to Petitioner and they include medications from Dr. Narla with a "start date" of May, 2008. This may have coincided with Petitioner's earlier work injury (RX 15 - 07 WC 39184); however, neither party introduced earlier records from Dr. Narla and it appears from both Petitioner's testimony, as well as that of his supervisor, that he has steadily worked for Respondent in the two years preceding his undisputed accident in October of 2010. The only doctor questioning causal connection was Respondent's examining physician, Dr. Hauter. The only doctor finding any signs of malingering was Dr. Hauter. Dr. Hauter's opinions are not persuasive. None of the doctors or therapists treating Petitioner around the time of the Section 12 examination questioned Petitioner's pain, motivation, or effort. Additionally, Dr. Hauter only examined Petitioner once, is not an orthopedic surgeon, and only reviewed the MRI and discogram reports. Furthermore, the doctor could not explain when Petitioner's work-related lumbar strain resolved; rather, he just knew it had. Similarly, he believed Petitioner had a long history of back problems but acknowledged he never was provided with any records showing treatment for back problems between January of 2007 and October of 2010. Finally, the Arbitrator notes that Dr. Hauter agrees that Petitioner is probably a surgical candidate. Petitioner's right arm complaints appear to have resolved.
- 2. Temporary total disability:** Having found that Petitioner's current condition of ill-being in his lumbar spine is causally related to his undisputed work accident, the Arbitrator awards Petitioner temporary total disability benefits for 132 weeks commencing October 6, 2010 through the date of the hearing, with credit to Respondent for past TTD paid. Respondent stipulated to temporary total disability benefits through January 7, 2011. The additional period of temporary total disability is awarded based upon the Arbitrator's causation determination. Petitioner remains on a twenty pound restriction. Petitioner testified, and the medical records suggest, that he cannot return to work for Respondent until he is able to work full duty (lift 75 lbs.). Petitioner's testimony was un rebutted. The video surveillance has been considered and while it may show Petitioner engaged in lifting in excess of his weight restriction, it was an isolated instance at best and performed by Petitioner during a time period when he was not receiving any benefits or authorization for surgery. The conduct displayed on the videotape is not so damaging as to indicate Petitioner should not receive temporary total disability benefits.
- 3. Medical expenses:** Respondent stipulated to liability for medical bills incurred prior to January 10, 2011. (AX 1) Based upon that stipulation together with her causation determination, the

Arbitrator awards payment of Petitioner’s medical bills as set forth in PX 5 as follows: Memorial Medical Center (\$6,899.70); Clinical Radiologists (\$3,267.00); Midwest Emergency (\$708.00); Springfield Clinic (\$5,747.00); St. Louis Spine & Ortho Center (\$8,682.00); Dr. Gornet (\$6,346.00), and reimbursement to Petitioner for prescriptions (\$854.81). The total amount awarded is \$32,504.51. Respondent is to receive credit for any medical bills previously paid.

Petitioner’s prescription receipts total \$963.69; however, according to PX 5, Petitioner only seeks reimbursement in the amount of \$854.81 and that is the amount awarded.

Mileage, lodging, and meals are denied as discussed below.

4. **Prospective Medical Care:** Dr. Gornet’s recommendation for a new discogram and further treatment based upon the results of that discogram is reasonable and necessary and causally related to Petitioner’s work-related accident. Respondent is directed to pay the costs of said procedure and related treatment subject to the medical fee schedules. While Petitioner has undergone one discogram, Dr. Gornet credibly explained why he believes a second one is necessary – ie., he wants one done now that Petitioner has been off of pain medication. While Petitioner may not have taken pain medication the day of his first discogram, the Arbitrator has inferred from Dr. Gornet’s deposition testimony that he wants another one done now that Petitioner has been off narcotic pain medication for a substantial period of time. This seems reasonable and the doctor has candidly acknowledged that if it comes back negative, treatment suggestions may be altered. This seems a more prudent course than simply proceeding with surgery.

5. **Mileage:** Petitioner’s request for mileage and travel expenses (lodging and meals) is denied.

The Illinois Appellate Court has held that the determining factor as to whether a Petitioner is entitled to travel expenses related to seeking treatment is whether the treatment was reasonable and necessary. *General Tire & Rubber Co. v. Industrial Comm’n*, 582 N.E.2d 744, 750 (Ill.App.5 Dist., 1991).

Petitioner did not provide much testimony as to how and why he chose Dr. Gornet except to indicate he found him on the internet. As shown by the medical records Petitioner has seen other doctors in Springfield who have felt Petitioner might benefit from surgery. There was no evidence presented indicating the type of surgery and treatment being suggested by Dr. Gornet is not available in a more local area such as Springfield. Accordingly, Petitioner has failed to prove that the mileage for his travel back and forth to Dr. Gornet’s office is reasonable and necessary. As for lodging and meal expenses, the Act does not provide for their award under these circumstances.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify	<input checked="" type="checkbox"/> PTD/Fatal denied
	<input type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

WALLACE DUNCAN,,
Petitioner,

vs.

NO: 09 WC 20260

STATE OF ILLINOIS - LASALLE VETERANS' HOME,,
Respondent,

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 causal connection, medical expenses, temporary total disability, and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Findings of Fact and Conclusions of Law

1. Petitioner sustained a left inguinal hernia after a work-related accident on March 28, 2009.
2. On May 1, 2009, Dr. Williams performed left inguinal hernia repair with plug and patch for incarcerated left inguinal hernia. Dr. Williams noted Petitioner could return to light duty with no lifting more than 10 pounds by May 18, 2009 and to full duty as of June 1, 2009.

3. The day after the surgery Petitioner suffered a loss of consciousness and was taken to a hospital emergency department by ambulance.
4. Petitioner was taken to another hospital on a "life flight." A chest CT showed extensive bilateral pulmonary emboli. A Greenfield filter was placed for pulmonary emboli and deep vein thrombosis. Petitioner was discharged from hospital on May 4, 2009.
5. The Parties stipulated that Petitioner's hernia and initial pulmonary emboli were causally connected to a work accident.
6. Petitioner testified that he developed leg pain, chest pain, and shortness of breath after the filter was implanted from which he still suffers. He can only walk two or three blocks before he needs to rest. His legs hurt more than one half of the time. He leaves his home once maybe twice a week. He is now divorced and lives with his parents.
7. Petitioner also testified he developed headaches, dizziness, and short-term memory loss after the blood clots. Because of those symptoms, Petitioner had a CT and was referred to a neurologist. Petitioner has also been treated for deep vein thrombosis and for psychiatric difficulties he developed after the blood clots. He has not been released to work but temporary total disability benefits were terminated as of June.
8. On September 2, 2009, Petitioner presented to Dr. Eilers for evaluation at the request of his lawyer. Dr. Eilers noted his treatment to date and that he did not believe the Greenfield filter was removable unlike the ones currently used. Since his syncope event and placement of the filter, Petitioner experienced trouble with his memory.
9. Dr. Eilers concluded that as a direct result of his March 28, 2009 accident, Petitioner suffered the pulmonary embolism, probable mild anoxic/hypoxic encephalopathy with mild higher level cognitive deficits, which should be neurologically evaluated. Petitioner will have permanent restrictions with regards to the deep vein thrombosis, which was complicated by the pulmonary embolism and Greenfield filter; his condition would progress and he could not return to heavy or very heavy work. However, Dr. Eilers opined Petitioner might be able to tolerate light sedentary work.
10. On November 11, 2009, Dr. Eilers testified by evidence deposition. He opined that the emboli caused a period of lack of oxygen to the brain causing unconsciousness. "It appears that [Ppetitioner] has changes in his left frontal lobe, which could be related to the hypoxia." Dr. Eilers noted that the left frontal lobe affects memory, some of the executive function, and problem solving. He could have a neuropsychological battery which would delineate his deficits. Although it appears Petitioner may have some focal involvement in the left hemisphere, he definitely had a diffuse injury due to the hypoxia. Petitioner's cognitive difficulties were due to the hypoxia which accompanied the pulmonary emboli.

11. Petitioner will need ongoing treatment of his venous stasis disease, anticoagulation treatment, and the side effects of the filter. His hernia would obviously limit his ability to lift, "but he could return to work and he may need some further testing and neuropsych relative to his encephalopathy and memory deficits to asses that." He will need to elevate his leg on a regular basis. Dr. Eilers believed Petitioner's deficits were permanent.
12. On March 1, 2010, Petitioner presented to Dr. Cote at the request of his lawyer. Dr. Cote noted that over the last several months Petitioner had noticed cognitive impairment and personality changes including rudeness and irritability along with headaches. He also developed chronic left lower leg pain and swelling. Dr. Cote related all his physical conditions to the March 28, 2009 accident and subsequent treatment. He opined that his "lower extremity injuries prevent him from engaging in any kind of work requiring physical activity." The cognitive deficiencies must be evaluated and would likely require life-long medical care.
13. On March 21, 2011, Petitioner and his wife presented to Dr. Sheth for a psychiatric evaluation at the request of his lawyer. Petitioner had "had been going through a difficult time for approximately the past three years," since the hernia surgery in May of 2009." He developed pulmonary embolism and had a history of chronic venous insufficiency of both legs.
14. Petitioner went through a phase of depression and anxiety which gradually improved. He now did not feel depressed but felt anxious and stressed about his financial situation and health. Petitioner also related cognitive difficulties; he reported he used to be good at math and recollection, however now he feels he has to write things down. He began taking Zoloft when he first had the surgery. His medical records indicate a "history of stress related anxiety and depression."
15. Dr. Sheth diagnosed "adjustment disorder with mixed emotional features, anxiety disorder mild, and cognitive disorder NOS." His concentration/attention span and short-term memory difficulty may be related to a combination of several factors including sleep apnea, which Petitioner reported but which had not been confirmed by a sleep study, as well as severe hypoxia and syncope experienced in the recent past. However, Dr. Sheth concluded Petitioner was functioning well overall and was well adjusted with the Zoloft. He was coping well with adequate support from his wife and family. Dr. Sheth did not believe he needed any supportive psychotherapy.
16. On September 20, 2011, Petitioner presented to Dr. Hartman for an evaluation at the request of Respondent. Dr. Hartman recited Petitioner's history of accident and medical treatment. Petitioner's affect and interaction appeared to be normal and Dr. Hartman noted that he "was able to proceed through a workday involving various cognitive activities with no evidence of fatigue or decompensation."

17. Dr. Hartman noted that the tests for cognition were susceptible to manipulation by patients who wish to exaggerate any difficulties. In Petitioner's case "tests that are sensitive to exaggerated or faked impairment were consistently performed in the malingering range." Petitioner consistently attempted to "deliberately exaggerate cognitive dysfunction and symptom complaint in the context of potential secondary gain." Petitioner's performance was below that of patients with much more severe disorders or children with a verbal IQ below 70. "His delayed recognition choice profile was actually *below chance*, which is highly improbable unless the individual knows the correct answer and then chooses the wrong answer and his WMT better matched those of individuals asked to fake impairment on this test, than performance of patients exerting a credible effort." (emphasis in original)
18. Dr. Hartman opined that "in the context of ... secondary gains associated with linking work activities to a hernia and associated medical problems and current objectively malingered test results, there is no credible neuropsychological or psychological limitation to work return." While Dr. Hartman could not rule out mild cognitive inefficiencies, he did not require treatment for such deficits.
19. On September 18, 2012, Petitioner presented to Dr. Eilers for reevaluation. He noted Petitioner had two years of high school but received a GED. He was continuing with Coumadin and reported still getting shortness of breath and swelling and pain in his legs. Petitioner also reported occasional dizziness, difficulty with short-term memory and learning new things, altered concentration, some numbness in his legs, walking with poor coordination, occasional ringing in his ears, difficulty finding words, and difficulty sleeping. Dr. Eilers noted significant edema in his legs and some discoloration of the left leg. Petitioner would have problems in the future and would need life-long medical treatment and may need in-home assistance. If his condition is not properly treated, Petitioner was at risk for amputation.
20. Dr. Eilers opined Petitioner could not return to his previous job, and was could not perform a job which required standing, walking, lifting, bending, twisting, and turning. In addition, he would need frequent break times in a sedentary job to elevate his legs to prevent venous stasis. The deep vein thrombosis caused an injury which was "quite profound and long lasting in its impact." Dr. Eilers opined that "in all probability with his education, his age, and experience, Petitioner was probably permanently disabled from competitive employment based upon his overall condition noted at this time."
21. Dr. Eilers again testified by deposition on November 27, 2012. He testified that Petitioner exhibited "some higher level cognitive deficits and seems to be consistent with encephalopathy." When asked for his diagnosis, Dr. Eilers indicated Petitioner "probably had a hypoxic encephalopathy when he collapsed due to the acute pulmonary embolism, which is often a terminal event for most people. And he did have two episodes of loss of

consciousness and awareness so that's consistent." All his conditions were directly related to his work accident of March 28, 2009. Petitioner's condition will continue to worsen even with fastidious management; he is at the risk of cellulitis and infection, and eventually possible amputation.

22. Dr. Eilers also testified Petitioner was quite limited physically in terms of returning to work. He would need to elevate his legs every hour or so, standing and walking was "out of the question," and he would have to be protected from any trauma or cut which could cause excessive bleeding or infection. Petitioner will become more disabled as time goes by and infections are "going to occur." He will probably need home care in the long run. While Petitioner may be able to be self-employed or do some things on a flexible schedule, he will not be able to go into the work force.
23. On cross examination, the witness testified the fact that Petitioner had venous insufficiencies prior to the surgery made the failure to administer a blood thinner at that time "so egregious." Dr. Eilers thought Dr. Sheth's conclusions that Petitioner had normal intellect, his memory was intact, and his thoughts were coherent were "contradictory to his findings in the examination;" he "clearly described the memory problems, the recall problems, and calculation problems." Dr. Eilers had not seen any neuropsychological tests; otherwise he would not have recommended one.
24. Dr. Eilers agreed that venous insufficiency could potentially cause edema. While he did not see Petitioner prior to his surgery, if he "had that much edema nobody would do surgery on him." When asked whether he knew that none of Petitioner's treaters put permanent restrictions on him, Dr. Eilers responded that he did not know of "their experience in long-term management." They need to "think about longevity and disability." Petitioner could possibly work at a job where he would work two hours and take an hour break to elevate his legs.

In finding Petitioner permanently and totally disabled from the work accident, the Arbitrator found that that Petitioner's hernia, surgery, deep vein thrombosis, pulmonary emboli, brain injury, need for anticoagulant treatment, headaches, and "ongoing physical disability including pain and difficulty ambulating were all caused by the work accident of March 28, 2009." The Commission disagrees with these findings of the Arbitrator.

First, the Arbitrator's conclusion that Petitioner's venous insufficiency was caused by the accident appears to be incorrect. The record indicates that Petitioner's venous insufficiency condition predated the accident. Second, by referring to Petitioner's "brain injury" the Arbitrator apparently accepted Petitioner's testimony about his psychiatric/cognitive deficits. Those alleged deficits were rebutted both by Petitioner's own psychiatric medical examiner, Dr. Sheth, who indicated Petitioner was functioning well on Zoloft, and by Dr. Hartman's report which concluded Petitioner was purposefully feigning his cognitive difficulties for secondary gain.

Third, it appears that only Petitioner's medical examiner, Dr. Eilers, offered the opinion, that Petitioner was unemployable, and that opinion was somewhat equivocal. In the first examination he opined that Petitioner was employable with significant restrictions. It was only after the second examination that he opined "in all probability with his education, his age, and experience, Petitioner was probably permanently disabled from competitive employment based upon his overall condition noted at this time."

For these reasons, the Commission finds that Petitioner did not sustain his burden of proving he is permanently and totally disabled from the work accident. In looking at the record as a whole, the Commission finds that an award of 50% loss of the person as a whole is appropriate in this case and modifies the Decision of the Arbitrator accordingly. All other provisions of the Decision of the Arbitrator are affirmed and adopted.

The Arbitrator awarded Petitioner temporary total disability benefits up to the date of arbitration. From our review of the record, the Commission finds that it is clear that Petitioner was at maximum medical improvement at the time of arbitration. The pain treatment he was receiving at that time did not appear to provide him any additional relief. The Commission notes that Petitioner did not proffer into evidence of any job search logs and he did not testify to any such job search. In addition, it appears Petitioner did not demand Respondent provide any vocational rehabilitation services. Therefore, while the Commission finds that the Arbitrator's award of temporary total disability benefits to the date of arbitration was proper, the award of additional temporary total disability benefits is not warranted in this case. Because the Commission has adjudicated both prospective temporary total disability benefits and permanent partial disability, there is no need to remand this case back to the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$308.47 per week for a period of 206 4/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay reasonable and necessary medical services, pursuant to the applicable fee schedule of \$1,369.18 to St. Margaret's Clinics, \$30,922.30 to St. Margaret's Hospital, \$765.00 to Hospital Radiology, \$1,900.00 to Dr. Williams, \$251.00 to Illinois Valley Surgical, \$642.20 to 10/33 Ambulance Service, \$400.00 to Heartcare Midwest, \$936.00 to Dr. Atul Sheth, \$2,010.00 to Rush University Medical Group, \$3,047.80 to Rush University Medical Center, and \$980.00 to Bureau Valley Anesthesia under §8(a) and §8.2of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given credit of \$29,177.41 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services or insurer who paid the same, for which Respondent is receiving credit, as provided in Section 8(j) of the Act.

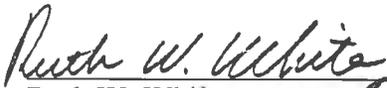
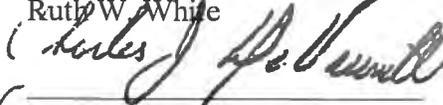
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner \$277.63 a week for 250 weeks as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of 50% use of the person as a whole.

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: JUN 16 2014

RWW/dw
O-2/19/14
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Ruth W. White

Charles J. DeVriendt

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

DUNCAN, WALLACE

Employee/Petitioner

Case# 09WC020260

09WC026091

ILLINOIS VETERAN'S HOME-LASALLE

Employer/Respondent

14IWCC0469

On 7/22/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

1097 SCHWEICKERT & GANASSIN
SCOTT J GANASSIN
2101 MARQUETTE RD
PERU, IL 61354

0639 ASSISTANT ATTORNEY GENERAL
CHARLENE C COPELAND
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
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SPRINGFIELD, IL 62794-9255

0499 DEPT OF CENTRAL MGMT SERVICES
MGR WORKMENS COMP RISK MGMT
801 S SEVENTH ST 6 MAIN
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

JUL 22 2013



[Signature]
KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Will)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input checked="" type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Wallace Duncan,
Employee/Petitioner

Case # 09 WC 20260

v.

Consolidated cases: 09 WC 26091

Illinois Veteran's Home - LaSalle,
Employer/Respondent

14IWCC0469

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 **Gregory Dollison**, Arbitrator of the Commission, in the city of **New Lenox, Illinois**, on **March 19, 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 _____

FINDINGS

On **March 28, 2009**, 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.

14IWCC0469

In the year preceding the injury, Petitioner earned **\$20,359.12**; the average weekly wage was **\$462.71**.

On the date of accident, Petitioner was **40** years of age, *married* with **1** dependent children.

Petitioner *has not* 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 **\$38,560.31** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$38,560.31**.

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

ORDER

Consistent with Petitioner's request, cause 09 WC 26091 is hereby dismissed.

Respondent shall pay Petitioner temporary total disability benefits of \$308.47/week for 206-4/7 weeks, commencing March 29, 2009 through March 19, 2013, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of \$1,369.18 to St. Margaret's Clinics, \$30,922.30 to St. Margaret's Hospital; \$765.00 to Hospital Radiology; \$1,900.00 to Dr. Williams; \$251.00 to Illinois Valley Surgical; \$624.20 to 10/33 Ambulance Service; \$400.00 to Heartcare Midwest; \$936.00 to Dr. Atul Sheth; \$2,010.00 to Rush University Medical Group; \$3,047.80 to Rush University Medical Center; and \$980.00 to Bureau Valley Anesthesia, as provided in Sections 8(a) and 8.2 of the Act.

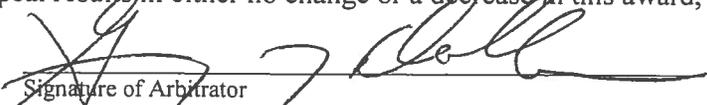
Respondent shall be given a credit of \$29,177.41 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services or insurer who paid the same, for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

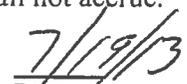
Respondent shall pay Petitioner permanent and total disability benefits of \$461.78/ week (minimum) for life, commencing March 19, 2013, as provided in Section 8(f) of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the *Rate Adjustment Fund*, as provided in Section 8(g) 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


Date

JUL 22 2013

14IWCC0469

FINDINGS OF FACT:

As a preamble, Petitioner declared, prior to the commencement of trial, that cause 09 WC 26091 is voluntarily dismissed.

On March 28, 2009, Petitioner, Wallace Duncan was employed by the Illinois Veteran's Home, LaSalle, Illinois. He worked in its kitchen performing a number of tasks, including dishwashing. This job required him to stand by a sink and use a sprayer to rinse dishes, pots and utensils and then manually place them in a 3 foot by 3 foot rack. Mr. Duncan would then push the dish rack into the washer where it would then go through a several minute cleaning cycle. After the cycle was completed, Mr. Duncan would open the dishwasher and pull out a clean rack of items. He would then move the loaded rack, often weighing 40 to 50 pounds, to another pile which would then be put away later. While lifting one of these heavy dish racks and then turning to place it on another stack of clean dishes, Mr. Duncan felt pain and discomfort in his groin and lower left torso. As the pain was significant, he reported it to Diane Gebhart, his supervisor.

The next morning, March 29, 2009, due to increasing pain overnight, he also spoke to Faith Ann DeRosa, a Human Resource Manager for the facility, discussed his accident and described the pain he experienced in his groin and low torso.

Petitioner was then sent by Respondent to St. Margaret's Hospital Emergency Room on March 29, 2009. Px 6. Mr. Duncan testified the staff asked him how long his pain from the hernia had been occurring and he explained it was present the last two days, the work accident having occurred on March 28, 2009. He testified the hospital accidentally wrote down two weeks in their records. Id. At St. Margaret's, a CT scan was performed which demonstrated a left inguinal hernia. Id. At this visit, he was provided pain medication and kept off work. Id.

On April 8, 2009, Wallace Duncan visited with his family physician, Dr. Tun. Px 5. During that visit, Dr. Tun noted Petitioner experienced a sudden onset of pain in his left groin on March 28, 2009. Id. He had been doing a lot of heavy lifting for several days at work because they were short of manpower. Id. Dr. Tun reported that Petitioner's inguinal hernia had reduced since his hospital visit. Id. It was felt Mr. Duncan could be scheduled for outpatient repair of the left inguinal hernia. Id. As such, he was referred to Dr. Wojcik.

Before meeting with Dr. Wojcik, Petitioner was terminated relating to inaccuracies in his application for employment by his failure to list misdemeanor convictions occurring in 1990 and 1991. Px 11. Petitioner testified that prior to termination, he had no prior discipline issues related to work.

At his appointment with Dr. Wojcik on April 8, 2009, it was reported Petitioner developed a left inguinal hernia while lifting a heavy object at work on or about March 28, 2009. Px 4. After an examination, Dr. Wojcik wrote that Petitioner did have a hernia and it could be repaired through outpatient surgery. Id.

Petitioner also met with Dr. Mark Williams. Px 3. He performed a pre-surgical evaluation and indicated Petitioner was recommended to undergo weight loss and smoking cessation as he remained at a higher risk for secondary issues due to obesity and smoking. Px 6.

On May 1, 2009, Petitioner underwent surgery for an incarcerated left inguinal hernia. Px 6. The hernia was removed and a large plug was placed along with mesh. Id. There was felt to be good bleeding control and the wound was closed. Id. Following surgery, Mr. Duncan was released the same day. Id.

Petitioner testified that on the evening following surgery, he had a great deal of pain and pressure in his groin area but thought it was surgically related. He recalls the next morning experiencing increasing pain and discomfort. Although he explained he does not remember it, emergency room records reflect he had two syncopal episodes associated with severe shortness of breath. Id. These records demonstrate his wife called an ambulance which returned him to St. Margaret's Hospital. Id. At St. Margaret's, it was determined Mr. Duncan suffered pulmonary embolisms following surgery and now required the installation of a Greenfield filter to address extensive bilateral pulmonary emboli. Id. As a result, he was then transferred by Life Flight to St. Francis Hospital in Peoria. Px 2.

Upon arrival at St. Francis, they reported Petitioner suffered from bilateral pulmonary emboli with acute venous thrombosis at the left popliteal vein following postoperatively his left inguinal hernia repair. Px 2. After an evaluation, it was determined Petitioner required surgery for the placement of a transfemoral Greenfield filter. Id. After placement, his postoperative convalescence was unremarkable and he was released May 4, 2009 to follow up with his physicians. Id.

After his release from St. Francis Hospital, Petitioner continued to follow with Dr. Tun. Px 5. At his May 5, 2009 appointment, Dr. Tun wrote Petitioner had been transported to St. Francis Hospital from the St. Margaret's emergency room due to an acute onset of shortness of breath and a diagnosis of acute bilateral pulmonary embolism. Id. He was later diagnosed with deep vein thrombosis of the left lower extremity that developed following his left inguinal hernia surgery. Id. At St. Francis, he underwent the placement of a Greenfield filter and was released on May 4, 2009. At this visit, Dr. Tun noticed mild puffiness and tenderness of the left calf area and wrote Petitioner suffered from acute bilateral pulmonary embolisms, deep vein thrombosis of the left lower extremity and was status post left inguinal hernia repair. Id. He was then sent to St. Margaret's Hospital where they checked his protime readings which were within normal limits. Id.

On May 13, 2009, Dr. Tun's partner, Dr. Williams visited with Petitioner. Px 3. Dr. Williams reported Petitioner had bruising on his right thigh and occasional pain. Id. Petitioner continued to suffer from his pulmonary emboli but the doctor indicated he could return to work at a 10 pound weight restriction with no extensive pulling, pushing or twisting. Id. Because Respondent terminated Petitioner after his injury, no work was available.

Petitioner next met again with his physician, Dr. Tun, on May 14, 2009. At that time, it was reported that Petitioner's shortness of breath and chest pain was improving. Id. The left inguinal hernia repair pain was also significantly resolved. Id. Mild right ankle edema continued but there was no clinical evidence of recurrence of deep vein thrombosis. Id. Relative to future availability for work, Dr. Tun determined Petitioner should wait 6 weeks after the pulmonary embolism and left inguinal surgery before considering the same. Id. Dr. Tun also increased Petitioner's Coumadin from 5mg to 7.5 mg every day. Id.

At Dr. Tun's visit of June 10, 2009, Petitioner's headache complaints and memory loss following his bilateral embolism were discussed. Id. Mr. Duncan also reported difficulty walking since his bilateral embolism and a recent fall on his right leg. Id. Upon examination, Dr. Tun noted mild tenderness as well as crepitus in the right knee. Id. Dr. Tun concluded Petitioner also suffered from headache, memory loss and a recent issue of severe hypoxia due to pulmonary emboli, along with continued anticoagulant therapy. Id. He ordered a CT scan of the head. Id.

On June 30, 2009, the Petitioner underwent a CT scan of his head at St. Margaret's Hospital. Px 6. Dr. Tun analyzed the CT and felt there was a small, old lacunar infarction versus normal variation of the right frontal lobe. Id. Dr. Tun also was concerned about Petitioner's continuing memory difficulties that have continued since his bilateral pulmonary embolisms. Id. He wanted to rule out hypoxia encephalopathy. Id. At the

time of the visit, Petitioner continued to use Coumadin and Vicodin as prescribed. Id. Dr. Tun wrote Petitioner continued to have persistent right leg and knee pain since his fall from an acute pulmonary embolism on May 2, 2009. Id. He had undergone the left inguinal hernia repair on May 1, 2009. Id. He noted Mr. Duncan continued to have frequent episodes of memory difficulty since that time. Id. He also noted Petitioner had continuing tenderness over the right hamstring muscle and over the right popliteal fossa and around the right patella. Id. Flexion and extension of the right knee was restricted. Id. Dr. Tun remained concerned about Petitioner's deep vein thrombosis issues and felt he was experiencing continuing pain in the right knee secondary to his May 2, 2009 fall. Id. He was concerned with Mr. Duncan's memory difficulty and provided a differential diagnosis that included anxiety and encephalopathy due to severe hypoxia from the pulmonary embolism of May 2, 2009. Id.

On August 13, 2009, Dr. Tun noted Petitioner had short-term memory problems due to his pulmonary embolism issues of May 2, 2009. Id. Knee problems on the right side continue from the fall he experienced from the hypoxia. Id. An examination showed tenderness along with mild crepitus and partial limitation of the right knee on movement. Id. Recent memory and recall is slow. Id. Dr. Tun noted Petitioner had degenerative joint disease of the right knee with traumatic arthritis secondary to his fall on May 2, 2009 and that he has possible hypoxia and encephalopathy. Id. Anticoagulant therapy for his bilateral pulmonary embolism continued. Id. Dr. Tun reported he tried to send Petitioner to a neurologist but Respondent failed to provide approval. Id.

At his follow up appointment of September 14, 2009, Petitioner reported ongoing memory difficulty, left sided chest pain with a history of bilateral pulmonary embolism and the use of medication including Coumadin, Augmentin, Vicodin and a Medrol Dose Pack. Id. He was now also experiencing increasing pain in the right hip area with weight bearing and applying pressure on the right side. Mr. Duncan had pain in his right knee and leg after his fall on May 2, 2009. Id. Dr. Tun reported a concern that Petitioner had bronchitis versus a recurrent pulmonary embolism, bursitis of the right hip and, therefore, provided Vicodin and a Medrol Dose Pack. Id. He was advised, as he had been in the past, to also quit smoking.

During his October 28, 2009 appointment, Dr. Tun was concerned Petitioner continued to experience bilateral leg swelling which was most likely secondary to his venous insufficiency. Id. He indicated Petitioner still suffered memory difficulty following his severe hypoxia episode of May 2, 2009 and his history of bilateral pulmonary embolism secondary to the deep vein thrombosis of the left leg. Id. Petitioner remained on restrictions and next saw Dr. Rana at Heartcare Midwest on November 19, 2009. Px 9.

Dr. Rana found Mr. Duncan had lower left extremity edema symptoms. Id. He had experienced a hernia repair in May of 2009 which was complicated by a lower left extremity deep vein thrombosis and pulmonary embolism. Id. Mr. Duncan now experienced bilateral lower extremity swelling, shortness of breath and was currently on anticoagulation medication with a vena cava filter having been placed. Id. Dr. Rana indicated the edema could be multifactorial but certainly could be related to his post thrombotic syndrome from his recent DVT. Id. He recommended Mr. Duncan use compression stockings and have venous duplex and venous reflux studies along with a duplex study of his vena cava to assess patency.

On December 20, 2009, Petitioner returned to Dr. Tun. Px 5. He noted Mr. Duncan continued to have venous insufficiency issues in both lower extremities and possible Greenfield filter blockage. Id. Hip pain continues along with persistent memory difficulties since his collapse and fall of May 2, 2009 when he had his bilateral pulmonary embolism. Id. Although Petitioner reported some improvement in his bilateral leg swelling, his other symptoms continued. Id.

At the request of his attorney, Mr. Duncan was next seen by Dr. Mario Cote, an internal medicine physician. Px 10. Dr. Cote indicated Petitioner suffered a work related left inguinal hernia that required surgery on May 1, 2009. Id. By later that evening, Petitioner developed severe chest pain and shortness of breath. Id. He experienced at least two episodes of loss of consciousness and collapsed to the floor. Id. He was grunting,

appeared confused and became incontinent of urine and hypoxemic. Id. He was taken by ambulance to the St. Margaret's Hospital emergency room where a CT scan of his lungs demonstrated massive pulmonary emboli. Id. The emergency room physician consulted with a vascular surgeon at St. Francis Hospital in Peoria where he was then transported to by helicopter. At St. Francis Hospital, a Greenfield filter was placed due to continuing concerns of embolization and the potential for increased morbidity and mortality. Id. Petitioner was noted to have cognitive impairment, difficulty with memory and judgment. Id. His personality was also noticed to have changed by the appearance of irritability and rude behavior. Id. He experienced recurring headaches and underwent an additional MRI, EEG and neuropsychological testing. Id. Mr. Duncan also experienced pain in his right hip since his falls sustained after the syncopal events. Id. There has also been continuous swelling and pain in the left lower extremity. Id.

After a review of Petitioner's records and the performance of a medical evaluation, Dr. Cote indicated Mr. Duncan developed a symptomatic inguinal hernia while working at the Veteran's Nursing Home. Id. As a direct consequence of his subsequent inactivity and surgery, he suffered a massive pulmonary embolism. Id. This was accompanied by hypoximia and loss of consciousness. Id. Because of the hypoximia, he has developed evidence of cognitive impairment. Id. Mr. Duncan also experiences chronic left and right lower extremity pain. Id. Dr. Cote reported the medical care Mr. Duncan has undergone has been reasonable, necessary and incurred as a result of his work injury of March 28, 2009. Id. He wrote Petitioner was unable to return to work. He requires a further intensive evaluation of his cognitive function and will likely need life-long medical care. Id. Dr. Cote explained Mr. Duncan's time off has been reasonable and necessary. Id.

At Petitioner's April 9, 2010 visit with Dr. Tun, it was reported Petitioner was now experiencing stress and anxiety related to his current condition. Id. He continued to experience venous insufficiency in both lower extremities and possible partial blockage of his Greenfield filter. Id. Right hip bursitis continued along with headaches and the memory difficulty which followed his hypoxia and syncopal episodes of May 2, 2009. Id. Petitioner continued medication and demonstrated swelling in both legs with pain. Id. Dr. Tun decided to add Zoloft for his anxiety and depression and also renewed his Vicodin prescription for pain. Id. In addition, Dr. Tun indicated Petitioner could not return back to work due to his pain and memory difficulties along with the emotional instability, anxiety and depression he was experiencing. Id.

Petitioner continued to follow with Dr. Tun. Px 5. At his October 20, 2010 appointment, Dr. Tun reported the Petitioner had increasing pain with both legs swelling along with ecchymosis and discoloration and bruising in the left groin and suprapubic area. Id. Dr. Tun was concerned about a possible malfunction of the Greenfield filter and, as a result, he was seen by Dr. McCarthy.

Dr. McCarthy visited with him on November 16, 2010. Px 13. At that time, it was reported Petitioner developed a hernia in March of 2009 for which he underwent surgery. Id. He developed deep vein thrombosis and pulmonary embolism which then required the placement of a filter. Id. Because of ongoing bilateral lower extremity swelling, Petitioner was fitted with knee high compression stockings. Id. Dr. McCarthy sent Mr. Duncan to another physician at Rush University Medical Center, Dr. Neil Ruggie, a cardiologist. Id.

Dr. Ruggie reported that Mr. Duncan developed an inguinal hernia in 2009 for which he underwent a surgical repair. Id. Postoperatively, he had shortness of breath and a syncopal episode, a DVT and pulmonary embolism. Id. A Greenfield filter was placed and Coumadin employed. Id. Chronic anticoagulation therapy has become necessary. Id. Mr. Duncan complains of shortness of breath which has not improved since his pulmonary embolism in 2009. Id. He reports suffering labored breathing while walking one flight of stairs or 2 to 3 blocks on level ground and suffering bilateral foot edema since placement of the Greenfield filter. Id. The edema has improved with compression stockings. Id. A CT scan documents resolution of pulmonary emboli. Id. Although his weight is currently 250 pounds, having lost 80 pounds, he does not note any significant improvement in his dyspnea or labored breathing. Id.

After a review of Mr. Duncan's records, Dr. Ruggie reported Petitioner's peripheral edema is due to use of the Greenfield filter. Relative to the dyspnea, possible explanations include recurring pulmonary emboli resulting in pulmonary hypertension, possible blood pressure issues, if not controlled, as well as deconditioning considering his obesity and sedentary lifestyle, among other things. Id. He felt further pulmonary evaluation was necessary. Id. At this physician's request, a lower extremity venous Doppler study was performed on December 30, 2010. Id. Although it showed no evidence of DVT, it did show bilateral saphenous vein reflux. Id. In a follow up visit with Dr. McCarthy of January 4, 2011, it was felt Petitioner might also have a malfunctioning Greenfield filter resulting in swelling and the need for stockings. Id.

Dr. Atul Sheth, a psychiatrist, performed a psychiatric evaluation on March 21, 2011 of Mr. Duncan. Px 12. At that time, he reported Petitioner suffered a left inguinal hernia in 2009 which resulted in complications that included bilateral pulmonary embolisms requiring the placement of a filter and the use of anticoagulant therapy. Id. He experiences cognitive difficulties since his work accident involving tasks such as mathematics and recall from short-term memory. Id. Dr. Sheth wrote Petitioner suffers from mild anxiety, frustration, health problems and issues relating to guilt from his financial situation that has followed his injury. Id. Mr. Duncan has increased difficulty with concentration and attention along with short term memory issues that maybe related to several factors, including anxiety and the long term sequela of severe hypoxia and syncope experienced. Id. Emotionally, he felt Petitioner was functioning well and appears to have adjusted to his situation. Id. He advised Petitioner to continue Zoloft as prescribed. Id. He provided a diagnosis of an adjustment disorder with mixed emotional features, a mild anxiety disorder and cognitive disorder among his multiple medical problems. Id.

Petitioner continued to follow with Dr. Tun throughout 2011, 2012 and 2013. Px 5. He reports the Petitioner has continuing multiple medical problems including issues resulting from his pulmonary emboli, DVT and memory issues that flow from his work injury. Px 5. He remains off work at this time. Id. His application for Social Security Disability is pending per Mr. Duncan.

At the request of his counsel, the Petitioner was evaluated by Dr. Robert Eilers, a board certified doctor of physical medicine and rehabilitation on 2 occasions, September 2, 2009 and September 18, 2012. Px 7 & 14. During the initial evaluation with Dr. Eilers, it was noted Petitioner was injured at work on March 28, 2009, when he felt a left abdomen pull. Px 7. This required his visit to the emergency room and hernia surgery. Id. On the day of his surgery, May 1, 2009, he was permitted to return home. Id. Later that day, his wife noted Petitioner became less responsive. Id. That evening, he passed out several times, became short of breath, incontinent and unresponsive. Id. After transfer to St. Margaret's Hospital and a CT scan demonstrated deep vein thrombosis, he was airlifted to Peoria where a Greenfield filter was placed. Id. Since that time, he has been experiencing difficulty with memory, hip pain due to his fall upon becoming unconscious and issues with edema. Id. Dr. Eilers reported in his September 2, 2009 report that Petitioner's condition was likely to become progressive. Id. He wrote that as a result of the March 28, 2009 work injury, the hernia repair, resulting pulmonary embolism and treatment that followed were reasonable and necessary. Id. Dr. Eilers indicated that after this initial accident, Petitioner has and will continue to experience progressive edema with standing. Id. In light of his pulmonary embolism and the Greenfield filter which complicates his diagnosis, Dr. Eilers reported this gentleman was permanently and totally disabled when also considering the cognitive changes that occurred. Id.

Dr. Eilers had the opportunity to reexamine Mr. Duncan on September 18, 2012. Px 14. He reported that Petitioner was still suffering from consequences of his work related hernia, left inguinal hernia repair, deep vein thrombosis, resulting pulmonary embolism and hypoxic encephalopathy which was secondary to the emboli and episodes of loss of consciousness that resulted in cognitive defects. Id. Dr. Eilers also noted Dr. Williams was aware prior to surgery of a potential deep vein thrombosis issue but decided not to anticoagulate at the time of

surgery. Id. Dr. Eilers continued that the cost of medical care and treatment has been reasonable and appropriate and that Mr. Duncan remains permanently and totally disabled. Id. He will continue to require, as he has since this event, anticoagulant treatment along with linear Jobst compression dressings. Id. He will suffer blood flow issues with his vena cava filter that appears now to be obstructing blood flow and causing edema in the lower extremities. Id.

Respondent chose to obtain two medical evaluations. The first one was with Dr. Grubb, a general osteopathic physician. Rx 4. This physician questioned whether Petitioner was injured at work and also felt Petitioner may have been injured by the medical community as they did not appear to follow the standard of care for his problem. Id. He explained Petitioner was inappropriately taken to surgery and then later abandoned by his surgeon after postoperative complications. Id. He was then undertreated by OSF Hospital and was prematurely discharged from that facility. Id. He then explained Mr. Duncan was at MMI and required no restrictions. Id. Dr. Grubb explained Petitioner currently uses Lasix and Coumadin and is status post encephalopathy as a result from the pulmonary emboli with residual brain injury. Id. He needs a thorough neuropsychological evaluation and treatment. Id. He should continue to follow appropriately with his doctor in regard to DVT and pulmonary embolism to prevent a reoccurrence. Id. A pulmonary consultation would be of great benefit for the encephalopathy. Id.

Respondent also required Petitioner to be seen by David Hartman, PhD, a clinical and neuropsychologist. Rx 5. This doctor reported Petitioner was malingering. Id. Dr. Hartman states Mr. Duncan deliberately exaggerates his cognitive dysfunction symptoms. Id. He noted there were differences regarding the level of smoking and alcohol abuse in the records as compared to what he was provided. During his interview with Petitioner, Dr. Hartman felt Petitioner's complaints were further complicated by two medications he was on that effected alertness, attention and memory. Id. He reported that if Mr. Duncan has an underlying cognitive inefficiency, memory or mood problem, they are insufficient to observe impairment and rendered speculative by Mr. Duncan's extreme unrealistic symptoms. Id. Dr. Hartman indicated that he could not rule out mild cognitive and emotional consequences of Mr. Duncan's medical condition but added these are insufficient to prevent him from returning to work. Id. He continued to then suggest it was possible Mr. Duncan was malarating to obtain drugs for secondary gain. Id. As a result, detoxification and substitution of non-narcotic pain medication should be considered. Id. He explained that if a drug change would occur, Mr. Duncan may experience some improvement in his alertness and memory. Id.

Petitioner testified he continues to experience significant daily pain and disability as a result of his work injury. He reports that he sees Dr. Tun bi-monthly for his injuries and the monitoring of his blood clotting issues. On a typical day, he does his best to obtain physical comfort. He now lives with his parents in a single story home and is divorced. He can walk a maximum of 2 blocks before pain and fatigue prevent him from walking further. He explains his short-term memory is terrible since his pulmonary embolism and he has to write down everything in a small notepad for later recall. He testified that limited physical exertion is fatiguing.

As reflected in Petitioner's Exhibit No. 1, Mr. Duncan has incurred gross medical expenses of \$108,905.35. Px 1. Of that amount, his personal insurance has paid \$29,177.41. There have been insurance discounts of \$36,277.46 with Petitioner paying \$245.00 out of pocket and an additional \$43,205.48 remains unpaid. Id. The unpaid medical expenses in the amount of \$43,205.48 is represented by St. Margaret's Clinics: \$1,369.18, St. Margaret's Hospital: \$30,922.30, Hospital Radiology: \$765.00, Dr. Williams \$1,900.00, Illinois Valley Surgical: \$251.00, 10/33 Ambulance: \$624.20, Heartcare Midwest: \$400.00, Dr. Atul Sheth: \$936.00, Rush University Medical Group: \$2,010.00, Rush University Medical Center: \$3,047.80 and Bureau Valley Anesthesia: \$980.00.

With respect to (F.) Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds as follows:

At the March 19, 2013 hearing in this matter, it was stipulated by the parties that Respondent was not contesting that Petitioner's hernia or pulmonary embolism that followed were causally related to Petitioner's work injury. Respondent questions the causation of Petitioner's ongoing condition as being related to the work injury of March 28, 2009.

As a result of Petitioner's inguinal hernia, he was required to undergo surgery on May 1, 2009. The evening following the surgery, Petitioner explained he had pressure and pain in the groin area that was limited. He felt it was probably related to the surgery and thought little of it. By the next morning, Mr. Duncan indicated his pain was severe and that he lost consciousness. He was then taken by ambulance to the hospital where it was determined Petitioner developed a deep vein thrombosis followed by bilateral pulmonary embolisms. As a result of this medical condition, Petitioner was life-flighted to St. Francis Hospital in Peoria. At St. Francis Hospital, it was determined Petitioner suffered from pulmonary emboli and required the placement of a Greenfield filter.

Following Petitioner's release after surgical placement of the Greenfield filter, records indicate Mr. Duncan continued to suffer anticoagulation issues, headaches that had began after his pulmonary embolism, difficulty ambulating, problems with loss of memory and mental acuity. The Respondent's own examining physician, Dr. Grubb, indicates Petitioner experienced a residual brain injury that requires further evaluation and treatment for what he described as anoxic encephalopathy. Petitioner's physicians have continuously kept Petitioner on light duty or off work since March 29, 2009. The only physicians who recommended a return to full duty work in the last two years have been Dr. Hartman, Respondent's examining clinical psychologist and Dr. Grubb, its other evaluating physician. Otherwise, it has been determined that Petitioner should remain off work and that this work restriction is permanent.

Petitioner continues to suffer the effects of his pulmonary embolism, including shortness of breath, a malfunctioning Greenfield filter, the continuous use of anticoagulants, pain, loss of memory, weight gain and shortness of breath. He can walk no longer than 2 blocks and has difficulty performing the simplest tasks about his residence. This 43 year old Petitioner now lives with his parents who have assisted him with his financial and physical needs that have followed the work injury.

Following consideration of the testimony, medical records in evidence and stipulations on the record, this Arbitrator finds Petitioner's current cause of ill-being, this being the effects and consequences of treatment for Petitioner's work related left inguinal hernia that include his deep vein thrombosis, bilateral multiple pulmonary emboli, increased venous insufficiency issues, partial Greenfield filter failure and the physical impairment that flows from these conditions is causally related to Petitioner's work injury of March 28, 2009.

With respect to (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, the Arbitrator finds as follows:

The Arbitrator has already determined Petitioner's hernia, surgery for repair of the same, deep vein thrombosis, his pulmonary emboli which followed, the resulting medical care employed to address Petitioner's pulmonary embolism, his brain injury, anticoagulation needs, headaches and ongoing physical disability, including pain and difficulties ambulating, are causally related to Petitioner's March 28, 2009 work injury. For the treatment of this condition, he initially underwent a hernia repair that was followed by medical care and treatment for the resulting DVT, pulmonary embolism and hypoxia. Other than the original surgery, there has been surgical placement of Mr. Duncan's Greenfield filter, continuing anticoagulation therapy, physical therapy, diagnostics and monitoring of Petitioner's resulting coagulation issues.

Following the testimony and evidence presented, the Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary. The Arbitrator further finds the bills (see Px 1) for these services rendered were reasonable and appropriate under the circumstances and, to the extent applicable, they should be paid by Respondent pursuant to the Medical Fee Schedule. As stipulated by the parties, the same maybe paid directly by Respondent to Petitioner's medical providers. In Petitioner's Exhibit No. 1, \$43,205.48 remains unpaid (St. Margaret's Clinics: \$1,369.18, St. Margaret's Hospital: \$30,922.30, Hospital Radiology: \$765.00, Dr. Williams \$1,900.00, Illinois Valley Surgical: \$251.00, 10/33 Ambulance: \$624.20, Heartcare Midwest: \$400.00, Dr. Atul Sheth: \$936.00, Rush University Medical Group: \$2,010.00, Rush University Medical Center: \$3,047.80 and Bureau Valley Anesthesia: \$980.00).

A portion of the bills have been paid by Petitioner's health insurance that was provided by his ex-spouse, \$29,177.41. This resulted in discounts of \$36,277.46 for which Respondent shall hold Petitioner harmless from any repayment obligations demanded by the group provider.

With respect to (K.) What temporary benefits are in dispute (TTD) and (L) What is the nature and extent of the injury, the Arbitrator finds as follows:

Since March 29, 2009, Petitioner has been ordered to remain off work or, for a brief time, permitted to return to work with significant restrictions. However, no work was provided. The short-term release of Petitioner to employment occurred through Dr. Williams and provided a return to work with a 10 pound restriction, including no extensive pulling, pushing or twisting. This occurred in May 2009. In the interim, Petitioner's employment was terminated by Respondent. It claimed Mr. Duncan failed to completely disclose his criminal behavior that occurred almost two decades prior. As a result, he was not allowed to return to work in any capacity. Other than this brief suggestion that Petitioner could return to work at a light duty position, his physicians have continuously kept Petitioner off work and report that he is permanently disabled.

While off work from March 29, 2009 through and including the date of hearing, March 19, 2013, a period of 206-4/7 weeks, Respondent has paid TTD on an intermittent basis for 125 weeks. Arb Ex 1. This creates a TTD shortfall of 87-4/7 weeks.

Petitioner continues to suffer from his March 28, 2009 work related hernia and the surgical repair of the same that led to his deep vein thrombosis and bilateral pulmonary emboli. Multiple physicians have indicated that because of the pulmonary emboli experienced, Petitioner suffers serious venous insufficiency issues that provides for lower extremity swelling, difficulties with ambulation and pain in his lower extremities. Fatigue, ambulation limitations, continuing headaches, anticoagulation issues requiring the use of medication for the remainder of his lifetime prevent him from doing anything more than limited physical activity.

Following consideration of the testimony and evidence presented, the Arbitrator finds that Petitioner is permanently and totally disabled from all employment as a result of his work injury of March 28, 2009 and its sequela. As such, the Respondent shall pay permanent total disability benefits of \$461.78, the minimum rate provided by the Act, from the date of hearing of March 19, 2013 and for the remainder of Petitioner's life as provided by the Worker's Compensation Act.

With respect to (M.) Should penalties or fees be imposed upon Respondent, the Arbitrator finds as follows:

Respondent's dispute regarding Petitioner's care and treatment following his initial DVT treatment was not unreasonable. As such, Petitioner's request for penalties is hereby denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="checkbox"/> up	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KAREN BENSON,

Petitioner,

vs.

NO: 11 WC 25877

MCDONALD'S, INC.,

Respondent

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, and medical expenses both current and prospective, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation 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).

Findings of Fact and Conclusions of Law

1. Petitioner testified she was employed by Respondent since November, 29, 2007 as an Assistant General Manager. She works the 7 pm to 4 am shift. Her job requires "constant standing, walking, reaching, bending-type things, physical, very physical job." The "lobby" closes at 11 p.m. but the drive-thru remains open 24 hours. After the lobby closes "there's excessive cleaning," and there are four employees present total, including Petitioner. Petitioner would assist in the cleaning.

14IWCC0470

2. On April 14, 2011, she was on a six-foot ladder putting away box fans in the attic with a coworker. She lost her balance and fell backwards landing "back to the right." She felt nauseous and felt pain in her back, neck, and shoulder. She estimated she fell four feet. When she tried to get up, her pain went from her back all the way down her right side. Her coworker helped her to the office and she sat down. She did not continue to work and went home.
3. The next day she went to her general practitioner, Dr. Mozwecz. She complained of pain in her shoulder, neck, back, right knee, and down her side. The next day x-rays were taken of her cervical and lumbar spine, her left shoulder, and right knee. She also believed they took x-rays of the sacroiliac joint. Petitioner returned to work after taking off a few days.
4. Petitioner testified she returned to work in light duty after July 19, 2011 through October 17, 2011. During that time she was concerned about the pain in her right hip. "The pain was becoming more intense, and it was, you know like shooting from the hip down. The numbness was becoming greater and moving into the groin area."
5. Petitioner also testified x-rays were taken of her right hip and left shoulder arthrogram was performed on August 16, 2011. A right knee arthroscopy was also recommended. She was taken off work on November 17, 2011 because she had shoulder surgery.
6. In July 2011, Petitioner had physical therapy and complained about pain in her back and hip. In November 2011 she had a cortisone injection in her right hip. Petitioner testified her pain in "the lower back hip and down the leg were getting worse, the neck was kinking up, the shoulder was still throbbing."
7. When she returned to work on February 14, 2012 she had limited use of her shoulder, and had "excessive pain" in the lower back hip area and numbness in the right thigh and knee when "walking and standing for long periods." When she was taken off work on April 23, 2012 the pain in the low back, leg, and hip was "getting a lot worse."
8. When she complained of hip pain to her doctors "they thought the knee originally was causing the pain going upward. They thought the back was causing problems going down the right." She thought "the SI joint was an issue. They thought a nerve was trapped. They did an EMG."
9. Dr. Durkin ordered an arthrogram of her hip in July 2012. The arthrogram was positive for a labral tear and she was referred to Dr. Domb, an orthopedic surgeon. Dr. Domb recommended surgery to repair the labral tear and to replace her hip. Dr. Durkin kept her off work since July 30, 2012. Petitioner has not had the surgery because it was denied by Respondent.

10. Petitioner testified she cannot walk long distances because of her hip. After about half an hour she gets shooting pain down the leg to the ankle. She has to "sit down and or relax." Her pain starts at the hip and goes all the way down to the foot. She brings one of her children to help her when she goes on errands. They perform any function that requires lifting or bending. She cannot perform her job duties because of her hip.
11. On cross examination, Petitioner testified she did not land on her left side, and if she told Dr. Mozwecz that, or if medical records indicated that she did, that would be incorrect. When questioned about not telling Dr. Durkin about her hip pain, Petitioner answered "I did report the pain went down my right side starting with my lower back, buttocks, waist, down to the knee." She also said that to Dr. Zindrick.
12. Petitioner agreed that there is not any pending recommended treatment for her shoulder or knee, "at this time." She was "not sure" whether she had a bone scan for hip complaints prior to her accident. She then guessed she did have a bone scan in 2005, but she denied being treated for sacroiliac arthritis prior to the accident.
13. She can walk "maybe a couple of blocks." Then asked whether she previously testified she could walk 1 hour, Petitioner responded "approximately." She does not use an assistive device when she walks, at this time. She is unable to reach overhead.
14. On redirect examination, Petitioner testified she had complaints regarding her right hip in July of 2012. She explained her problems in physical therapy. The 2005 hip bone scan was negative. Petitioner understood that her low back and knee pain were all related to the hip.
15. When she walks for "about an hour" that would be at a "slow, slow, pace." She does not walk an hour every day. When she was referring to an hour of walking she included standing, like she does at work. Lifting over her head "causes pressure on" her hip, back, and shoulder.
16. The medical records reveal that on April 15, 2011, Petitioner presented to her general practitioner, Dr. Mozwecz, who noted that Petitioner kept pointing to her sacroiliac joint as a source of pain.
17. On April 16, 2011, lumbar x-rays were taken because of back "pain lower back toward the left" after a fall off a ladder two days previously. It showed mild narrowing at L4-5 without compression and small osteophytes at L3-4. X-rays of the sacroiliac joint showed mild degenerative changes. X-rays of the cervical spine showed narrowing at C5-7 with associated osteophytes.

18. On June 8, 2011, Petitioner was referred for physical therapy of her shoulder by Dr. Durkin. On the evaluation questionnaire Petitioner noted she was "having back pain into right leg."
19. On July 7, 2011, in physical therapy for her shoulder condition, Petitioner complained that her back and hip were sore and her neck felt stiff.
20. The July 11, 2011 physical therapy progress report indicated Petitioner was being treated for lumbar/pelvic stabilization. Petitioner complained her back and buttocks felt stiff. She reported her shoulder was 70% better; her neck and back were 10% better. She reported 4/10 shoulder pain, 6/10 neck pain, and 7/10 hip pain.
21. On July 14, 2011, Dr. Andersson evaluated Petitioner's cervical and lumbar spine conditions in an examination pursuant to section 12 of the Act at Respondent's request. Petitioner complained of pain in the neck without radiation and pain in the lower back with some radiation into the right buttock, anterior thigh, shin, and foot. Dr. Andersson diagnosed contusions of the neck and back and neck with possible strains. She has degenerative disc disease of both the lumbar and cervical spine which he did not think was caused or aggravated by the accident. He thought completing physical therapy was reasonable as was an EMG because her right leg condition was not typical radiculopathy and the MRI was essentially normal. He thought Petitioner could work with a 5-10 lb lifting restriction and limited sitting and walking.
22. On November 11, 2011, Petitioner presented to Physician Assistant Pretzer for a visit after shoulder surgery. Ms. Pretzer noted tenderness over the trochanter bursa, which could be related to her fall and contribute to her symptoms. She administered an injection in Petitioner's right hip.
23. On May 22, 2012, Petitioner had a functional capacity evaluation ("FCE") which was considered invalid "based on consistencies and inconsistencies when interfacing grip dynamometer graphing, resistance dynamometer graphing, heart rate variations, weights achieved, and selectivity of pain reports and pain behaviors. The results represent a manipulated effort by the client. Therefore, the levels identified by the client represent less than their true safe capability level." According to the FCE, Petitioner demonstrated the ability to work at a sedentary level, which was consistent with the job description. Petitioner indicated her job actually was at the light physical demand level because she occasionally had to lift more than 20 pounds.
24. On June 13, 2012, Petitioner saw Dr. Zindrick and continued to complain of pain and numbness in the right buttock and down her right leg. Dr. Zindrick diagnosed ongoing back pain with right leg radiculopathy. He prescribed an EMG, continued physical therapy, and kept Petitioner off work.

25. On July 19, 2012, Petitioner returned to Physician Assistant Pretzer. She noted that along with other injections, Petitioner had one in the trochanter bursa which did not provide relief. Ms. Pretzer examined the hip and noted mild tenderness in the greater trochanter and pain with range of motion. She ordered an MRI arthrogram to rule out a labral tear which would correlate with her symptoms and which would have been caused by the fall off the ladder she had at work.
26. The MRI arthrogram showed superior labral tear and moderate to severe gluteus minimus insertional tendinosis, and Petitioner was referred to Dr. Domb.
27. On August 9, 2012, Petitioner presented to Dr. Domb complaining of 5-6/10 right hip pain since falling from a ladder on April 14, 2011. She had physical therapy which aggravated her symptoms and injection in the greater trochanter bursa with minimal relief. She denied back pain. Dr. Domb diagnosed "right lateral hip labral tear caused by the work injury." She also had moderate degenerative joint disease which would make successful arthroscopy uncertain. He thought she would be best served with a hip replacement. He administered a cortisone injection, and took her off work.
28. On September 13, 2012, Petitioner reported only a week of relief from the injection. They discussed the alternatives of arthroscopic surgery to repair the labral tear, total hip replacement to also deal with degenerative joint disease, or diagnostic arthroscopy which may be converted to a hip replacement during surgery. Dr. Domb was inclined toward the third option but would await Petitioner's decision on how to proceed.
29. On November 12, 2012, Dr. Fossier performed a review of Petitioner's medical records at the request of Respondent. In answering whether Petitioner's hip injury was caused by the accident, Dr. Fossier opined that there was "no history of a hip injury." Petitioner "was examined by multiple providers, and had several IMEs, none of whom mentioned any problem with the right hip, or of any abnormal examination of the hip. It was only on July 19, 2012 Ms. Pretzer, PAC, mentions a problem with the hip and suggests a possibility of a labral tear. This is over a year after the original injury."
30. Dr. Fossier concluded that Petitioner "was seen by too many providers for them to have not noticed a problem with the hip in a more contemporaneous timeframe. Furthermore, the presumptive diagnosis of labral tear is based on her subjective complaints. From the invalid FCE, one would have to question her subjective complaints. Whatever complaints [Petitioner] has about the hip cannot be causally related to the injury of April 14, 2011, injury, on a more probable than not basis."
31. Dr. Domb testified by deposition on January 14, 2013. The witness testified he is a board-certified orthopedic surgeon with a subspecialty of hip surgery. His practice is about 50% hips, 25% shoulders, and 25% knees. He performed about 1,000 hip replacements in his career.

32. He explained that a labrum tear can be caused by repetitive motion or acute trauma. A labrum tear can be separate and distinct from an arthritic hip. A patient with arthritis may be more prone for developing a labral tear. A patient with a labral tear or an arthritic hip can be asymptomatic. Both conditions can be aggravated by a fall or trauma. Labral tears can cause pain in the hip and leg.
33. Labral tears are often difficult to diagnose because they can cause pain in a variety of locations. He agreed that "symptoms associated with labral tears are somewhat vague and nonspecific many times." Leg and knee pain would be consistent with a labral tear. Symptoms of sharp and burning pain radiating upward toward the hip can also be associated with a labrum tear.
34. Dr. Domb first saw Petitioner on August 9, 2012 for evaluation and treatment of her right hip. She reported constant pain in the anterior and posterior aspects of the hip since her accident on April 14, 2011. Falling from a four-foot ladder onto her right buttock "certainly could" cause a labral tear. It could also be caused by a fall on the left side as a result of a twisting injury.
35. Dr. Domb stated that disturbance in gait and in motion due to hip pain caused by a labral tear can cause compensatory pain in the sacroiliac joint. He thought it was more likely than not that the fall caused the labral tear. The basis for his opinion was primarily "the temporal relationship between the onset of her pain and the injury itself." He thought Petitioner had preexisting arthritis, but he thought it was asymptomatic prior to the fall. "So putting it all together the fall caused her to have a symptomatic hip problem." He characterized Petitioner's arthritis as mild.
36. Dr. Domb was unaware that there "some issues" as to whether Petitioner did not complain of hip pain until July of 2012. Petitioner's report to her general practitioner of hip or sacroiliac joint pain the day after the fall would be consistent with a possible hip problem after the fall. Her continued complaints of pain in the leg and numbness going from the leg to the hip on May 27, 2011 would also be consistent with a labral tear. Increased pain with radiation into the right buttocks and leg after a return to work and relief of pain while off work could both be associated with a labral tear. Dr. Domb then noted that leg pain more than leg numbness would be associated with a labral tear. Tenderness over the trochanter bursa is commonly associated with a labral tear. He did not see any records indicating Petitioner had any type of hip or leg pain prior to the accident.
37. On cross examination, Dr. Domb testified he did not know when Petitioner's antalgic gait began. Petitioner did not tell him exactly how she landed. Labral tears can be caused by degenerative changes. He believed the accident caused her condition to be symptomatic.

He is not knowledgeable about Petitioner's work activities. However, he thought it would be difficult for her to walk to her car or from the car to the job.

38. Dr. Domb examined Petitioner a couple of weeks previously and in his opinion it would be very difficult for her to work in any job that required her to be on her feet at all. Dr. Domb was not aware that Dr. Nho issued a report and opined that Petitioner's labral tear was not caused by the accident.
39. On redirect Dr. Domb testified that Petitioner's pain complaints prior to July 25, 2012 were consistent with a labral tear.
40. Dr. Nho testified by deposition on March 8, 2013. He testified he is a board-certified orthopedic surgeon who specializes in sports medicine and hip arthroscopies. He performs about 400 arthroscopies a year, about 80% of which include torn labrum repair. Usually there is an underlying mechanical problem in the hip associated with a torn labrum.
41. Degenerative labrum tears are usually caused by overuse and passage of time. An acute traumatic labral tear is generally caused by a "high-energy accident," that sometime also results in dislocation of the hip. A symptom of a labral tear is "just generalized dull achy pain." Pain can occur in areas around the hip joint such as the pelvis and low back. However, a labral tear can be asymptomatic.
42. Dr. Nho performed an examination pursuant to section 12 of the Act on Petitioner and reviewed medical records. Petitioner reported falling from a ladder and landing on her left side. Petitioner complained of pain in her low back, buttock, and pain radiating down her right leg.
43. On examination, Petitioner exhibited some weakness and pain with rotation of the right hip. Dr. Nho opined that it was unlikely that Petitioner's hip condition was related to her accident because the hip pain was first documented on July 25, 2012, while the accident occurred on April 14, 2011, though he could not "say for sure." Nevertheless, he thought a course of nonsurgical treatment may be appropriate to alleviate her symptoms.
44. Dr. Nho reviewed the deposition testimony of Dr. Domb; it did not change his opinions. Dr. Nho was aware that Dr. Domb had recommended surgery; either an arthroscopic labral tear repair or hip replacement. Dr. Nho had opined that nonsurgical treatment was appropriate when he performed his examination, but he had not seen her since. He also thought Petitioner could return to work at her previous job based on the job description and the results of the FCE.
45. On cross examination, Dr. Nho agreed that in his initial report he recommended physical therapy, but that if that did not resolve her pain, surgical intervention may be necessary.

That opinion would not likely change based on the additional medical records he reviewed. He also agreed that he recommended sedentary work with a 20-lb lifting limit. According to the job description, he believed that Petitioner's job duties were within his restrictions.

46. Dr. Nho indicated that it was probably more likely than not that a person over 40 would have a labral tear, but he did not have a specific percentage. He thought a sedentary job meant "sitting for eight hours a day." He knows Dr. Domb and considers him a reasonably well qualified orthopedic surgeon. He does not have any problem with Dr. Domb's "protocol" regarding Petitioner's hip condition.
47. Dr. Nho agreed that if there were reports of hip pain prior to July 25, 2012, his causation opinion may be different depending on how long after the accident the complaint was made.
48. He agreed that an asymptomatic labral tear can become symptomatic after a trauma. A person with an arthritic hip may not necessarily be more susceptible to get a labral tear, but "it would just be harder to detect." Symptoms of a labral tear can be somewhat vague and nonspecific. Symptoms can develop after a trauma within a reasonable period of time. On rare occasions the pain can be distracted or disguised as a low back, leg, or knee problem. It would normally present as groin pain radiating to the knee and not just a knee problem.
49. He also agreed that it "could be true" that patients with labral tears can be undiagnosed for an extended period of time and are often seen by numerous treaters before being definitively diagnosed. He was aware of studies that indicated there is an average of two years until a labral tear is diagnosed. "It could happen" that a labral tear could present as pain radiating into a knee or buttock, but "it's very unusual."
50. Dr. Nho was familiar with the Journal of Bone and Joint Surgery, which is an authoritative journal in which Dr. Nho has published. The articles are peer-reviewed and he has respect for their opinions, even if he does not always agree with them. He was also familiar with a specific article written in 2006 about the presentation of labral tears. The article indicated on average a patients sees 3.3 providers and it is 21 months before a torn labrum is correctly diagnosed. However, that article is a bit out dated and there is now a better understanding of hip conditions.
51. Symptoms of a labral tear can be diffuse and indistinct, "but generally located in the hip area." Tenderness in the trochanter bursa could be related to a torn labrum, but they are separate conditions. An injection in the trochanter bursa would not usually relieve pain from a torn labrum.

52. Dr. Nho agreed with the opinion of Dr. Domb that Petitioner was a borderline candidate for arthroscopic because she had the early signs of arthritis. He thought it was reasonable to initially begin an arthroscopic labrum repair and then assess the necessity of a hip replacement.
53. Sometimes sacroiliac joint pain can be associated with a labral tear, but it's very rare. While Dr. Mozwez examined Petitioner's hips the day after the fall, she appeared to examine Petitioner's entire body. He assumed she did so because of the nature of the fall. Thigh pain can be associated with a torn labrum, and Petitioner did complain of SI joint pain. It is possible that a torn labrum can be misdiagnosed as radiculopathy, but radiculopathy is usually pretty distinct in its presentation. Radiculopathy and hip pain are very different. A labral tear does cause hip pain, but hip pain is a pretty broad diagnosis. Walking and activity increases pain from labral tears.
54. Dr. Nho did not believe the torn labrum could account for all of Petitioner's symptoms; it "is very atypical." He agreed that Petitioner did mention hip pain prior to the date he indicated in his report after being shown some medical records.
55. On redirect examination, Dr. Nho testified the symptoms he was asked about, pain traveling down the leg would indicate radiculopathy. Hip pain is more associated with pain in the groin. Generally, Petitioner's complaints were more like a radiculopathy than indicating a hip problem. He still did not believe Petitioner's torn labrum was caused by the accident. Although he recommended sedentary work, Petitioner would be able to do some walking, some stair climbing, change positions, and get into and out of a vehicle.
56. On re-cross examination, Dr. Nho agreed that in his addendum report he indicated that Dr. Fossier reviewed medical records and came to the same conclusion on causation because of the lack of complaints until July of 2012. He agreed that Petitioner complained of hip pain in July of 2011. Dr. Nho agreed that people have different pain thresholds and their ability to perform various tasks with pain is different.
57. Respondent submitted into evidence surveillance video. The video includes activities on July 5, 2012, July 30, 2012, and February 11, 2013. It shows Petitioner walking without any apparent limp, standing, bending, twisting driving, and getting into and out of vehicles without any apparent difficulty. It also shows her with a young companion, presumably a grown son, shopping. He appears to touch her head with a mop-like utensil and Petitioner swiped it away with her right hand. Later she is seen carrying heavy-looking objects (at least heavier than a gallon of milk) from the vehicle into the garage in both hands. One appears to be a canister, perhaps a fire extinguisher. The son does not assist her. Petitioner is also seen watering her lawn for an extended period holding the hose in her right hand. Finally, Petitioner is seen twice reaching overhead activating the closing mechanism of the hatchback door of an SUV. While she reaches overhead she does not appear to have to pull the door down; it appears to close automatically.

The Arbitrator found that Petitioner failed to prove her hip condition was caused by the work accident. She found the opinions of Respondent's section 12 doctors persuasive as well as the surveillance video. Petitioner argues the Arbitrator erred in finding the section 12 medical examiners persuasive because their opinions were fundamentally flawed.

The Commission agrees with Petitioner that the causation opinions of Drs. Nho and Fossier are indeed flawed because for some reason they were under the impression that Petitioner did not complain of hip pain until July of 2012. The record is clear that Petitioner complained of specifically about hip pain in physical therapy in July of 2011 and to Ms. Pelzer in November of 2011. In addition, the Commission finds the testimony of Dr. Nho not very persuasive. He had to concede that pain from labral tears can be distracted or disguised, is often misdiagnosed, and that the article cited by Petitioner's did indicate that on average it takes on average 21 months for a correct diagnosis of a torn labrum to be made. Finally, Dr. Mozwecz indicated that the day after the accident Petitioner kept pointing her sacroiliac joint as a source of pain, and the sacroiliac joint would appear to be close to the hip. Dr. Nho conceded specifically that a torn labrum can be associated with sacroiliac pain, a fact which was also confirmed by Dr. Domb's testimony.

Similarly, the Commission does not consider the causation opinion of Dr. Fossier very persuasive. Not only was he under the misimpression that Petitioner had not complained of hip pain until 15 months after the accident, he indicated that was a foundational basis of his opinion. His other fundamental basis for his opinion that her hip condition was not caused by the accident was that she was simply seen by too many doctors who would not have missed the diagnosis of a labral tear. However, that opinion was directly refuted by Dr. Nho's concession about the scholarly article that established that on average it takes 21 months and numerous doctor visits before a labral tear is correctly diagnosed.

Finally, Dr. Andersson's section 12 examination report actually supports the proposition that Petitioner's symptoms were mostly related to her hip condition. He noted that her leg symptoms were not typical of pure radiculopathy and that her spinal MRIs were essentially normal. Therefore, it appears likely that the continuing back and leg symptoms were caused by her hip condition which was undiagnosed at the time.

Clearly, the Arbitrator did not find Petitioner credible, and that is not necessarily an unreasonable finding especially in light of the surveillance video which clearly shows her engaging in activities that she testified were very painful to her. While Petitioner may have engaged in some symptoms exaggeration, the Commission considers that fact is not really relevant to the issue of causation, but may rather be relevant primarily to the issue of the nature and extent of Petitioner's permanent partial disability. There is no doubt that Petitioner has a torn labrum; a fact that was conceded by Respondent's medical examiners.

The surveillance video does not really adversely affect Petitioner's claim regarding the issues now before the Commission. While Petitioner was shown to lift her arm over her head, her shoulder condition is not currently an issue before the Commission. The issues before the Commission are restricted to causation of Petitioner's hip condition, Petitioner's ability to perform her job duties, and medical expenses. In addition, while the video shows her walking, turning, and getting into and out of vehicles without apparent difficulty, the video is certainly of limited temporal duration. The Commission concludes that Petitioner has sustained her burden of proving she cannot currently perform the fundamental duties of her job. While Dr. Domb may have exaggerated her current disability, even Dr. Nho opined that Petitioner should be restricted to sedentary duty. Petitioner did prove that her job as assistant manager of a fast-food restaurant was not strictly sedentary; that it required that she stand and walk for a considerable time every day, which was specifically made difficult because of her hip condition. Therefore, the Commission awards temporary total disability benefits to the date of arbitration.

Regarding the issue of medical expenses, the Commission agrees with the Arbitrator about the times at which Petitioner reached maximum medical improvement of her back, shoulder, and knee, as well as her denial of expenses incurred for those conditions after those dates and her denial of the unspecified charges. However, the Commission awards the medical expenses incurred from Dr. Domb for treatment of her hip condition and any prospective treatment he may recommend for her hip condition.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$458.83 per week for a period of 76 ³/₇ weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner for medical expenses incurred for treatment of her hip condition provided by Dr. Domb, pursuant to the applicable medical fee schedule, under §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent authorize and pay for prospective treatment recommended by Dr. Domb for Petitioner's hip condition.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$70,000.00. 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: JUN 16 2014


Ruth W. White


Daniel R. Donohoo

RWW/dw
O-5/21/14
46


Charles J. DeVriendt

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

14IWCC0470

BENSON, KAREN

Employee/Petitioner

Case# 11WC025877

McDONALD'S INCORPORATED

Employer/Respondent

On 7/19/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0290 KARCHMAR & STONE
LARRY KARCHMAR
111 W WASHINGTON ST SUITE 1030
CHICAGO, IL 60602

0210 GANAN & SHAPIRO PC
JULIA A MURPHY
210 W ILLINOIS ST
CHICAGO, IL 60654

STATE OF ILLINOIS)
)SS.
 COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION 19(b)

Karen Benson
 Employee/Petitioner

Case # **11WC 25877**

v.

Consolidated cases: **n/a**

McDonald's Incorporated
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **May 28, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **4/14/2011**, 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$35,789.00**; the average weekly wage was **\$688.25**.

On the date of accident, Petitioner was **47** years of age, *married* with **1** dependent child.

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

Respondent shall be given a credit of **\$12,591.51** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$61,292.72** for medical benefits, for a total credit of **\$73,884.23**.

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

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, to Loyola, Dr. Durkin and Hinsdale Orthopedics outlined in the attached Conclusions of Law, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit of \$61,292.72 for medical benefits that have been paid pursuant to the Illinois Medical Fee Schedule and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act. Respondent shall be given a credit of \$12,591.51 for temporary total disability benefits that have been paid.

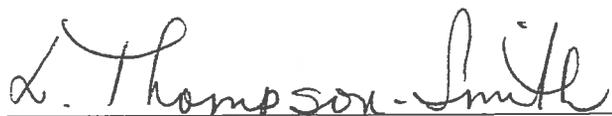
Petitioner's claim for prospective medical service is denied.

Respondent shall pay Petitioner temporary total disability benefits of \$458.83/week for 26 & 3/7 weeks, commencing 6/17/11 through 7/19/11, 10/17/11 through 12/27/11, 1/13/12 through 2/13/12, & 4/23/12 through 5/30/12 as provided in Section 8(b) 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

July 19, 2013

KAREN BENSON

11 WC 25877

14IWCC0470

Findings of Fact

The disputed issues in this matter are: 1) causal connection; 2) medical bills; 3) temporary total disability; and 4) prospective medical services. See, AX1.

Karen Benson ("Petitioner") testified she worked for McDonald's ("Respondent") as an assistant manager. She was hired in 2007, and her job duties included various activities including cleaning, getting food, preparing food, supervising up to four employees, assisting customers, paperwork and maintaining the cash registers.

Petitioner was involved in a work related accident on April 14, 2011. Petitioner testified she was placing box fans in an attic with another employee. Petitioner testified she was on a ladder when she fell backward approximately four feet hitting her back to the right side. Petitioner testified she had immediate pain in her low back, neck, left shoulder, right side and right knee. She finished her shift, took Advil, felt worse and sought medical treatment the next day.

Petitioner testified that she sought treatment with her personal physician, Dr. Mozwecz on April 15, 2011. Dr. Mozwecz' notes indicated that Petitioner reported pain in the left buttock and left shoulder.

An x-ray of the lumbar spine performed on April 16, 2011, purported to show mild degenerative changes in the sacroiliac joint with no evidence of fracture. An x-ray of the lumbar spine taken April 16, 2011, purported to show disc narrowing at L4-L5 and mild degenerative changes. SI joints were normal. An x-ray of the cervical spine taken April 16, 2011, purported to show osteophytes at C5-C7 with no acute osseous abnormalities demonstrated. An x-ray of the left shoulder showed no fracture or degenerative changes and all joints appeared normal. She was diagnosed with low back pain, left shoulder pain, and directed to return to work, in a light duty capacity, through April 19, 2011. See, PX11 & RX13.

An MRI of the left shoulder taken May 10, 2011 purported to show moderate degenerative changes of the acromioclavicular joint with sub-articular geode formations that abut the musculotendinius junction of the supraspinatus; a small partial tear of the distal articular surface of the supraspinatus tendon; and a small subacromial bursitis. The x-ray of the cervical spine performed on June 29, 2011

purported to find degenerative changes in the cervical spine consisting of marginal osteophytes at C5 through C7; reduced disc spacing at C6 through C7; and straightening of the lordosis. The MRI of the lumbar spine taken June 2, 2011, purported to show early loss of disk hydration signal at L2 through L5; suggestion of posterior annular tears at these levels; and 2.0mm to 2.3mm disc bulges effacing or abutting the thecal sac. *See*, RX13.

Petitioner testified she was referred to Hinsdale Orthopedics for treatment. She saw Dr. Durkin for her complaints of left shoulder pain and right knee pain. He provided an injection into the right knee, took her off work, prescribed therapy and referred her to Dr. Zindrick for the low back pain and neck pain. *See*, PX6.

Petitioner testified she was then referred by Dr. Mozwez to Dr. Zelby, a neurosurgeon, for her radicular complaints of pain. Dr. Zelby continued Ms. Benson off work and recommended physical therapy and an EMG. *See*, PX9.

On July 11, 2011, Dr. Nikhil Verma evaluated Petitioner by request of Respondent, pursuant to Section 12. She reported pain in her left shoulder and right knee. Dr. Verma evaluated Petitioner's entire left arm and right leg. Petitioner did not report any pain in the right hip, nor were there any positive findings on exam. Dr. Verma diagnosed Petitioner with a left shoulder rotator cuff tear and right knee injury, most likely without internal derangement. He recommended an injection, therapy and possible surgery for the left shoulder. Dr. Verma recommended an MRI of the right knee to confirm no internal derangement was present. Dr. Verma released Petitioner to return to work light duty. *See*, RX1.

On July 14, 2011, Petitioner was evaluated by Dr. Gunnar Andersson, pursuant to Section 12 of the Act, for neck and back complaints. Petitioner complained of pain in her neck and low back with radiculopathy into the right lower extremity. Dr. Andersson diagnosed Petitioner with strains and contusions of the neck and low back and recommended physical therapy. He also wanted an EMG of the right lower extremity and indicated that Ms. Benson could return to work in a light duty capacity. *See*, RX2.

Petitioner returned to Dr. Zelby on July 15, 2011, at which time he recommended she return to work in a light duty capacity. Petitioner testified she returned to work on July 20, 2011. *See*, PX9.

The EMG/NCV was performed on July 21, 2011, and read as normal. There was no evidence of any lumbar radiculopathy. Petitioner followed up with Dr. Zelby on August 3, 2011, who diagnosed her as having lumbar degenerative disc disease. He noted that besides her subjective complaints of pain, the neurological examination was normal. He opined that her complaints had no objective basis and were not related to any injury or infirmity noted within her lumbar spine or nervous system. Dr. Zelby placed Petitioner at maximum medical improvement ("MMI") for her neck and low back, opined she required no further treatment, returning her to work in a full duty capacity. *See*, PX9.

The next day, August 4, 2011, Petitioner returned to Dr. Zindrick reporting ongoing pain in the neck and low back. He referred her to Dr. Lipov for injections and returned her to work with restrictions. Petitioner testified that the injections were denied by Respondent. *See*, PX5.

During her treatment for the lumbar and cervical condition, Petitioner continued under the care of Dr. Durkin for her right knee and left shoulder complaints. Dr. Durkin eventually prescribed a MR arthrogram of the left shoulder to rule out internal derangement. The test was performed, and Petitioner followed up with Dr. Durkin on August 22, 2011 to review the results. Dr. Durkin prescribed a left shoulder arthroscopy for a debridement and repair of the rotator cuff. *See*, PX6.

On August 29, 2011, Petitioner was re-evaluated by Dr. Verma at Respondent's request. Petitioner reported pain in the left shoulder, right knee and low back radiating into the right leg. Dr. Verma diagnosed Petitioner with a left shoulder rotator cuff tear. He opined she was at MMI for the right knee injury, noting that her complaints were non-anatomic in nature. He agreed with the recommendation for a left shoulder arthroscopy and released Ms. Benson to return to work in a light duty capacity. *See*, RX3.

Left shoulder surgery was performed on October 17, 2011. Petitioner confirmed she was taken off work after surgery and eventually referred for a course of physical therapy. Petitioner testified she began therapy at ATI in November 2011 and noticed pain in the low back, hip and neck and throbbing in the left shoulder.

Petitioner followed up with Dr. Durkin on December 27, 2011, at which time it was noted she had improvement in her range of motion. She did report pain going down her left shoulder blade. Dr. Durkin recommended continuing therapy and released Petitioner to return to work with no use of the left arm.

Petitioner testified she returned to work with restrictions through January 12, 2011. *See*, PX6.

On January 10, 2011, Petitioner called Dr. Durkin's office and wanted to know whether she should be working light duty while on medications. She was advised to take Tylenol and continue working within her restrictions. On January 13, 2012, Petitioner followed up with Dr. Durkin reporting that her shoulder was throbbing. Range of motion was limited on exam. Dr. Durkin took Petitioner off work stating Respondent could not accommodate the restrictions. Dr. Verma evaluated Petitioner again on February 2, 2012, and she reported continuing throbbing pain in the left shoulder. She was diagnosed with post-operative stiffness, and Dr. Verma prescribed an injection, medications and physical therapy. She was released to return to work in a light duty capacity. *See*, PX6 & RX4.

Dr. Durkin released Petitioner to return to work with restrictions again in February 2012, and took her off work in April of 2012. Petitioner eventually underwent a course of work conditioning and was prescribed a functional capacity evaluation ("FCE"), at Dr. Durkin's request. The FCE was performed on May 22, 2012, and Petitioner testified she gave her best efforts during the FCE. The FCE was deemed invalid and it was stated that the results represented a manipulated effort. The examiner opined Petitioner could return to work, at least a sedentary capacity and that she was able to meet all of her job demands.

On May 25, 2012, Petitioner returned to Hinsdale Orthopedics where she reported low back pain radiating into the right leg. She stated that she had tenderness in the low back and buttock and was diagnosed with radiculopathy. *See*, PX6.

Petitioner confirmed she returned to work in July of 2012. Despite having been released by her treating physician, she testified her left shoulder did not feel right and that she cannot perform overhead activities and lacks the strength to lift a gallon of milk.

Surveillance from June 30, 2012 and July 5, 2012 shows Petitioner engaged in various activities of daily living. Petitioner was able to go shopping on that day. She was filmed as she walked a store, got in and out of her SUV and even assisted a passenger when adjusting a sheet of plywood. Later that day, Petitioner is shown working in her yard. She walked around the house that day with a hose

and watered her plants. She is shown squatting down to the ground to pick things up off the ground. She is shown reaching overhead with her right arm, on at least two occasions, to push the button to lower her SUV truck door, and on one occasion swatting away an item put in her face by her young companion. *See, RX11.*

Petitioner was also re-evaluated by Dr. Andersson on July 5, 2012. Petitioner reported ongoing low back pain with radiculopathy into the right lower extremity. Dr. Andersson opined Petitioner's severe subjective complaints were not supported by the objective findings. He felt Petitioner was at MMI when she was released by Dr. Zelby, to return to work in a full duty capacity. *See, RX5.*

Petitioner saw Dr. Zindrick again on July 19, 2012. Again, she reported left shoulder, right knee and back pain. Dr. Zindrick felt her complaints were not related to her low back and Petitioner's hip was examined. She was diagnosed with a right hip labral tear and prescribed an MRI of the right hip. She was released to return to work sedentary and was declared to be at maximum medical improvement ("MMI").

On August 9, 2012, Dr. Domb evaluated Petitioner. She reported sharp right hip pain with numbness and radiation. On exam, Petitioner denied any low back pain. X-rays of the hips showed bilateral sclerosis. Petitioner was diagnosed with a right hip labral tear and Dr. Domb recommended surgery including a labral repair and/or total hip replacement. Petitioner was also provided with an injection into the right hip. *See, Px3.*

Dr. Domb testified Petitioner's right hip complaints are causally related to the April accident. He opined that Petitioner's radicular complaints could have been manifestations of the underlying hip condition. *See PX4.*

On August 14, 2012, Dr. Shane Nho examined Petitioner at Respondent's request. Dr. Nho opined Petitioner had weakness in both hips, right greater than left. He opined that Petitioner's hip complaints began recently and that they were not related to the accident. He recommended that she return to work per the FCE. *See, RX6 & RX8.*

Dr. Nho testified that Petitioner complained of low back pain and pain radiating down the right leg. He testified that in this instance, Petitioner's complaints were consistent with a diagnosis of radiculopathy for which she had been treated.

Petitioner saw Dr. Domb on September 13, 2012, reporting approximately one week of relief from the right hip injection. Petitioner reported no pain in her low back, and Dr. Domb again prescribed a right hip arthroscopy versus total hip replacement. She testified she has not had the surgery prescribed by Dr. Domb, but would proceed if it were awarded. *See*, PX3.

Dr. Charles Fossier also issued a peer review report dated November 20, 2012, wherein, he opined that Petitioner's right hip complaints were not causally related to the April 2011 accident. In so finding, he relied on the medical records of Petitioner, which do not include ongoing complaints of right hip pain. *See*, RX12.

The Arbitrator notes that the medical records of Dr. Mozwecz demonstrate that Petitioner was treating for right hip pain and low back pain in the years preceding the accident. This treatment included bone scans and x-rays. *See*, RX13.

Petitioner testified she has not returned to work since July 30, 2012, but she has not been terminated from her employment with Respondent. She testified she cannot walk or stand for long periods without pain in the right hip. Petitioner testified she still has pain in the left shoulder, neck, low back and right knee. She cannot do excessive driving or house work. She cannot carry anything and is slow while taking stairs. She testified she has spasms in her low back and they cause her to limp on occasion.

Ms. Bonnie Hovanec testified on behalf of Respondent. She testified that she started working for McDonald's in 1976 and has been an area supervisor since 1990. She oversees four locations plus the office and works directly with managers and assistant managers. She testified she has known Petitioner for over 15 years, having met her through the Girl Scouts organization. She testified she actually helped Petitioner find her job at McDonald's, and Petitioner was hired as a manager trainee and eventually obtained the job of Assistant Manager.

Ms. Hovanec confirmed that when Petitioner was released to return to work in a light duty capacity, Respondent was advised of same. Ms. Hovanec confirmed she worked directly with the location to provide Ms. Benson with light duty and testified that Petitioner was provided with a chair to perform light duty work.

Ms. Hovanec confirmed Petitioner has never been terminated by Respondent; and that if she were to be released to return to work light duty capacity, they would still be able to accommodate her restrictions.

Conclusions of Law

F. Is Petitioner's present condition of ill-being causally related to the injury?

Under the provisions of the Illinois Workers' Compensation Act (the "Act"), the Petitioner has the burden of proving, by a preponderance of credible evidence, that the accidental injury both arose out of and occurred in the course of employment. *Horath v. Industrial Commission*, 96 Ill. 2d 349, 449 N.E. 2d 1345 (1983). An injury arises out of the Petitioner's employment if its origin is in the risk connected with or incidental to employment so that there is a causal connection between the employment and the accidental injury. *See, Warren v. Industrial Commission*, 61 Ill. 2d 373, 335 N.E. 2d 488 (1975). *See also, Technical Tape Corp. v. Industrial Commission*, 58 Ill.2d 226 (1974). The mere fact that the worker is injured at a place of employment will not suffice to prove causation. The Act was not intended to insure employees against all injuries. *Quarant v. Industrial Commission*, 38 Ill. 2d 490, 231 N.E. 2d 397 (1967). The burden is on the party seeking an award to prove, by a preponderance of credible evidence, the elements of the claim; particularly the pre-requisite that the injury complained of arose out of and in the course of employment. *Hannibal, Inc. v. Industrial Commission*, 38 Ill. 2d 473, 231 N.E. 2d 409, 410 (1967).

The Arbitrator concludes Petitioner failed to prove her current condition of ill-being, regarding her hip, is causally related to the April 14, 2011 accident. In so finding, the Arbitrator relies on the treating medical records, the Section 12 opinions and the June 30, 2012 and July 5, 2012 surveillance videos.

According to her medical records, Petitioner reached MMI for her right knee complaints on August 29, 2011. The Arbitrator finds Petitioner reached MMI for her lumbar spine injury on August 3, 2011. The Arbitrator relies on the medical records and opinions of Dr. Zelby, Petitioner's treating neurosurgeon. Dr. Zelby saw Petitioner on August 3, 2011 for follow up after an EMG. He determined

Petitioner's subjective complaints had no objective basis, noting she was neurologically normal on exam. He opined her symptoms were not related to any injury or infirmity noted within her lumbar spine or nervous system. As such, he released her at MMI and in a full duty capacity for the neck and back injuries sustained on April 14, 2011. The Arbitrator places great weight on the opinions of Petitioner's treating physician, which is supported by Respondent's Section 12 examiner, Dr. Gunnar Andersson. Dr. Andersson concurred with the opinions and findings of Dr. Zelby, when Petitioner was re-examined by him on July 5, 2012.

The Arbitrator concludes Petitioner reached MMI for her left shoulder on May 20, 2012. In support thereof, the Arbitrator relies on the medical records of Dr. Durkin and the Petitioner's participation in the FCE.

Petitioner testified she is unable to perform overhead maneuvers with her left shoulder. However, the surveillance from June 30, 2012 and July 5, 2012 shows Petitioner engaged in various overhead activities. The Arbitrator notes Petitioner was able to use her arm to reach overhead to push the button to close the hatch of her SUV while shopping. In addition, Petitioner was able to water her plants and lift the hose overhead to do so.

The Arbitrator finds Petitioner failed to prove her right hip complaints are causally related to the April 14, 2011 accident. While Petitioner testified she reported right hip pain immediately after falling on her right side, the medical records do not support this assertion. Petitioner saw Dr. Mozwecz on April 15, 2011, the day after the fall. She reported having pain in her low back, left shoulder and right knee. The Arbitrator finds the history provided to Dr. Mozwecz particularly persuasive, as it is Petitioner's initial mechanism of injury.

The Arbitrator notes that a majority of Petitioner's pain in the right leg was radicular in nature. The treating records show the first time Petitioner complained of pain specific and localized to the right hip area to be on or about November 11, 2011 to Dr. Durkin. In addition, Dr. Nikhil Verma evaluated Petitioner on July 11, 2011 pursuant to Section 12 and re-evaluated by him on August 29, 2011 and February 2, 2012. Petitioner did not mention any hip pain to Dr. Verma. Dr. Verma's examination notes show he examined Petitioner's hips noting full range of motion. Petitioner was then evaluated by Dr. Anderson on July 14, 2011 and July 5, 2012. On neither occasion was right hip pain reported by Petitioner. Petitioner's right hip complaints were not mentioned again until

July 2012, after the petitioner was released by Dr. Zindrick for her back complaints. This is also after the surveillance showing Petitioner was moving in a pain free, fluid manner on June 30, 2012 and July 5, 2012.

The Arbitrator concludes that Petitioner's current right hip complaints are similar to those for which she sought treatment for prior to the date of accident, are degenerative in nature, and are not causally related to the April 2011 incident.

The Arbitrator finds Petitioner reached maximum medical improvement for each of the injuries sustained by the work-related accident and as such, her current condition of ill being, concerning her hip, is not causally related to the April 14, 2011 incident.

J. Were the medical services that were provided to Petitioner reasonable and necessary and has Respondent paid all appropriate charges for all reasonably necessary services?

Petitioner's Exhibit 13 – Bills from Loyola

Petitioner's Exhibit 13 contained various bills for services rendered at Loyola University Medical Center incurred through 10/2/12. In reviewing the bill, the Arbitrator notes there were only three dates of service for which there remained a balance, 2/8/12, 3/29/12 and 4/13/12. Respondent's Exhibit 9 contained a listing of all medical bills, which were paid per the fee schedule as of December 3, 2012. The Arbitrator notes Respondent issued payment to Loyola for services rendered on 2/8/12. Therefore, that bill is a balance bill not collectable pursuant to the Illinois Medical Fee schedule.

The Arbitrator finds Respondent is liable for the therapy services rendered at Loyola for treatment of the right shoulder on 3/29/12 and 4/13/12. The Arbitrator concludes Respondent shall receive credit for all amounts paid pursuant to Section 8(a) and the Illinois Medical Fee Schedule.

Petitioner's Exhibit 14 – Bills of Dr. Zelby

Petitioner's Exhibit 14 contains medical bills for services rendered by Dr. Zelby. The bill shows it was paid in full and has a zero balance. The Arbitrator concludes Respondent paid this bill.

Petitioner's Exhibit 15 – Bills from ATI

The Arbitrator concludes the medical bills from ATI are balance bills above that which is due per the fee schedule, and does not award the same. In so finding, the Arbitrator relies on the payment screens of Respondent, which substantiate payments were made for each of the dates of service alleged as outstanding by ATI.

Petitioner's Exhibit 16 – Bills from Dr. Durkin

Petitioner's Exhibit 16 contains two pages of bills for services from Dr. Durkin at Hinsdale Orthopaedics. The third page of charges, cited as "28" on the lower right hand corner does not name a provider, nor does it outline what services were performed for the Petitioner.

As for the charges from Dr. Durkin, cited as "26" and "27" in the lower right hand corner, the Arbitrator finds Respondent is liable for all services rendered by Dr. Durkin to Petitioner's left shoulder through her release at MMI on May 20, 2012. The Arbitrator finds that Respondent is liable for services rendered for Petitioner's right knee through August 29, 2011; the date on which Petitioner was found at MMI by Dr. Verma. Respondent shall be given credit for all payments made pursuant to Section 8(a) and the Illinois Medical Fee Schedule.

The Arbitrator finds the charges on page "28" are vague and do not state the name of the provider. In addition, this page says it is "Page 1 of 2," but no page 2 was included, therefore, the charges on page "28" are not awarded unless they are related to the injuries, not including the hip; and before the dates of MMI, as stated in the record.

Petitioner's Exhibit 17 - Additional bills from Hinsdale Orthopedics

Petitioner's Exhibit 17 contains charges from Drs. Durkin, Zindrick and Domb from Hinsdale Orthopedics. The Arbitrator finds Respondent is liable for medical services rendered to the cervical spine and lumbar spine through August 3, 2011, the date on which Petitioner was released at maximum medical improvement by Petitioner's treating physician, Dr. Zelby. All medical services rendered for the lumbar spine or cervical spine after August 3, 2011 are not causally related to the accident and are denied.

The Arbitrator finds Respondent is liable for all medical services rendered to the left shoulder through May 20, 2012. The Arbitrator finds Respondent liable for

services rendered for Petitioner's right knee through August 29, 2011, the date on which Petitioner was found at MMI by Dr. Verma.

As Petitioner has failed to prove, by a preponderance of the evidence, that her right hip complaints are causally related to the April 14, 2011 accident, the Arbitrator denies all services rendered for the right hip.

Respondent shall be given credit for all payments made pursuant to Section 8(a) and the Illinois Medical Fee Schedule.

Petitioner's Exhibit 18 – Medical Bills from Adventist LaGrange Hospital

Petitioner's Exhibit 18 contains charges for diagnostic services rendered at Adventist LaGrange Hospital. The Arbitrator notes that the Respondent issued payment to LaGrange Hospital for all of these dates of service. Therefore, the Arbitrator finds these services were paid in full and no additional medical bills are awarded per the Illinois Medical Fee Schedule.

Petitioner's Exhibit 19 – Medical Bills from Dr. Mozwecz

Petitioner's Exhibit 19 contains charges for services rendered by Petitioner's personal physician, Dr. Mozwecz. The Arbitrator finds only the services rendered on April 15, 2011 and April 27, 2011 are reasonably necessary to cure or relieve the effects of the accident. By that time, Dr. Mozwecz referred the Petitioner to Hinsdale Orthopedics for further care related to the 2011 incident. Thereafter, Petitioner treated for various personal issues and non-work related conditions. The Arbitrator further notes Respondent issued payment for the April 2011 services rendered by Dr. Mozwecz. As such, the Arbitrator concludes these services were paid in full and no additional medical bills are awarded per the Illinois Medical Fee Schedule.

K. Is Petitioner entitled to future medical treatment?

Based on the conclusion that Petitioner reached maximum medical improvement and her current condition of ill-being, regarding her hip, is not causally related to the injury, the Arbitrator finds Petitioner is not entitled to any future medical treatment.

KAREN BENSON

11 WC 25877

14IWCC0470

L. What amount of compensation is due for temporary total disability?

The Arbitrator concludes Petitioner is entitled to TTD benefits from 6/17/11 through 7/19/11; 10/17/11 through 12/27/11; 1/13/12 through 2/13/12 and 4/23/12 through 5/20/12; a period of 26 & 3/7 weeks.

The Arbitrator further awards Respondent credit for TTD paid, which totals \$12,591.51.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input checked="" type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL SULLIVAN,

Petitioner,

vs.

NO: 10 WC 29206

CITY OF ELGIN,

Respondent,

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 causal connection, prospective medical treatment, and alleged evidentiary errors, and being advised of the facts and law, changes the Decision of the Arbitrator as specified below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation 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).

Petitioner was sent to Dr. Butler by Respondent for a medical examination under section 12 of the Act on December 14, 2012. Petitioner testified that Dr. Butler told him things that were different from his written report. While the report indicated Petitioner was not a surgical candidate, Dr. Butler told Petitioner he disagreed with the protocol of treatment in 2009. Petitioner testified Dr. Butler indicated he would have ordered more aggressive physical therapy, injected cortisone, and then performed a discectomy if Petitioner's symptoms continued after conservative treatment. However, because of the length of time since the accident, Petitioner was no longer a candidate for the discectomy and his only option would now be fusion. Respondent's objection to this testimony was overruled.

In finding causation, the Arbitrator found the opinions of Dr. Coe, Petitioner's section 12 medical examiner, and Dr. Ignacio, Petitioner's general practitioner, more persuasive than that of Dr. Butler. He also noted Petitioner's persistent complaints of back pain to Ignacio throughout the period after the accident. The Arbitrator also wrote: "Moreover, petitioner testified without contradiction that Dr. Butler told petitioner at the IME that he would have treated his low back and radiating pain conditions more aggressively in 2009 with aggressive physical therapy, injections and a discectomy if injections were ineffective but that now petitioner's only option was fusion surgery."

The Commission agrees with Respondent that Petitioner's testimony concerning the statements allegedly made by Dr. Butler was impermissible hearsay and Respondent's objection should have been granted. Unfortunately, the error was somewhat highlighted because the Arbitrator noted the testimony as a basis of his decision. Nevertheless, the Commission considers the error harmless. There was more than sufficient basis for the Arbitrator to find causal connection to Petitioner's lumbar condition absent the hearsay testimony.

The Commission agrees with the Arbitrator that the causal opinions of Drs. Coe and Ignacio were more persuasive than that of Dr. Butler. Dr. Butler appears to have been under a misimpression of Petitioner's physical capabilities. Dr. Butler wrote in his report that Petitioner ran "three legs of a marathon," when in reality he ran a 3.2 mile race, in what he testified was a very slow time, and which he felt compelled to run because it was a team event. Petitioner had been a marathon runner prior to his accident and a goal in his physical therapy was to run the 3.2 mile race. In addition, the Commission agrees with the Arbitrator's conclusion that Petitioner did complain persistently of low back pain to his general practitioner Dr. Ignacio, though out his treatment following the accident.

For these reasons the Commission hereby deletes the sentence quoted above from the Decision of the Arbitrator and otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 5, 2013 is changed as specified above, and otherwise 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.

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

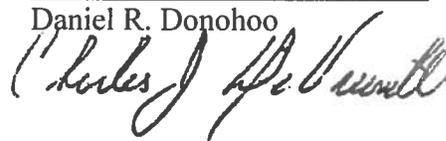
DATED: JUN 16 2014



Ruth W. White



Daniel R. Donohoo



Charles J. DeVriendt

RWW/dw
O-5/22/14
46

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

14IWCC0471

SULLIVAN, MICHAEL

Employee/Petitioner

Case# 10WC029206

CITY OF ELGIN & ELGIN POLICE DEPT

Employer/Respondent

On 11/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

1380 MURPHY & MURPHY
DANIEL E MURPHY
39 S LASALLE ST SUITE 720
CHICAGO, IL 60603

0078 BRADY & JENSEN LLP
FRED BEER
2425 ROYAL BLVD
ELGIN, IL 60123

STATE OF ILLINOIS)
)SS.
 COUNTY OF Kane)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
 19(b)

Michael Sullivan

Employee/Petitioner

v.

City of Elgin and Elgin Police Department

Employer/Respondent

Case # **10 WC 29206**

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 **Arbitrator Falcioni**, Arbitrator of the Commission, in the city of **Geneva**, on **October 16, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **December 6, 2008**, 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 **\$76,954.28**; the average weekly wage was **\$1479.89**.

On the date of accident, Petitioner was **50** years of age, *married* with **3** 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, \$ for TPD, \$ 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

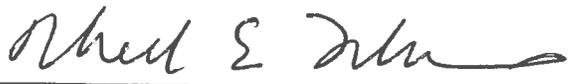
Respondent shall authorize and pay reasonable and necessary medical treatment as prescribed by Dr. Tom D. Stanley concerning surgical treatment, post-surgical care and medical charges relating to the same.

Past unpaid and related medical expenses have been reserved by the parties for determination at a later date.

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



Date

NOV - 5 2013

FINDINGS OF FACT AND CONCLUSIONS OF LAW

10 WC 29206

On December 6, 2008 Petitioner, Michael Sullivan, was on duty on patrol as a member of the special task force of the Elgin Police Department when the pursued vehicle crashed into a house. Petitioner attempted to take the driver into custody through the driver's window when the driver drove away, swerving and striking Petitioner's right hip and lower back with the vehicle. Petitioner was ordered to seek treatment at St. Joseph's Hospital by his supervisor. Petitioner was treated initially at St. Joseph's Hospital ER complaining of right leg and right knee injuries. Petitioner returned to St. Joseph's Hospital ER the following day when his low back seized up upon awakening.

Petitioner was examined at St. Joseph Hospital on December 6, 2008 complaining of being hit by a moving vehicle at 15 mph on the right hip, right knee, right elbow, right thumb and right sided pain. PX 2. Petitioner returned to St. Joseph Hospital on December 7, 2008 the next morning with more severe low back pain at a level of 10, with difficulty to sit, having been hurt on the job yesterday. PX2. Exam showed positive straight leg raise bilaterally on December 7, 2008 and acute lumbar strain. PX2. He was given Toradol, Vicodin, Naprosyn, Valium and told to put heat on the low back and to follow up at St. Joseph Occupational Health. PX 2. Petitioner returned to St. Joseph Occupational Health on December 8, 2008 with a shooting, radiating pain in the lower back at 2/10 and 4/10 with activity and bending. PX 2. The pain shot down radiating to the right calf intermittently. PX 2. On exam on December 8, 2008 there was midline tenderness between L4 and S2 as well as paralumbar muscle spasm and tenderness present. PX 2. Forward flexion and extension of the low back were restricted due to the pain. PX2. Impression on December 8, 2008 was severe lumbosacral sprain and strain with muscle spasm and he was given Motrin and Flexeril. PX 2. On December 12, 2008 petitioner was released to full duty by St. Joseph Occupational Health because his pain had improved although the records reflect that the pain had not resolved, and despite his range of motion of the low back being less than full in lateral bending. PX2.

Petitioner testified that he was released to full duty without any restrictions as a police officer by the St. Joseph Occupational Health Clinic physicians because he could touch his toes, he was not a surgical candidate and that he would have to live with his low back pain.

Petitioner testified that he then was seen by his primary care doctor, Dr. Jemini Ignacio, on the first available date of January 14, 2009 because of continued low back pain which had begun on December 6, 2008. Dr. Ignacio ordered a low back MRI which was performed at Sherman Hospital on January 28, 2009. PX 3. A second lumbar MRI was performed on December 11, 2012 at Sherman Hospital which was ordered by Dr. Ignacio as well which revealed that findings had progressed slightly from the previous study. PX 4.

Dr. Jemini G. Ignacio testified in his deposition on August 20, 2013 that petitioner complained of low back pain in the initial visit on January 14, 2009, that he ordered an MRI because of nerve involvement and prescribed a muscle relaxant and anti-inflammatory. PX 8 at 12-13, 19.

Petitioner complained of low back pain at the next visit on January 29, 2009 as well. PX 8 at 14. Dr. Ignacio believed at that time that the back was nonsurgical so he ordered Mobic to address inflammation in the low back. PX 8 at 17. Dr. Ignacio ordered physical therapy on February 2, 2009. PX 8 at 19. On the March 11, 2010 visit petitioner was seen primarily for the right shoulder complaint from the work injury the day before which necessitated a surgery to repair the rotator cuff by Dr. Mox. PX 8 at 18. On June 10, 2010 petitioner complained to Dr. Ignacio about low back pain existing since the accident of December 6, 2008 so he referred petitioner to a chiropractor because the physical therapy did not relieve the pain in the low back and a different modality of treatment was ordered. PX 8 at 20-23. On September 8, 2010 petitioner complained of low back pain again to Dr. Ignacio which was the same persistent back pain that began in December, 2008. PX 8 at 24. Dr. Ignacio ordered a second lumbar MRI at that time to determine if there was any progression in the abnormality in the MRI because petitioner still complained of persistent back pain. PX 8 at 24. In the next note of Dr. Ignacio on February 4 2011 petitioner was still complaining of low back pain as well as right leg pain from the December 2008 accident and the doctor noted "positive back pain" on exam. PX 8 at 26. Dr. Ignacio ordered another lumbar MRI that day but it was not done. PX 8 at 27-28. In the next visit on August 22, 2011 with Dr. Ignacio petitioner made consistent complaints of low back pain and numbness in the right lateral side of the foot which Dr. Ignacio opined reflected a progressing condition. PX 8 at 29. On exam on August 22, 2011, Dr. Ignacio found decreased sensation in the right lateral leg which he assumed also indicated a progression of the low back issue. PX 8 at 30. Dr. Ignacio noted at that time back pain with neuropathy with history of disk bulging and ordered another MRI together with a prescription for Cymbalta for the low back pain. PX 8 at 31. The low back MRI of December 11, 2012 showed a slight progression of the low back condition according to Dr. Ignacio. PX 8 at 32-33. PX 8 at 34.

At pages 34-35 of his deposition, Dr. Ignacio opined that the petitioner's low back was injured in the accident of December 6, 2008 and that petitioner consistently complained to him over the years about the low back pain caused as a result of that accident. PX 8 34-35. Dr. Ignacio testified that the low back pain was caused or aggravated by the accident of December 6, 2008. PX 8 at 72-73. He also testified that trauma can cause arthritis and pain and that petitioner's low back arthritis became symptomatic as a result of the trauma from the December 2008 accident. PX 8 at 63, 66, 72-73. He further testified that the abnormal low back conditions seen on MRI that became symptomatic from the trauma of the accident can potentially be better at times and symptomatic at times. PX 8 at 41-42.

Dr. Ignacio prescribed physical therapy which Petitioner attended from February 13, 2009 through April 21, 2009. PX 7. Petitioner noted his pain at a level at 5/10 having symptoms starting in December 2008 in the lower back and leg/knee pain with inability to bend right leg, run, lift, enjoy life and marked the human diagram as showing sharp low back pain with numbness radiating down the right leg to the foot as well as aching right knee pain. PX 7. He

was prescribed Meloxicam by Dr. Ignacio in February 2009 for pain. PX 7. The therapist noted initially on February 3, 2009 that pain radiated to the ankle level with numbness in the right leg from a 5 to 8 of 10 pain level and, most significantly, that petitioner is a full duty police officer "working through the pain", unable to exercise, run, bend knee or rest comfortably. PX 7. Petitioner complained of transfer in/out of a squad car among other issues. PX 7.

In April 2009 after his release without restrictions, he ran a 5K (3.2 miles) leg of the River to River Race in Southern Illinois as a member of a team which was thereafter inducted into the Hall of Fame of the race because this was the eighth consecutive year they had competed. Prior to the accident, he ran that distance in 28 minutes whereas he ran it in 45 minutes in April 2009 because he walked it in part. Petitioner testified that he had run marathons before the accident but none since the accident.

While Petitioner had a previous low back injury in 2003, he had no continuing treatment or pain from that injury from 2004 up to the time of the accident of December 6, 2008.

Petitioner testified that he injured his shoulder on March 10, 2010 while on duty and had a surgery to repair the rotator cuff shortly thereafter. He testified that due to the nature of that injury that surgery for that injury had to take precedence according to Dr. Mox. He testified that Dr. Ignacio referred him to Dr. Mox for both the shoulder and low back injuries but that Dr. Mox had stated that he did not treat back injuries.

Plaintiff was seen by Dr. Stanley, an orthopedic surgeon, on January 7, 2013 and on April 5, 2013 who opined that surgery on the low back is necessary to relieve the pain symptoms. PX 5, 6. Petitioner was referred to Dr. Stanley by Dr. Ignacio. During the January 2013 visit petitioner stated that he had daily back pain and radiating pain down his right leg as a result of the work related accident. PX 5. Dr. Stanley found on exam in January, 2013 that "positive reverse straight leg raise reproduces L4 radiculopathy", that upon review of imaging the patient has "a foraminal disc herniation on the right which corresponds to his right radicular leg symptoms at L4-5" and has "severe spinal stenosis at L4-5." PX 5. Dr. Stanley offered petitioner a surgery for right-sided TLIF at L4-5 with laminectomy at L4-5 at the same time. PX 5. Petitioner would like to have the surgery offered by Dr. Stanley.

Petitioner testified that he was examined by Dr. Jesse Butler at the request of respondent pursuant to Section 5 of the Act on December 14, 2012. RX 1. Petitioner testified that Dr. Butler told him that in 2009 that he would have treated petitioner differently with aggressive physical therapy, injections and a discectomy but that he was no longer a candidate for discectomy but now required a fusion surgery at L4-L5 due to lapse of time. Petitioner testified that he read Dr. Butler's reports and did not see those statements in his written reports. On cross exam, he testified that he did not tell Dr. Butler that he resigned from the police force due to his injuries from the accident. He testified that he resigned for another reason and is currently working as a compliance monitor.

Dr. Butler's December 14, 2012 narrative report concludes that "the current symptoms appear to be related to the initial work injury based on the history provided." RX 1 Dr. Butler goes on to state that the persistent symptomatology reported by the patient is not supported by the records

supplied, and opinions on causal connection are difficult to render. RX 1. Dr. Butler's neurologic exam on December 14, 2012 revealed decreased Right L5 and Right S1 pinprick and decreased strength in all aspects of the right leg. RX 1. Dr. Butler opined that MMI is impossible to determine without complete records and that the prognosis for petitioner "is poor." RX 1.

Dr. Butler generated a second narrative report on January 16, 2013 [before Dr. Ignacio's deposition to decipher his illegible handwritten notes was taken which showed persistent and continuous complaints of low back and radiating right leg pain]. RX 1. Respondent only sent Dr. Butler a visit for review of an MRI on January 29, 2009 and no other records. Dr. Butler's prior report fails to review any physical therapy visits or the majority of the visits with Dr. Ignacio or Dr. Stanley.

Dr. Butler's third report dated September 23, 2013 reflects that he never read Dr. Ignacio's deposition testimony as the body of his report claims "unknown author" to handwritten notes and illegible notes which he could not read from office visits on January 14, 2009, January 29, 2009, March 11, 2009, April 8, 2010 and February 4, 2011 ("no physician identified"). RX 1. Thus, Dr. Butler did not read the deposition transcript of Dr. Ignacio which set forth in detail what each of those illegible notes stated and which supplied the persistence of symptomatology which he sought in his initial report. Dr. Butler did not review or consider Dr. Jeffrey Coe's examination, narrative report or opinions. Dr. Butler did not review or consider Dr. Stanley's examination of petitioner, recommendations for surgery or other opinions. The failure of Dr. Butler to take into account the deposition testimony of Dr. Ignacio and relying, instead, upon the illegible notes, whether inadvertently or intentionally, renders his subsequent opinion far less significant than they would otherwise be. Moreover, Dr. Butler did not consider the May 14, 2013 examination by Dr. Coe or the January 13, 2013 examination by Dr. Tom D. Stanley, an orthopedic surgeon who offered petitioner surgery at that time. Instead, Dr. Butler relied solely on his examination of December 14, 2012 and only after prompting from respondent's claim personnel with additional calls and letters did he change his initial opinion that "the current symptoms appear to be related to the work injury" to find that petitioner reached MMI in 2009.

On December 11, 2012 petitioner testified that he had another low back MRI even though two orders of Dr. Ignacio for low back MRI's had been denied by respondent and health insurance between the two MRI's.

Petitioner was seen by Dr. Jeffrey Coe on May 14, 2013. PX 1. Dr. Coe opined that petitioner sustained injuries caused by the December 6, 2008 accident namely, "aggravation of preexistent, asymptomatic degenerative disc disease and degenerative arthritis in the lumbar spine with annular tearing and disc breakdown at L4-L5 causing both acute and chronic lumbar discogenic, facetogenic and myofascial pain injury with right lumbar radiculopathy symptoms as well as right knee synovitis." PX 1. [Emphasis supplied.] Dr. Coe's examination revealed a broad based forward bending gait consistent with spinal stenosis, right sided sciatic notch tenderness, sacroiliac joint tenderness, decreased range of motion in the lumbar spine in extension and right lateral bending. PX1. He found the right leg to be weak with decreased sensation and right leg

atrophy consistent with irritation of right-sided lumbar nerve roots. PX 1. Dr. Coe concludes that lumbar decompression and fusion surgery prescribed by Dr. Stanley is appropriate. PX 1.

Petitioner testified that he complained to Dr. Ignacio about his continuing low back pain consistently and constantly. He testified that his pain is in the low back to the right and radiates down through the right leg and foot into the toes. He testified that his low back pain and radiating right leg pain are constant, throbbing and daily since the accident and that he experiences numbness in the right foot and buttocks. He also experiences pain radiating into the left leg. He testified that he cannot bend his right leg, that he limps, can currently walk a limited amount, cannot jog, bicycle, hike or take long walks. He currently experiences weather sensitivity and cannot work out as he did before the accident noting that he could squat 250 lbs before the accident whereas now he cannot squat at all. He has difficulty walking on stairs.

The Arbitrator finds and concludes as follows:

1. Petitioner sustained injury to his low back with radicular pain extending into his right leg as a direct and proximate result of the work related accident of December 6, 2008. Petitioner and Dr. Ignacio testified to continuous and consistent complaints of pain in the low back and radiating to the right lower extremities over the period of time until he was seen by Dr. Stanley. Petitioner was told he was not a surgical candidate, to live with the pain and he continued to work as a full duty police officer. He continued to complain of low back and right leg radiating pain to Dr. Ignacio, his primary care physician, who ordered four lumbar MRI's over the years with two of them being denied. Petitioner was injured in an unrelated work accident on March 10, 2010 involving surgery to repair the rotator cuff which delayed resolution of the low back issue because the rotator cuff tear took immediate precedence. Moreover, Petitioner testified without contradiction that Dr. Butler told petitioner at the IME that he would have treated his low back and radiating pain conditions more aggressively in 2009 with aggressive physical therapy, injections and a discectomy if injections were ineffective but that now petitioner's only option was a fusion surgery. Petitioner made complaints of pain in the low back to Dr. Ignacio consistently, did as he was told and continued to live the pain and continued to work. Dr. Ignacio, Dr. Coe and Dr. Stanley as well as petitioner's own testimony each establish causal connection for these work related injuries. Dr. Ignacio and Dr. Coe's opinions are more credible and entitled to greater weight than Dr. Butler's opinions for the reasons previously set forth herein. Accordingly, the costs of the surgery (and ancillary treatment and fees or charges attendant therewith) proposed by Dr. Stanley are hereby awarded petitioner at the rates provided for by the fee schedule under the Act.

2. Because the parties reserved ruling on the past medical expenses not previously paid by respondent, no ruling in this regard is made at this time.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with comment	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Denise D'Hooge,

Petitioner,

vs.

NO: 08 WC 7247

Proviso Area,

Respondent.

14IWCC0472

DECISION AND OPINION ON REVIEW

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

The Commission modifies the Arbitrator's Decision finding that Petitioner proved she sustained an accident arising out of and in the course of her employment on September 27, 2007. Petitioner testified to what occurred that day, that she had reported same that day and the next day an accident report was done. However, the Commission affirms the Arbitrator's finding that Petitioner failed to prove causal connection. The Arbitrator concluded that the accident did not change her preexisting condition and the Commission affirms that finding. Petitioner testified that her preexisting condition had resolved before the September 27, 2007 accident, but the medical records of Dr. Couri on October 16, 2007 show that she had the exact symptoms as before the accident. Dr. Brown testified that the February 14, 2007 MRI and the January 28, 2008 MRI were not too different and that Petitioner's symptoms varied a little bit. Dr. Couri

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08 WC 7247

Page 2

opined that the symptoms Petitioner had on October 16, 2007 were similar to the symptoms she had on June 5, 2007 and then stated that her symptoms became significantly worse after the September 27, 2007 accident. §12 Dr. Wehner opined Petitioner had the same preexisting complaints and there was no new finding on the radiographic examinations to indicate a new injury. §12 Dr. Wehner opined, "The symptoms were the same as she had previously." The Commission affirms all else.

IT IS THEREFORE ORDERED BY THE COMMISSION that since Petitioner failed to prove a causal relationship exists between the accident of September 27, 2007 and Petitioner's condition of ill-being, her claim for compensation and medical expenses is hereby denied.

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

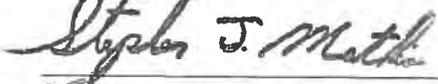
DATED: JUN 17 2014

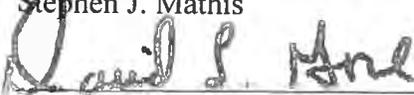
MB/maw

o05/08/14

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Mario Basurto

Stephen J. Mathis

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

D'HOOGHE, DENISE

Employee/Petitioner

Case# 08WC007247

14IWCC0472

PROVISO AREA

Employer/Respondent

On 7/9/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

4984 ROBIN LAW OFFICE
SHAWN M ROBIN
30 N LASALLE ST SUITE 1210
CHICAGO, IL 60602

0863 ANCEL GLINK
TIFFANY NELSON-JAWORSKI
140 S DEARBORN ST SUITE 600
CHICAGO, IL 60603

14IWCC0472

- J. Were the medical services that were provided to petitioner reasonable and necessary?
- K. What temporary benefits are due: TPD Maintenance TTD?
- L. What is the nature and extent of injury?
- M. Should penalties or fees be imposed upon the respondent?
- N. Is the respondent due any credit?
- O. Prospective medical care?

FINDINGS

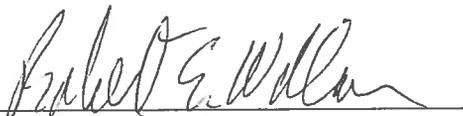
- On September 27, 2007, the respondent was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship existed between the petitioner and respondent.
- Timely notice of this accident was given to the respondent.
- In the year preceding the injury, the petitioner earned \$56,826.00; the average weekly wage was \$1,092.81.
- At the time of injury, the petitioner was 39 years of age, *married* with no children under 18.

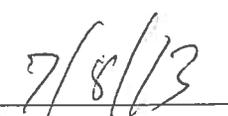
ORDER:

- The petitioner's claim for benefits is denied.

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

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


Robert Williams


Date

JUL 9 - 2013

14IWCC0472

FINDINGS OF FACTS:

On September 28, 2007, the petitioner, a teacher with a long history of lumbar symptoms and problems, gave the respondent a written report of a work incident on September 27, 2007. She reported hearing and feeling a pop in her back, when a student yanked down on her hand and complained of back spasms and pain. On October 16, 2007, she returned to a prior medical provider for her back, Dr. Brian Couri at Chicago Institute of Neurosurgery and Neuroresearch, and reported increased left leg and low back pain, occasional numbness on the top of her left foot and increased left leg weakness that she attributed to the September incident. She was started on physical therapy. On December 4th, she reported to Dr. Couri that she was doing well with therapy until a week earlier when her symptoms returned. She was unable to bear weight on her left leg or to straighten it and reported left leg weakness, burning on the sole of her left foot, occasional numbness in the entire left foot and increased pain. She received a left L3 and left L4 transforaminal epidural steroid injections on December 7th that increased her symptoms for three days.

Dr. J. Thomas Brown at Chicago Institute of Neurosurgery and Neuroresearch evaluated the petitioner on January 24, 2008. A CT scan and lumbar myelogram on February 5th revealed degenerative changes at the L3-4 level with diffuse posterior bulging and a nonfilling of the left L3 nerve root. On February 25th, Dr. Brown performed a left L3-4 laminoforaminotomy and decompression of the L4 nerve root. She received physical therapy and periodic follow-ups with Dr. Brown through August 11, 2008, at which time it was noted that the petitioner walked and change position slowly,

14IWCC0472

walked without a limp, walked normally and walked on her heels and toes. She was released to work beginning August 25, 2008.

The petitioner received a rheumatology evaluation by Dr. Douglas Cotsamire for diffuse osteoarthritis on May 20, 2008. She reported continued back pain and leg numbness to Dr. Carlos Cespedes of Elmhurst Clinic on March 30, 2009. She returned to Dr. Brown on May 14, 2009, for back pain, who recommended an L3-4 decompression and fusion. On June 29, 2009, the Elmhurst Clinic noted hospital discharge information of an L3-L4 laminectomy with fusion. Dr. Brown released the petitioner to work on August 24, 2009, without restrictions. She reported continuing back symptoms and was started on physical therapy on October 1, 2009, and a lumbar MRI and EMG of her lower extremities were ordered on March 16, 2010. The NCV was normal and the EMG showed non-specific increased polyphasic in the left lateralis. Dr. Brown opined on April 13, 2010, that the MRI showed satisfactory alignment and minimal degenerative changes and mild disc bulges at L4-5 and L5-S1 without nerve root compression and only minimal bilateral foraminal narrowing. On October 11, 2010, the petitioner reported to Dr. Couri no relief from bilateral L2 transforaminal epidural steroid injections on September 17, 2010. The petitioner reported to Dr. Couri on November 22, 2010, a 40 to 50% relief following L5 and L2 transforaminal epidural steroid injections on October 20, 2010. The petitioner reported to Dr. Couri increased lower back, left posterior thigh and left shin pain, right leg burning and left sided neck pain on November 8, 2011. The petitioner reported to Dr. Couri on December 13, 2011, a 30% relief following L5 and left L2 transforaminal epidural steroid injections on November 11, 2011.

FINDING REGARDING WHETHER THE PETITIONER'S ACCIDENT AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH THE RESPONDENT AND WHETHER THE

14IWCC0472

PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY:

Based upon the testimony and the evidence submitted, the petitioner failed to prove that she sustained a work injury on September 27, 2007, arising out of and in the course of her employment with the respondent and that her present condition of ill-being is causally related to a work incident on September 27, 2007. After feeling back pain on September 27, 2007, the petitioner continued working and returned to work the next day through April 14, 2008. The petitioner did not seek emergency or urgent care after the incident. It is not persuasive that three weeks after her hand was pulled down, the petitioner attributed an increased in her left leg and low back pain to the September 27th incident. Also, it is clear from Dr. Brown's February 2008 surgery report that the petitioner's lumbar condition did not change after September 27th. Moreover, according to the petitioner's report to Dr. Couri on December 4th, she was doing well through late November until her symptoms returned. At that visit, she was unable to bear weight on her left leg or to straighten it. She had left leg weakness, burning on the sole of her left foot, occasional numbness in the entire left foot and increased pain. The petitioner had waxing and waning symptoms with periodic flare-ups. The evidence is not sufficient to establish an aggravation or acceleration of her pre-existing lumber condition. The petitioner's claim for benefits is denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input checked="" type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Tracy McCormick,
Petitioner,

vs.

NO: 13 WC 10345

Proviso Township High School District #209,
Respondent.

14IWCC0473

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, medical and temporary total disability benefits and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, with the exception of the changes noted below. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission specifically finds that in Dr. Miller's July 23, 2013 evaluation report Dr. Miller indicates he was provided with additional medical records. Upon reviewing the records, he stated it is difficult for me to make any definitive statements because the last time I examined Petitioner was almost four months ago. At that time I clearly stated that there was some evidence to support intra-articular pathology in the knee, but I also said her symptoms were far more diffuse than I could substantiate on her minimal abnormal objective exam. Her left knee is much more problematic. It seems as if almost all of her symptoms for several months were lateral and consistent with a peroneal nerve lesion, even though the EMG was negative. I cannot reconcile this apparent discrepancy. I looked at the MRI films myself and I could not identify any definite meniscal tear. She has had two episodes of locking documented which could be a torn meniscus. However, the surveillance showed her going up and down stairs and carrying

things in May without any apparent problems whatsoever. Therefore, while I cannot dispute the possibility of a torn meniscus, it is well known that MRIs can miss 20% of true torn cartilages. However, the absence of effusion and the significant variability of her symptoms also make it impossible for me to make that diagnosis. I would again repeat my recommendation that she receive an injection of Cortisone and a local anesthetic into the knee to see if her symptoms can be eliminated with local anesthesia. If she doesn't respond to the Cortisone, then I would agree that an arthroscopy is appropriate. However, I would reiterate that any connection to the incident in question is at best questionable. Independent of whether or not she has a torn cartilage or not, there is no reason why she cannot return to full work duties.

On review Petitioner's attorney contends that the Arbitrator failed to address the totality of the evidence. More specifically the Petitioner's attorney contends that Dr. Miller, Respondent's evaluating doctor, found on July 23, 2013 that Petitioner should have additional treatment. When the totality of Dr. Miller's records are reviewed and a close review of Dr. Miller's July 23, 2013 report is made, the Commission finds that it is evident that while Dr. Miller did address the need for additional medical treatment he did so in relationship to Petitioner's pre-existing left knee condition as opposed to her condition after the February 27, 2013 work accident. Dr. Miller did not find a casual connection exists between the February 27, 2013 work accident and the alleged menial meniscus tear. Rather, the doctor stated on more than one occasion that he disagreed with the radiologist's interpretation of the left knee MRI and he found that there was no such tear post accident. He also opined that the left knee MRI is consistent with a degeneration of the medial meniscus and patella chondromalacia, which are both probably pre-existing. He additionally indicated that the surveillance footage further substantiated his belief that Petitioner did not have a tear post accident. Lastly, he concluded the variation of Petitioner's symptoms along with the lack of objective physical signs for the same made it impossible for him to make such a diagnosis. The Commission finds that with the exception of the added interpretation of the surveillance video, Dr. Miller's July 23, 2013 report mirrors that of his prior April 1, 2013 report. While Dr. Miller recommended additional treatment in both reports, he acknowledged that Petitioner had some pre-existing degenerative conditions in her left knee and also stated that he felt that any connection to the February 27, 2013 work accident is questionable at best. As such Dr. Miller consistently held that he was unable to opine that there is a causal relationship between Petitioner's current condition of ill-being and the March 27, 2013 accident. Rather, the current condition of ill-being relates to Petitioner's pre-existing degenerative conditions and any recommended treatment arising there from.

In terms of the surveillance footage itself, the Commission finds, similar to Dr. Miller and the Arbitrator, that Petitioner did not show any outward signs of being disabled by her work accident as she went about her daily leisure activities and her errands. While there is no "smoking gun" here and while Petitioner was performing tasks that were within her physical capabilities, the video does depict Petitioner moving in a fluid fashion without any outward signs of a disability in terms of her left knee, left shoulder and low back. While the surveillance footage alone, is not dispositive of the issue of whether Petitioner needs surgery, taken together

14IWCC0473

with the other evidence in the record and specifically Dr. Miller's reports it does indicate that Petitioner is not a surgical candidate and in need of additional medical treatment which is related to the February 27, 2013 work accident. As such the Commission affirms the Arbitrator's finding regarding Petitioner's failure to show additional medical treatment is needed as a result of the February 27, 2013 work accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that with the exception of the additional notations above the Decision of the Arbitrator filed November 4, 2013 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.

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

DATED: JUN 17 2014

MB/jm

O: 5/1/14

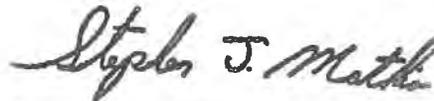
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Mario Basurto



David L. Gore



Stephen Mathis

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

8(a)

McCORMICK, TRACY

Employee/Petitioner

Case# 13WC010345

14IWCC0473

PROVISO TOWNSHIP HSD #209

Employer/Respondent

On 11/4/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

4595 WHITESIDE & GOLDBERG LTD
BRENT R EAMES
155 N MICHIGAN AVE SUITE 540
CHICAGO, IL 60601-7613

0863 ANCEL GLINK
ERIN BAKER
140 S DEARBORN 6TH FL
CHICAGO, IL 60603

14IWCC0473

STATE OF ILLINOIS)
)SS.
COUNTY OF DUPAGE)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION 19(b)/8(a)

Tracy McCormick,
Employee/Petitioner

Case # 13 WC 10345

v.

Consolidated cases: none

Proviso Township HSD #209,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **Wheaton**, on **8/12/13**. 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 _____

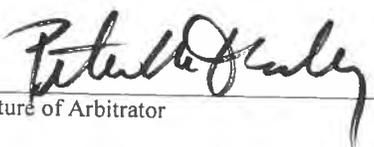
14IWCC0473

FINDINGS

On the date of accident, **2/27/13**, 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 after 6/28/13 *is not* causally related to the accident. In the year preceding the injury, Petitioner earned **\$71,801.67**; the average weekly wage was **\$1,795.04**. On the date of accident, Petitioner was **48** years of age, *married* with **3** 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 **\$5,128.66** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$5,128.66**. Respondent is entitled to a credit under Section 8(j) of the Act **for all related payments made by its group insurance carrier**. By so stipulating, the parties also agreed that Respondent will hold Petitioner harmless for any medical treatment related to the 2/27/13 accident paid by the group carrier. (See Arb.Ex.#1).

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$1,196.69 per week for 11-5/7 weeks, commencing 4/8/13 through 6/28/13, as provided in Section 8(b) of the Act. Respondent shall be given a credit of \$5,128.66 for temporary total disability benefits that have been paid. Respondent shall pay reasonable and necessary medical services pursuant to the fee schedule for dates of service through June 28, 2013, as provided in Sections 8(a) and 8.2 of the Act. Petitioner's request for prospective medical treatment is hereby denied. Respondent shall be given a credit for medical benefits that have been paid by the group carrier, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of 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

10/24/13
Date

ICArbDec19(b)

NOV - 4 2013

STATEMENT OF FACTS:

14IWCC0473

Petitioner, a 48 year-old wellness teacher, testified that she works at Proviso Mathematics & Science Academy where she is the department chair who oversees the wellness department, the visual arts department, the counselors, the school nurse and social workers. In addition, she noted that she works as a behind-the-wheel instructor of the driver's education class. Petitioner testified that on February 27, 2013, she was driven to the parking lot of Proviso East High School to pick up a driver's education car. Petitioner testified that as she stepped out of the automobile her left lower extremity fell into an open manhole which she estimated to be approximately four feet deep. She indicated that she fell up to her leg, hitting the front of the hole with the front of her left leg while her left shoulder hit the ground. She noted that she hit so hard and so fast that "life stopped." Petitioner indicated that she was scared because she had a friend who had drowned in a sewer hole. She stated that she "army crawled" out of the hole and thereupon noticed she had extreme pain in her left shoulder. Petitioner noted that it was the same kind of pain she had experienced a year earlier when she had right rotator cuff surgery. She indicated that she also twisted her back, but that her left leg was the major concern at the time.

Petitioner noted that following the incident she was taken to the school nurse by the maintenance man. At that time she was given ice and told to report to the principal, her supervisor. She noted that she sat in the main office and iced her knee and then went to a meeting, where she continued to ice the knee. She indicated that as time went on the knee continued to get sore and was really painful.

Later that day she reported to the emergency department at Gottlieb Memorial Hospital. (PX2). At the hospital, Petitioner was seen by Dr. Nathaniel Jones at which time she reported pain in her left shoulder, left lower extremity and lower back as a result of falling into a manhole at work. Specifically, Petitioner complained of pain in her left knee and left ankle. Upon examination, a contusion of the left knee was noted. X-rays of the left shoulder revealed no acute fracture or dislocation and no significant AC or glenohumeral degenerative change. X-rays of the left tibia and fibula were likewise normal. Petitioner was diagnosed with a left leg injury with contusion, a left shoulder injury and a lower back injury. She was prescribed a regimen of anti-inflammatory medication and ordered to follow up if her condition failed to improve. (PX2).

In the days following the accident, Petitioner noticed increasing pain in her left lower extremity as well as lingering pain in her left shoulder. Per her discharge instructions, she followed up to see Dr. Jones at Gottlieb Immediate Care on March 2, 2013. At that time she complained primarily of left ankle pain which would increase in severity when she used the stairs. X-rays of the left ankle revealed no acute fracture or dislocation and no significant soft tissue swelling or joint effusion. Dr. Jones prescribed a CAM walking boot for her left ankle and referred her for a course of physical therapy at Athletico. (PX2).

Petitioner initiated her physical therapy at Athletico on March 4, 2013. In her intake form, she complained of pain in her left lower extremity from her knee down into her calf which she described as "fire." She also complained of lower back pain, left shoulder pain and ankle pain which worsened with any physical activity. She was prescribed a course of physical therapy three times a week for four weeks. (PX5).

Petitioner followed up with Dr. Jones on March 21, 2013 noting improved back pain and improving left shoulder pain, but worsening pain in her left lower extremity. Dr. Jones ordered MRIs of the Petitioner's left knee and left ankle and instructed her to discontinue the CAM boot as it increased her pain and problems. (PX2).

14IWC0473

Petitioner underwent an MRI of her left knee at Loyola University Medical Center on March 26, 2013 which was interpreted as revealing a small oblique tear of the body and posterior horn of the medial meniscus involving the interior articular surface, as well as mild cartilage fissuring at the patellar apex and lateral femoral condyles. It was also specifically noted that there was no MR evidence for peroneal neuropathy. (PX3). Likewise, an EMG of the left lower extremity did not show any evidence of neuropathy. An MRI of her left lower leg from the knee down through the left ankle performed two days later on March 28, 2013 was unremarkable. (PX3).

Petitioner underwent a §12 medical examination with Dr. Klaud Miller at the request of Respondent on April 1, 2013. Dr. Miller noted that the mechanism of injury was a competent cause of her complaints. However, Dr. Miller indicated that there was some discrepancy between Petitioner's subjective complaints and her objective findings, noting that the MRI, in his opinion, was perfectly consistent with some mild degenerative changes and showed no evidence of a true torn cartilage. In support of this interpretation, Dr. Miller noted the absence of effusion and the diffuse and nonfocal complaints of tenderness. Based on this, Dr. Miller suggested that Petitioner may have sustained a peroneal nerve contusion of the left lower extremity as well as a slap lesion of the left shoulder. Dr. Miller recommended a left knee injection with local anesthesia and cortisone to confirm or deny intraarticular pathology as well as an MRI of the left shoulder. (RX1).

Petitioner returned to Dr. Jones on April 8, 2013 complaining of increasing numbness, tingling and burning down her left lower extremity, with prolonged standing making her symptoms worse. Dr. Jones ordered Petitioner off of work and referred her to Dr. Pietro Tonino for an orthopedic consultation. In addition, Dr. Jones ordered an EMG of the left lower extremity. (PX2).

An EMG of the left lower extremity performed on April 10, 2013 was normal without EMG evidence for a left peroneal nerve lesion or left lumbosacral radiculopathy causing her symptoms. (PX3).

Petitioner first saw Dr. Tonino on April 15, 2013 at which time she complained of left shoulder and left knee pain. Dr. Tonino noted that "[i]t sounds like she contused her left leg" but that "[h]er MRI shows the possibility of a medial meniscus tear of the left knee and some chondromalacia of her left knee." (PX2). Upon examination Dr. Tonino found some tenderness over the inferior pole of the patella, over the medial and lateral border of the patella, as well as some decreased elevation, external and internal rotation of the left shoulder compared to the right. Dr. Tonino's diagnosis was left knee contusion and left shoulder injury. Petitioner was kept off work and her left shoulder was administered an injection of Depo-Medrol and local anesthetic. Dr. Tonino noted an immediate improvement in her symptoms. (PX2). Petitioner testified that the injection into her shoulder caused a marked improvement in her shoulder pain.

Dr. Miller issued an addendum to his original report on May 2, 2013, with the sole question being whether the Petitioner was physically able to return to work for Respondent. Dr. Miller was provided with a job description for a teacher from the Proviso Township High School District. Based on that job description, Dr. Miller opined that there was no reason why Petitioner could not fulfill all of the physical requirements of her job. (RX2).

At hearing, the Petitioner reviewed the job description provided to Dr. Miller and testified that said job description was not complete. She noted that said job description did not include any of her responsibilities as department chair, which consists of monitoring 12 other employee, making sure they are present and ready for the day and which requires that she do a walk through, going from room to room and evaluating teachers. She also noted that as a behind the wheel instructor she is in the car with two to three students and has to sit in a position to use the brake, which she pointed out comes up a lot. Lastly, she indicated that the description does

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not take into account the fact that as a wellness instructor she has to walk across the grounds of the school with her classes to perform various physical activities.

On or about May 8, 2013 Petitioner visited Dr. Singh Bajaj at Loyola University Medical Center. At this appointment, Petitioner complained of pain and a burning sensation along the lateral aspect of the left lower extremity below the knee which traveled all the way into her left foot. Petitioner indicated that this pain would worsen with any knee bending. After examination, Dr. Bajaj opined that Petitioner's condition was consistent with a peroneal neuropathy at the fibular head following the subject fall. Petitioner was instructed to continue with physical therapy and was prescribed Diclofenac. (PX3).

Petitioner took the Diclofenac on or about May 10, 2013. After taking this Petitioner experienced chest tightness and an elevated heart rate. Petitioner was subsequently taken by ambulance to Loyola University Medical Center. (PX6). She was kept overnight until May 12, 2013 under observation and was eventually prescribed new medication. (PX4).

On May 17, 2013, Petitioner noticed increased chest pain during her physical therapy. When this pain did not subside, she returned to Loyola University Medical Center. An allergy to the new medication was noted and Petitioner's medications were once again adjusted. She was ordered to return for a pulmonary embolism test and a sleep apnea test to rule out said conditions as the cause of her chest problems. (PX4).

Petitioner followed up with Dr. Tonino on May 20, 2013 at which time she complained of pain and intermittent numbness in her left leg which worsens while she is standing. Dr. Tonino noted that Petitioner suffered a direct contusion over the peroneal nerve which is likely causing her problems. He instructed Petitioner to remain off work and ordered her to continue with physical therapy. (PX3).

Petitioner returned for a pulmonary embolism test on May 31, 2013 and was given an IV. No pulmonary embolism was indicated. However, following the IV placement, Petitioner developed right arm pain and a red streak creeping up her arm. Petitioner was diagnosed with phlebitis associated with the IV placement and received supportive care. (PX4).

Petitioner returned to Dr. Tonino on June 3, 2013 at which time he noted Petitioner's allergic reaction to the previously prescribed medications. (PX3). Petitioner testified that she has not suffered from any chest pain or problems since discontinuing these medications.

On June 19, 2013, Petitioner's physical therapist noted that while Ms. McCormick's left shoulder pain and complaints had improved, her left lower extremity pain and complaints continued to be a problem. Locking in of the left knee was also noted. (PX5).

Petitioner returned to Dr. Tonino on June 20, 2013 complaining of knee locking and ongoing pain and problems. Lack of progression with physical therapy was noted. Based upon the failure of conservative treatment, Dr. Tonino suggested an arthroscopic evaluation of the knee with partial medial meniscectomy. Dr. Tonino discontinued therapy for the left lower extremity, but advised that Petitioner could continue with therapy for her left shoulder. However, given the improvement in her left shoulder, Petitioner advised that she did not require any additional therapy, so physical therapy was discontinued. (PX3).

In addition to Dr. Tonino, Petitioner saw James Kellershabrokh, an associate of Dr. Bajaj, on June 20, 2013. On that date Dr. Kellershabrokh noted that Petitioner had been doing therapy for the knee and that she felt the leg was stronger, although she continues to have tingling/numbness and soreness over the anteriolateral shin, which

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worsens with any weight-bearing activity after approximately 15-20 minutes. Dr. Kellershabrokh that the shoulder pain was improved overall and had apparently went into A-Fib after her last visit after starting on diclofenac. Dr. Kellershabrokh opined the patient likely had a superficial peroneal nerve injury, given that the EMG in April 2013 was normal. Dr. Kellershabrokh recommended a topical anesthetic cream and noted that the only reason to consider repeating the NCS to investigate the superficial peroneal nerve would be if a surgical exploration was considered. Dr. Bajaj later signed off on this report on June 21, 2013. (PX3).

Respondent presented three videos and reports into evidence which were prepared by Bonnamy and Associates consisting of activities observed on May 4, 2013, May 8, 2013 and May 10, 2013, respectively. (RX7) The video of May 4, 2013 shows Petitioner walking as well as carrying several folding lawn chairs on her left shoulder without any observable sign of pain or discomfort or any noticeable limp with respect to the left leg/knee. Petitioner is subsequently seen sitting in a lawn chair at a youth softball game, variously crossing and uncrossing her legs at times, once again with no observable sign of pain or discomfort or any noticeable limp with respect to her left leg/knee. The video of May 8, 2013 apparently shows Petitioner driving to Loyola Medical Center for therapy. Finally, the video of May 10, 2013 shows Petitioner unloading her min-van and making numerous trips to and from the curb, where the van is parked, across the lawn and up the front steps and into her home. Petitioner is seen carrying multiple items, from an armful of clothing to multiple bags in each hand, including what appears to be a golf bag at one point. The Arbitrator counted approximately eight (8) to ten (10) trips back and forth between the van and the front of the house. Once again, Petitioner demonstrated no noticeable limp or outward sign of pain or discomfort while performing these tasks. (RX7).

Dr. Miller issued a second addendum report on June 28, 2013 wherein he opined that based upon the surveillance video he did not believe there was any evidence to support physical disability in either the left lower extremity or the left shoulder. Dr. Miller noted that as set forth in his 4/1/13 report, Petitioner had significantly more symptoms than he could substantiate on his minimally abnormal examination, pointing out that “[t]his video suggests that whatever symptoms she may or may not have had at the time of my examination have resolved. In my opinion, based upon this video no further treatment is necessary...” (RX3).

With respect to these videos, Petitioner testified that she is continuously in pain, all the time, and that no doctor has restricted her from walking. In fact, she noted that she was told to walk and told to report back as to how it felt and when her leg got numb. She also testified that she never unloaded any golf clubs from her automobile. Petitioner speculated that the bag in question was likely her daughter’s softball equipment bag, which she noted weighed ten pounds or less.

Dr. Miller issued a third addendum report on July 23, 2013. In said report, Dr. Miller noted that while “[i]t is difficult for me to make any definitive statements because the last time I examined [Petitioner] was almost four months ago ...”, it would appear that Petitioner’s shoulder condition had largely resolved but that her left knee was much more problematic. (RX4). He indicated that almost all of her symptoms for the past several months were lateral and consistent with a peroneal nerve lesion, but that the EMG was negative. He also noted that he had reviewed the MRI himself and “must respectfully disagree with the radiologist”, stating that in his opinion he did not see anything that he would call a true torn cartilage. Dr. Miller went on to state that “while I cannot dispute the possibility of a torn meniscus, it is well known that MRIs can miss 20 percent of true torn cartilages. However, the absence of effusion and the significant variability of her symptoms also makes it impossible for me to make that diagnosis.” Dr. Miller recommended a Cortisone injection, noting if that did not eliminate her symptoms “... then I would agree that an arthroscopy is appropriate. However, I would reiterate that any connection to the incident in question is at best questionable.” (RX4).

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Petitioner testified that her lower back pain and problems have resolved. She further testified that her left shoulder pain and problems have practically resolved, although she experiences occasional pain and popping in her shoulder. She currently has no plans of obtaining any additional medical treatment related to her left shoulder. Petitioner testified that she continues to experience ongoing pain and problems in her left lower extremity. She experiences locking in her left knee with extended activity. She expressed a desire to proceed with the proposed surgery so that she will be able to return to work for the Respondent.

Petitioner testified that prior to the subject injury, she never suffered from any left knee pain or problems of any kind, and prior to the subject injury, she never received any medical treatment related to her left knee.

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

The Arbitrator finds that the Petitioner's current condition of ill-being in her left knee is not causally related to her accident while employed for the Respondent. Although Petitioner also had injuries to her left shoulder and back, she testified at trial that the left shoulder and back conditions had completely resolved and that she no longer is undergoing any treatment for either injury.

With respect to the left knee, the Arbitrator relies upon the opinion of Dr. Miller in conjunction with the video surveillance tapes previously mentioned. Along these lines, Dr. Miller found no causal connection between Petitioner's left knee condition and the accident at work as Petitioner's symptoms were variable and inconsistent. (RX4). Dr. Miller did find a causal connection between the left shoulder condition and the accident, but he found that condition has resolved, and Petitioner testified the same. Dr. Miller found that any connection between Petitioner's left knee surgery and her February 27, 2013 accident was "at best questionable." (RX4). After his examination of the Petitioner on April 1, 2013, Dr. Miller noted a relatively normal examination, with severe complaints for a mildly abnormal examination. (RX1). Dr. Miller found preexisting degeneration in the medial meniscus and preexisting patella chondromalacia, which would be unrelated to the accident in question. (RX1). Finally, in his report dated June 28, 2013, Dr. Miller opined that based upon the surveillance video he did not believe there was any evidence to support physical disability in either the left lower extremity or the left shoulder. Dr. Miller noted that as set forth in his 4/1/13 report, Petitioner had significantly more symptoms than he could substantiate on his minimally abnormal examination, pointing out that "[t]his video suggests that whatever symptoms she may or may not have had at the time of my examination have resolved. In my opinion, based upon this video no further treatment is necessary..." (RX3).

As far as the surveillance footage itself is concerned, the Arbitrator notes that while Petitioner may not be engaged in strenuous activities, the videos in question clearly depict a woman who is not in apparent distress when it comes to either her left knee or left shoulder. Indeed, Petitioner is shown walking, sitting and carrying multiple items while exhibiting absolutely no outward signs of pain or discomfort with respect to any or her claimed injuries, particularly her left knee, including any signs of a limp or altered gait. Instead, what we see is a woman going about her normal daily activities – running errands, watching her son's baseball game and emptying her mini van. Not someone in dire need of arthroscopic surgery to relieve what she claims to be ongoing subjective complaints – complaints which, other than one MRI reader's opinion, do not appear to be substantiated by the objective tests.

Therefore, based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner failed to prove that her conditions of ill-being subsequent to Dr. Miller's June 28, 2013 report -- specifically with respect to her left knee, left shoulder and lower back -- are causally related to the accident on February 27, 2013.

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

Based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to causation (issue "F", supra), the Arbitrator finds that Petitioner is entitled to reasonable and necessary medical expenses incurred up through the date of Dr. Miller's June 28, 2013 §12 report pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act. Furthermore, the Arbitrator finds that Respondent shall receive a credit under §8(j) credit for any medical expenses paid up through that date by Petitioner's group insurance, and in turn Respondent shall hold Petitioner harmless from any attempts by the Petitioner's group insurance to recover said amount previously paid.

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

Based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to causation (issue "F", supra), the Arbitrator finds that Petitioner failed to prove her entitlement to prospective treatment in the form of the arthroscopic procedure recommended by Dr. Tonino. As a result, Petitioner's claim for same is hereby denied.

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

Based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to causation (issue "F", supra), the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from April 8, 2013 through June 28, 2013, or the date of Dr. Miller's final report, for a period of 11-5/7 weeks.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

As previously mentioned, the parties agreed that Respondent would receive a credit under §8(j) of the Act in the event this matter was found compensable for any and all payments made by the group insurance carrier on behalf of Petitioner, and that Respondent in turn would hold Petitioner harmless for any medical treatment related to the February 27, 2013 accident paid by said group carrier. (See Arb.Ex.#1). In addition, the parties agreed that Respondent had paid TTD benefits in the amount of \$5,128.66 on account of this injury, for which it would be allowed a credit. (See Arb.Ex.#1).

STATE OF ILLINOIS)
) SS.
 COUNTY OF KANE)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input checked="" type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Tina Cowart,
 Petitioner,

vs.

NO: 10 WC 39183

14IWCC0474

Johnson Controls,
 Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, temporary total disability, additional compensation and attorneys' fees 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, along with answering specific questions posed pursuant to the Act. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission finds that Petitioner initially filed a total of five claims pursuant to Section 19(b) of the Act. Four of the five claims pertain to Petitioner's hands/arms and one of the claims pertained to Petitioner's neck and low back. On June 4, 2012 the Arbitrator found Petitioner was temporarily totally disabled from July 26, 2010 through May 8, 2012 for 93-2/7 weeks, is entitled to medical expenses of \$4,140.00 and Respondent is ordered to authorize an FCE. Both parties appealed the Arbitrator's decision. On February 7, 2013 the Commission modified the Arbitrator's decision and found Petitioner was temporarily totally disabled from June 26, 2010 through November 29, 2011 for 70 weeks and affirmed all other issues. Three of the hand/arm claims were not appealed after the Commission's decisions and the decisions became final. The cervical/low back decision was appealed by Respondent to the Circuit Court and is currently pending. In regard to the last hand/arm claim with a date of accident of July 9, 2010, Petitioner filed a second 19(b) Petition. The July 9, 2010 claim was heard by Arbitrator Falcioni who found that Petitioner failed to

prove a causal relationship exists between Petitioner's current condition of ill-being and the July 9, 2010 work accident. Petitioner has appealed the Arbitrator's decision and Claim No. 10 WC 39183 is currently pending before the Commission. Additionally, the Petitioner's attorney has requested that the Commission answer specific questions related to the case. Findings of Fact and Conclusions of Law:

The Commission finds:

A. Evidence from first 19(b) hearing:

Dr. Lamberti, a board certified orthopedic surgeon with a certification and added qualifications in hand and upper extremity surgery was deposed on October 20, 2011. He first examined Petitioner on November 11, 2010. Based on the November 11, 2010 exam he concluded Petitioner had proximal median nerve compression and medial and lateral epicondylitis. On April 27, 2011, he performed surgery on Petitioner's bilateral arms consisting of a bilateral lateral epicondylar release, medial epicondylar release and median nerve decompression. This was followed by post surgical physical therapy. During physical therapy, Petitioner complained to the therapist that her neck was being exacerbated. Dr. Lamberti suspended her physical therapy and referred her to Dr. Salehi for a spinal consult. He put Petitioner's therapy on hold in deference "to Dr. Salehi's treatment of her neck because the treatment of the neck, directly impacts the symptoms in her arms and his decision making in regard to her arms". He also opined that Petitioner could not do rehabilitation for her arms. He noted based on his exam there was quite a bit of abnormality/symptomology involving the extensor carpi radialis brevis (ECRB), which is the primary muscle that is symptomatic in tennis elbow. He noted bilateral spasm, hypertonicity, which means she could have cervical spine issues from the arm muscle spasming continually. He opined that Petitioner's main problem was constant spasms of her proximal lateral forearms. From November 11, 2010 to the present, he has not released her to full duty. On the September 22, 2011 exam, he found that objectively her arms were fairly normal other than the soreness in the ECRB. So, she mainly had pain and her nerves were acting normally. He believes he would have put her on restrictions that were not causing pain. He opined that Petitioner has not reached maximum medical improvement because of the pain in her forearm. She should have an FCE because her neck condition has not been resolved. The FCE would be something for the future when the symptoms get more resolved. Once her neck condition is cleared up he could get her back into therapy, treat her forearms and get her going.

On February 14, 2012 a work status and restriction note from Dr. Lamberti's office was issued. The note lists the diagnosis as lateral epicondylitis and it indicates Petitioner is to return to work with restrictions until March 13, 2012 appointment. The restrictions include no lifting greater than five pounds, no pushing or pulling, no work above the shoulder/overhead.

B.Evidence from second 19(b) hearing:

Petitioner stated she last testified on May 8, 2012. She claims that since the May 8, 2012 hearing she remains under Dr. Lamberti's care for her hands/arms. Since May 8, 2012 she has had tightness in her forearms and a shocking sensation from her shoulders to her arms and when she is doing something with her hands. Sometimes it happens when she is just walking. She has sharp pain on the outside of her elbows on a daily basis.

She has not had any appointments with Dr. Lamberti since May 9, 2012. She has contacted Dr. Lamberti's office but since her last bills were not paid they would not schedule her for a visit. When she said the bills were not paid she was referring to the bills for her arms/wrist prior to May 9, 2012. She does not have an explanation as to why she did not use the money she was paid to pay Dr. Lamberti back for those services.

To the best of her knowledge she is still employed by Respondent but from May 9, 2012 until now they have not contacted her about having work available within her restrictions. She has looked for jobs, but she has not received any offers. She checked for clerical positions mostly through Manpower and she never got a response on anything clerical. She got a response for another job but it required her to lift 50 pounds, which is outside her restrictions. She received this offer when she was doing the vocational rehabilitation, which was before May of 2012. She has not contacted anyone since. It was her understanding that she did not need to look for a job in order to receive temporary total disability payments. Since May 9, 2012 she has not worked any job and she has not received any workers' compensation benefits.

Dr. Lamberti did provide her with work restrictions for her hands/arms. She has not seen anyone else for her hands/arms since May 9, 2009. She telephoned Dr. Lamberti last week and asked him if her restrictions were the same and that is how she received a "no work" note from Dr. Lamberti even though she has not seen him since May 9, 2012. The note states it is for treatment of both arms and that the patient's status remains the same pending her neck surgery. Currently, she wakes up, takes a shower, feed her cats, has breakfast, watches a little T.V., walks, visits her sister and niece/nephew, eats her lunch and cleans her house if it needs it and sometimes starts dinner if she is hungry. Most of the time she doesn't eat dinner because the pain causes her not to be hungry. Her symptoms in her arms have gotten worse. She telephoned Dr. Lamberti after May 9, 2012 and asked him about the tingling sensation that goes down her arms. He said it is nerve compression and that it will not be relieved by anyone until the neck surgery is done. She has never been contacted by anyone from Dr. Lamberti's office telling her that a FCE has been approved. She is not aware of any medical payments that have been made to Dr. Lamberti. She does have a current outstanding medical balance from Dr. Lamberti.

On October 14, 2011 Petitioner was seen Dr. Salehi who noted that Petitioner returns today with her new MRI. She states she continues to have constant pain in the neck radiating to the shoulders. She denies any radiating of pain into the arms but does get a "freckling" feeling at times in the deltoid regions. Her October 11, 2011 cervical MRI shows a minor disc bulge at C3-4 and a central herniation at C5-6 along with diffuse disc bulge without neural compression. There is no cord compression. Dr. Salehi prescribed medicine, physical therapy for cervical spine 2-3 times a week for 4-6 weeks and one to two cervical epidural steroid injections. He instructed her to return for re-evaluation after undergoing the above.

On February 14, 2012 Dr. Lamberti's office issued work status and restrictions notes. On the notes was a diagnosis of lateral epicondylitis. The notes indicated Petitioner was able to return to work with restrictions until her next appointment on March 13, 2012. Her restrictions consisted of no lifting greater than five pounds, no pushing or pulling and no work above the shoulder/overhead.

On July 11, 2013 Dr. Lamberti's office issued a note stating that this is to certify that Petitioner is being seen in our office for treatment of both her arms. The patient's work status remains the same pending her neck surgery. The work status was listed as off work.

Having reviewed the evidence above, the Commission adopt the Arbitrator's findings in total and affirm the Arbitrator on the issue of causation. The Commission finds Petitioner has failed to prove since the May 8, 2012 Arbitration hearing that Petitioner's current condition of ill-being is related to her arms/hands as opposed to her cervical condition and that she has shown through treatment records that there is a causal relationship between her current arm/hand condition and the July 9, 2010 work accident. At most, Petitioner has presented subjective evidence through her testimony that her condition has worsened and she has provided a "no work" note from Dr. Lamberti who has not seen Petitioner for an examination and/or treatment for the last fourteen months. The Commission finds that each Section 19(b) claim must stand on its own and in this instance Petitioner must prove anew that after May 8, 2012 hearing that her condition has continued to persist and is causally related to the July 9, 2010 work accident. Based on the evidence above, the Commission finds Petitioner failed to prove her current condition of ill-being as it relates to her arms/hands is causally related to the July 9, 2010 work accident.

C. Specific Questions:

1. Was Respondent's refusal to authorize the FCE ordered by the Commission, in its previous final decision reasonable?

Yes. Given the fact that Dr. Lamberti believed Petitioner's current arm condition is possibly related to her cervical condition, Respondent had appealed the cervical claim to the Circuit Court, the Commission has no evidence that Petitioner has undergone additional medical treatment related to the cervical condition including and not limited to cervical surgery, Respondent's authorization for the FCE would have been premature and contraindicated.

2. Given Petitioner had not had the FCE recommended by Dr. Lamberti, nor had Dr. Lamberti opined permanent restrictions, has the Commission determined that Petitioner's bilateral hand and arm injuries have permanently restricted her from performing her regular duties?

Given the fact that it is unclear what the status of Petitioner's arm condition is at this point, the question of whether Petitioner's arm injury had permanently restricted her from performing her regular duties is premature and unanswerable at this time. The status of Petitioner's right arm condition is in abeyance until such time that the Commission is presented with evidence that Petitioner has undergone additional medical treatment related to the cervical condition, including but not limited to cervical surgery, and a determination can be made in regard to how, if at all, Petitioner's arm condition related to the medical treatment administered for Petitioner's cervical condition.

3. Is Respondent liable for weekly temporary total disability payments from May 9, 2012 through the date of the hearing of July 17, 2013 due to Petitioner's bilateral arm and hand restrictions being un-accommodated and Respondent's refusal to authorize the FCE?
4. Regarding her July 9, 2010 accident, was Petitioner partially disabled from her bilateral arm and hand injuries from May 9, 2012 through July 17, 2013?

As with all claims, Petitioner must prove up each and every element of her claim. Give the fact that the Commission has found on the threshold issue of causation that no causation exists between Petitioner's current condition of ill-being as it relates to Petitioner's arms/hand conditions and the July 9, 2010 accident, there is no need to address the issues posed in questions three and four.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 7, 2013 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.

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

DATED: JUN 17 2014

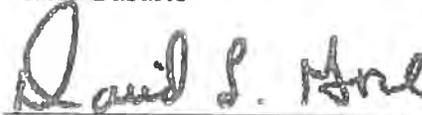
MB/jm

O: 5/1/14

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Mario Basurto



David L. Gore



Stephen Mathis

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

COWART, TINA

Employee/Petitioner

Case# 10WC039183

14IWCC0474

JOHNSON CONTROLS

Employer/Respondent

On 8/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0293 KATZ FRIEDMAN EAGLE ET AL
FRANK J BERTUCA
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

0210 GANAN & SHAPIRO PC
ELAINE T NEWQUIST
210 W ILLINOIS ST
CHICAGO, IL 60654

STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION 19(b)

Tina Cowart
Employee/Petitioner

Case # **10WC 39183** _____

v.

Consolidated cases: _____

Johnson Controls
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Robert Falcioni**, Arbitrator of the Commission, in the city of Geneva, on **July 17, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

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FINDINGS

On the date of accident, **7/9/2010**, 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.(SEE ATTACHED FINDINGS)

In the year preceding the injury, Petitioner earned **\$42,715.92**; the average weekly wage was **\$821.46**.

On the date of accident, Petitioner was **33** years of age, *single* with **3** dependent children.

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

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

*All prior TTD due through 5/8/12 per prior awards has been paid by Respondent to Petitioner.

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

ORDER

Any temporary total disability claimed for these conditions after November 29, 2011 is denied.

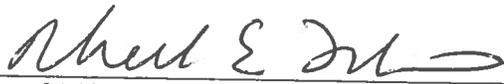
Respondent shall authorize and pay for the FCE previously ordered herein.

Penalties and attorneys' fees are denied.

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



Date

AUG 7 - 2013

14IWCC0474

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History Petitioner pursued five Applications for Adjustment of Claim alleging injuries to her hands and arms with dates of accident of June 1, 2007, June 7, 2008, December 7, 2009 and July 9, 2010, along with alleged injuries to her neck and low back on October 30, 2008. All five cases proceeded to trial under Sections 19b and 8a of the Act on April 5 and May 8, 2012, and resulted in awards favorable to Petitioner. The neck/low back claim of October 30, 2008 is currently on appeal to the Circuit Court of Kane County, and thus, Respondent's liability for any condition of ill being, need for lost time or treatment has not been set. Awards for the June 1, 2007, June 7, 2008 and December 7, 2009 injuries to the hands and arms resulted in payments of medical bills and temporary total disability incurred before Petitioner's fourth injury to her hands and arms on July 9, 2010. Those 19b/8a decisions are now final and awarded benefits have been paid.

The Arbitrator's decision for the July 9, 2010 accident found Petitioner had sustained injuries to her hands and arms manifesting on that date, found Petitioner entitled to medical bill balances due Dr. Lamberti and Midwest Orthopedic, and awarded temporary total disability through the date of last hearing on May 8, 2012. Both parties appealed. The Commission decision reduced the amount of temporary total disability due for this incident to an end date of November 29, 2011, without specific comment or basis. Further, it ordered Respondent to authorize a FCE as previously prescribed by Dr. Lamberti. Neither party appealed that decision and its now final as to Petitioner's entitlement to benefits through May 8, 2012.

Current Proceeding Petitioner has pursued a second 19b for her July 9, 2010 injury to her arms and hands, claiming entitlement to further temporary total disability for those conditions after May 8, 2012 and through the date of hearing of July 17, 2013. She has also pursued petitions for penalties and attorneys' fees for non payment of further benefits.

Testimony and Evidence at Trial Petitioner testified that since May 8, 2012 she has not returned to Dr. Lamberti nor been seen by any doctor for her hands and arms. She alluded to having contacted him for appointments and/or having been unable to see him as he maintains outstanding balances, but admitted on cross examination the only charges incurred with him were before May 8, 2012 and she had been paid the balance due Dr. Lamberti per the prior paid awards. She testified she perceives she has restrictions on her work duties due to her hands and arms, at below medium level, and that she believes she can do sedentary work. She claimed she has looked for work, and identified contacting Manpower and one other job, but admitted this was before the last hearing May 8, 2012 and that she has made no further contacts or attempt to return to work in any capacity.

She claims ongoing tightness down both arms from her shoulders to her fingertips with shock like sensations in both hands, with sharp pains in both elbows. She lives alone and takes care of her cats, visits relatives, cooks, and cleans.

14IWCC0474

At the request of Petitioner Dr. Lamberti authored a "no work" note July 11, 2013 stating her "work status remains the same pending her neck surgery."

Conclusions of Law

Regarding F) is Petitioner's present condition of ill being causally related to the July 9, 2010 incident the Arbitrator finds the following:

There is no evidence to show that Petitioner's current complaints and alleged condition of ill being is causally related to her injuries to her hands and arms, as opposed to her neck condition which is the subject of another claim and which remains in dispute. The Arbitrator notes Petitioner has not sought any medical care at all since the last hearing 14 months ago. While she called Dr. Lamberti and got him to author a "no work" note, he clearly predicated his no work status on Petitioner's pending neck surgery and not on any ongoing condition of ill being related to the arms or hands. He did not examine her or even see her at that time.

Indeed, in reviewing the record of the prior hearing, Dr. Lamberti has not seen Petitioner in 16 months and not since March 13, 2012 when, per his office note, he specifically stated that Petitioner did not need to see him anymore, he was not going to offer her any further surgical intervention, she was discharged per as needed, and was directed to undergo a functional capacity evaluation to assess any permanent restrictions due to her hand and arm conditions.

The Arbitrator notes that the Commission did not find Petitioner temporarily totally disabled for her hands and arms through the last hearing of May 8, 2012 or indeed, through Dr. Lamberti's last visit of March 13, 2012, when he discharged her from medical care and released her to return to work pending restrictions. Rather, the Commission suspended temporary total disability for these conditions on November 29, 2011. That decision is now final. There is nothing in the record indicating that there has been a change in Petitioner's medical condition since that date sufficient to compel the Arbitrator to make an award of TTD benefits based on the condition of her hands and arms since the Commission terminated TTD benefits in this case effective November of 2011.

The Commission does not set forth in its decision the significance of November 29, 2011 in suspending Respondent's liability for further temporary total disability relative to the hand and arm conditions on that date. However, November 29, 2011 happens to be the date Petitioner was examined by Dr. Kolavo at Respondent's request at which time he documented upper extremity numbness, neck pain, pain into both trapezius and thoracic regions, inability to lift or carry, all allegedly related to her cervical condition.

The Arbitrator notes the same complaints Petitioner seeks to relate to her hand and arm condition in the instant trial are those which she has related to Drs. Kolavo and Salehi as from her cervical condition.

14IWCC0474

At trial, Petitioner's counsel inquired as to whether Petitioner had undergone a FCE as advocated by the Commission decision. The Arbitrator notes Petitioner continues to pursue her neck claim and total disability status allegedly related to that condition. It may be that Petitioner has an operable neck problem, and that it would therefore be unsafe and medically contraindicated for her to undergo such testing, however there is nothing in the record to so indicate, and therefore the final order of the Commission awarding the FCE should be complied with.

For the foregoing reasons the Arbitrator finds that Petitioner's current condition of ill being with respect to her hands and arms as alleged in the instant case is identical to that as found by the Commission in its decision.

Regarding L) what temporary total disability benefits are due, the Arbitrator finds the following:

There is no basis for awarding temporary total disability to Petitioner for her hand and arm conditions. In support of this finding, the Arbitrator notes the Commission refused to extend Petitioner's entitlement to temporary total disability through May 8, 2012 for these conditions, suspending Respondent's liability as of November 29, 2011. The record reflects no change in circumstance after May 8, 2012 which would warrant an award of further benefits for these conditions, and therefore TTD is denied.

Regarding M) penalties and attorneys' fees, the Arbitrator finds the following:

Based on the findings set forth above, the Arbitrator finds that the Respondent has not acted unreasonably or vexatiously in this matter and therefore denies Petitioner's petition for penalties and attorney fees. There is no basis for award of penalties or attorneys' fees in this matter.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Marion Ford,
Petitioner,

vs.

NO: 12 WC 22946

City of Chicago,
Respondent,

14IWCC0475

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 medical expenses, prospective medical expenses, causal connection, 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 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 10, 2012 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.

14IWCC0475

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

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

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

DATED: JUN 17 2014

MB/mam
O:5/8/14
43



Mario Basurto



David L. Gore



Stephen Mathis

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

FORD, MARION

Employee/Petitioner

Case# 12WC022946

14IWCC0475

CITY OF CHICAGO

Employer/Respondent

On 12/10/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.14% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0230 FITZ & TALLON LTD
PATRICK A TALLON
5338 MAIN ST
DOWNERS GROVE, IL 60515

0113 CITY OF CHICAGO DEPT OF LAW
DAN NIX
30 N LASALLE ST SUITE 800
CHICAGO, IL 60602

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

STATE OF ILLINOIS)
)
 COUNTY OF COOK)

14IWCC0475

ILLINOIS WORKERS' COMPENSATION COMMISSION

19(b) ARBITRATION DECISION

MARION FORD
 Employee/Petitioner

Case #12 WC 22946

v.

CITY OF CHICAGO
 Employer/Respondent

An Application for Adjustment of Claim was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Robert Williams, arbitrator of the Workers' Compensation Commission, in the city of Chicago, on November 27, 2012. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

- A. Was the 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 the petitioner's employment by the respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to the respondent?
- F. Is the petitioner's present condition of ill-being causally related to the injury?
- G. What were the petitioner's earnings?
- H. What was the petitioner's age at the time of the accident?
- I. What was the petitioner's marital status at the time of the accident?
- J. Were the medical services that were provided to petitioner reasonable and necessary?

14IWCC0475

- K. What temporary benefits are due: TPD Maintenance TTD?
- L. Should penalties or fees be imposed upon the respondent?
- M. Is the respondent due any credit?
- N. Prospective medical care?

FINDINGS

- On February 23, 2012, the respondent was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship existed between the petitioner and respondent.
- On this date, the petitioner sustained injuries that arose out of and in the course of employment.
- Timely notice of this accident was given to the respondent.
- In the year preceding the injury, the petitioner earned \$57,200.00; the average weekly wage was \$1,100.00.
- At the time of injury, the petitioner was 55 years of age, *single* with one child under 18.
- The parties agreed that the respondent paid \$26,130.40 in temporary total disability benefits.
- The parties agreed that the petitioner is entitled to temporary total disability benefits for 25 weeks, from February 24, 2012, through August 16, 2012.

ORDER:

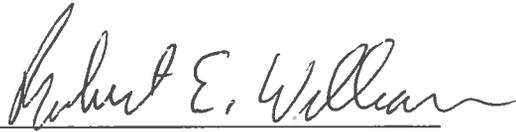
- The respondent shall pay the petitioner temporary total disability benefits of \$733.33/week for 26-1/7 weeks, from February 24, 2012, through August 16, 2012, and from November 20, 2012, through November 27, 2012, which is the period of temporary total disability for which compensation is payable.
- The medical care rendered the petitioner was reasonable and necessary. The respondent shall pay the medical bills in accordance with the Act and the medical fee schedule. The respondent shall be given credit for any amount it paid toward the medical bills, including any amount paid within the provisions of Section 8(j) of the Act, and any adjustments, and shall hold the petitioner harmless for all the medical bills paid by its group health insurance carrier.
- The petitioner is entitled to have from the respondent the reasonable and necessary cost for an arthroscopic meniscus repair on his right knee.

14IWCC0475

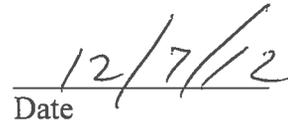
- In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of temporary total disability, medical benefits, or compensation for a permanent disability, if any.

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.



Robert Williams


Date

DEC 10 2012

FINDINGS OF FACTS:

The petitioner, a motor-truck driver, hit and injured his right knee on his steering column on February 23, 2012, when his seat slid forward. He received immediate care at MercyWorks, where x-rays of his right knee were negative. He was provided medication and off-work status for a right knee contusion. X-rays of his right knee on the 27th revealed moderate osteoarthritis and joint effusion. An MRI on March 9th showed a horizontal oblique tear across the posterior horn of the medial meniscus extending to the undersurface and a free-edge tear. It was noted at Concentra on March 12th that the MRI showed a posterior horn medial meniscus tear with small joint effusion. Dr. Michael Maday at Midland Orthopedic saw the petitioner on March 14th, and noted a diagnosis of a small right medial meniscus tear in 2007 and 2008 and intermittent symptoms thereafter. Dr. Maday opined that the free-edge tear was the cause of the catching and locking in the petitioner's knee.

At the respondent's request, Dr. David Raab at Illinois Bone and Joint evaluated the petitioner on May 9th and opined that the x-rays showed almost bone-on-bone in the medial compartment, early degenerative changes of the patellofemoral joint and a bipartite patella. Dr. Raab's impression was degenerative arthritis of the medial compartment associated with a medial meniscus tear and degenerative changes of the patellofemoral joint. Dr. Raab opined that the petitioner sustained a contusion, arthroscopy was not warranted and that the petitioner could perform light-duty work.

On June 7th, Dr. Maday opined that the medial meniscus tear was the source of petitioner's right knee problems. The petitioner received an intra-articular cortisone injection on August 1st, but reported no significant improvement. Dr. Maday

recommended an arthroscopic meniscus repair on August 15th, which the petitioner requests.

FINDING REGARDING WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER ARE REASONABLE AND NECESSARY:

The medical care rendered the petitioner was reasonable and necessary. The respondent shall pay the medical bills in accordance with the Act and the medical fee schedule. The respondent shall be given credit for any amount it paid toward the medical bills, including any amount paid within the provisions of Section 8(j) of the Act, and any adjustments, and shall hold the petitioner harmless for all the medical bills paid by its group health insurance carrier.

FINDING REGARDING WHETHER THE PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY:

Based upon the testimony and the evidence submitted, the petitioner proved that his current condition of ill-being with his right knee is causally related to the work injury.

FINDING REGARDING THE AMOUNT OF COMPENSATION DUE FOR TEMPORARY TOTAL DISABILITY:

The petitioner returned to work full duty on August 16th and took a personal leave of absence on November 19, 2012. The respondent shall pay the petitioner temporary total disability benefits of \$733.33/week for 26-1/7 weeks, from February 24, 2012, through August 16, 2012, and from November 20, 2012, through November 27, 2012, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner.

FINDING REGARDING PROSPECTIVE MEDICAL:

The petitioner proved that the arthroscopic meniscus repair recommended by Dr. Maday is reasonable medical care necessary to relieve the effects of the work injury. The

14IWCC0475

petitioner is entitled to have from the respondent the reasonable and necessary cost for an arthroscopic meniscus repair on his right knee.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Pedro Velasquez,
Petitioner,

vs.

NO. 12WC001242

Elite Staffing,
Respondent.

14IWCC0476

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, permanent disability, causal connection, nature and extent, medical expenses, penalties 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 30, 2013 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.

14IWCC0476

12 WC001242
Page 2

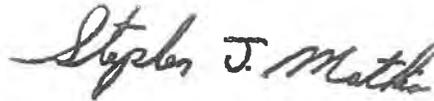
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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.

No bond is required for removal of this cause to the Circuit Court by Respondent. 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:
SM/sj
o-4/17/14
44

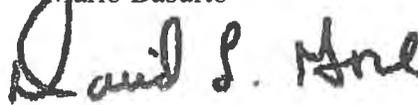
JUN 16 2014



Stephen Mathis



Mario Basurto



David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

VELAZQUEZ, PEDRO

Employee/Petitioner

Case# 12WC001242

ELITE STAFFING

Employer/Respondent

14IWCC0476

On 1/30/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.11% 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:

2512 THE ROMAHER LAW FIRM
CHARLES P ROMAHER
211 W WASCKER DR SUITE 1450
CHICAGO, IL 60606

4866 KNELL & O'CONNOR
KAROLINA M ZIELINSKA
901 W JACKSON BLVD SUITE 301
CHICAGO, IL 60607

14IWCC0476

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Pedro Velazquez
Employee/Petitioner

Case # 12 WC 001242

v.

Elite Staffing
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **November 1, 2012 and December 12, 2012**. 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 _____

FINDINGS

On **January 4, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being regarding his right shoulder or lower back, *is not* causally related to the accident.

In the five weeks preceding the injury, Petitioner earned **\$1,553.06**; the average weekly wage was **\$310.61**.

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

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 **\$9,622.78** under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of \$286.00 per week for 10 & 6/7 weeks commencing January 9, 2012 through March 23, 2012 pursuant to Section 8(b) of the Act.

Medical Benefits

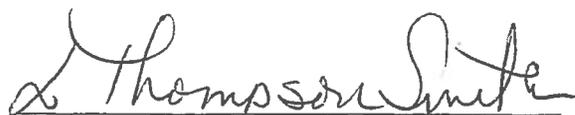
Respondent shall pay to the medical services providers those medical bills for Petitioner's left shoulder, left hand, left upper back, left elbow and anterior chest wall, including the 12 sessions certified by Respondent's utilization review, pursuant to Section 8(a) of the Act.

Penalties

No penalties or attorneys' fees are awarded under Section 19(k), 19(l) and Section 16 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

January 30, 2013

FINDINGS OF FACT

Procedural Posture

On November 1, 2012 and December 12, 2012, both parties proceeded to trial by way of agreement, with disputed issues of this matter being: 1) accident; 2) causal connection; 3) reasonableness and necessity of medical services; 4) payment of medical bills; 5) temporary total disability; 6) penalties; and (7) attorney's fees. See, AX1. The accident claim at issue is 12 WC 001242 with injury date of January 4, 2012.

Injury and Treatment Summary

On January 4, 2012, Petitioner was admitted to Concentra Medical Center after slipping and falling at work. The Patient Statement contained within the records from Concentra indicates: "As I was moving a box I slipped because the floor was wet and box fell on my left arm." The History of present Illness indicated that Petitioner was struck by a corner of the box he was carrying when he slipped and as a result felt pain in the left hand, left elbow, left shoulder and left upper back. See, RX2.

Cervical testing showed a full range of motion with axial rotation, lateral flexion and forward flexion and extension; no pain with movements, no swelling, and a negative Spurling's test. Lumbar pain was not noted and no radiological testing was taken of the cervical or lumbar spine. The notes do not indicate pain to the lower back or right arm/shoulder. X-rays of the left shoulder, left elbow and left hand were taken and determined to be negative. An x-ray of the thoracic spine was also taken and determined to be negative. Petitioner was returned to work, in a modified capacity with restrictions of "no lifting over 10 lbs, no use of left arm and no reaching above shoulders." Petitioner was prescribed physical therapy three (3) times per week for 2 weeks. See, PX1 & RX2.

On January 5, 2012, Petitioner returned to Concentra for a follow-up examination of his left shoulder, chest, left elbow and hand. Petitioner complained of pain in his neck and upon examination, moderate tenderness to palpitation was found in the left shoulder and left upper anterior chest wall; with moderate pain with end range movements. There was a full range of motion in the right elbow and no cervical spine tenderness was noted and Petitioner had a normal range of motion. Petitioner was not examined for any low back complaints or right shoulder complaints. Petitioner had been working, in a modified capacity, within his restrictions. Petitioner was diagnosed with a chest wall contusion and a left shoulder, left elbow and left hand and elbow contusions. Petitioner was ordered to continue physical therapy for one week. Petitioner did not present for his January 9, 2012 and January 11, 2012 physical therapy appointments at Concentra. See, PX1 & RX2.

On January 10, 2012, Petitioner presented to his first choice of physician, Dr. Ravi Barnabas, at Herron Medical Center complaining, of left shoulder and low back pain, radiating into both legs. The doctor's notes indicated that Petitioner was injured at Elite Staffing on January 4, 2012, where he had been working for the past three months. Petitioner's wage records indicate that he has been an employee of Elite Staffing, at the time of the accident, for five weeks. The records indicate that

Petitioner slipped at work, landed on his back, injured his left shoulder and lower back. Petitioner was diagnosed with a lumbar strain and pain in the left shoulder. MRIs of the left shoulder and back were ordered. Petitioner was also prescribed physical therapy, with Dr. Ruben Bermudez, D.C. A history taken on this date states that the petitioner “slipped and landed on his back, injuring his left shoulder, lower back, left elbow and skull”. And that he could not go back to work “due to severe pain in the body parts mentioned” He was complaining back pain of 8 out of 10 and radiating down both legs; the shoulder pain, on a scale of 10 was a level 8 and radiated down the left arm. The left elbow pain was 5 out of 10. The petitioner’s skull pain was accompanied by headaches on the level of 8 out of 10. *See, PX2.*

On January 11, 2012, Petitioner had an MRI of the lumbar spine and the left shoulder at Open Preferred MRI, which indicated no disc herniations or significant central or foraminal stenosis. The report further indicated “grade I/II anterior spondylolisthesis of L5 with respect to S1, most likely as a result of underlying spondylolysis with defects in the bilateral pars interarticularis at L5.” *See, PX7.*

On January 13, 2012, Petitioner presented to Dr. Ruben Bermudez, D.C., at Alivio Physical Therapy and Chiropractic. The history taken by the doctor’s notes complaints of pain into the right shoulder, which is then crossed out, and left is written over it; with radiating pain into the neck and low back, with pain radiating into both buttocks. However, the doctor notes indicate that he examined the right shoulder and states that motion in the right shoulder is painful in all directions of flexion, rotation, extension and adduction; and his assessment was that the January 11, 2012 MRI of the lumbar spine revealed a grade 1-2 anterior spondylolisthesis of L5 with respect to S-1; most likely the result of underlying spondylosis with defects of the bilateral pars interarticularis at L-5. “This finding in combination with minimal disc bulge and posterior element degenerative changes create a fairly severe degree of foraminal stenosis bilaterally at L5-S1.” Regarding the left shoulder the January 11, 2012 MRI showed a mild thickening in T2 hyperintensity in the substance of the distal supraspinatus tendon due to minimal tendinopathy without evidence of the full thickness rotator cuff tear; there was also mild degenerative changes of the AC joint without any significant degree of narrowing of the supraspinatus outlet. The doctor now examines the right shoulder and states that motion is painful in all directions *See, PX2.*

On January 17, 2012, Petitioner returned to Alivio with complaints of pain in the left shoulder with chest pain. There was evidence for granulomatous disease and the petitioner was kept off work. Petitioner continued to present to Alivio on January 19 and 25, 2012; February 1 and 7, 2012. There are no further treatment records from Dr. Bermudez and there was no prescription for a cane. The Arbitrator notes that Petitioner presented at trial with a cane and testified that it was prescribed by this doctor. *See, PX2.*

On January 19, 2012, Petitioner again presented to Dr. Bermudez complaining of pain in the lower back radiating into his buttocks and both legs. Upon examination, his motion was limited and painful in all directions of flexion, extension, lateral flexion and rotation; with tenderness upon palpation into

the bilateral lumbar supraspinatus muscles and the lumbar spine and into the left shoulder area, the supraspinatus muscle and tendon, the upper and middle trapizius and into the cervical paraspinal muscles on the right side, with positive Jobe's and Milgram's tests. On the following visit the petitioner urine test comes back positive for an over abundance of an anxiety medication, Methobromide with normal limits being 500 and he testing at 7180. The doctor tells him not to take any medication unless it was prescribed by him. Upon physical examination, the lumbar inspection is normal however, there is pain on flexion, extension and lumbar lateral rotation. The doctor's assessment was a lumbosacral strain/sprain with spondylolisthesis. The petitioner was referred to Dr. Ossama Abdellatif, on January 28, 2011. *See*, PX2.

On January 30, 2012, Petitioner presented to Dr. Ossama Abdellatif, M.D. and underwent the following procedures at Lakeshore Surgery Center: (1) a lumbar/sacral facet block-medial branch technique first level; (2) a lumbar/sacral facet block-medial branch technique additional levels; (3) a lumbar epidural steroid injection under x-ray; (4) a trigger point injection; (5) a fluoroscopic guidance; and (6) an epidural gram lumbar approach. The notes indicate that Petitioner felt relief for seven days. According to the medical records put into evidence, this is the only time Petitioner was treated by Dr. Abdellatif or at the Lakeshore Surgery Center. *See*, PX3. Petitioner then presented to Dr. Bermudez with complaints of pain in the low back, radiating into both legs, dizziness, headaches and pain in his neck, upper back and left shoulder.

On February 9, 2012, Petitioner presented to his second choice of doctor at Rehab Dynamix for an initial examination and was evaluated by Dr. Krysten Kuk, D.C. The notes indicate that Petitioner fell at work, landing on his back with a box falling on his chest. The Rehab Dynamix notes further indicate that Petitioner went to a doctor on his own and has been receiving physical therapy for his low back since that time. The symptom survey is written in Spanish and indicates Petitioner's symptoms and complaints. There is nothing marked under the section entitled "shoulders/hombres" indicating any shoulder pain. Other areas are marked, including low back pain and pain down the legs. Petitioner was diagnosed with a thoracic sprain and lumbar disc syndrome and recommended to undergo physical therapy five times per week for six weeks. Petitioner was kept off work for two weeks. *See*, PX5.

On February 22, 2012, Petitioner was re-examined by Dr. Kuk following physical therapy. Overall improvement was noted to be at 20% for complaints of lumbar spine and thoracic spine pain. Petitioner noted his pain was a six out of ten and Petitioner's recommended therapy was increased from six to twelve weeks. Petitioner was also given modified work duties with restrictions of no lifting/carrying, no pushing/pulling and no climbing.

On March 5, 2012, Petitioner was re-examined by Dr. Kuk and his overall improvement was noted at 10%; Petitioner noting that his pain increased to a seven out of ten. There was no change to Petitioner's work status. Petitioner presented to Dr. Neeraj Jain, M.D. at Chicago Pain and Orthopaedic Institute, being referred to pain management by Dr. Krysten Kuk. As part of the initial

consultation, Petitioner filled out a four-page workers' compensation claim form in Spanish. The form indicated that the petitioner last worked on January 9, 2012 and that he had two children, ages 10 and 12. The form also indicated that he felt pain in his right shoulder. *See*, PX6.

Dr. Jain's initial consultation report noted that Petitioner fell at work, landing on his buttocks and then onto his back with a box landing on his chest and left shoulder. Petitioner complained of pain in his neck and low back with radiating symptoms into the bilateral buttocks. The report also indicated Petitioner obtained an epidural steroid injection from Dr. Hassan following the incident and reported significant relief in his back and leg following the injection. There are no treatment records or bills from Dr. Hassan contained within the record. It was also recommended that Petitioner have a second bilateral L5-S1 epidural steroid injection, as well as an MRI of the cervical spine and right shoulder. It was noted that work status would remain per Dr. Kuk's orders. *See*, PX6.

On March 8, 2012, Petitioner obtained an MRI of the right shoulder at Preferred Open MRI, which demonstrated a superior labral tear with configuration of SLAP lesion type II, anterior-inferior labral tear and supraspinatus tendinopathy. Petitioner also obtained an MRI of the cervical spine on March 8, 2012, which indicated a multilevel disc protrusion, multilevel spinal stenosis and chronic mild vertebral compression deformities. *See*, PX7.

On March 19, 2012, Petitioner returned to Dr. Jain. It was noted that Petitioner had a right shoulder MRI which indicated a labral tear with a SLAP lesion. Petitioner also had a cervical spine MRI which showed spondylosis with disc protrusions at C4-C5 and C5-C6. Petitioner was taken off work and it was recommended that he have cervical facet injections and an orthopedic evaluation for his right shoulder. *See*, PX6.

On March 21, 2012, Petitioner was re-examined by Dr. Kuk and overall improvement was noted at 10%. Petitioner's work status was noted as "as ordered per specialist." Petitioner continued to undergo physical therapy at Rehab Dynamix through October 31, 2012, for a total of approximately 9 months of physical therapy. Petitioner's pain level had not improved since the beginning of physical therapy in February of 2012, in fact, his pain level had increased. On February 22, 2012, Petitioner reported his pain level at 6 out of 10, on August 15, 2012, Petitioner's pain level was 8 out of 10; on September 10, 2012, his pain level was 8 out of 10. *See*, PX5.

On March 23, 2012, Petitioner presented to Dr. David Raab, at the Illinois Bone and Joint Institute, for an Independent Medical Evaluation ("IME") of both shoulders. Dr. Raab reviewed the right shoulder MRI and noted there were some findings with regard to the labrum that were degenerative in nature as well as findings of some associated paralabral cysts. Dr. Raab opined that the paralabral cysts indicated some chronicity. During his deposition, Dr. Raab testified that falling on the posterior aspect of his back is not a mechanism of injury that would cause a labral or rotator cuff tear. Dr. Raab indicated that he specifically asked Petitioner how he fell at the IME and Petitioner never stated that he used his arms to break his fall. Rather, Petitioner stated that he made contact with the ground with

his low back, head and the back of the neck. Dr. Markarian's records also do not indicate that Petitioner fell on an outstretched right arm. Dr. Raab testified that based on his experience, if an individual did fall and sustain a labral tear of the right shoulder, he or she would feel pain immediately. Dr. Raab additionally opined that it would not be possible for an individual not to feel pain for two months after sustaining a labral tear. Dr. Raab further testified that based on the MRI findings and Petitioner's mechanism of injury (that he fell on the posterior aspect of his back, head and neck), the findings on MRI regarding Petitioner's right shoulder were not causally related to the work injury that Petitioner sustained on January 4, 2012 when he fell at work. As such, Dr. Raab opined that Petitioner was at maximum medical improvement ("MMI") as it pertained to a left shoulder injury caused by the January 4, 2012, work accident and could return to work full duty. *See*, RX8.

On April 16, 2012, Petitioner was evaluated by Dr. Christopher Morgan, at Chicago Pain and Orthopaedic Institute. It was noted that Petitioner reported no improvement, reporting a pain score of 8-9 out of 10. Recommendations were again made for an orthopedic consultation for the right shoulder, bilateral ESIs and facet joint injections. Petitioner was kept off work. *See*, PX6.

On April 26, 2012, Petitioner presented to Dr. Gregory Markarian, at Chicago Pain and Orthopaedic Institute, per referral by Drs. Morgan and Jain. The history of the accident now indicated that a 75-pound piece of meat fell on Petitioner at work and as a result, he fell backwards injuring his back, neck and right shoulder. A right shoulder MRI was reviewed and Petitioner was assessed as having a labral tear, bicipital tendonitis and AC joint arthritis. The doctor recommended a right shoulder x-ray and surgery. Dr. Markarian's records do not indicate that Petitioner fell on an outstretched right arm. *See*, PX8.

On May 15, 2012, Petitioner obtained a bilateral L5-S1, S1 transforaminal epidural steroid injection with selective nerve block at Accredited Ambulatory Care. *See*, PX9.

On June 4, 2012, Petitioner returned to Chicago Pain and Orthopaedic Institute for a follow up with Dr. Jain. It was noted Petitioner's neck pain did improve after the transforaminal injections. Petitioner was also evaluated by Dr. Markarian for his right shoulder and an arthroscopy was recommended. Petitioner was kept off work. *See*, PX6.

On June 7, 2012, Petitioner had an x-ray of the right shoulder at Preferred Open MRI per Dr. Markarian, which was unremarkable. *See*, PX7.

On June 14, 2012, Petitioner returned to Dr. Markarian for a follow up. It was recommended that Petitioner undergo an arthroscopy, subcromial decompression, possible labral repair, biceps tenotomy and sub-pectoral tenodesis. Petitioner was also ordered to undergo physical therapy three (3) times per week for four (4) weeks. The work status note from June 14, 2012, does not indicate whether Petitioner could return to work and whether he had any restrictions. On July 10, 2012, Dr.

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Markarian scheduled Petitioner for surgery and on July 12, 2012, Petitioner was taken off work. *See, PX8.*

On July 12, 2012, Petitioner underwent right shoulder surgery performed by Dr. Markarian at Accredited Ambulatory Care. *See, PX9.* Petitioner continued to follow up with Dr. Markarian following his shoulder surgery and was ordered to continue physical therapy. Petitioner was told to remain off work. *See, PX8.*

On July 30, 2012, Petitioner returned to Chicago Pain and Orthopaedic Institute for a follow-up with Dr. Jain. It was noted Petitioner had completed shoulder surgery with Dr. Markarian and still had persistent bilateral low back pain. Cervical facet injections at C4-5, C5-6 and C6-7 were recommended. Petitioner was told to continue physical therapy as directed by Dr. Markarian and to remain off work. *See, PX6.*

On August 8, 2012, Petitioner presented to Dr. Andrew S. Zelby, M.D., at the Neurological Surgery & Spine Surgery, for an IME of his neck and back. Dr. Zelby explained that the degree of Petitioner's January 4, 2012 injury, appeared to have increased by several magnitudes over the five days between his visits at Concentra on January 4 and January 5, 2012 and his visit at Herron Medical Center on January 10, 2012. Dr. Zelby noted that a medical explanation for this increase in symptoms was elusive. Dr. Zelby opined that if Petitioner's initial complaints at Concentra did not describe a skull injury, loss of consciousness, headache, neck or low back complaints, then his subsequent complaints of five days later would not be related to his January 4, 2012 injury. *See, RX7.*

Dr. Zelby noted Petitioner's pre-existing spondylolisthesis at L5-S1 and opined that if Petitioner complained of an injury to his lumbar spine on January 4, 2012, then his pre-existing, asymptomatic condition may have become symptomatic due to his injury. However, Dr. Zelby opined that if Petitioner did not complain of lower back pain and did not report an injury to his lumbar spine when he first sought treatment at Concentra, then his current low back complaints would not be related to his work accident. Dr. Zelby explained that with the mechanism of injury that Petitioner reported, it would be medically inconceivable that he would not have complaints of back pain within hours of his injury. *See, Rx7.*

Dr. Zelby opined that the cause for Petitioner's neck complaints was similarly unclear and likely soft tissue in origin. He further noted that Petitioner had 4/5 positive Waddell signs with significant symptom magnification. Dr. Zelby opined that Petitioner was easily qualified to work in a light duty capacity with restrictions of lifting up to 20 pounds occasionally and 10 pounds frequently. Dr. Zelby opined that seven months of physical therapy for the spine, even with spondylolisthesis, was excessive, irrespective of cause. *See, RX7.*

On August 27, 2012, Petitioner returned to Chicago Pain and Orthopaedic Institute for a follow-up with Dr. Morgan. It was noted that Petitioner had been seen four weeks ago and continued to have

neck pain, low back pain, paresthesias traveling down his right arm and hand and tingling in both feet. Petitioner had not had the cervical facet injections recommended back in April 2012; and was referred for electrodiagnostic studies of both lower and upper extremities and kept off work. *See*, PX6.

On September 20, 2012, Petitioner was evaluated by Dr. Paul Av. Marsiglia, D.O. at Chicago Pain and Orthopaedic Institute, who recommended bilateral L3-L5 medial branch blocks under fluoroscopic guidance. *See*, PX6.

On October 4, 2012, Petitioner returned to Dr. Markarian for a follow-up for his right shoulder. Petitioner had full forward elevation and good strength, positive Tinel's over the median nerve and positive median nerve compression test. An EMG was ordered to rule out carpal tunnel and possible ulnar nerve entrapment and additional physical therapy was also recommended. Petitioner was told to remain off work. *See*, PX8.

On October 11, 2012, Petitioner followed-up with Dr. Marsiglia for complains of low back pain and neck pain. The same recommendations were made as before and Petitioner was kept off work. (Px 6).

Various health care services were reviewed via utilization review for medical necessity and appropriateness by Dr. Edwin Rabin, D.C., of Genex. The reports from Genex dated October 11, 2012 were introduced into evidence as Respondent's exhibits 4-6.

The medical necessity and appropriateness of 31 sessions of chiropractic treatment and therapeutic modalities as well as travel for Petitioner's cervical and lumbar spine from February 9, 2012 through April 30, 2012, were reviewed. Twelve (12) sessions were certified and nineteen (19) were not. The utilization review report noted that the six initial visits starting February 9, 2012 were reasonable. After the six initial visits, according to subjective findings, Petitioner was noted to have a 20% overall improvement, therefore, an additional six visits were warranted to provide additional gains. However, after the total 12 visits, there were no additional flare-ups in Petitioner's condition, range of motion was normal; and a home exercise program was reasonable. With regards to the 31 travel sessions, the utilization review did not certify any

of the 31 visits because the report noted there was no evidence of limitations that precluded Petitioner from self-transport and there was a lack of clear parameters that outlined the need for transport.

In addition, the medical necessity and appropriateness of 23 sessions of work conditioning and travel for Petitioner's cervical and lumbar spine from May 3, 2012 through July 10, 2012 were reviewed. All 23 sessions were not certified. The utilization review report noted that work conditioning is recommended as an option and should be specific for the job the individual is going to return to. And that the best practice work conditioning is recommended at 10 visits over 8 weeks. The report noted there was no documentation of a specific job Petitioner would be returning to and no documentation evidencing a plateau from previous conservative treatments, that would warrant work conditioning.

Petitioner's Testimony

On direct examination, Petitioner testified that he sustained injuries to his lower back, head, the back of his neck and his right, not his left shoulder, on January 4, 2012 when he slipped and fell at work. *See*, Tr.1, pg. 18. Petitioner testified that he was picking up a box of meat and holding it with both hands against his chest when he slipped on grease and water that was on the floor. Petitioner further testified that he tried to stop himself from slipping with his right arm and fell on the floor with his right arm behind him while still holding the box and that his back, head, back of the neck and right shoulder hit the floor. Finally, Petitioner testified that after he fell, he ended up lying face up, with his right arm underneath his waist and his left arm holding the box on his chest. *See*, Tr. 1, pgs. 19-20. The histories of accident contained within Petitioner's treatment records from Concentra, Herron, Alivio and Rehab Dynamix do not indicate that Petitioner fell on his right arm or that he used his right arm as support in stopping his fall. Rather, the histories state that Petitioner fell backwards on his buttocks and that his left hand, elbow and shoulder were injured. The medical histories of accident contradict Petitioner's testimony.

Petitioner testified that after the accident, he was taken to Concentra and was told that there was nothing wrong with him, that it was just the emotions from the accident and that he should go back to work. *See*, Tr. 1, pg. 22. Petitioner further testified that he told the doctors at Concentra that he fell with his right arm underneath the lower part of his back. *See*, Tr. 1, pg. 42. The records from Concentra dated January 4, 2012, January 5, 2012 and January 6, 2012, do not indicate that Petitioner fell on an outstretched right arm or injured his right arm/shoulder. On January 4, 2012, Petitioner obtained an x-ray of his left shoulder at Concentra not his right shoulder. *See*, RX2.

Petitioner testified that he presented to Dr. Barnabas at Herron Medical Center on January 10, 2012. On cross examination, Petitioner testified that he told the doctor what happened at work and he saw the doctor writing down what Petitioner was telling him. Petitioner again testified that he told the doctor at Herron that he fell on his right arm. Petitioner testified that he received treatment for his left arm even though his left arm was not hurting him. The medical records from Herron Medical Center dated January 10, 2012 describe Petitioner's work accident but do not indicate that Petitioner fell on an outstretched right arm. *See*, Tr. 1, pgs. 44-46, & PX2.

Petitioner testified that after eight months of physical therapy he feels a little better in regards to his neck and back. Petitioner further testified that Dr. Ruben Bermudez from Alivio prescribed the use of a cane for him on February 12, 2012, via a prescription order. The records from Dr. Bermudez dated February 12, 2012 do not indicate an order for a cane. *See*, Tr. 1, pgs. 51-52 & PX2.

Petitioner testified that he presented to Dr. Krysten Kuk at Rehab Dynamix on February 9, 2012 and that he complained of right shoulder pain to Dr. Kuk but she did not say anything. The records from Rehab Dynamix dated February 9, 2012 and February 22, 2012, do not indicate any complaints of

right shoulder pain. No x-rays or MRIs of the right shoulder were recommended or ordered by Dr. Kuk. *See*, Tr. 1, pg. 50 & PX5.

Petitioner testified that he was not made aware at any time in April of 2012, that a job was available within his restrictions. Petitioner also testified that he was never offered light-duty work. And Petitioner also testified that he attempted to return to work on several occasions, but was told he could not by, Elite supervisors. He further testified that his supervisor told him that he first had to speak to the insurance company before they could allow him to work. The petitioner testified that he was seen by Dr. Cook on February 22, 2012, and did not attempt to return to work after that date. *See*, Tr. 1, pp. 54-56 & Tr. 2, pg. 45.

Petitioner testified he has two children, ages 12 and 14. On his original Application for Adjustment of Claim, Petitioner indicated he had three children. In March of 2012, Petitioner filled out a form in Spanish at Chicago Pain and Orthopaedic and indicated his children were ages 10 and 12. The record from Chicago Pain and Orthopaedic Institute had Petitioner's signature on the fourth page. On cross-examination, Petitioner testified he did not sign the document. *See*, Tr. 1, p. 13 & 39 & RX1.

Petitioner testified that the firm Goldstein, Aiossa & Good were never his attorneys. Respondent's exhibit 9 is of a substitution of attorneys signed by Petitioner, Pedro Velazquez, substituting Charles Romaker in the stead of Frederick Aiossa of Goldstein, Aiossa & Good. *See*, Tr. 2, pg. 45 & RX9.

CONCLUSIONS OF LAW

C Did an accident occur which arose out of and in the course of Petitioner's employment with Respondent?

The petitioner's medical records from Concentra and Drs. Barnabas and Bermudez confirm that the petitioner was diagnosed with a chest wall contusion and a left shoulder, left elbow and left hand and elbow contusions. And he was further diagnosed with a lumbar strain and pain in the left shoulder. The Arbitrator finds that the Petitioner did suffer an accident that arose out of and in the course of his employment with Respondent.

F. Is Petitioner's current condition of ill-being is causally related to the injury?

A claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. It is the function of the Commission to judge the credibility of the witnesses and resolve conflicts in the medical evidence. *See, O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E. 2d 221, 223 (1980). In deciding questions of fact, it is the function of the Commission to resolve conflicting medical evidence, judge the credibility of the witnesses, and assign weight to the witnesses' testimony. *See, R & D Thiel*, 398 Ill. App. 3d at 868; *See also, Hosteny v. Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009).

For an employee's workplace injury to be compensable under the Workers' Compensation Act, he must establish the fact that the injury is due to a cause connected with the employment such that it arose out of said employment. *See, Hansel & Gretel Day Care Center v. Industrial Comm'n*, 215 Ill. App.3d 284, 574 N.E.2d 1244 (1991). It is not enough that Petitioner is working when accidental injuries are realized; Petitioner must show that the injury was due to some cause connected with employment. *See, Board of Trustees of the University of Illinois v. Industrial Comm'n*, 44 Ill.2d 207 at 214, 254 N.E.2d 522, (1969).

The Arbitrator concludes that Petitioner's current condition of ill-being as it relates to his right shoulder and lower back is not causally related to the January 4, 2012 work accident. The Arbitrator notes that Petitioner's testimony lacks credibility regarding these injuries. Petitioner testified that he sustained injuries to his lower back, head, the back of his neck and his right shoulder on January 4, 2012, when he slipped and fell at work and that he tried to stop himself from slipping with his right arm and fell on the floor with his right arm behind him while still holding the box. None of Petitioner's initial medical records support this manner of injury. In the histories of the accident contained within the treatment records from Concentra, Herron Medical, Alivio, and Rehab Dynamix, it states that Petitioner fell on his back. None of the histories state that Petitioner fell on his right arm or used his right arm to break his fall. Dr. Markarian's records do not indicate that Petitioner fell on an outstretched right arm. *See, PX8.*

In addition, it is clear from the treatment records of Concentra, Herron Medical, Alivio, Rehab Dynamix and Chicago Pain and Orthopaedic that Petitioner did not complain of right shoulder pain until several weeks following his work accident. Petitioner testified at trial, that he told all of his treating physicians that his right arm and shoulder were in pain following the accident, yet none of the physicians listened to him and they all treated his left arm instead. The Arbitrator does not find this testimony credible and relies on the treating records, which state that Petitioner complained of left arm pain and diagnostic testing which focused on his left arm following his fall at work.

Finally, in regards to Petitioner's right shoulder, the Arbitrator relies on the opinions of Dr. David Raab. Petitioner's treating physician, Dr. Markarian, is relying on Petitioner's subject complaints or his statements regarding the mechanism of injury. It is clear that there are contradictions to Petitioner's testimony, contained with the records. Moreover, Dr. Markarian does not provide a basis for his opinion that Petitioner's right shoulder injury was a result of his work accident; rather, he simply notes that Petitioner was injured at work on January 4, 2012. As indicated by Dr. Raab in his deposition, if an individual did fall and sustain a labral tear of the right shoulder, he or she would feel pain immediately. Petitioner did not immediately complain of right arm or right shoulder pain. Dr. Raab opined that it would not be medically possible for an individual not to feel pain for two months after sustaining a labral tear.

The Arbitrator finds the opinions of Dr. Raab to be more credible than those of Petitioner's treating doctors, concerning the right shoulder and finds that Petitioner's right shoulder complaints, including his subsequent surgery and right shoulder physical therapy, is not causally related to the work injury that Petitioner sustained on January 4, 2012.

The Arbitrator further concludes that Petitioner's current condition of ill-being as it relates to his left shoulder, left elbow, left hand, upper left anterior chest wall, upper back and neck is causally related to the January 4, 2012 injury. First, the Arbitrator relies on the record demonstrating that Petitioner's lumbar condition was diagnosed as a strain by Petitioner's treating doctor, Dr. Barnabas, on January 10, 2012. Petitioner's January 11, 2012 lumbar spine MRI indicated no lumbar compression deformities and no herniations. The MRI demonstrated grade I/II anterior spondylolisthesis of L5 with respect to S1, most likely a result of underlying spondylolysis with defects in the bilateral pars interarticularis at L5. The Arbitrator notes the lack of evidence presented by Petitioner proving that Petitioner's pre-existing lumbar condition was in any way aggravated or caused by his fall on January 4, 2012.

The Arbitrator relies on the opinions of Dr. Andrew Zelby when he noted Petitioner's pre-existing spondylolisthesis at L5-S1 and opined that if Petitioner complained of an injury to his lumbar spine on January 4, 2012, then his pre-existing, asymptomatic condition may have become symptomatic due to his injury. The notes from Concentra demonstrate that upon examination, the day of and after the accident, Petitioner had complaints of pain in the neck, left hand, volar and dorsal left elbow, left shoulder and left upper back. Cervical testing showed a normal range of motion with axial rotation,

lateral flexion and forward flexion and extension, no pain with movements, no swelling, and a negative Spurling's test. Lumbar pain was not noted and no radiological testing was taken of the cervical spine or lumbar spine. Dr. Zelby explained that with the mechanism of injury that Petitioner reported, it would be medically inconceivable that he would not have complaints of back pain within hours of his injury. The Arbitrator concludes that since Petitioner did not complain of lower back pain and did not report an injury to his lumbar spine when he first sought treatment at Concentra, then his current low back complaints would not be related to his work accident.

Dr. Zelby concluded that Petitioner showed 4 out of 5 Waddell signs and symptom magnification. At trial, Petitioner testified that after the incident he was taken to Concentra and was told that there was nothing wrong with him, that it was just the emotions from the accident and that he should go back to work. See, Tr. 1, pg. 22. This statement is contradicted by the records from Concentra, which clearly indicate Petitioner was given an examination, x-rays were taken, he was ordered to undergo physical therapy and he was placed on work restrictions. Additionally, Petitioner appeared at trial with a cane and testified that Dr. Ruben Bermudez from Alivio prescribed the use of a cane on February 12, 2012 via a prescription order. See, Tr. 1, p. 52. The records from Dr. Bermudez, dated February 12, 2012 do not indicate an order for a cane. As such, the Arbitrator finds that Petitioner's current condition of ill-being concerning his lumbar spine is not causally related to his January 4, 2012 work accident.

J. Were the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for reasonable and necessary medical services?

In light of the Arbitrator's determination that Petitioner failed to prove, by a preponderance of the evidence, that his right shoulder injury and subsequent surgery was causally connected to an injury arising out of and in the course of his employment with Respondent; Petitioner's claim for medical benefits for a right shoulder injury, is denied. These services include, but are not limited to, medical bills from Accredited Ambulatory Care totaling \$43,948.94; Orthopedic Association of Naperville totaling \$21,345.00; Preferred Open MRI totaling \$2,220.00 (for MRI right shoulder and x-ray right shoulder); Rehab Dynamix (for right shoulder physical therapy following surgery); and Chicago Pain and Orthopaedic Institute (for right shoulder evaluations).

Similarly, in light of the Arbitrator's determination that Petitioner failed to prove, by a preponderance of the evidence, that his low back injuries were causally connected to an injury arising out of and in the course of his employment with Respondent, Petitioner's claims for medical benefits for low back injuries is denied.

K. What temporary total disability benefits are due?

In light of the Arbitrator's determination that Petitioner failed to prove by a preponderance of the evidence that his right shoulder and lower back injuries were causally connected to an injury arising

out of and in the course of his employment with Respondent, the Respondent's liability for temporary total disability (TTD) benefits is only with regards to his left shoulder, left elbow, left hand, left chest wall, neck and upper back.

Notwithstanding the above, the Arbitrator notes that Petitioner worked modified duty until January 9, 2012, when he was taken off work by Dr. Barnabas on January 10, 2012 through February 15, 2012. His last visit at Alivio was on February 7, 2012 and the visit notes indicate Petitioner was complaining of left shoulder pain, left elbow pain and back pain. The off work notes from Herron Medical Center and Alivio do not indicate the reason Petitioner was taken off work.

On February 9, 2012, Petitioner was taken off work by Dr. Kuk at Rehab Dynamix. Petitioner's diagnosis at this time was lumbar disc syndrome and thoracic sprain. On February 22, 2012, Petitioner was placed on modified duty by Dr. Kuk. Respondent's witness, Leo Winstead, testified that light duty work was available within the restrictions provided by Dr. Kuk, however, the witness also testified that he had not a conversation with the Petitioner to advise him of the light duty work that was available and that he does not know if anyone from the company, had that conversation with the petitioner. Petitioner testified that no one from the respondent contacted him, verbally or in writing, regarding returning to work; and when he attempted to return to work he was not allowed to do so. Petitioner remained on modified duty until March 19, 2012, when he was evaluated by pain specialist, Dr. Jain, and taken completely off work. Petitioner was then evaluated by Dr. Markarian on April 26, 2012, and taken off work due to his right shoulder surgery. Petitioner has remained off work since that surgery. The petitioner is due TTD benefits from January 9, 2012 through March 23, 2012, when he was declared to have reached MMI by Dr. David Raab.

M. Should penalties or fees should be imposed upon Respondent?

Petitioner alleges injuries arising out of and in the course of employment on January 4, 2012. Section 8.2(d) of the Illinois Workers' Compensation Act specifies in part "All payments to providers for treatment provided pursuant to this Act shall be made within 60 days of receipt of the bills as long as the claim contains substantially all the required data elements necessary to adjudicate the bills." A failure to pay because of a good faith belief that no payment is due will not warrant a penalty. *See, Avon Products, Inc. v. Industrial Commission*, 82 Ill.2d 302, 412 N.E.2d 470 (1980).

The lack of complete medical documentation inhibits Respondent's ability to determine related lost time which may be compensable. Where Respondent's actions are consistent with the Act, Respondent's nonpayment, underpayment, or delayed payment cannot be deemed vexatious or without just cause, and Section 19(k) and 19(l) penalties must be denied.

In the instant case, Respondent alleges that they were not provided with complete medical documentation in order to determine related lost time until Petitioner's prior counsel forwarded same on March 28, 2012. At this time, Petitioner had already been evaluated by Dr. Raab, who opined that

Petitioner was at MMI; in relation to the left shoulder, and could return to work in a full duty capacity. Respondent also alleges that they forwarded several e-mails to Petitioner's former counsel, while he still represented the petitioner, advising of the availability of modified work within Petitioner's restrictions. Finally, Respondent relied on the Independent Medical Examination performed by Dr. Zelby and the opinions contained within Dr. Zelby's report regarding Petitioner's ability to return to work. Respondent's reliance on its IME physicians' evaluations and opinions was reasonable under the circumstances and the denial of TTD benefits was made in good faith. As such, Respondent's nonpayment of benefits cannot be deemed vexatious or without just cause, and Section 19(k) and 19(l) and Section 16 penalties will not be awarded.

N. Is Respondent is due any credit?

Respondent is entitled to a credit of \$9,622.78 under Section 8(j) of the Act. *See, RX3.*

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input checked="" type="checkbox"/> Reverse <u>Accident</u>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GORDON ROHRER,

Petitioner,

14IWCC0477

vs.

NO: 08 WC 30930

KEYSTONE STEEL & WIRE CO.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability (TTD), medical, statute of limitations and permanent partial disability, and being advised of the facts and applicable law, hereby reverses the Decision of the Arbitrator and finds that Petitioner sustained an accident arising out of and in the course of his employment through his repetitive job duties.

The Commission finds that Mr. Rohrer is entitled to TTD from August 6, 2008 through February 15, 2009, representing 27-6/7 weeks. The Petitioner is entitled to medical expenses in the amount of \$826.00. The Commission finds that Petitioner sustained forty-five percent loss of use of the left leg and forty-five percent loss of use of the right leg pursuant Section 8(e)(12) of the Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission makes the following findings:

1. According to the Application for Adjustment of Claim filed July 15, 2008, Gordon Rohrer was a 59 year old, single male with no dependants under the age of 18. The

Petitioner alleged injury to his bilateral legs, hips and person-as-a-whole as the result of his repetitive work duties. The alleged manifestation date was July 7, 2008.

2. Mr. Rohrer testified that he had worked as a forklift driver since July 7, 1968. T.10. He testified that the forklifts were rough to drive. T.15. The seat was 4 feet off the ground and did not have a lot of give. T.13. They had no shocks. T.16. The tires were made of hard rubber. He stated that there were spots/holes everywhere on the floor. T.20. He also drove over steel flooring thirty percent of the day. The forklift would bottom out when he would drive over the holes. He drove the forklift for 6.5 hours a day and would inspect the forklift prior to each shift. T.17. He would note if anything needed to be repaired. *Id.* Petitioner testified that there was never a day when his forklift did not bottom out during his 40 year career. T.31.
3. Petitioner testified that he had a lot of pain on an average day due to the shock on the body from driving over the rough surface. T.24. He stated that his leg pains started in 2003 and progressively deteriorated thereafter. T.26. He began noticing his hip issues at work in 2006. He retired on June 30, 2012. T.49.
4. Mike Fink has been employed with Keystone Steel for 37.5 years and is the foreman of vehicle repairs. He testified that Mr. Rohrer never reported any hip issues to him or that his seat was bottoming out. T.79. & T.78. He stated that employees are supposed to fill out a vehicle inspection report prior to their shift. T.73. If there is a defect, then the employee has the right to take the forklift out of service and a different forklift will be provided to the employee. T.74. He stated that the forklifts do not have suspension.
5. Mr. Fink testified that from 1986 until 2006, the forklifts had the Viking suspension seat assembly which was for the operator's comfort and safety, and was considered the gold standard. T.76. After 2006, they used Hyster forklifts, which had a full suspension seat. *Id.* They purchased top of the line seats. *Id.*
6. Mr. Fink testified that the terrain over which the forklift traversed was paved, blacktop or steel plate laid onto the concrete. T.77. He stated that there are various routes a driver can take to get around the plant. *Id.* If an area is bumpy, it was the obligation of the driver to report that area. It would have then been blocked off and repaired. T.78. His department would have fixed the seat if a driver reported bottoming out. *Id.*
7. Samuel Watkins is a line foreman and was Petitioner's supervisor from 2004 forward. T.91. He stated that from 2004 to July 6, 2008, Petitioner never told him that his forklift was causing him to experience hip pain. T.93. The Petitioner also never told him that his seat had bottomed out and caused him hip pain. *Id.*

8. Mr. Rohrer was seen for leg pain on June 5, 2003 at Methodist Medical Center. His leg pain was mostly in his thighs. It hurt to raise his legs and walk. Examination revealed decreased range of motion of the knees and hips. His pain was 5 out of 10. PX.2.
9. Petitioner underwent an x-ray of his bilateral hips on July 7, 2003. The x-ray revealed narrowing of both hips consistent with degenerative arthritic changes. PX.2A.
10. Petitioner was again seen at Methodist Medical Center on May 14, 2004. He complained of bilateral leg pain that he rated as 7 to 8 out of 10. He reported that he could not raise his legs and could not spread his legs to cross them. PX.2. On July 28, 2004, he had decreased range of motion of the bilateral hips. On January 7, 2005, he had no range of motion of the hips. *Id.* On February 24, 2006, he complained of bilateral leg pain. He reported that he could not spread his legs to the side. *Id.*
11. Mr. Rohrer was seen by Dr. Edward Smith on March 15, 2006. Examination of the hips showed some discomfort with internal rotation. External rotation of the hips was somewhat limited. X-rays of the bilateral hips revealed moderately severe degenerative joint disease in both hips with complete loss of the joint space over the lateral weight bearing area. The impression was bilateral degenerative joint disease of the hips. He was not symptomatic enough to warrant total hip replacement. He was referred to physical therapy. PX.3. Petitioner testified that he told Dr. Smith that he had pain in his thighs for a couple of years and it was interfering with his ability to ride his motorcycle. T.59. He made no mention of his work duties causing his symptoms.
12. The Petitioner was seen by Dr. Smith on May 18, 2006 and received an injection into both hips. The post-operative diagnosis was bilateral degenerative joint disease. PX.4A. Petitioner testified that he never discussed with Dr. Smith whether his condition was work-related. T.34.
13. The Petitioner was seen by Dr. Antoine Dawalibi on May 24, 2007 for bilateral neck and leg pain. PX.2. Mr. Rohrer reported that he always had some leg pain that he described as numbness and pain in both thighs and feet. He had flatfeet bilaterally. The x-ray of the right hip revealed advanced hip arthritis. There was marked loss of the superior lateral hip joint space and small spur formation from the superior lateral acetabulum and from the femoral head. There was subchondral sclerosis involving portions of the superior lateral femoral head and the acetabulum. PX.2C. The x-ray of the left hip revealed severe arthritis. There was severe loss of superior lateral left hip joint space and subchondral acetabular cyst formation and subchondral sclerosis. PX.2D.
14. Petitioner was seen by Dr. Dawalibi on June 15, 2007. He had left hip severe arthritis and right hip advanced arthritis. His pain was 6 to 7 out of 10. Examination revealed decreased range of motion of both hips. The Faber-Patrick test was positive bilaterally.

He was diagnosed with advanced and severe degenerative joint disease of the hips. Dr. Dawalibi noted Petitioner likely needed a surgical consultation, which he declined. PX.2.

15. Mr. Rohrer was seen by Dr. Dawalibi on April 11, 2008. Dr. Dawalibi noted that total hip arthroplasty was recommended, but Petitioner elected to wait. He provided Petitioner with an injection into the hip, which helped markedly. Petitioner requested another injection. The diagnosis was osteoarthritis of the hip. PX.2.
16. Mr. Rohrer was seen by Dr. Ted Maurer on May 22, 2008. He reported a 3 year history of hip pain, left greater than right. He reported significant night pain. On his hip score, he had severe pain and his ambulation was about a block. He had a severe limp and was unable to climb stairs. Examination revealed a significant flexed hip gait bilaterally. He was 2 millimeters shorter on the right than left. Both hips had range of motion of "ABD 5, ADD 5, ERE 5, IRE 0," and he flexed to 90 degrees and had pain with all extremes of motion. The x-ray of the bilateral hips revealed complete obliteration of the joint space, periarticular sclerosis and osteophyte formation with some degenerative changes throughout the remainder. The diagnosis was severe arthritis of the bilateral hips, left greater than right. Petitioner considered bilateral hip replacement. PX.5.
17. Petitioner testified that he contacted his attorney after the May 22, 2008 appointment. T.41. He testified that it was not until after he spoke with his attorney that he discussed causal connection with Dr. Maurer. T.65.
18. On June 3, 2008, a handwritten note indicated Dr. Maurer returned Petitioner's wife's call. Petitioner's wife was informed that Dr. Maurer would meet with Petitioner to discuss any causal relationship regarding the hips. Petitioner's attorney could then request the medical records. PX.5.
19. On June 26, 2008, Petitioner was seen by Dr. Maurer. Petitioner felt his hip condition was work-related due to the fact that he had been riding a forklift with a bad seat over a very rough surface without air in the tires for 40 years. Dr. Maurer noted this was not completely the cause of his hip arthritis as he performed other activities on his own. However, the continued shock to the hips would contribute to the arthritis. PX.5.
20. Mr. Rohrer completed a report of injury on July 7, 2008. He noted that he injured his hips and pelvis as the result of driving his forklift for 40 years. RX.11. Petitioner testified that he did not complain to anybody about his hip issues prior to this date as he saw no reason to complain. T.44.
21. On July 31, 2008, Dr. Matthew Jimenez of the Illinois Bone & Joint Institute performed a Section 12 examination at the request of the Respondent. Dr. Jimenez is board certified in orthopedics. He was subsequently deposed on March 7, 2013. He diagnosed Petitioner with end stage bilateral hip osteoarthritis that was in no way work-related. RX.17. pg.24.

He stated that the CAM-type impingement causes arthritis and is likely related to a patient's genetics, but the evidence is not clear. RX.17. pg.13. He further stated that why a person develops a CAM deformity is not necessarily known. RX.17. pg.14. He opined that Petitioner's work duties did not cause or aggravate his condition. *Id.* There was absolutely no medical evidence that driving a forklift would cause hip arthritis. RX.17. pg.25.

22. Dr. Jimenez testified that how long Petitioner drove a forklift and the surface over which he drove was not relevant in any way, shape or form. It would not worsen or speed up the disease process. RX.17. pg.34. He stated that repetitive loading does not cause arthritis. RX.17. pg.50.
23. Dr. Jimenez noted that the July 7, 2003 x-ray revealed narrowing of both hips that was consistent with degenerative arthritic changes. He stated that hips are going to wear at a given rate based on a person's age, genetics and the integrity of their articular cartilage. He stated that Petitioner's history is fairly common in people that need hip replacements. RX.17. pg.20.
24. Dr. Jimenez testified that hitting a pothole would be painful and make Petitioner's condition hurt. RX.17. pg.34. He further stated that it would have no relation or causation with the cause of arthritis, nor would it worsen the pathology or speed up the disease process. *Id.*
25. Mr. Rohrer underwent left total hip arthroplasty on August 6, 2008 that was performed by Dr. Maurer. The post-operative diagnosis was left hip arthritis. The surgery revealed complete eburnated bone of the femoral head with severe degenerative changes throughout the remainder. At the completion of the procedure, they had lengthened the Petitioner by 5 mm. PX.5B.
26. Petitioner underwent right total hip arthroplasty on November 5, 2008 that was performed by Dr. Maurer. The diagnosis was right hip arthritis. The surgery revealed complete eburnated bone of the femoral head with severe degenerative changes throughout the remainder. PX.5F.
27. Petitioner was seen by Dr. Dawalibi on February 10, 2009. He was six months post total left hip replacement and three months post total right hip replacement. He was doing well and thought he was ready to go back to work without restrictions. He was returned to work without restrictions. PX.5.
28. Petitioner underwent a Section 12 examination with Dr. Joseph Newcomer on May 27, 2011 at the request of his attorney. Dr. Newcomer was subsequently deposed on September 7, 2012. Dr. Newcomer is board certified in orthopedic surgery. He diagnosed Mr. Rohrer with status post bilateral hip replacement secondary to osteoarthritis. He

opined that driving the forklift and sitting in a flexed position for 8 hours a day with the jarring probably, and more likely, led to femoral acetabular impingement which led to the development of his degenerative hip disease. He developed labral tears as a result, which altered the mechanics of his hips and led to the development of degenerative arthritis that ultimately required joint replacement. PX.9. & PX.8. pg.16. However, while he thought Petitioner had a labral tear, he could not find it on any radiograph. PX.8. pg.39.

29. Dr. Newcomer testified that it was possible for an individual of Mr. Rohrer's age to have hip pain that was just arthritic in nature. PX.8. pg.32. Once an individual has degenerative arthritic changes in the hip, they could become symptomatic merely at home while getting up from a chair. PX.8. pg.35. Dr. Newcomer could not cite any authority that associated hip replacements with driving a forklift. PX.8. pg.37. He diagnosed Petitioner with osteoarthritis which could develop absent any job duties. PX.8. pg.39. He stated that driving a forklift could aggravate his condition. PX.8. pg.41. He further testified that an individual who never worked a day in their life could develop osteoarthritis. Once it causes symptoms, any activity could cause symptoms. PX.8. pg.50. Those activities would be considered aggravating factors. *Id.*
30. On November 29, 2011, Dr. Maurer authored a report to Petitioner's attorney noting Mr. Rohrer had severe arthritis of the bilateral hips. He saw Petitioner on June 26, 2008 at his request to discuss his hip arthritis. He was scheduled for left hip replacement and came to discuss whether his condition was work related. Dr. Maurer stated that his work duties would add additional wear of the hip. His work was not the complete cause of his hip arthritis. The continued shock from his work duties to the hip would contribute to his arthritis. PX.7.
31. Dr. Maurer is board certified and concentrates in hip and knee replacements. He was deposed on March 23, 2012. He saw Mr. Rohrer on referral from Dr. Dawalibi. The Petitioner gave a 3 year history of left greater than right hip pain. PX.7.pg.5. His past medical history was negative for diabetes, high blood pressure, heart problems, ulcers, cancer and blood clots. He did not smoke or drink. PX.7. pg.6. He had a hook and a bump of the femoral head and a CAM type anatomy. PX.7. pg.7. He testified that a CAM type anatomy is when the ball is not round and sits on the neck and tends to droop forward. When the ball moves in the hip socket, the CAM is not centered and tends to hit the inside of the socket and cause difficulty. PX.7. pg.8. This is seen in people with arthritis and who need hip replacements. *Id.* This is not something a person is born with; rather, the condition develops as the hip develops. *Id.*
32. Dr. Maurer stated that there is no real research to back up his opinion. But it seems as though a CAM type anatomy tends to pitch more in the socket especially in the seated position where the CAM hits the edge of the socket. He stated that it seems as though this is where the arthritis starts and those people are a little more likely to get an injury to the cartilage that is around the socket. PX.7. pg.9.

33. After he saw Mr. Rohrer on May 22, 2008, he thought Petitioner had severe arthritis of both hips, left greater than right. He noted Petitioner wanted bilateral hip replacement. PX.7. pg.11. He noted that a lot of bumping and jarring of the hips would be a contributing factor to the arthritis of the hips, but was not the total cause of his condition. PX.7. pg.15.
34. Dr. Maurer performed bilateral hip replacement and returned Petitioner to work on February 16, 2009. He last saw Petitioner on November 10, 2009. He was doing well at that time and had an occasional slight ache only. PX.7. pg.23.
35. Dr. Maurer opined that any wear and tear on the hip would contribute to wear and tear arthritis. The wear and tear caused by the jarring while using the forklift would contribute to the accumulated wear and tear that his hips experienced to make them arthritic. PX.7. pg.31. He further stated that Petitioner's work activities might or could have been a cause or an aggravating cause of the necessity of bilateral hip replacements. *Id.* He stated that his CAM deformity would make him a little more likely to get hip irritation. PX.7. pg.51.
36. On cross-examination, Dr. Maurer stated that he has performed around 1500 hip replacements. Of those 1500, less than 10 have been due to a single traumatic event. Of the remaining 1490, over 90 percent have been due to an arthritic condition with no known cause. PX.7. pg.34. It is not unusual for an individual 59 years old, regardless of their occupation, to have an arthritic hip that requires hip replacement. PX.7. pg.34. He noted that there were no medical records prior to May 22, 2008 that revealed that Petitioner complained of hip pain due to his work duties. PX.7. pg.37. He does not know anything about the suspension system of the forklift driver.
37. When he first saw Petitioner on May 22, 2008, Petitioner indicated that his condition was not work-related. PX.7. pg.39. There was no indication that his hip pain was associated with his forklift driving. PX.7. pg.40. He further stated that it is not unusual for an individual 59 years old to have arthritis in his hip that is unrelated to his work. PX.7. pg.41. He could not point to any specific finding on his May 22, 2008 x-ray that was attributable to his work duties. PX.7. pg.42.
38. Dr. Maurer further noted that the first reference of Petitioner's condition being work-related was after Petitioner met with his attorney. PX.7. pg.43. He noted that there is no medical literature that indicates that sitting causes a CAM type deformity to be changed in any way. PX.7. pg.44. There is no medical literature that indicates driving a forklift causes or accelerates a degenerative hip in any way. *Id.* He could have needed the hip replacements due to the arthritis in the absence of any job activity. PX.7. pg.47. Once arthritis is present, any everyday activity of life could cause the progression. PX.7. pg.50.

39. Petitioner was off work from August 6, 2008 until February 16, 2009. T.48. He testified that he is happy with the hip replacements. He no longer has hip pain. He can raise his leg and walk. T.49. After he returned to work, he continued to work as a forklift driver. T.50. He did not sustain any singular traumatic injury to his hips between August 5, 1968 and July 7, 2008. T.51.

The Commission is not bound by the Arbitrator's findings, and may properly determine the credibility of witnesses, weigh their testimony and assess the weight to be given to the evidence. *R.A. Cullinan & Sons v. Industrial Comm'n*, 216 Ill. App. 3d 1048, 1054, 575 N.E.2d 1240, 159 Ill. Dec. 180 (1991). It is the province of the Commission to weigh the evidence and draw reasonable inferences therefrom. *Niles Police Department v. Industrial Comm'n*, 83 Ill. 2d 528, 533-34, 416 N.E.2d 243, 245, 48 Ill. Dec. 212 (1981). Interpretation of medical testimony is particularly within the province of the Commission. *A. O. Smith Corp. v. Industrial Comm'n*, 51 Ill. 2d 533, 536-37, 283 N.E.2d 875, 877 (1972).

Mr. Rohrer filed an Application for Adjustment of Claim alleging injury as the result of his repetitive job duties. There is no requirement that a certain percentage of time be spent on a task in order for the duties to meet a legal definition of "repetitive." *Edward Hines Precision Components v. Indus. Comm'n*, 356 Ill. App. 3d 186, 825 N.E.2d 773. The evidence establishes that Mr. Rohrer has worked as a forklift driver since July 7, 1968. T.10. He drove his forklift for six and a half hours per day during his 40 plus year career. T.17. He had few additional work duties. The evidence shows that the Petitioner's job was repetitive in nature.

An employee who alleges injury from repetitive trauma must still meet the same standard of proof as other claimants alleging accidental injury. *Three "D" Discount Store v. Industrial Comm'n*, 198 Ill. App. 3d 43, 47, 556 N.E.2d 261, 264, 144 Ill. Dec. 794 (1989). "In the course of" employment refers to the time, place and circumstances under which the accident occurred. *Lee v. Industrial Comm'n*, 167 Ill. 2d 77, 81, 656 N.E.2d 1084, 212 Ill. Dec. 250 (1995). "For an injury to 'arise out of' the employment its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58, 541 N.E.2d 665, 133 Ill. Dec. 454 (1989). Additionally, an injury arises out of the employment if the claimant was exposed to a risk of harm beyond that to which the general public is exposed. *Brady v. L. Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548, 578 N.E.2d 921, 161 Ill. Dec. 275 (1991).

The evidence shows the forklift did not have a suspension system or shocks, and the tires were made of hard rubber. T.16. The Petitioner's testimony in this regard was confirmed by Mr. Fink. The Commission is persuaded by Petitioner's testimony that the ground over which he drove the forklift was rough and contained spots and holes. The Respondent admits that there were defects in the ground and parts of the ground were covered by steel plating. The Respondent offered no credible evidence to rebut Mr. Rohrer's testimony as to the condition of the ground. The condition of the ground would cause Petitioner's forklift to bottom out, which

caused a shock to his whole body. The Commission finds that this repetitive shock caused injury to Petitioner's bilateral hips. Petitioner's employment clearly exposed him to a risk greater than that faced by the general public. The Petitioner proved that he sustained a repetitive trauma injury that arose out of and in the course of his employment.

In repetitive trauma cases, the employee must show that the injury is work related and not the result of a normal degenerative aging process. *Peoria County Belwood Nursing Home v. Industrial Com.*, 115 Ill. 2d 524, 505 N.E.2d 1026, 1987 Ill. LEXIS 161, 106 Ill. Dec. 235 (Ill. 1987). Petitioner need only prove that some act or phase of employment was a causative factor of the resulting injury. *County of Cook v. Industrial Comm'n* (1977), 69 Ill. 2d 10, 370 N.E.2d 520. A pre-existing condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill. Dec. 6 (1982).

The records establish that Mr. Rohrer had a pre-existing bilateral hip condition. The Commission, however, finds that the repetitive shock, at minimum, exacerbated or accelerated his bilateral hip condition which necessitated surgery. In support of this finding, the Commission is persuaded by the opinions of Dr. Newcomer and Dr. Maurer. Dr. Newcomer opined that driving the forklift and sitting in a flexed position with the jarring led to femoral acetabular impingement, which led to the development of his degenerative hip disease and necessitated surgery. Dr. Maurer was of the opinion that a lot of bumping and jarring to the hips would be a contributing factor to Petitioner's hip arthritis. Dr. Jimenez testified, however, that he was not concerned with the surface upon which the Petitioner drove his forklift. He did not know the dimensions of the forklift or the speed and duration that the Petitioner drove the forklift. He was also never asked whether a continuous shock to the hip would accelerate the bilateral hip condition. Dr. Jimenez also testified that a CAM deformity is thought to be likely related to a patient's genetic predisposition, however, it is not necessarily known and the evidence is not clear. Dr. Jimenez offered no testimony as to whether a person with a CAM deformity would ultimately need a hip replacement absent trauma. The Commission is not persuaded by Dr. Jimenez' testimony that, while hitting a pothole would be painful and make his condition hurt, it would not, however, have any relevance to his disease process. Based on the totality of the evidence, the Commission finds that Petitioner's repetitive job duties, at minimum, exacerbated or accelerated his bilateral hip condition which necessitated the need for surgery.

The Respondent made several objections based on the statute of limitations. It is well established that the date of injury in repetitive trauma cases is the date on which the injury manifests itself, meaning the date on which the fact of injury and the causal relation to work would have become plainly apparent to a reasonable person. *Three "D" Discount Store*, 198 Ill. App. 3d at 47, 556 N.E.2d at 264. The categorization of an injury as due to repetitive trauma and the corresponding establishment of an injury date are necessary to fulfill the purpose of the Act to compensate workers who have been injured as a result of their employment. *Belwood Nursing Home*, 115 Ill. 2d at 530-31, 505 N.E.2d at 1028-29. The recognition of such a date allows an employee to be compensated for injuries that develop gradually, without requiring the employee

to push his body to a precise moment of collapse. *Castaneda v. Industrial Comm'n*, 231 Ill. App. 3d 734, 737, 596 N.E.2d 1281, 1284, 173 Ill. Dec. 402 (1992). Mr. Rohrer first became aware of the causal relationship in June 2008 when Dr. Maurer offered a medical opinion regarding causal connection. Petitioner filed his Application for Adjustment of Claim in July 2008. Mr. Rohrer's claim was timely and the statute of limitations objections were properly overruled.

The Commission finds that Mr. Rohrer proved that his job duties were repetitive in nature. He further established that he drove his forklift over a surface that had holes and spots which caused a shock to his hips. Those repetitive shocks, at minimum, exacerbated or accelerated his bilateral hip condition which necessitated the need for the bilateral hip replacement. As a result of his injury, the Petitioner is entitled to TTD for 27-6/7 weeks from August 6, 2008 through February 15, 2009. He is also entitled to medical expenses in the amount of \$826.00.

The Commission finds that Mr. Rohrer is entitled to 45 percent loss of use of the right leg and 45 percent loss of use of the left leg pursuant to Section 8(e)(12) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION, that the Decision of the Arbitrator filed on November 20, 2013, is hereby reversed for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$666.67 per week for a period of 27-6/7 weeks from August 6, 2008 through February 15, 2009, 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 \$600.00 per week for a period of 96.75 weeks, as provided in §8(e)(12) of the Act, for the reason that the injuries sustained caused the 45% loss of use of the right leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$600.00 per week for a period of 96.75 weeks, as provided in §8(e)(12) of the Act, for the reason that the injuries sustained caused the 45% loss of use of the left leg.

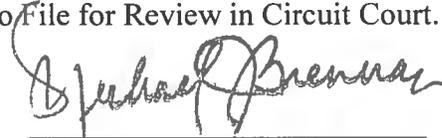
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$826.00 for medical expenses under §8(a) of the Act and subject to the fee schedule.

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.

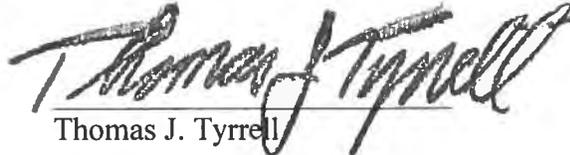
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 18 2014



Michael J. Brennan

MJB/tdm
O: 6-2-14
052



Thomas J. Tyrrell

DISSENT

I respectfully dissent from the decision of the majority. Arbitrator Fratianni's findings are both thorough and well reasoned. This decision is correct and should be affirmed



Kevin W. Lamborn

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input checked="" type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Roxanne Woodyard,

Petitioner,

vs.

No. 10WC006458

Recycled Paper Greetings,

14IWCC0478

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issue of the duration of temporary disability, and being advised of the facts and the law, clarifies the decision of the Arbitrator, as stated below and otherwise affirms and adopts the decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission 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).

On August 25, 2010, Dr. Brian Forsythe, an orthopedic surgeon, placed Petitioner off work "until further notice" as Petitioner was recovering from the left knee surgery that Dr. Forsythe had performed one week before. On October 20, 2010, Dr. Forsythe noted Petitioner had persistent pain and severe chondrosis of the left patellofemoral joint, and recommended that Petitioner undergo a left patellofemoral resurfacing procedure. On February 28, 2011, Dr. Forsythe, reiterated his recommendation that Petitioner undergo a left patellofemoral resurfacing

procedure and placed Petitioner off work "until further notice." On March 28, 2011, Dr. Forsythe placed Petitioner off work "until further notice" once again. When asked at his August 8, 2011, deposition whether Petitioner could return to work at that time, Dr. Forsythe stated that Petitioner would have to undergo a Functional Capacity Evaluation for him to determine the appropriate work restrictions for Petitioner. On March 12, 2013, Dr. Forsythe re-examined Petitioner and noted that she had not worked as a machine operator for approximately two-and-a-half years. Petitioner reported that she was unable to work secondary to left knee pain. Dr. Forsythe reiterated his recommendation for a patellofemoral resurfacing procedure given the degree of disability that Petitioner was experiencing.

Finding that Petitioner's current left knee condition was causally related to the work accident, the Arbitrator awarded temporary total disability benefits from March 9, 2010, the date of Petitioner's first left knee surgery, through April 3, 2013, the date of the section 19(b) arbitration hearing. The Commission agrees with the Arbitrator's award of temporary total disability benefits but disagrees with the Arbitrator's basis for the award.

On the Request For Hearing form, the parties stipulated that Petitioner is entitled to temporary total disability benefits from March 9, 2010, through January 12, 2011. With respect to additional temporary total disability benefits, the Commission finds that Dr. Forsythe placed Petitioner off work "until further notice" on August 25, 2010, and he has not released Petitioner to work since that time. At his deposition, Dr. Forsythe testified that Petitioner would have to undergo a Functional Capacity Evaluation for him to determine appropriate work restrictions. Petitioner never underwent a Functional Capacity Evaluation and Respondent has not authorized the patellofemoral resurfacing procedure that Dr. Forsythe recommended. The Commission finds that Petitioner is entitled to temporary total disability benefits from March 9, 2010, through April 3, 2013, as Dr. Forsythe kept Petitioner off work throughout this period of time while he awaited approval for the left patellofemoral resurfacing procedure.

IT IS THEREFORE ORDERED BY THE COMMISSION that the decision of the Arbitrator filed on April 23, 2013, is hereby clarified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of \$3,493.97 for medical expenses under §8(a) and §8.2 of the Act, subject to the medical fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for prospective medical care in the form of a left patellofemoral resurfacing procedure and any subsequent prescribed recuperative medical care as recommended by Dr. Brian Forsythe.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of \$462.75 per week for 150-4/7 weeks, from March 9, 2010, through April 3, 2013, which is the period of temporary total disability for work under

10WC006458

§8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

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 shall pay 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 \$51,700.00. 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:
SM/db
o-05/08/14
44

JUN 18 2014



Stephen J. Mathis



David L. Gore



Mario Basurto

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

WOODYARD, ROXANNE G

Employee/Petitioner

Case# 10WC006458

14IWCC0478

RECYCLED PAPER GREETINGS

Employer/Respondent

On 4/23/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

0575 REGAS GUBBINS & REGAS
MATTHEW T GUBBINS
ONE DEARBORN SQ SUITE 300
KANKAKEE, IL 60901

2837 LAW OFFICES OF THADDEUS GUSTAFSON
JOSEPH MARCINIAK
2 N LASALLE SUITE 2510
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

ROXANNE G. WOODYARD

Employee/Petitioner

Case # 10 WC 6458

v.

Consolidated cases: _____

RECYCLED PAPER GREETINGS

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Robert Falcioni**, Arbitrator of the Commission, in the city of **Geneva**, on **April 3, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **December 9, 2009**, 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 **\$29,291.79**; the average weekly wage was **\$694.12**.

On the date of accident, Petitioner was **49** years of age, *married* with **0** dependent children.

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

Respondent shall be given a credit of **\$21,550.93** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$21,550.93**.

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 \$462.75/week for 150-4/7ths weeks, commencing March 9, 2010 through April 3, 2013, as provided in Section 8(b) of the Act.

~Respondent shall be given a credit of \$21,550.93 for temporary total disability benefits that have been paid.

~Respondent shall pay reasonable and necessary medical services of \$3,493.97, as provided in Section 8(a) of the Act.

~Respondent shall authorize the prospective medical care prescribed for the Petitioner by her treating orthopedic surgeon, Brian Forsythe, MD, consisting of a left patellofemoral resurfacing procedure and any subsequent prescribed recuperative medical care, as the Petitioner's current condition of ill-being is causally related to her injuries of December 9, 2009, and Petitioner has not yet reached maximum medical improvement as a result of those injuries.

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.


Robert Falcioni, Arbitrator

April 17, 2013
Date

APR 23 2013

Roxanne G. Woodyard v. Recycled Paper Greetings
10 WC 6458

ATTACHMENT TO ARBITRATOR'S DECISION

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

In support of the Arbitrator's findings relating to causation, the Arbitrator finds that evidence established that Petitioner sustained significant injuries as a result of this accident, and that her present condition of ill-being is causally related to her injuries of December 9, 2009.

Petitioner was employed as a machine operator for the Respondent and had been so employed for nine months. On December 9, 2009, she was injured when she tripped on some wires on the floor and fell as she walked between the machines to which she was assigned that day. Petitioner fell on her right and left knees onto the cement floor. Her head struck a nearby table, as did her right index finger (Pet. Ex. 1).

Petitioner received immediate medical care at the Respondent's occupational clinic at St. James Occupational and Environmental Center. At the time of her initial treatment, Petitioner complained of bilateral knee pain, pain in the right index finger and headaches upon abduction (Pet. Ex. 1). Physical examination revealed erythema with tenderness over her left frontal temporal area and a 0.5 cm laceration to her right index finger. Bilateral knee contusion, right index finger laceration and blunt head trauma were diagnosed. Bilateral knee x-rays were obtained and were read as normal. A CT of her head without contrast was unremarkable. A tetanus shot was administered and anti-inflammatory was prescribed. She was discharged with instructions to return to Respondent's occupational clinic on December 14, 2009. (Pet. Ex. 1). Over the next two-and-a-half weeks, Petitioner received treatment through the clinic for left knee contusion and effusion, right knee contusion, right index finger laceration and blunt head trauma. During this period she complained of bilateral knee pain (left greater than right), left knee giving way, head soreness, increased sensitivity to the right index finger, and intermittent numbness between the shoulder blades. Treatment consisted of anti-inflammatory and pain medication, and warm Epsom soaks for her right finger. An MRI of the left knee was performed December 23, 2009, and revealed trace effusion mild nonspecific prepatellar subcutaneous edema, mucoid degeneration of the posterior horn of the medial meniscus, and mild degenerative joint disease (Pet. Ex. 1, 8).

On December 28, 2009, she was referred by Respondent's occupational clinic to an orthopedic surgeon, Ram Aribindi, MD. On January 4, 2010, Dr. Aribindi diagnosed left synovitis, mild effusion with internal derangement with possible tear of the posterior horn of the medial meniscus and

mild arthritic changes. Initial treatment consisted of anti-inflammatory medication, cortico-steroid injections to the left knee, physical therapy, home exercises and modified work duties of no kneeling or squatting (Pet. Ex. 2). Following no significant improvement of her left knee symptoms, on March 9, 2010, she underwent arthroscopic surgery to her left knee, which revealed a degenerative medial meniscal tear of the anterior horn, degenerative tear of the posterior horn of the lateral meniscus, prominent synovitis and chondromalacia of the patella, the femoral trochlea and lateral tibial plateau (grade 2 to 3) (Pet. Ex. 4). Post-operatively, a home exercise program, physical therapy, and anti-inflammatory medication were prescribed. Throughout the course of her post-operative physical therapy, Petitioner reported transient locking, soreness, pain and swelling in the knee (Pet. Ex. 3). On April 23, 2010, she reported left knee pain and swelling after "she 'overdid' it in physical therapy." Doctor Aribindi administered a steroid injection at that time (Pet. Ex. 2). Due to persistent left knee pain especially upon weight-bearing, ambulation and extension, a repeat MRI was prescribed, which revealed a complex tear of posterior horn of the medial meniscus (Pet. Ex. 8). Petitioner elected to undergo left arthroscopic surgery for repair.

On July 7, 2010, Petitioner consulted with orthopedic surgeon, Brian Forsythe, MD with Orthopedic Associates of Kankakee for a second opinion. Upon examination of Petitioner's left knee and review of the left knee MRI, Doctor Forsythe concurred with the recommendations of Doctor Aribindi and the need for a repeat arthroscopy (Pet. Ex. 5). Petitioner elected to treat with Doctor Forsythe. On August 18, 2010, she underwent left knee arthroscopic medial meniscus debridement of the posterior horn, lateral retinacular release, patellofemoral chondroplasty and partial synovectomy (Pet. Ex. 6). Physical therapy and pain medication was prescribed. Due to persistent pain and plateau of her progress in physical therapy, Doctor Forsythe prescribed that she undergo patellofemoral resurfacing for relief of her pain (Pet. Ex. 5). She last saw Dr. Forsythe in March 2011, prior to seeing him again in March 2013. To date, Petitioner has not undergone the prescribed surgery. Authority for the prescribed surgery has been denied by Respondent .

At arbitration, Petitioner testified that she still experiences persistent pain to the anterior left knee just below her patellar region. She ambulates with a cane that was prescribed by Doctor Forsythe. On March 12, 2013, Doctor Forsythe once again saw the Petitioner concerning her current condition. Once again the doctor prescribed an arthrosurface patellofemoral resurfacing procedure to her left knee, calling this procedure the best therapeutic option given the degree of disability she is experiencing and her persistence of symptoms (Pet. Ex. 12). This was exactly the same recommendation he had given Petitioner 2 years previously.

Respondent's IME doctor, Dr. Sporer examined Petitioner and testified regarding his findings. He agreed with DR. Forsythe and Dr. Aribindi regarding Petitioner's diagnosis, need for past medical treatment she received and the need for the future surgery prescribed by both Dr. Forsythe and Dr. Aribindi, but disagreed regarding any possible causal connection between Petitioner's accident as alleged herein and her current condition. Dr. Sporer opined that Petitioner's symptoms as currently evinced through her subjective complaints and objective findings were degenerative in nature and would not have been caused by her fall at work.

Doctor Forsythe opined as to a causal connection between Petitioner's accident, her present condition of ill-being, and the need for both arthroscopic procedures, and the medical necessity of the prescribed surgery to cure or relieve the Petitioner from the effects of her injuries (Pet. Ex. 11).

Prior to January 2, 1999, Petitioner testified that she had never experienced any of these symptoms in her left knee. She testified to receiving treatment to her left leg on only one occasion with her primary care physician prior to this injury. On that occasion, she suffered from lateral pain from the thigh to the calf which was resolved with a pain medication injection. All evidence in this case points to whatever that problem being, it was immediately cleared up by the injection and Petitioner working full duty at the time of her accident. Further when asked on cross exam where the pain was located on her leg prior to the accident alleged herein, she specifically pointed to her upper leg, not her knee. The Petitioner's reported symptoms following her injury on December 9, 2009 are clearly different in nature and scope. Throughout her post-injury care, Petitioner reported consistent symptoms throughout her anterior and medial aspects of her left knee. The evidence simply did not establish that this prior treatment to her left lateral leg was causally related to her current symptoms. This prior leg treatment is insufficient to break the causal relationship established between the injuries she sustained on December 9, 2009 and her present condition of ill-being. Further, in contrast to Dr. Sporer, Dr. Forsythe testified that her condition of degenerative arthritis was exacerbated by the accident herein.

Wherefore, based on the record as a whole, the Arbitrator finds that Petitioner's current condition of ill being is causally connected to the accident as alleged herein.

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?

In support of the Arbitrator's findings relating to medical expenses, the Arbitrator finds that the medical expenses contained in Petitioner's Exhibit 10 were causally related to her injuries of December 9, 2009. The Arbitrator further finds these expenses were both reasonable and necessary in order to cure or relieve the Petitioner from the effects of her injuries. The Arbitrator notes the testimony of Brian

Forsythe, MD, Respondent's IME doctor, Dr. Sporer and the Petitioner in support of these findings. These expenses have not been paid to date by Respondent. Respondent offered no evidence to dispute the reasonableness and necessity of those expenses. These expenses total \$3,493.97 for physical therapy services incurred by Petitioner at ATI Physical Therapy between February 7, 2011 and February 24, 2011, following her second left knee arthroscopy. Accordingly, Respondent is liable to pay those medical expenses as set forth in Petitioner's Exhibit Number 10 pursuant to the fee schedule. Respondent shall be entitled to credit for any medical expenses previously paid pursuant to Sections 8(a) and 8(j) of the Workers' Compensation Act.

Issue K: Is Petitioner entitled to any prospective medical care?

Given the causal relationship that exists between the Petitioner's injury of December 9, 2009, and her present condition of ill-being, as well as the medical necessity of the patellofemoral resurfacing procedure to cure or relieve the Petitioner from the effects of those injuries, the Arbitrator finds that the Respondent shall authorize the prospective medical care incurred by the Petitioner, consisting of left patellofemoral resurfacing procedure and any subsequent prescribed recuperative medical care, as prescribed by her treating orthopedic surgeon, Brian Forsythe, MD. In support of these findings, the Arbitrator relies upon the medical records in evidence and in particular the testimony of Petitioner's treating orthopedic surgeon, Brian Forsythe, MD.

Issue L: What temporary benefits are in dispute?

In support of the Arbitrator's findings relating to temporary total disability, the Arbitrator finds as follows. Petitioner claims TTD from 3/9/2010 to 4/3/13. She testified that she had been working until she had surgery. Since that time, she has not sought any employment. She testified that the Respondent plant has shut down. Based on the Arbitrator's finding with respect to causation, the Arbitrator awards TTD to 1/12/11. (44-1/7 weeks).

Furthermore, the Arbitrator finds that the last off work note was 3/28/11. (Px 9). The current treatment note dated 3/12/13 does not contain an off work note. The doctor observes that she has not been working but does not authorize continued off work. Petitioner testified that she did not see the doctor at all for the period of 3/29/11 to 3/12/13. She testified that she had group insurance coverage available. Respondent offered no evidence of Petitioner's work status during the period 3-12-11 to 3-28-13. Based on the scanty evidence present

14TWCC0478

in this case regarding this issue, the Arbitrator finds that Petitioner is entitled to a further period of TTD from 3/12/11 to 3/28/13 or 106-3/7 weeks.

Accordingly, Respondent shall pay Petitioner temporary total disability benefits of \$462.75/week for 150-4/7ths weeks, commencing March 9, 2010 through April 3, 2013, as provided in Section 8(b) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Bryan Stanly,

Petitioner,

vs.

No. 11WC029285

Village of Matteson,

Respondent.

14IWCC0479

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, prospective medical care and temporary disability, and being advised of the facts and law, modifies the decision of the Arbitrator as stated below, and otherwise affirms and adopts the decision of the Arbitrator which is attached hereto and made a part hereof. The Commission 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 Arbitrator found that Petitioner's current right knee condition was causally related to the undisputed July 5, 2011, work accident and awarded prospective medical care in the form of right knee replacement surgery. The Arbitrator reasoned that Petitioner had no medical problems with his right knee prior to the undisputed work accident and had successfully passed all required annual physical exams for his job as a firefighter and paramedic. Additionally, the Arbitrator found that although Dr. Charles Bush-Joseph opined Petitioner had reached maximum medical improvement on February 17, 2012; that same day, Dr. Bush-Joseph also performed a right knee injection and indicated that Petitioner would require further injections and medication in the

future. Lastly, the Arbitrator found that Dr. Pietro Tonino's opinions were not persuasive. The Commission disagrees with the Arbitrator's findings as to causation.

On January 3, 2012, Petitioner treated with Dr. Bush-Joseph after undergoing a right knee arthroscopy about two months before. Dr. Bush-Joseph noted that during surgery, he found Petitioner had "bone-on-bone anterior compartment osteoarthritis with full thickness cartilage loss and multiple loose bodies." Dr. Bush-Joseph also noted that Petitioner had underlying anterior compartment osteoarthritis which would continue to be a source of pain and soreness. On February 17, 2012, Petitioner returned to Dr. Bush-Joseph who performed a cortisone injection, and opined:

"we do feel that Bryan has a continued source of pain and discomfort in terms of an arthritic patellofemoral joint of the right knee. We do feel that the surgery and the treatment following the surgery have been warranted, as he had an exacerbation of a preexisting condition related to his injury at work. However, at this time he is at maximum medical improvement for this injury. He is still felt with significant arthritis [sic] of the patellofemoral joint which will severely impact his ability to perform his work as a firefighter and paramedic.

He will require occasional injections and anti-inflammatory medications to treat his underlying patellofemoral arthritis. However, at this time we have recommended that he be considered at maximum medical improvement."

On March 19, 2012, Dr. Tonino opined that the undisputed work accident temporarily aggravated Petitioner's pre-existing right knee chondromalacia based on the degenerative changes noted at the time of Petitioner's surgery. On November 16, 2012, Dr. Basel Al-Aswad performed an independent medical examination as part of a disability pension proceeding and opined that prior to the undisputed accident, Petitioner had patellofemoral arthritis with subluxation. On November 23, 2012, Dr. Kenneth Sanders also performed an independent medical examination as part of the same disability pension proceeding and opined that Petitioner had severe patellofemoral arthritis of the right knee prior to the undisputed accident.

The Commission finds that Petitioner reached maximum medical improvement on February 17, 2012, with respect to his work-related right knee injury. That day, Dr. Bush-Joseph, Petitioner's treating physician, opined that the undisputed work accident had exacerbated Petitioner's pre-existing right knee arthritis and Petitioner had reached maximum medical improvement with respect to the work-related right knee injury. Dr. Bush-Joseph also opined that Petitioner had pre-existing and significant patellofemoral arthritis, which would continue to be a source of pain and discomfort and would require occasional injections and anti-inflammatory medications in the future. The Commission finds that Dr. Bush-Joseph's opinion that Petitioner reached maximum medical improvement on February 17, 2012, with respect to the work-related right knee condition is credible, persuasive and supported by the medical records. The Commission notes that no physician has opined that Petitioner's need for partial or

total right knee replacement surgery is causally related to Petitioner's work-related injury. The Commission awards Petitioner temporary total disability benefits from July 20, 2011, through February 17, 2012, and vacates the Arbitrator's award of prospective medical care.

IT IS THEREFORE ORDERED BY THE COMMISSION that the decision of the Arbitrator filed on September 25, 2013, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of \$1,092.06 per week for a period of 30-3/7 weeks from July 20, 2011, through February 17, 2012, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of prospective medical care pursuant to section 8(a) of the Act in the form of a right knee replacement as recommended by Dr. Brett Levine is hereby vacated.

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.

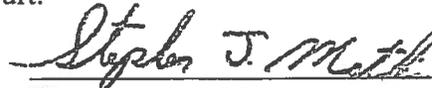
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner interest under §19(n) of the Act, if any.

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.

No bond is required for removal of this cause to the Circuit Court by Respondent. 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.

JUN 18 2014

DATED:
SM/db
o-05/08/14
44


Stephen J. Mathis


David L. Gore

David L. Gore


Mario Basurto

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

STANLY, BRYAN

Employee/Petitioner

Case# **11WC029285**

VILLAGE OF MATTESON

Employer/Respondent

14IWCC0479

On 9/25/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% 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:

4788 HETHERINGTON KARPEL BOBBER ET AL
PETER C BOBBER
161 N CLARK ST SUITE 2080
CHICAGO, IL 60601

2337 INMAN & FITZGIBBONS LTD
JILL A BAKER
33 N DEARBORN ST SUITE 1825
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

BRYAN STANLY
Employee/Petitioner

Case # 11 WC 29285

v.

Consolidated cases: N/A

VILLAGE OF MATTESON
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **July 30, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

14IWCC0479

FINDINGS

On **July 5, 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 **\$85,160.60**; the average weekly wage was **\$1,638.09**.

On the date of accident, Petitioner was **44** years of age, *single* 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 **\$99,377.46** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$99,377.46**.

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

ORDER

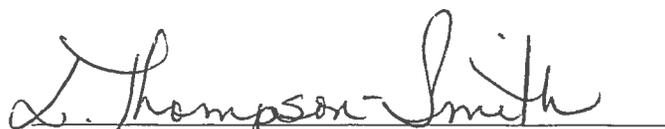
Respondent shall pay Petitioner temporary total disability benefits of \$1,092.06 per week for 104 4/7 weeks, commencing 7/20/2011 through 2/19/2012; 2/25/2012 through 4/30/2012; and 5/5/2012 through 7/30/2013, as provided in Section 8(b) of the Act.

Respondent shall authorize and pay for Petitioner's prescribed right knee replacement and the other reasonable and necessary rehabilitative medical services incident as prescribed by Dr. Levine 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

September 24, 2013

SEP 25 2013

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STATEMENT OF FACTS

The disputed issues in this matter are 1) causal connection; 2) temporary total disability; and 3) prospective medical treatment. *See, AX1.*

At the time of his July 5, 2011 work injury, Bryan Stanly ("Petitioner") was 44 years old; single, with no dependent children. He had worked as a firefighter/paramedic for the Village of Matteson ("Respondent") since November 24, 2004. Prior to that, he worked for the town of Oak Forest for 17 years. Petitioner's job duties with Respondent included firefighting, providing emergency medical services; and transporting patients to hospitals. Specifically, the firefighting aspect of the job included dragging hoses, carrying ladders, utilizing axes and other tools including hydraulic tools in order to extricate car crash victims. Prior to this work accident, petitioner never had any injury or medical problems regarding his right knee.

On July 5, 2011, at approximately 1:30 a.m., petitioner was dispatched on a call to assist an ambulance crew. That night, he was driving the engine and upon arriving at the call, he found the patient was a bed-ridden female weighing approximately 750 pounds, who was in respiratory distress. After administering medical treatment, including breathing treatments and application of a heart rate monitor, petitioner then assisted seven other firefighters/paramedics in moving this patient to a tarp and dragging her outside. They used two backboards to serve as a ramp into the ambulance and they attempted to pull the patient into the ambulance, utilizing the makeshift ramp. While so doing, petitioner had his left foot placed on the ambulance floor with his right foot on the ambulance bumper. After he pulled the patient approximately three times while on the ramp, he experienced a popping sensation in his right knee and noticed some type of internal movement of his kneecap. Petitioner informed his supervisor, Chris Dedo, of the accident at the scene, however, he kept working.

In the days following the accident, petitioner noted increasing pain and swelling in the knee. He attempted self-medication with ice, heat, sports cream and pain medication, but he noted that the pain and swelling continued to worsen especially when kneeling, or traversing stairs. He testified that he also noted that his kneecap would slide from side to side, which would also increase his pain.

On July 20, 2011, Respondent directed the petitioner to Ingalls Occupational Health Clinic ("Ingalls"). A consistent history of the July 5, 2011 work accident was noted. X-rays and an MRI were ordered. He was prescribed Vicodin, a knee immobilizer and instructed to utilize ice and elevate the knee. Upon physical examination, Dr. Akhtar indicated that there was effusion and palpation with mild tenderness over the medial joint line as well as a moderate to severe limp. The doctor diagnosed the petitioner as having right knee pain and indicated that the x-rays revealed subluxation of the patella, with effusion. The petitioner was released to return to restricted, sedentary work, which his employer could not accommodate. *See*, PXs 1 & 2.

On July 30, 2011, Petitioner underwent a right knee MRI that revealed moderate osteoarthritis, greatest in the patellofemoral compartment, with a 7mm loose body in the superolateral joint space. The petitioner was advised to see his own doctor for the osteoarthritis and further advised that he should continue to seek treatment in occupational medicine for the injury that occurred at work.

On August 1, 2011, the petitioner returned to Ingalls with continued complaints of pain located in the right knee that was described as sharp, aching and throbbing. He reported that his pain was worse with walking and movement and improved with rest and that his pain level was 4/10. Upon physical examination, Dr. Shastri indicated that the petitioner had joint pain, swelling and stiffness as well as mild medial tenderness to palpation. The doctor noted that an MRI of July 30, 2011, revealed mild osteoarthritis with a 7 mm loose body and superolateral joint space along with extensive, diffused,

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partial to full thickness cartilage loss, in the patellofemoral compartment; which was most severe at the lateral patellar facet.

On August 5, 2011, the petitioner presented to Dr. Bush-Joseph with complaints of right knee pain; and he reported that it felt like his kneecap was moving around. Upon physical examination, Dr. Bush-Joseph indicated that the petitioner had trace knee effusion and flexion contracture of approximately 10 degrees. He also had positive patellofemoral crepitus as well as patellar apprehension. The doctor reviewed the x-rays as well as the MRI film and indicated that the petitioner had arthritis in the right knee patellofemoral as well as a quadriceps strain. He recommended physical therapy. The doctor indicated that the knee immobilizer stiffened Petitioner's range of motion and recommended conservative therapy, advising the petitioner to return in two weeks. The petitioner was authorized to remain off work through August 23, 2011 and Dr. Bush-Joseph further prescribed physical therapy; three times per week for two weeks. *See, PX2.*

On August 9, 2011, the petitioner attended physical therapy at AthletiCo. In the initial assessment, it is indicated that the petitioner had decreased knee extension, range of motion and increased knee swelling. *See, PX3.*

On August 23, 2011, the petitioner presented to Dr. Bush-Joseph for a follow-up visit. He noted that the petitioner was making improvements in physical therapy but continued to have instability in the kneecap. Upon physical examination, Dr. Bush-Joseph indicated that the petitioner has an antalgic gait favoring the right side and apprehension with lateral mobilization of the patella with mild pain. The petitioner was diagnosed with a quadriceps strain with resultant patellar instability. The doctor recommended continued physical therapy but reported that the petitioner may need a

diagnostic arthroscopy and lateral release to re-center his kneecap. The petitioner was authorized to continue his off work status. *See*, PX2.

The petitioner received additional physical therapy from August 25, 2011 through November 17, 2011; at which time the petitioner reported that he was able to do many activities over the weekend without wearing his brace, but still had significant soreness with ambulation without the brace. *See*, PX3.

On September 13, 2011, the petitioner again presented to Dr. Bush-Joseph for a follow-up regarding his right knee quadriceps strength. The petitioner reported that he continued to struggle with endurance and giving way of the right knee, mostly when going up and down stairs. Upon physical examination, Dr. Bush-Joseph indicated that the petitioner had complaints of pain with palpation at the attachment site of the VMO and pain in the same area with forced flexion as well as lateral patellar immobilization. He further had crepitation in the anteromedial knee with active motion and a Grade II lateral patellar subluxation. The petitioner was diagnosed with VMO quadriceps weakness. The doctor indicated that the petitioner had slow progress regarding his recovery largely related to the pre-existing arthritis and that the petitioner continued to have instability and giving way related to his quadriceps weakness. The doctor recommended continued physical therapy and the petitioner was also authorized to continue his off work status. *See*, PX2.

Petitioner continued to follow up with Dr. Bush-Joseph and underwent therapy; however, he continued to struggle with endurance and experienced giving way of the right knee most notably going up and down stairs. He also continued to have significant pain. *See*, PX2 & 3.

On November 9, 2011, Dr. Bush-Joseph performed a right knee arthroscopy, debridement and chondroplasty and noted a post-operative diagnosis of patellofemoral arthritis and cartilaginous loose bodies of the right knee. Inter-operatively, Dr. Bush-

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Joseph noted that the patellofemoral surfaces revealed effused broad areas of exposed bone over the distal lateral pull of the patella and the entire lateral trochlea. Additionally, he noted multiple cartilaginous fragments present throughout the knee and a significant reactive synovitis.

Post-operatively, petitioner went to therapy and had a decrease in his pain but continued to have difficulty with loading on the leg, including single leg squats or lifts. Additionally, he continued to note some swelling and popping of the knee with extension.

In his January 17, 2012 office note, Dr. Bush-Joseph noted that petitioner had worsening of symptoms after four days of work conditioning and also noted popping, locking and an abnormal tracking of the patella, with swelling.

Based on Dr. Bush-Joseph's order on February 9, 2012, Petitioner underwent an functional capacity evaluation ("FCE") at AthletiCo Physical Therapy. The test was deemed invalid because Petitioner's pain complaints limited his ability to perform strength, positional and endurance testing. Notwithstanding the invalidity determination, the evaluating therapist found Petitioner to be able to function at the heavy demand level, i.e. lifting 50 to 100 pounds for all levels, however, the evaluator also concluded that the petitioner did not demonstrate the ability to meet his pre-injury very heavy demands of a firefighter/paramedic. *See*, PX3.

Dr. Bush-Joseph opined that he agreed with the FCE in terms of its conclusions that petitioner was unable to return to his pre-injury job as a firefighter/paramedic. Further, he opined that petitioner could return to an occupation at the heavy physical demand level. Dr. Bush-Joseph also injected the knee with Lidocaine, Marcaine and Depo-

Medrol and noted that Petitioner will require occasional injections and anti-inflammatory medications to treat his condition. *See*, PX2.

On June 29, 2012, petitioner returned to Dr. Bush-Joseph, at which time he noted significant pain with every step while walking and he administered another injection in to the right knee. Dr. Bush-Joseph opined that petitioner was at end-stage degeneration of his patellofemoral compartment and he had failed all conservative management, including arthroscopy injections and anti-inflammatory medication. In light of the fact that the symptoms were affecting petitioner's activities of daily living, Dr. Bush-Joseph referred him to his partner for evaluation for patellofemoral joint arthroplasty.

On September 25, 2012, Petitioner was evaluated by Dr. Levine who noted a consistent history of petitioner's July 5, 2011 work accident; and that this evaluation was part of a workers' compensation injury. He also noted that the petitioner was presently experiencing continued pain in the front of the knee with no relief and that he had significant problems traversing stairs and squatting. Dr. Levine concluded petitioner was a reasonable candidate for patellofemoral arthroplasty with a possible total knee arthroplasty. To date, despite wanting to do so, petitioner has not undergone the surgery prescribed by Dr. Levine because Respondent has not authorized it.

In connection with his application for his duty disability pension, the petitioner was examined by Drs. Sanders and Al-Aswad. Following these examinations, Petitioner was approved for his duty-related disability by his pension board. Dr. Sanders noted that petitioner had no problems with his right knee prior to July 5, 2011, and that petitioner's pain level varies reaching to a 7 or 8 out of 10; and that he walks with an antalgic gate. Dr. Sanders further noted that Petitioner would require a total knee replacement and that he cannot return to perform full, unrestricted, firefighter duties; and that this disability would be permanent. Dr. Sanders went on to note that although Petitioner may have suffered some pre-existing patellofemoral arthritis of the right knee, there is

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no indication in his medical records that he suffered any prior problems with the right knee. *See*, PXs2 & 4.

Similarly, Dr. Al-Aswad, who examined petitioner on November 16, 2012, also noted no pre-existing injury or treatment prior to the July 5, 2011 work accident. He diagnosed petitioner with moderate to severe degenerative arthritis of the patellofemoral joint, with subluxation, which would preclude him from performing full and unrestricted firefighter duties; and he indicated such disability would be permanent. He also went on to note that Petitioner could be helped by surgical procedures such as a partial or total knee arthroplasty, to address some of his symptoms but he would still not progress to the point where he could return to full and unrestricted firefighter duties. *See*, PX5.

On March 19, 2012, petitioner was examined by Dr. Pietro Tonino, at Respondent's request. Dr. Tonino opined that all treatment was reasonable, necessary and appropriate and concluded that because of his work accident, petitioner aggravated his pre-existing chondromalacia of the right knee; given that he had no prior history of injuries to the right knee, therefore concluding the knee injury was related. Similarly, he concluded that petitioner would have limitations on climbing, squatting, and kneeling. *See*, RX1.

On January 25, 2013, Dr. Tonino offered a second report based upon a record review in which he opined that he could not comment on Dr. Levine's proposed surgery without re-evaluation of the patient. However, he did indicate that he believed that petitioner had reached maximum medical improvement ("MMI"), in connected with the July 5, 2011 work injury.

On April 15, 2013, Dr. Tonino authored a supplemental report, without further examination of petitioner, wherein he agreed that the petitioner was unable to perform

his regular work and opined that those restrictions were as a result of the chondromalacia in petitioner's knee, noted at the time of Dr. Bush-Joseph's arthroscopic surgery. *See*, RX2 & 3.

Presently, petitioner wishes to undergo the knee replacement as prescribed by Dr. Levine, to improve his quality of life, but the respondent has not authorized the procedure. He testified that he is in constant pain and has difficulty performing any activities involving use of his knee including walking, kneeling, squatting and climbing stairs. Additionally, climbing a ladder or running causes him significant pain as well.

Petitioner testified, with no evidence offered to the contrary, that presently, he can walk 1 1/2 to 2 blocks before his pain becomes intolerable. The petitioner further testified that he had not worked for any other employers since the accident. He stated that he wanted to undergo the surgery to improve his quality of life, as he was in constant pain. He further testified that his knee easily dislocated and goes to the right side. He reported that he takes pain medication, daily.

The petitioner testified that he did not seek immediate medical care following the injury on July 5, 2011 and he further agreed that he had returned to work for the respondent, on a light duty basis, on at least two occasions. He further testified that he has applied for his disability pension and that he owned the landscaping company named B&B Lawn Maintenance & Snow Plowing. He testified that he had approximately twenty-five (25) lawn customers and thirty (30) snowplowing customers; and he denied doing any physical work for this company; testifying that he had this business prior to the work injury.

Petitioner testified, in a credible and un rebutted manner, that since commencing treatment at Ingalls on July 20, 2011, he has either been on restrictive work or kept off work by his doctors. He further testified that the only time Respondent offered him light duty work was when he returned to perform office work, from February 19, 2012,

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through February 25, 2012. Thereafter, respondent indicated that no further light work was available. Petitioner was also provided light duty work from April 30, 2012 through May 4, 2012; and was then he was told by his chief, Ed Leeson, that no further accommodating work was available. *See*, PX6.

Petitioner testified that he has been awaiting authorization to proceed with the total knee replacement prescribed by Dr. Levine and he has worked nowhere since July 20, 2011, except for the 2 weeks of light duty work provided by Respondent, as noted above.

CONCLUSIONS OF LAW

F. Is the Petitioner's condition of ill-being causally related to the injury?

It is within the province of the Commission to determine the factual issues, to decide the weight to be given to the evidence and the reasonable inferences to be drawn there from; and to assess the credibility of witnesses. *See, Marathon Oil Co. v. Industrial Comm'n*, 203 Ill. App. 3d 809, 815-16 (1990). And it is the province of the Commission to decide questions of fact and causation; to judge the credibility of witnesses and to resolve conflicting medical evidence. *See, Steve Foley Cadillac v. Industrial Comm'n*, 283 Ill. App. 3d 607, 610 (1998).

It is established law that at hearing, it is the employee's burden to establish the elements of his claim by a preponderance of credible evidence. *See, Illinois Bell Tel. Co. v. Industrial Comm'n.*, 265 Ill. App. 3d 681; 638 N.E. 2d 307 (1st Dist. 1994). This includes the issue of whether Petitioner's current state of ill-being is causally related to the alleged work accident. *Id.* A claimant must prove causal connection by evidence from which inferences can be fairly and reasonably drawn. *See, Caterpillar Tractor Co. v. Industrial Comm'n.*, 83 Ill. 2d 213; 414 N.E. 2d 740 (1980). Also, causal connection can be inferred. Proof of an employee's state of good health prior to the time of injury and the change immediately following the injury is competent as tending to establish that the impaired condition was due to the injury. *See, Westinghouse Electric Co. v. Industrial Comm'n*, 64 Ill. 2d 244, 356 N.E.2d 28 (1976). Furthermore, a causal connection between work duties and a condition may be established by a chain of events including Petitioner's ability to perform the duties before the date of the accident and inability to perform the same duties following that date. *See, Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 193 (1986).

Prior to his July 5, 2011 undisputed work accident, petitioner had no injury to his right knee; never underwent any medical care for his right knee; and never had any medical

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problems with his right knee. It is undisputed that petitioner was required to undergo and pass an annual physical and an annual agility test in order to work as a firefighter/paramedic. He did so and he always passed said tests, prior to his July 5, 2011 work accident.

The only evidence offered by Respondent to attempt to refute the causal connection opinions of Drs. Bush-Joseph, Levine, Al-Aswad, and Sanders is the independent medical evaluation reports of Dr. Pietro Tonino. Dr. Tonino examined petitioner on March 19, 2012 and opined that petitioner aggravated his pre-existing chondromalacia of the right knee as a result of his July 5, 2011 work accident; and further noted that petitioner had no prior history of injuries to the right knee or no problems. Dr. Tonino went on to note that given those facts, petitioner's knee injury would be related to the July 5, 2011 work accident and he agreed with Dr. Bush-Joseph that petitioner would likely have limitations on climbing, squatting and kneeling with this type of injury.

Thereafter, Dr. Tonino authored two additional narrative reports, without further examination of petitioner. In his January 25, 2013 report, he opined that the petitioner had already reached MMI and the temporary aggravation of the pre-existing degenerative arthritis had resolved. Dr. Tonino did note that he could not offer an opinion as to whether the proposed total knee replacement was medically necessary, in light of the fact that he had not re-examined the petitioner.

Lastly, Dr. Tonino authored a second supplemental medical report dated April 15, 2013, at which time he opined that Petitioner's work restrictions and possible need for further treatment was not related to the July 5, 2011 work accident, since he believed Petitioner to be at MMI at the time of his March 19, 2012 evaluation.

After considering the totality of the evidence, the Arbitrator is not persuaded by Dr. Tonino's opinions in this matter. Rather, the Arbitrator is persuaded by Petitioner's

credible, un rebutted testimony, which is buttressed by the opinions of all treating and examining doctors. The Arbitrator notes that although Dr. Bush-Joseph did initially deem Petitioner to be at MMI as of February 17, 2012, on that date Dr. Bush-Joseph administered injections to petitioner's right knee and indicated that further injections and medications would be needed, which contradicts his indication of MMI. At the next office visit, on June 29, 2012, Petitioner returned to Dr. Bush Joseph complaining of increased pain. The doctor offered another set of injections and noted that the petitioner's pain has progressed to the point that his daily activities were being affected. Therefore, he made the referral to his partner, Dr. Levine, for consult regarding total knee replacement. The Arbitrator notes that petitioner had continuity of care from shortly after his July 5, 2011 work accident through the time that Dr. Bush Joseph indicated total knee replacement might be necessary and referred petitioner to Dr. Levine for such an opinion.

All treating and evaluation doctors agree that Petitioner had no prior problems, never had any prior medical treatment, and he passed his annual physicals and agility tests to perform his very heavy job as a firefighter/paramedic.

Given petitioner's credible testimony coupled with consistent treating medical records and the opinions of evaluating doctors Sanders and Al-Aswad, the Arbitrator finds petitioner's present condition of ill-being in regarding his right knee is causally related to his July 5, 2011 work accident, as that trauma caused an aggravation of his underlying osteoarthritis in his right knee.

L. What temporary total disability benefits are due Petitioner?

At arbitration, parties stipulated that the petitioner was temporarily, totally disabled from July 20, 2011 through February 9, 2012. Therefore, the only TTD in dispute would be for dates after February 9, 2012.

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Petitioner testified, without rebuttal and in a credible manner, that since July 20, 2011, he has either been kept off work; or provided work restrictions by his various treating doctors. Petitioner's treatment records corroborate his testimony, specifically, the doctors at Ingalls, who restricted his work starting on July 20, 2011.

Dr. Bush-Joseph then kept petitioner off work until February 17, 2012, at which time he was released with restrictions per the FCE, including limited squatting and kneeling. Petitioner returned to work on February 20, 2012, performing light duty office work for Respondent, which lasted one week through February 24, 2012; at which time petitioner testified he was told that no further light-duty work was available. Respondent offered no evidence refuting or rebutting petitioner in this regard. Petitioner then remained off work with no accommodating light-duty work from February 25 through April 29, 2012.

Petitioner then received correspondence dated April 25, 2012, from the respondent indicating that he should return to light-duty work on April 30, 2012. He returned to work on April 30, 2012, and worked that week through April 4, 2012. On Friday, April 4, 2012, petitioner testified that Fire Chief Edward Leeson told him that no further light-duty work would be available. Thereafter, on June 29, 2012, Dr. Bush-Joseph reiterated that petitioner was restricted from full duty work, as did Drs. Sanders and Al-Aswad. Respondent's IME doctor, Dr. Tonino, agreed that petitioner would be expected to have limitations on climbing, squatting and kneeling.

The Arbitrator hereby finds that as a result of his July 5, 2011 work accident, Petitioner was temporarily totally disabled from July 20, 2011 through February 19, 2012; February 25, 2012 through April 29, 2012; and May 5, 2012 through July 30, 2013, the date of hearing, representing 104 4/7 weeks.

K. Is Petitioner entitled to prospective medical care?

Petitioner testified that he wishes to undergo the knee replacement surgery prescribed by Dr. Levine because he is in constant pain due to his knee and it has significantly affected his activities of daily living.

Consistent with petitioner's credible testimony, every doctor who offered any opinion concurs that the knee replacement is medically necessary, reasonable and appropriate. Specifically, Dr. Levine indicates that petitioner is a reasonable candidate for patellofemoral arthroplasty and possible total knee arthroplasty. Similarly, Drs. Sanders and Al-Aswad also agree that the knee replacement surgery is necessary and appropriate.

Therefore, given petitioner's consistent, significant complaints, the consistency of the medical opinions in the absence of any evidence to the contrary, the Arbitrator orders Respondent to authorize and pay for petitioner's patellofemoral arthroplasty and possible total knee arthroplasty; as prescribed by Dr. Levine; and any and all reasonable and necessary rehabilitative treatment, pursuant to Sections 8(a) and 8.2 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF ROCK ISLAND)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Janet Melsness,

Petitioner,

vs.

No. 09WC014987

Jack Mabley Developmental Center,

Respondent.

14IWCC0480

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by both parties herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary disability and permanent disability, and being advised of the facts and law, modifies and corrects 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.

At the outset, the Commission corrects the third and eighth paragraphs on page four of the Arbitrator's decision and finds that Petitioner underwent total right knee replacement surgery on August 10, 2010.

In her decision, the Arbitrator found that Petitioner's right knee surgeries, namely the February 4, 2009 arthroplasty and the August 10, 2010 total knee replacement, were causally related to the undisputed February 13, 2007 work accident. The Arbitrator relied on Dr. Shawn Hanlon's opinion that Petitioner's need for the surgeries was causally related to the undisputed work accident and had it not been for the accident, Petitioner would not have required a total knee replacement. The Commission disagrees.

Pre-accident medical records show that Petitioner treated with Dr. Hanlon on October 3, 2005. That day, Petitioner complained of right knee pain and frequent feelings of giving way that began after she twisted her right knee at work on July 7, 2005. Dr. Hanlon diagnosed Petitioner with right knee internal derangement and a possible torn medial meniscus, and recommended that Petitioner undergo an arthroscopic evaluation. On October 19, 2005, Dr. Hanlon performed a right knee arthroscopy. On June 28, 2006, Dr. Hanlon noted that Petitioner's condition had improved since she began taking Celebrex and recommended that she return on an as needed basis.

On January 15, 2007, Petitioner returned to Dr. Hanlon and reported that she fell at a restaurant on January 13, 2007. Dr. Hanlon noted that Petitioner sustained some facial contusions and abrasions, as well as a forehead laceration. Dr. Hanlon also noted that Petitioner fractured her right arm, hit her right knee, and sustained a small right knee abrasion. It is undisputed that on February 13, 2007, Petitioner had a work-related accident and injured her right knee.

On April 17, 2007, Petitioner returned to Dr. Hanlon who noted that she complained of bilateral knee pain, worse on the right, and was "doing well up until the time that she injured her knees in an automobile accident of 01/13/07." Dr. Hanlon also noted that on February 13, 2007, Petitioner slipped on ice at work and fell on both knees. Since that time, Petitioner had increased pain in both knees, worse on the right.

A Notice of Injury Report dated September 6, 2007 indicates that Petitioner twisted her right knee at work on September 5, 2007. On September 19, 2007, Dr. Hanlon re-examined Petitioner and noted that she had sustained a twisting injury to her right knee since her last visit. Dr. Hanlon also noted that Petitioner was tolerating her knee problem well until the recent aggravation or new injury. On September 25, 2007, Dr. Hanlon placed Petitioner off work until further notice and noted that Petitioner's sit-down work request was not accommodated. On October 2, 2007, Dr. Hanlon released Petitioner to sit-down work with very limited walking effective on October 9, 2007. On November 2, 2007, Petitioner returned to Dr. Hanlon about one month after her last Orthovisc injection. Dr. Hanlon noted that Petitioner had improved, recommended that Petitioner return on an as needed basis and released Petitioner to full duty work effective on November 6, 2007.

On July 8, 2008, Petitioner returned to Dr. Hanlon for a right knee Xylocaine and Depo-Medrol injection and complained of an unrelated left leg problem. On July 14, 2008, Petitioner was diagnosed with a left distal tibial stress fracture. On August 4, 2008, Petitioner followed up with Dr. Hanlon's assistant for the left leg fracture and also complained of some right knee symptoms. Dr. Hanlon's assistant opined and Petitioner agreed that her right knee bothered her because she had been overcompensating for the left leg. On December 30, 2008, Dr. Hanlon diagnosed Petitioner with degenerative changes of the right knee meniscal cartilage, a degenerative intrasubstance tear of the anterior horn of the lateral meniscus and possible synovitis. Dr. Hanlon recommended that Petitioner undergo arthroscopic surgery. Petitioner underwent an arthroscopic debridement of the right knee on February 4, 2009.

On March 27, 2009, Petitioner signed an Application For Adjustment Of Claim, which states that she injured her right knee when she slipped on ice. That day, Dr. Hanlon prepared an addendum to his April 17, 2007, progress note at Petitioner's request. Dr. Hanlon corrected that on January 13, 2007, Petitioner fell on ice and injured her knees in a non-work-related injury. Petitioner did not injure her knees in an automobile accident. On April 24, 2009, Dr. Hanlon prepared a report stating that Petitioner injured her right knee on January 13, 2007, and then "re-injured" her right knee at work on February 13, 2007. On June 4, 2009, Dr. Hanlon re-evaluated Petitioner and released her to full duty work.

A Notice of Injury Report dated June 11, 2009, shows that Petitioner twisted her right knee at work on June 10, 2009. A work status note shows that on August 31, 2009, Dr. Hanlon released Petitioner to full duty work. From January 2010 through May 2010, Petitioner underwent several injections and used a knee brace. On June 21, 2010, Petitioner returned to Dr. Hanlon complaining of continued pain, swelling and giving way of the right knee. Dr. Hanlon noted that Petitioner had failed to improve with injections and Petitioner's prior surgeries had revealed advanced grade chondromalacia. Dr. Hanlon recommended that Petitioner undergo total right knee replacement surgery.

On November 30, 2012, Dr. Hanlon corrected his April 17, 2007, progress note at Petitioner's request. Dr. Hanlon noted:

"She points out that there was a mistake in my notes. I made a note on April 17, 2007 stating that she had been involved in an automobile accident on January 13th when in fact she had fallen on January 13th at a local restaurant and sustained some facial contusions, abrasions, and a laceration of her forehead. There was no knee injury at that time and she was not in an automobile accident. Her knee injury occurred on February 13, 2007 when she fell on the ice at work. So, to summarize, she did not sustain a knee injury in an automobile accident on January 13, 2007, as it was mistakenly noted in my dictation of April 17, 2007."

Dr. Hanlon also noted that following her 2005 right knee arthroscopy, Petitioner had no problems with her knee until she fell at work in February of 2007. Finally, Dr. Hanlon opined that "the fall on the ice at work initiated a series of events that required ongoing treatment, including two arthroscopic procedures, a number of office procedures for injections, and finally a total knee replacement."

At the March 6, 2013, arbitration hearing, Petitioner testified that in 2005, she sustained a work-related right knee injury and underwent surgery performed by Dr. Hanlon. Dr. Hanlon released Petitioner from care on June 28, 2006, and Petitioner received a workers' compensation settlement award for 20 percent loss of use of the right leg. After June 28, 2006, Petitioner did not have problems performing her job duties for Respondent although she experienced continued swelling and pain in her right knee. Petitioner also testified that in January of 2007, she injured her face at a restaurant but did not injure her right knee. On cross-examination, Petitioner could not remember whether she sustained a right knee injury on September 5, 2007. When shown the Notice of Injury Report dated September 6, 2007, Petitioner acknowledged that her handwriting

appeared on the report. Petitioner testified that she could not remember any other right knee accidents. When shown the Notice of Injury Report dated June 11, 2009, Petitioner acknowledged that her handwriting was on the report.

The Commission finds that Petitioner's testimony was not credible. At the arbitration hearing, Petitioner testified that in January of 2007, she sustained facial injuries at a restaurant but did not injure her right knee. Petitioner's testimony is contradicted by Dr. Hanlon's medical records, which show that she hit her right knee at the time of the January 2007 injury and sustained a small right knee abrasion. Additionally, on cross-examination, Petitioner denied sustaining other right knee injuries until she was confronted with Notice of Injury Reports, completed in her handwriting, which show that she injured her right knee at work on September 5, 2007, and June 10, 2009.

Further, the Commission finds that Dr. Hanlon's November 30, 2012, correction to his April 17, 2007, progress note is not credible or reliable. At Petitioner's request, Dr. Hanlon corrected the April 17, 2007, progress note to state that Petitioner did not injure her right knee when she fell at a restaurant on January 13, 2007. However, both Dr. Hanlon's January 15, 2007, and April 17, 2007, notes confirm that Petitioner injured her right knee in January of 2007 when she sustained a non-work-related injury. The Commission finds that Dr. Hanlon's causal connection opinions are not credible or persuasive as they contradict his medical records and are based on inaccurate information.

With respect to causation, the Commission finds that Petitioner's right knee condition was causally related to the undisputed February 13, 2007, work accident until November 2, 2007. After being released from Dr. Hanlon's care on November 2, 2007, Petitioner did not return to Dr. Hanlon for approximately eight months. When she sought treatment with Dr. Hanlon again in July and August of 2008, Petitioner complained of an unrelated left leg condition along with right knee pain from compensating for the left leg. A chain of events analysis of the record shows that Petitioner sustained a non-work-related right knee injury on January 13, 2007, that was temporarily aggravated by the undisputed work accident on February 13, 2007. Petitioner reached maximum medical improvement on November 2, 2007, when Dr. Hanlon released Petitioner to full duty work and recommended that Petitioner return as needed. The Commission awards Petitioner temporary total disability benefits from February 14, 2007, through April 17, 2007, and from September 25, 2007, through October 9, 2007. Respondent shall be given a credit for all temporary total disability benefits that it paid. At the arbitration hearing, the parties stipulated that Respondent paid all of Petitioner's medical expenses.

With respect to permanent disability, the Commission finds that the injury sustained caused permanent partial disability equivalent to the loss of use of 30 percent of the right leg, minus a credit pursuant to section 8(e)(17) of the Act, for Petitioner's previous loss of use of 20 percent of the right leg in a settlement award associated with case No. 06WC029268.

IT IS THEREFORE ORDERED BY THE COMMISSION that the decision of the Arbitrator filed on August 20, 2013, is hereby modified and corrected as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of \$495.15 per week for 11-1/7 weeks, from February 14, 2007, through April 17, 2007, and from September 25, 2007, through October 9, 2007, which is the period of temporary total disability for which compensation is payable.

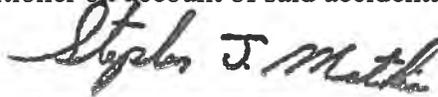
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of \$445.64 per week for a period of 21.5 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused permanent partial disability equivalent to the loss of use of 30 percent of the right leg, minus a credit to Respondent pursuant to section 8(e)(17) of the Act, for Petitioner's previous loss of use of 20 percent of the right leg. After applying the credit, Petitioner has 10 percent loss of use of the right leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay 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:
SM/db
o-04/24/14
44

JUN 18 2014



Stephen J. Mathis



David L. Gore



Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MELSNESS, JANET

Employee/Petitioner

Case# 09WC014987

JACK MABLEY DEVELOPMENT CENTER

Employer/Respondent

14IWCC0480

On 8/20/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

2028 RIDGE & DOWNES LLC
MICHAEL K BRANDOW
415 N E JEFFERSON AVE
PEORIA, IL 61603

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0988 ASSISTANT ATTORNEY GENERAL
BRETT D KOLDITZ
500 S SECOND ST
SPRINGFIELD, IL 62706

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

1745 DEPT OF HUMAN SERVICES
BUREAU OF RISK MANAGEMENT
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

AUG 20 2013



[Signature]
KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF ROCK ISLAND)

14IWCC0480

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JANET MELSNESS,
Employee/Petitioner

Case # 09 WC 14987

v.

Consolidated cases: NONE

JACK MABLEY DEVELOPMENTAL CENTER,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Rock Island**, on **March 6, 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: _____

FINDINGS

On February 13, 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 alleged accident *was* given to Respondent.

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

In the year preceding the alleged injury, Petitioner earned \$38,621.96; the average weekly wage was \$742.73.

On the date of accident, Petitioner was 51 years of age, *single* with no 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 \$42,018.67 for TTD, \$ 0.00 for TPD, \$ 0.00 for maintenance, and \$ 0.00 for other benefits, for a total credit of \$42,018.67.

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 \$495.15/week for 106-2/7 weeks, commencing February 14, 2007 through April 17, 2007, again commencing February 4, 2009 through May 7, 2009, again commencing August 10, 2010 through May 31, 2011, again commencing February 15, 2012 through December 1, 2012, as provided in Section 8(b) of the Act.

That as the result of a previous and independent injury said Petitioner suffered the permanent and complete loss of use of the **right leg** to the extent of 20% thereof, and was compensated therefor, as provided by Statute, and such loss has been taken into consideration and deducted from the compensation hereinafter awarded Petitioner, as provided in Section 8(e)17 of the Act. Respondent shall pay Petitioner permanent partial disability benefits of \$445.64/week for 118.25 weeks, because the injuries sustained caused the 55% loss of use of the **right leg**, as provided in Section 8(e) of the Act. After the deduction of the prior award, Respondent is liable for the remaining 35% disability to the right leg representing 75.25 weeks.

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 JOANN M. FRATIANNI

August 14, 2013
Date

AUG 20 2013

F. Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner testified she works for Respondent as a mental health technician. Her job duties include traveling to different buildings at the center depending upon need and staffing. On February 13, 2007, she was going from one building to another in the middle of her shift when she slipped on ice and injured her right knee.

Petitioner testified that she had a prior injury to her right knee on July 7, 2005. Following that injury, she underwent surgery in the form of a right knee arthroscopy on October 19, 2005 with Dr. Hanlon. Post surgery, she underwent physical therapy and was released to return to full duty work with no restrictions by Dr. Hanlon effective February 7, 2006. On June 28, 2006, Dr. Hanlon released her from care. Petitioner testified that she experienced no symptoms to her right knee until her fall on February 13, 2007. Her July 7, 2005 claim was filed at the Commission and was settled for 20% disability to the right leg.

Petitioner also fell on January 13, 2007 at a restaurant, suffering facial contusions, abrasions and lacerations. X-rays of the right knee were performed and were negative for fracture. She was found to have an abrasion to her right knee. Petitioner did not receive any follow up medical care after that restaurant fall.

Following her fall on ice on February 13, 2007, she saw Dr. Hanlon on April 13, 2007 with complaints of bilateral knee pain, right worse than left, and told him the pain had been present since the accident. Petitioner was noted to have numbness and tingling up and down her right leg. A right knee MRI performed on March 2, 2007 revealed joint effusion with no evidence of significant internal derangement. Dr. Hanlon reviewed the MRI and the operative report dated October 19, 2005, and felt she sustained a torn lateral meniscus, a partial tear of the anterior cruciate ligament, chondromalacia of the patella, Grade III, chondromalacia of the medial femoral condyle, Grade III, and chondromylasia of the medial tibial plateau Grade IV. Dr. Hanlon informed Petitioner if she had additional problems she should return for a follow up.

On May 7, 2007, Petitioner Dr. Hanlon's physician assistant, Jennifer Sheaffer. Ms. Sheaffer felt that Petitioner was able to return to work with no restrictions and that she would be allowed to work overtime effective May 8, 2007.

Petitioner testified that following this work release, she continued to experience symptoms to her right knee. On September 19, 2007 she returned to see Dr. Hanlon. Dr. Hanlon recorded a twisting injury to the right knee at work. X-rays performed September 6, 2007 revealed very minor degenerative changes, but were otherwise unremarkable. Dr. Hanlon noted a cortisone injection he administered in April provided a month of symptom improvement, but she still experienced knee symptoms once it wore off. Dr. Hanlon prescribed a viscosupplementation series to the right knee in the form of 3 Orthovisc injections. He also prescribed use of a knee support. Petitioner underwent the injections on September 19, 2007, September 25, 2007 and October 2, 2007.

Petitioner testified the injections did not alleviate her symptoms. On December 2, 2008, an MRI was prescribed along with right knee x-rays, revealing mild-moderate degenerative condition in the right knee joint along with moderate arthritis. The MRI also revealed mild degenerative changes of the right knee, medial patellar plica, degenerative changes to the meniscal cartilage, the anterior horn of the lateral meniscus having degenerative intrasubstance tear and possible synovitis. Dr. Hanlon prescribed surgery.

On February 4, 2009, Dr. Hanlon performed arthroscopic surgery in the form of debridement. Post-operatively, he diagnosed right knee degenerative joint disease and prescribed physical therapy. Dr. Hanlon authored a report dated April 24, 2009 in which he indicated Petitioner's need for surgical treatment was directly related to the February 13, 2007 injury.

Dr. Hanlon released her to return to full duty work on May 5, 2009, conditioned that she be placed in a home with less aggressive clients. She returned to see Dr. Hanlon on August 31, 2009, who administered an injection to the right knee due to complaints it was giving out. Another injection was performed on January 19, 2010 and the last injection February 17, 2010.

In spite of these measures, her right knee continued to deteriorate. X-rays performed on April 5, 2010 revealed mild-moderate tricompartmental DJD and a total knee replacement was discussed. Dr. Hanlon saw her again on May 3, 2010 with complaints she could no longer deal with the knee. Dr. Hanlon injected the knee with DepoMedrol and Xylocaine.

On August 20, 2010, Dr. Hanlon performed surgery in the form of a total right knee replacement. When seen on August 24, 2010, Dr. Hanlon complained that physical therapy had not been authorized by the carrier and feared that permanent knee stiffness would result. Subsequently, physical therapy was approved.

On June 1, 2011, Dr. Hanlon noted that Petitioner had been released to return to work for sitting only jobs. She was tolerating the work but felt she was sitting too much. Dr. Hanlon prescribed new restrictions of standing or walking for 4 hours during an 8 hour shift, and sit for the remaining shift.

Dr. Hanlon later prescribed a functional capacity evaluation that was performed on September 28-29, 2011. Following the FCE, Dr. Hanlon prescribed no client contact, permission to drive, standing no more than 4 hours in an 8 hour shift and a 20 pound weight restriction.

Respondent accommodated those work restrictions until February 15, 2012, and then paid her temporary total disability through December 1, 2012. On October 3, 2012, Petitioner was examined by Dr. Brent Johnson at the request of Respondent. Dr. Johnson diagnosed a right knee arthroplasty and left knee mild to moderate osteoarthritis. Dr. Johnson opined that he did not believe the right and left knee findings were related to the work injury of February 13, 2007. Dr. Johnson also felt she should have some permanent restrictions of no running, jumping, climbing ladders, kneeling, no working at heights and no lifting over 50 pounds.

Petitioner last saw Dr. Hanlon on November 30, 2012. Dr. Hanlon authored a report that day stating "the fall on the ice at work (2/13/07) led to a series of events that accumulated in a total knee replacement. It was his opinion that the fall on the ice at work initiated a series of events that required ongoing treatment, including two arthroscopic procedures, a number of office procedures for injections, and finally, a total right knee replacement. The doctor indicated that were it not for the fall at work on the ice it is unlikely Petitioner would have required a knee replacement when she did.

Based upon the above, the Arbitrator finds that Petitioner's right knee arthroplasty performed on February 4, 2009 and her right total knee replacement performed on August 20, 2010 are causally related to the accidental injury of February 13, 2007. The Arbitrator relies upon the medical evidence of the treating physician, Dr. Hanlon, who prepared two reports on this issue. The first report dated April 24, 2009 indicated the patient had ongoing problems that was followed quite closely and regularly, dating all the way back to the April 17, 2007 initial office visit. Dr. Hanlon indicated his belief that the need for surgical treatment was directly related to the February 13, 2007 injury. His second report dated November 30, 2012 indicated a fall on the ice at work led to a series of events that accumulated in a total knee replace. Dr. Hanlon indicated his opinion that the fall on the ice at work initiated a series of events requiring ongoing treatment, including two arthroscopic procedures, a number of office procedures for injections, and finally a total knee replacement. "Were it not for the fall at work on the ice it is unlikely Janet would have required knee replacement when she did."

K. What temporary benefits are in dispute?

Having found causal connection in "F" above, the Arbitrator further finds that Petitioner was under treatment and kept off of work by her treating physicians for the following periods:

February 14, 2007 through April 17, 2007;
February 4, 2009 through May 7, 2009;
August 10, 2010 through May 31, 2011;
February 15, 2012 through December 1, 2012.

December 1, 2012 represents the last date Petitioner was seen by Dr. Hanlon.

Based upon said findings, the Arbitrator further finds that as a result of this accidental injury that Petitioner is entitled to receive temporary total disability benefits from Respondent for the above periods of time.

L. What is the nature and extent of the injury?

See findings of this Arbitrator in "F" above.

Petitioner was released to return to work with significant work restrictions of no client contact, a 20 pound lifting restriction and no standing for more than 4 hours out of a 8 hour shift. Respondent has been unable to accommodate those restrictions since February 15, 2012. Petitioner testified that she has not looked for any other employment.

Petitioner testified she still experience pain and swelling to the right knee along with stiffness.

Based upon the above, the Arbitrator finds the above conditions of ill-being to be permanent in nature.

N. Is Respondent due any credit?

Respondent is entitled to receive a prior credit of 20% disability to the right leg in this matter. Respondent has also paid all medical bills for which they are entitled to a credit. Respondent further paid \$42,018.67 in temporary total disability benefits for which they are entitled to receive credit against this award.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="checkbox"/> Down	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gumaro Tepox,

Petitioner,

vs.

NO: 11 WC 42521

MVP Workforce and Buckeye Diamond Logistics,

Respondent.

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 causal connection, medical expenses, temporary total disability, maintenance and vocational rehabilitation and being advised of the facts and law, modifies the Decision of the Arbitrator which is attached hereto and made a part hereof. The Commission finds that Petitioner failed to prove that his current condition of ill-being is related to the September 26, 2011 accident. On that date Petitioner, a 33-year-old temporary laborer placed with Buckeye Diamond Logistics through MVP Workforce, sustained an accidental injury to his right shoulder while pushing a pallet. We find that Petitioner furthermore failed to prove entitlement to temporary total disability benefits between September 26, 2011 and September 29, 2011 and between March 23, 2012 and February 1, 2013 or entitlement to maintenance benefits and vocational rehabilitation. Accordingly we vacate those awards.

Petitioner was examined at Dreyer Medical Clinic on Monday, September 26, 2011, the date of accident. Petitioner was released with light duty restrictions. He testified that he returned to work on Tuesday and Wednesday and swept the factory floor for several hours each day. Therefore, we do not find that the Arbitrator's award of temporary total disability benefits from September 26, 2011 through September 29, 2011 is supported by the evidence.

Petitioner returned to Dreyer Medical Clinic on Thursday, September 29, 2011 requesting a full duty release. Petitioner stated that he had been exercising without discomfort and felt ready to return to full duty work. In contradiction to Petitioner's testimony, the examination notes state that Petitioner was not working due to Respondent's inability to accommodate his restrictions. Petitioner testified that he attempted to return to work but he did not specify the date; however, he learned that the job had been filled. There is no indication that Petitioner attempted to obtain a new job assignment through Respondent or to look for work elsewhere. Petitioner sought no further medical treatment until January 20, 2012.

On January 20, 2012, Petitioner was examined by Dr. Bare at OAD Orthopaedics for the first time. Petitioner gave a history of right shoulder pain that began months earlier as he was pushing a pallet. Dr. Bare restricted Petitioner from working with his right arm. On February 17, 2012, Petitioner reportedly gave Dr. Bare additional history with respect to a pre-existing injury. Dr. Bare diagnosed a longstanding brachial plexus injury to the right shoulder with related muscle atrophy and radial nerve damage. Dr. Bare did not believe the brachial plexus condition would improve with any type of treatment but he recommended an MRI in order to evaluate the supraspinatus tendon and the AC joint. The study was performed on March 16, 2012 and no acute pathology was found. Petitioner participated in physical therapy with no improvement; on March 23, 2012 Dr. Bare released Petitioner with ten pound lifting restrictions and ordered work hardening.

The parties stipulated that an offer of light duty was made to Petitioner after the March 23, 2012 examination by Dr. Bare. Petitioner testified that he refused the offer because it would have required him to travel from Joliet to Aurora for three hours of work per day. The Arbitrator found that the offer was not bona fide, based on a finding that the distance was unreasonable. Considering all of the facts of the case, we disagree, and we find that Petitioner is not entitled to temporary total disability benefits after March 23, 2012. The parties stipulated that the offer of light duty was made. Although the offered work site is not as convenient for Petitioner as the Buckeye Diamond Logistics factory close to his home in Aurora, the distance to Joliet is not unreasonable and the work would have facilitated Petitioner's re-entry into the workforce. There is no medical opinion that Petitioner could not drive the distance; furthermore Petitioner, as a temporary worker, could not reasonably expect to consistently find work so near to his home.

We do not find that Petitioner proved a causal relationship between the September 26, 2011 accident and his current condition of ill-being. On March 8, 2013 Petitioner was examined by Dr. Levin at the request of Respondent. Petitioner denied any pre-accident right shoulder problems, discomfort or medical treatment. On examination, Dr. Levin noted that Petitioner's right arm was eight centimeters shorter in length than Petitioner's left arm. Petitioner complained of diffuse discomfort over the entire right shoulder region with palpation and range of motion testing. X-rays taken by Dr. Levin showed chronic flattening of the humeral head consistent with chronic avascular necrosis and marked irregularity of the glenohumeral joint. Dr. Levin requested Petitioner's prior x-rays and the MRI films for review. On May 30, 2013 Dr. Levin

issued an addendum concluding from the physical examination, history and radiological evidence that the condition of Petitioner's humeral head and glenohumeral is unrelated to the work injury.

On January 11, 2013, Dr. Bare released Petitioner at maximum medical improvement. He reasoned that Petitioner's ongoing complaints were "at least partially related" to the work jury because Petitioner denied pre-existing symptoms. Dr. Bare imposed permanent lifting restrictions on February 1, 2013 based on Petitioner's FCE performance. We do not find that Petitioner proved by a preponderance of the evidence that the need for permanent restrictions is related to the right shoulder injury sustained on April 26, 2011 and not merely his chronic condition. We find Petitioner's denial of his pre-existing condition during his testimony not credible where multiple contradicting histories are found in the medical records, as well as objective evidence of congenital problems identified by Dreyer Medical Clinic, Dr. Bare and Dr. Levin. Dr. Bare's opinion that Petitioner's condition is "at least partially related" to the accident was not rendered within a reasonable degree of medical certainty and is not persuasive in light of all of the evidence. Pursuant to our findings with respect to causal connection, we also reverse the Arbitrator's award of maintenance benefits and vocational rehabilitation.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$238.55 per week for a period of 9 weeks (January 20, 2012 through March 23, 2012), that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act.

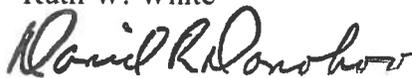
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the medical bills from Dreyer Medical Clinic in the amount of \$391.00 and Orthopedic Associates of DuPage in the amount of \$4,599.00 pursuant to Section §8(a) of the Act. All medical bills shall be paid in accordance with the medical fee schedule.

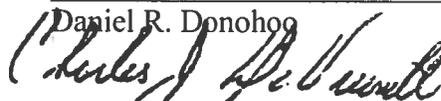
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$7,200.00. 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: JUN 19 2014
RWW/plv
o-5/21/14
46


Ruth W. White


Daniel R. Donohoo


Charles J. DeVriendt

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

TEPOX, GUMARO

Employee/Petitioner

Case# 11WC042521

14IWCC0481

MVP WORKFORCE (LOANING)
BUCKEYE DIAMOND LOGISTICS
(BORROWING)

Employer/Respondent

On 10/18/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.15% 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:

4642 O'CONNOR & NAKOS LTD
MATT WALKER
120 N LASALLE ST 35TH FL
CHICAGO, IL 60602

4944 KOREY COTTER HEATHER & RICHARDSON
NICHOLAS J TATRO
20 S CLARK ST SUITE 500
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
COUNTY OF Will)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Gumaro Tepox
Employee/Petitioner

Case # 11 WC 42521

v.

Consolidated cases: n/a

MVP Workforce (Loaning) &
Buckeye Diamond Logistics (Borrowing)
Employer/Respondent

14IWCC0481

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 Gregory Dollison, Arbitrator of the Commission, in the city of New Lenox, Illinois, on June 11, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **9/26/11**, 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 **\$18,607.16**; the average weekly wage was **\$357.83**.

On the date of accident, Petitioner was **33** years of age, *single* 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 **\$4,055.35** for TTD, **\$n/a** for TPD, **\$n/a** for maintenance, and **\$n/a** for other benefits, for a total credit of **\$4,055.35**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$238.55 /week for 54-5/7 weeks, commencing September 26, 2011 through September 29, 2011 and again from January 20, 2012 through February 1, 2013, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner maintenance benefits of \$238.55/week for 18-4/7 weeks, commencing February 2, 2013 through June 11, 2013, as provided in section 8(a) of the Act.

Respondent shall pay the medical bills from Dreyer Medical Clinic in the amount of \$391.00 and Orthopedic Associates of DuPage in the amount \$4,599.00 pursuant to Section 8(a) of the Act. All medical bills shall be paid in accordance with the medical fee schedule.

Respondent shall, in consultation with the injured employee and his representative, prepare a written assessment of the course of medical care and rehabilitation required to return Petitioner to employment, as Petitioner is unable to resume the regular duties in which he was engaged at the time of the injury.

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


Date

ICArbDec19(b)

OCT 18 2013

14IWCC0481

STATEMENT OF FACTS:

Petitioner was a borrowed employee at Buckeye Diamond on September 26, 2011. MVP Workforce, a staffing agency, was the loaning employer. Prior to the work accident of September 26, 2011, Petitioner worked as a laborer at Buckeye Diamond. His job was to repair and rebuild pallets.

Petitioner would normally begin work at around 6 o'clock in the morning. Sometimes, he would report earlier. His job duties required him to lift, push, pull and reach. He was required to do overhead work. Petitioner would be called upon to lift between 60-80 lbs. throughout his work day. Prior to September 26, 2011, Petitioner was working full duty at Buckeye Diamond.

Petitioner testified that on September 26, 2011, he began noticing pain in his right shoulder while pulling pallets. Petitioner provided the pain became so severe he had difficulty breathing. He informed his supervisor, and was taken to Dreyer Medical Clinic.

The initial medical records from Dreyer states that Petitioner "was lifting a pallet and placing it on a conveyor belt when he felt a sharp pain in his right shoulder." The chart note went on to state that "[t]oday around 7:00 a.m., he was lifting a pallet off a table waist high and placing it to push it on a conveyor belt when he felt sharp pain at the anterior and superior aspect of his right shoulder. There was no direct traumatic injury. He did immediately put the pallet down and was not able to continue work due to persistent pain. He reported the injury and sought medical attention at this clinic...He denies any previous right shoulder injuries or problems. He does describe congenital right upper extremity deformity as his right arm is slightly shorter and has some limitation of movement with his right hand." (PX 1)

The initial chart note also described Petitioner's job: "The patient is a laborer for his company. He has been working at his company through an agency for the past 3 months. He mostly lifts pallets throughout the day. The pallets each weigh approximately 50-80 pounds. His work involves lifting and repairing pallets." Petitioner was diagnosed with an acute right shoulder strain. He was taken off work and returned to modified work from 9/27/2011 through 10/3/2011. (PX 1)

Petitioner returned to the clinic on September 29, 2011. The chart note states that Petitioner reported significant improvement regarding his right shoulder. The doctor noted that Petitioner had "been cut off of work as the given work restrictions could not be accommodated." Petitioner was released to full duty work as of September 29, 2011. The clinic warned Petitioner to be careful regarding repetitive and heavier lifting activities. (PX 1) Petitioner testified that he returned to work and "...was told don't have a job anymore."

Petitioner did not seek treatment again until January 20, 2012. At that time, he saw Dr. Aaron Bare at Orthopedic Associates of DuPage. Dr. Bare charted a "33 year old right hand dominant male with right shoulder pain that began in the last 3 to 4 months. He works at a pallet repair location. He typically pushes and is involved in making pallets. He has pain with reaching and lifting. When he was pushing a pallet there was a twisting motion involved, and he noticed after that he developed pain in the knee and the shoulder. He reports to me that he told the supervisor the same day." Dr. Bare noted that Petitioner "has pain with reaching and lifting, especially with lifting over the chest level. He has night pain. Pain occurs over the parascapular and paracervical areas as well. There is no neck pain and no radicular symptoms." Dr. Bare diagnosed Petitioner with pain in the right shoulder and an acromioclavicular joint sprain/strain. He placed Petitioner on light duty of left hand work only. The doctor also recommended physical therapy and anti-inflammatories. (PX 2)

Petitioner next saw Dr. Bare on February 17, 2012. Dr. Bare recorded that Petitioner "was involved in a motor vehicle accident 15 years ago in Mexico which appears to be a brachial plexus injury with permanent deformity and loss of motion of his wrist and arm. He works to repair pallets. Prior to the work injury, he was able to move his elbow and forearm in flexion and extension, and lift his shoulder to about 90 degrees of forward flexion." Dr. Bare further noted that "[s]ince the injury, his shoulder has become more painful and he has less functionality to his elbow. His wrist has been a chronic problem. His pain overall continues. Pain occurs with lifting anything above the waist level. He reports to me that no light duty has been available from his employer." Dr. Bare's diagnosis on February 17, 2012 was "Pain, Shoulder. Acromioclavicular Joint Sprain/Strain. Right shoulder pre-existing brachial plexus injury. New injury, possible RC tear, injury to the AC joint." Dr. Bare provided that the pre-existing brachial injury "will likely not get better with any type of treatment and he is permanent as it pertains to that injury. The new injury has affected his ability to reach or lift at the shoulder as well as is with his elbow." Dr. Bare recommended a MRI noting that if same was negative, a course of work hardening would be appropriate. Petitioner's light duty restrictions were continued. (PX 2)

Petitioner returned to Dr. Bare on March 23, 2012. The doctor noted that the MRI of Petitioner's right shoulder was performed on March 16, 2012. Dr. Bare viewed the MRI films and noted essentially normal findings on the shoulder. Dr. Bare recommended 4 weeks of work conditioning, and issued work restrictions of no lifting over 10 pounds. (PX 2)

The parties stipulated that on March 23, 2012, Respondent offered to accommodate Petitioner's light duty restrictions. Their offer of accommodation consisted of 3 hours per day of light duty work at a location in Joliet, Illinois. Petitioner testified that originally he worked at the location in Aurora, which was 10 minutes from his home. He provided that the Joliet location was a two hour round trip commute.

Petitioner next saw Dr. Bare on April 20, 2012. Dr. Bare noted that his recommendation for work hardening had not been approved. Dr. Bare specifically charted that "I am awaiting 3 to 4 weeks of work conditioning or work hardening. After maximizing his functionality after this injury with 3 to 4 weeks of work conditioning or work hardening, I would allow him to return to his normal job. However, with the delay of getting work conditioning or work hardening approved, it is going to take him longer to return back to work...." Dr. Bare continued Petitioner on light duty. (PX 2)

A baseline FCE was performed on December 19, 2012. It placed Petitioner at the light physical demand level. The report noted that Petitioner's job requirements were very heavy, and that Petitioner was unable to perform at the level required by his employer. (PX 2)

Petitioner underwent work hardening from December 19, 2012 through January 9, 2013. The discharge summary dated January 9, 2013 indicated that Petitioner was "discharged from work hardening today due to lack of authorization." The report concluded that Petitioner did not meet the material handling or positional tolerance demands of his pre-injury job, and that reaching his full job demand was not a realistic goal. Although Petitioner had not reached a plateau of progress with all activities, the therapist opined that "only minimal progress would be anticipated with continuation of his Work Hardening program." (PX 2)

Petitioner followed up with Dr. Bare on January 11, 2013. Dr. Bare opined that "Mr. Tepox's arm is about the same as it was prior to his injury. He has deformity of his arm because of nerve injury sustained at birth. I believe he has reached maximum, medical improvement. As he denies previous pain and loss of function that he has right now, prior to his injury, I think his condition is at least partially related to his work injury. He did have a pre-existing brachial plexus palsy and trouble reaching and lifting with his arm, but per his report, this did not cause a substantial amount of pain." Dr. Bare recommended a functional capacity evaluation. (PX 2) No functional capacity evaluation was performed. On February 1, 2012, Dr. Bare placed Petitioner on permanent restrictions to include no lifting over 30 pounds to waist level, no lifting over 20

pounds to chest level, no lifting over 14 pounds overhead, and no carrying over 20 pounds. (The Arbitrator notes these restrictions coincide with the material handling abilities put forth in the January 9, 2013 Work Hardening Discharge Summary.) Dr. Bare declared Petitioner to be permanent and stationary. (PX 2)

On February 4, 2013, Petitioner's attorney provided Respondent counsel with a copy of the permanent restrictions imposed by Dr. Bare and demanded vocational rehabilitation. (PX 3)

On April 8, 2013, Petitioner was examined by Dr. Mark Levin at the request of Respondent. Petitioner provided a history of accident. During this visit, Petitioner informed Dr. Levin that he was fired on September 28, 2011. Petitioner denied any previous right shoulder injuries or that he had seen any physicians regarding right shoulder issues prior to September 2011. Dr. Levin notes that Petitioner had a pre-existing problem with his right upper extremity, including a shortening of the extremity on a chronic basis. The doctor also opined that Petitioner's "history of mechanism of injury does not fit with objective orthopedic pathology related to a work injury giving him his discomfort, but may have other underlying medical conditions that contribute it." (RX 2)

Dr. Levin issued an addendum report on May 30, 2013. After reviewing additional diagnostic studies previously taken, Dr. Levin wrote that Petitioner's "reported mechanism of injury does not substantiate any objective orthopedic pathology from an alleged work occurrence." The doctor added that he didn't find any evidence that Petitioner required any orthopedic intervention from an alleged work occurrence in September 2011. (RX 3)

Petitioner testified that he currently experiences pain in his right shoulder when sleeping on his right side, pain when he moves his right hand that interferes with personal care, and pain that interferes with recreational activity. Petitioner testified that he wants to return to work. Petitioner testified that he has attempted in the past to find work, but after two days of working, the unnamed employers let him go. Petitioner produced no evidence of any job search or any subsequent employment at trial.

With respect to (F.) Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant must prove that some phase of his employment was a causative factor in his ensuing injuries. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 592 (2005). An accidental injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill.2d 193, 205 (2003).

Petitioner reported his injury on September 26, 2011 and received treatment that same day at the company clinic. Petitioner was released by the company clinic on September 29, 2011. Petitioner testified that his employer was unwilling to accommodate his restrictions and that he needed to return to work. However, he was told by his employer that his position had already been filled.

Petitioner first saw Dr. Bare on January 20, 2012. There was no indication in Dr. Bare's report that Petitioner's right shoulder complaints arose from any other injury than the well documented right shoulder injury that occurred at work on September 26, 2011. Dr. Bare indicated that Petitioner's condition and need for permanent restrictions was "at least partially related to his work injury."

Respondent relies on the opinions of Dr. Levin. Dr. Levin saw Petitioner on one occasion. Dr. Levin charted Petitioner's complaints as consisting of right shoulder pain over the anterior shoulder, intermittent on a daily basis, and at a level of 5 out of 10. He noted that the pain would last approximately 20 minutes at a time,

and that Petitioner's range of motion would decrease throughout the day. Dr. Levin also wrote that Petitioner experienced shoulder pain at night.

It was Dr. Levin's opinion that all of Petitioner's complaints as of April 8, 2013 were related to a condition predating the September 26, 2011 work accident. He further opined that no further orthopedic intervention was required as a result of the work accident.

Petitioner testified that he did not have difficulty performing his job duties prior to the work accident on September 26, 2011. There is objective evidence in the form of a baseline functional capacity evaluation and work hardening discharge summary that this is no longer the case. Dr. Bare, Petitioner's treating physician, opined that Petitioner's current condition of ill-being and need for permanent restrictions is related at least in part to the work accident of September 26, 2011. Dr. Levin does not attempt to explain Petitioner's current inability to perform the work he was performing prior to the documented work injury of September 26, 2011.

Relying on the sequence of events as well as the opinion of Dr. Ware, the Arbitrator finds that Petitioner has proven by a preponderance of the credible evidence that his current condition of ill-being is causally related to his work accident.

With respect to (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, the Arbitrator finds as follows:

The treatment rendered in this case was conservative in nature. The Arbitrator finds that the treatment was reasonable, necessary and related to Petitioner's work accident of September 26, 2011. Dr. Levin's Section 12 report and subsequent addendum does not clearly address whether the treatment rendered in this case was reasonable and necessary.

Wherefore the Arbitrator awards medical bills as follows:

Dreyer Medical Clinic:	\$ 391.00
Orthopedic Associates of DuPage:	\$4,599.00

All medical bills shall be paid in accordance with the medical fee schedule.

With respect to (L.) What temporary benefits are in dispute, the Arbitrator finds as follows:

TTD

A claimant is temporarily and totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of her injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill.2d 107 (1990). To be entitled to TTD benefits, it is a claimant's burden to prove not only that he did not work, but also that he was unable to work. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill.2d 132, 148 (2010).

Petitioner was off work from September 26, 2011 through September 29, 2011. Dr. Bare next placed Petitioner on work restrictions beginning January 20, 2012. Respondent did not offer to accommodate Petitioner's restrictions until March 23, 2012. Respondent offered Petitioner a light duty position for 3 hours per day at a location in Joliet. At the time the light duty offer was made, Dr. Bare was recommending 4 weeks of work conditioning. It is also important to note that Petitioner was originally working at the location in Aurora, 10 minutes from his home. To drive to the location in Joliet would take Petitioner two hours round trip

to work for a three hours per day. Likewise, the work conditioning that was being recommended by Dr. Bare was not authorized by the Respondent until December of 2012.

14IWCC0481

In light of the totality of the circumstances, the Arbitrator finds that Respondent's light duty offer was not bona fide. If Respondent had authorized Petitioner to undergo work hardening, then it would be reasonable to have Petitioner work for 3 hours per day in Joliet assuming that therapy could be performed close to the job site. This did not occur.

Petitioner remained on light duty restrictions until he was placed at maximum medical improvement by Dr. Bare on January 11, 2013. Dr. Bare placed Petitioner on permanent restrictions as of February 1, 2013. No evidence of any ability to accommodate Dr. Bare's restrictions was offered into evidence by Respondent.

The Arbitrator awards TTD benefits in the amount of 238.55 per week for a total of 54-5/7 weeks, from September 26, 2011 through September 29, 2011 and from January 20, 2012 through February 1, 2013. Respondent paid \$4,055.35 in TTD benefits, and is entitled to a credit for that amount.

Maintenance

Section 8(a) of the Act permits an award of maintenance benefits while a claimant is engaged in a prescribed vocational rehabilitation program. *Greaney v. Industrial Commission*, 358 Ill.App.3d 1002 (2005). The maintenance benefit shall not be less than the temporary total disability rate determined for the employee. In addition, maintenance shall include costs and expenses incidental to the vocational rehabilitation program.

The Act clearly states that "[t]he employee or employer may petition to the Commission to decide disputes relating to vocational rehabilitation and the Commission shall resolve any such dispute, including payment of the vocational rehabilitation program by the employer."

In this case, Petitioner is requesting that the Arbitrator order Respondent to pay maintenance benefits and prepare a vocational rehabilitation plan to assist Petitioner in securing suitable employment taking into account his permanent restrictions. Petitioner was placed on permanent restrictions as of February 1, 2013 and Petitioner's counsel requested vocational rehabilitation on February 4, 2013. As it is clear that Petitioner is unable to resume the regular duties in which he was engaged at the time of the injury, and has reached maximum medical improvement as of February 1, 2013. The Arbitrator awards maintenance benefits in the amount of \$238.55 per week from February 2, 2013 through the date of hearing on June 11, 2013 for a period of 18-4/7 weeks.

With respect to (O.) Is Petitioner entitled to Vocational Rehabilitation, the Arbitrator finds as follows:

Awards for vocational rehabilitation are granted pursuant to Section 8(a) of the Act, which provides, in pertinent part, that an employer shall compensate an injured employee "for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee." 820 ILCS 305/8(a) (2011).

Section 7110.10 of Title 50, Chapter 2 states that "[t]he employer or his representative, in consultation with the injured employee and, if represented, with his or her representative, shall prepare a written assessment of the course of medical care, and, if appropriate, rehabilitation required to return the injured worker to employment when it can be reasonably determined that the injured worker will, as a result of the injury, be unable to resume the regular duties in which engaged at the time of injury, or when the period of total incapacity for work exceeds 120 continuous days, whichever first occurs.

The assessment shall address the necessity for a plan or program, which may include medical and vocational evaluation, modified or limited duty, and/or retraining, as necessary."

14IWCC0481

Inasmuch as Petitioner is unable to resume the regular duties in which he was engaged at the time of the injury, Respondent is hereby ordered to prepare a written assessment of the course of medical care and rehabilitation required to return Petitioner to employment. This plan shall be prepared in consultation with the injured employee and his representative. As dictated by the Act, the employee or the employer may petition this Commission to decide any future disputes related to vocational rehabilitation, including payment of the vocational rehabilitation plan by the employer.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="text" value="down"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SAMUEL BURNS,

Petitioner,

vs.

NO: 10 WC 40021

STATE OF ILLINOIS / PINCKNEYVILLE
CORRECTIONAL CENTER,
Respondent.

14IWCC0482

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, accident/manifestation date, notice, causation, medical expenses, temporary total disability and permanency, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission finds that the Petitioner sustained the loss of 10% of the left arm, 10% of the right arm, 10% of the left hand and 10% of the right hand pursuant to §8(e) of the Act.

The conditions found by the Arbitrator to be compensable were bilateral cubital tunnel syndrome and bilateral carpal tunnel syndrome. The Petitioner's duties as a prison guard were significantly varied throughout the workday, he testified he worked many different guard jobs at Respondent facility, and he clearly participated in significantly forceful activities with the hands and arms in his duties at his martial arts facility. There was no bar rapping at the Respondent's facility. The fact that many of the locks at the facility were either broken or in poor working order was a key factor in our affirmance of the accident and causation issues.

14IWCC0482

Following his surgeries the Petitioner was returned to regular work duties without restrictions. He voluntarily transferred into the DuQuoin Impact Incarceration facility, which appears to be a prison boot camp. While he testified to ongoing complaints, he hadn't been seen by Dr. Brown since April 2011, and he continued to participate in martial arts and weightlifting. This includes gripping of wrists and/or uniforms, punching, elbowing and grappling/wrestling, and at one point in the past resulted in bicep tendon rupture. It is difficult to believe that he has had anything but an excellent result with regard to the work related injuries. As such, the Commission finds significant bases to reduce the Arbitrator's permanency awards as noted above.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$720.35 per week for a period of 11-5/7 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 \$648.31 per week for a period of 91.6 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of use of 10% of the left arm, 10% of the right arm, 10% of the left hand and 10% of the right hand.

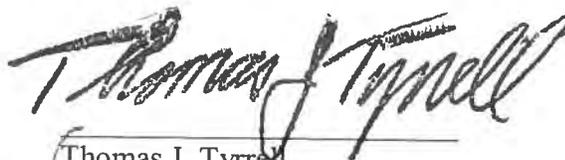
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the reasonable and necessary medical expenses identified in Petitioner's Exhibit 1, pursuant to §§8(a) and 8.2 of the Act subject to the fee schedule.

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, including but not limited to \$8,541.51 for previously paid temporary total disability.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit under §8(j) of the Act for any medical expenses contained in Petitioner's Exhibit 1 that were previously paid; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

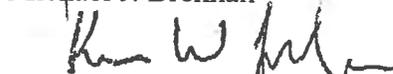
DATED: JUN 19 2014
TJT: pvc
o 4/22/14
51



Thomas J. Tyrrell



Michael J. Brennan



Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BURNS, SAMUEL

Employee/Petitioner

Case# **10WC040021**

SOI/PINCKNEYVILLE CORRECTIONAL CENTER

Employer/Respondent

14IWCC0482

On 5/16/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
MOLLY WILSON-DEARING
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

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

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

MAY 16 2013



[Signature]
KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

Samuel Burns
Employee/Petitioner

Case # 10 WC 40021

v.
State of Illinois/Pinckneyville Correctional Center
Employer/Respondent

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 William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on March 14, 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 _____

14IWCC0482

FINDINGS

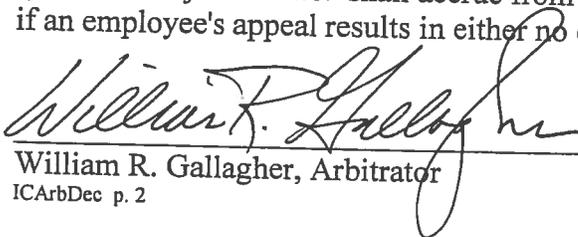
On October 4, 2010, Respondent was operating under and subject to the provisions of the Act.
On this date, an employee-employer relationship did exist between Petitioner and Respondent.
On this date, Petitioner did sustain an accident that arose out of and in the course of employment.
Timely notice of 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 \$56,187.00; the average weekly wage was \$1,080.52.
On the date of accident, Petitioner was 35 years of age, single with 0 dependent child(ren).
Petitioner has received all reasonable and necessary medical services.
Respondent has not paid all appropriate charges for all reasonable and necessary medical services.
Respondent shall be given a credit of \$8,541.51 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$8,541.51.
Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.
Respondent shall pay Petitioner temporary total disability benefits of \$720.35 per week for 11 5/7 weeks commencing January 6, 2011, through March 28, 2011, as provided in Section 8(b) of the Act.
Respondent shall pay Petitioner permanent partial disability of \$648.31 per week for 172.95 weeks because the injuries sustained caused the 20% loss of use of the right arm; 20% loss of use of the left arm; 17 1/2% loss of use of the right hand; and 17 1/2% loss of use of the left hand as provided in Section 8(e) of the Act.
Respondent shall pay Petitioner compensation that has accrued from March 29, 2011, through March 14, 2013, and shall pay the remainder of the award, if any, in weekly payments.

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

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



William R. Gallagher, Arbitrator
ICArbDec p. 2

May 11, 2013
Date

MAY 16 2013

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. The Application alleged a date of accident (manifestation) of October 4, 2010, and that Petitioner sustained repetitive trauma to his right and left hands, wrists and arms. Respondent disputed liability on the basis of accident, notice and causal relationship.

Petitioner worked for Respondent as a Correctional Officer beginning his career in July, 1998, at the Pinckneyville Correctional Center. Petitioner testified that during his time at Pinckneyville Correctional Center he spent approximately 50% of his time as a housing unit wing officer; 25% of his time as a segregation unit officer and the remaining 25% of his time as a walk/escort officer. Petitioner stated that he spent a considerable amount of time in the segregation unit filling in for other officers.

Petitioner's job duties at Pinckneyville Correctional Center required him to forcefully grip and pull on cell doors to make certain that they were secure. Petitioner would perform shakedown and he also lifted property boxes that could weigh 50 to 100 pounds.

Petitioner testified that he had to key thousands of heavy steel doors and chuckholes during his career as a Correctional Officer. Petitioner also had to lock and unlock numerous padlocks. He stated that the more the locks are used, the more they tend to stick or, in some cases, come apart completely. The wing doors in general population tended to stick and getting those doors to open was very difficult. Petitioner further stated that while he could open some of the chuckholes without difficulty, many of them, in particular, the ones in the segregation unit were extremely difficult to key. Petitioner stated that many times it was necessary to jam the key into the palm of his hand and apply force as it turned. He estimated that this occurred over 50% of the time.

Petitioner was also required to cuff and uncuff inmates and this was not an easy task especially when an inmate was not cooperative. For those inmates in segregation, the cuffing/uncuffing procedure was more difficult because it had to be performed with the inmates hands placed in the chuckhole. Petitioner stated that the chuckholes were low and that it was usually necessary to cuff the inmates behind the back and the manipulation of the small key was more difficult than normal in this position.

Petitioner testified that during the time in which he began developing his upper extremity symptoms that the facility was on a level I lockdown approximately 27% of the time. When the facility was on a level I lockdown, the job duties of the Correctional Officers increased a significant degree because they had to do basically everything including wheeling food carts, serving meals, collecting trash, etc.

Subsequent to the accident, on June 30, 2011, Petitioner was transferred to the DuQuoin Impact Incarceration Center. That facility is a "boot camp" for younger offenders.

Petitioner personally reviewed the videos depicting the activities of a Correctional Officer that were tendered into evidence by the Respondent and he stated that they were not accurate.

Petitioner described the videos as showing bits and pieces of a Correctional Officer's activities but they did not show either the intensity or pace of the work the Correctional Officers were required to perform. Specifically, the videos did not show locks breaking/malfunctioning, did not show chuckholes sticking, did not show inmates resisting when being cuffed/uncuffed, did not show officers restraining combative inmates and did not show officers lifting property boxes.

Petitioner testified that he started developing symptoms in 2009 of pain in his elbows and hands, loss of grip strength, numbness/tingling in his arms and hands and dropping objects. Petitioner admitted to being physically active and that he works out on a regular basis, performs martial arts and that he runs a karate school. Petitioner teaches martial arts at the school on Tuesday and Thursday evenings and supervises students sparring on Wednesday evenings. Petitioner does use his hands and arms for approximately 50% of his martial arts techniques. Petitioner did sustain prior injuries to both of his arms while performing martial arts. He was diagnosed with biceps tendon tears in both arms and had corrective surgeries performed.

Petitioner reviewed the "Demands of the Job" form prepared by the Respondent and stated that it was inaccurate. Specifically, the Petitioner noted that the form stated that he uses his hands for gross manipulation zero to two hours per day and that this was incorrect. Petitioner also reviewed the "Independent Job Site Analysis" prepared by Respondent which stated that wrist turning (which would be gross manipulation in the Demands of the Job form) was done up to five hours per shift. Petitioner could not explain this discrepancy. Petitioner also stated that the key estimation study was inaccurate; however, he agreed with Lieutenant Thompson (who performed the key estimation study) that Correctional Officers use their hands and arms for five to six hours per day.

Petitioner tendered into evidence the deposition testimony of Robert Schuchert, Jimmy Phillips, Donna Jones, Lieutenant Jason Thompson, Jaelene Bryan and Melanie Welch.

Schuchert previously worked as a Correctional Officer both at Menard and Pinckneyville, from 1981 to January, 2004. Since that time, he has been the locksmith at Pinckneyville Correctional Center and also operates his own locksmith business in Chester, Illinois. He testified the locks at Pinckneyville Correctional Center are subjected to a great deal of wear because of the extensive use and described their overall condition as being fair to poor. He confirmed that the locks and chuckholes were difficult to open.

Jimmy Phillips has been a Correctional Officer since 1998 and, with the exception of a few months at Menard Correctional Center, he has served in that capacity at Pinckneyville Correctional Center for his entire career. He testified that officers experience difficulties in opening/closing the chuckholes on a daily basis and that the inmates intentionally do things to make the locks difficult to operate. He also reviewed the videos and noted that they failed to show difficulties encountered by the officers when turning the keys. Consistent with the Petitioner's testimony, Phillips stated that there was no part of his job that did not include using his arms and hands.

Donna Jones testified that she has worked as a Correctional Officer at Pinckneyville Correctional Center since July 1, 1998. She also reviewed the videos and Job Site Analysis prepared by the

Respondent. She agreed that the video did show an inmate being cuffed and uncuffed; however, it did not show an inmate resisting during this procedure which she stated happens quite often. Further, the video did not show any difficulties when Correctional Officers were opening/closing doors which was something that occurred on a daily basis. The videos also did not show the pace of the work that was performed by the Correctional Officers, most of which was performed at a much quicker or faster pace than what was depicted in the video. She testified Folger-Adams keys are used in the segregation unit and that they are difficult to use. In respect to the Job Site Analysis prepared by the Respondent, she noted that it did not indicate the amount of inmate movement or passes provided on any given day.

Lieutenant Thompson was present at the trial of this case but he was not called to testify. In his deposition testimony, he confirmed that Correctional Officers performed numerous duties all of which involve the use of their arms and hands. He conducted the key estimation study that was tendered into evidence by Respondent and he testified that it was an estimate based on his own observation and experience.

Jaelene Bryan has been a Correctional Officer at Pinckneyville Correctional Center for approximately 13 years and she confirmed that the doors were difficult to open especially during the summer months because they stick more due to the summer heat. She also watched the videos and noted that they failed to show the difficulties encountered when cuffing/uncuffing inmates; the difficulties in locking/unlocking the chuckholes, difficulty in keying locks and she also stated that the videos did not accurately depict the pace that Correctional Officers were required to work in order to complete all of their assigned job duties. She also reviewed Respondent's Job Site Analysis and likewise testified that it was not accurate and did not show either the repetition or intensity of the work performed by the Correctional Officers.

Petitioner tendered into evidence the deposition testimony of Melanie Welch who is an employee of Corvel, the company that was retained by Respondent to conduct the Job Site Analysis. Welch testified that she performed this study at the request of the Respondent and has never performed a similar analysis on behalf of an injured worker. She agreed that the videos did not show any locks that were difficult to open, did not depict the doors as being difficult to open and close and knew nothing about the contents or weight of the property boxes. She had no personal knowledge of whether or not the chuckholes were difficult to open or close because she did not attempt to open or close one of them.

Petitioner testified that he reviewed the deposition testimony of the aforesaid witnesses and that the testimony of Schuchert, Phillips, Jones and Bryan accurately reflected the conditions at Pinckneyville Correctional Center. He further agreed with Lieutenant Thompson's testimony to the extent that the Lieutenant Thompson stated that the Correctional Officers used their hands and arms for five to six hours per day.

Major Derek Cleland was present at the trial and was called by Petitioner to testify. Major Cleland is the Shift Commander and he testified that he knew Petitioner and that he was a good employee. He further stated that Petitioner was never the subject of any disciplinary action.

Petitioner initially sought medical treatment from Dr. David Brown on October 4, 2010. Petitioner informed Dr. Brown that his job required him to lock/unlock cell doors, open/close cell doors, cuff/uncuff inmates and that he worked 40 to 60 hours per week. Dr. Brown examined Petitioner and opined that he had bilateral cubital tunnel and carpal tunnel syndromes. Nerve conduction studies were performed which confirmed Dr. Brown's diagnosis. In his initial medical note, Dr. Brown opined that Petitioner's job duties and the lack of any other medical problems would put him at risk for the development of peripheral compression neuropathy such as carpal tunnel or cubital tunnel syndromes. He opined that Petitioner's work as a Correctional Officer was an aggravating factor for both conditions. Shortly after being seen by Dr. Brown, Petitioner reported to the Respondent that he had sustained a work-related injury and a Report of Injury was prepared on October 8, 2010.

Dr. Brown performed carpal tunnel releases and ulnar nerve transposition surgeries on the right and left upper extremities on January 6, and January 27, 2011, respectfully. Petitioner remained under Dr. Brown's care following the surgeries and recovered and he was released to return to work on light duty on February 14, 2011, and then to full duty on April 11, 2007.

Dr. Brown was deposed on January 29, 2013, and his deposition testimony was received into evidence at trial. Dr. Brown's testimony was consistent with his medical treatment records. In regard to causality, Dr. Brown testified that he reviewed the deposition testimony of Schuchert, Phillips, Jones, Bryan and Thompson and that their description of Petitioner's job duties was consistent with what the Petitioner told him. Dr. Brown also watched the DVDs and reviewed the report of Dr. Williams (Respondent's physician who reviewed Petitioner's records) and he reaffirmed his opinion that Petitioner's work activities would be at least an aggravating factor in the development of both the carpal tunnel and cubital tunnel syndrome conditions. Dr. Brown again specifically noted that Petitioner did not have any other medical risk factors for the development of those conditions. While Dr. Brown agreed that Petitioner's martial arts activities could also be a contributing factor, he noted that if this type of activity for 50 minutes, two times per week would be a contributing factor, that it would be illogical to say that 12 years of exposure to turning locks 200 plus times a day would not be such a factor.

Petitioner testified that his condition has improved since the surgeries but that he still has some residual complaints. Petitioner still experiences pain in his wrist and elbows, diminished grip strength, occasional numbness/tingling in his hands and that his symptoms are intensified when he works with the inmates and demonstrates the physical activities that they are required to perform. Petitioner testified that he performs all of the physical activities required of the individuals in the Impact Incarceration Program because he wants to lead by example.

Respondent obtained a review by Dr. James Williams of Petitioner's medical treatment records. Dr. Williams authored a report dated April 18, 2012. Dr. Williams agreed with Dr. Brown's diagnosis and the treatment that he provided; however, he did not agree with Dr. Brown's opinion in regard to causality. Dr. Williams did review the Job Site Analysis, Demands of the Job, key estimation study and DVD videos and he opined that Petitioner's martial arts were the primary cause of the conditions and that his weightlifting and hypertension were contributing factors. Dr. Williams was deposed on May 31, 2012, and his deposition testimony was received into evidence at trial. Dr. Williams' testimony was consistent with his medical report and he

reaffirmed his opinion as to causality; however, Dr. Williams agreed that his specific knowledge about the detail of Petitioner's job duties was limited. Further, Dr. Williams did not review any of the deposition testimony of the others employed at Pinckneyville Correctional Center and he did agree that his opinions might be subject to change based upon what further information might be provided to him. Dr. Williams agreed that forcefully pulling on cell doors could contribute to the development of carpal tunnel or cubital tunnel syndromes as well as frequent lifting of property boxes and cuffing/uncuffing resistant inmates.

Conclusions of Law

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

The Arbitrator concludes that Petitioner sustained a work-related repetitive trauma injury to both of his upper extremities that manifested itself on October 4, 2010, and that Petitioner's current condition of ill-being is causally related to same.

In support of this conclusion the Arbitrator notes the following:

The Arbitrator concludes that Petitioner was a credible witness on his own behalf and that his testimony about the conditions at Pinckneyville Correctional Center and the work activities of a Correctional Officer was consistent with the deposition testimony of Schuchert, Phillips, Jones, Bryan and Thompson.

The Arbitrator is not persuaded by Respondent's "Demands of the Job" or "Job Site Analysis" because they are contrary to the testimony of not only the Petitioner but of the other aforesaid witnesses. Further, as is noted herein, there is a discrepancy in the data contained in the two forms in regard to the amount of gross manipulation that is purportedly required.

The Arbitrator is also not persuaded by the two DVDs as these present, at best, a very limited depiction of Petitioner's work activities and the accuracy of what is depicted in the DVDs is suspect and contrary to not only the Petitioner's testimony but the other witnesses as well.

Dr. Brown examined Petitioner on October 4, 2010, made his diagnosis of bilateral carpal tunnel and cubital's tunnel syndrome and opined that there was a causal relationship between those conditions and Petitioner's work activities. The Arbitrator concludes Dr. Brown's opinion as to causality to be credible and is based not only on what Petitioner told him but also on Dr. Brown's review of the deposition of the other witnesses, his review of the DVDs and his review of Dr. Williams' report. In this respect, it is germane to note that Dr. Williams conceded that some of Petitioner's work activities could have contributed to the development of the carpal tunnel or cubital tunnel syndrome conditions. While it is undisputed that Petitioner did engage in other arm/hand intensive activities (martial arts) and that this may have also been a contributing factor, it defies logic to conclude that Petitioner's work activities would not also be such a factor.

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

The Arbitrator concludes that Petitioner provided notice to Respondent within the time prescribed by the Act.

In support of this conclusion the Arbitrator notes the following:

The Arbitrator previously concluded that the date of manifestation is October 4, 2010. It is un rebutted that Petitioner notified Respondent on October 8, 2010, which is within the time period prescribed by the Act.

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

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

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In support of this conclusion the Arbitrator notes the following:

Dr. Brown diagnosed and treated Petitioner for both bilateral carpal tunnel and cubital tunnel syndromes and Dr. Williams agreed with Dr. Brown's diagnosis and that the medical care and treatment provided by him was reasonable.

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

The Arbitrator concludes that Petitioner is entitled to temporary total disability benefits for a period of 11 5/7 weeks commencing January 6, 2011, through March 28, 2011.

In support of this conclusion the Arbitrator notes the following:

It is undisputed that Petitioner was under active medical care and treatment during this period of time and was authorized to be off work. There is no medical opinion to the contrary.

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

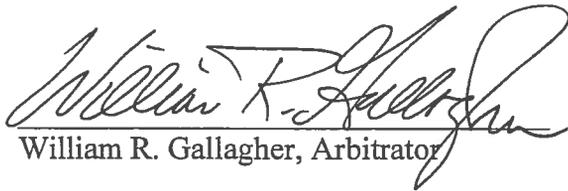
The Arbitrator concludes that Petitioner has sustained permanent partial disability to the extent of 20% loss of use of the right arm; 20% loss of use of the left arm; 17 1/2% loss of use of the right hand; and 17 1/2% loss of use of the left hand.

In support of this conclusion the Arbitrator notes the following:

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As noted herein, Petitioner developed bilateral cubital tunnel and carpal tunnel syndromes both of which required surgery. While Petitioner's condition has improved and he was able to return to work without restrictions, Petitioner's job does require the extensive use of both of his upper extremities. Petitioner's job requires him to provide physical training to the inmates and Petitioner demonstrates the activities the inmates are required to perform because he wants to lead by example. Petitioner continues to experience pain in his hands and elbows, in particular, by the end of the day, he still has diminished grip strength in both of his hands as well as numbness and tingling in both of his hands.

Petitioner is a physically active person the Arbitrator does not believe that he has the propensity to exaggerate or overstate his complaints and symptoms.


William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

<input type="checkbox"/> Affirm and adopt (no changes)	<input checked="" type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="text" value="down"/>	<input type="checkbox"/> PTD/Fatal denied
	<input type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CASEY HARRIS,

Petitioner,

vs.

NO: 08 WC 07981

PINPOINT MARKETING & THE INJURED
WORKERS' BENEFIT FUND,

14IWCC0483

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of employer/employee relationship, accident, notice, causation, average weekly wage, medical expenses, temporary total disability and permanency, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission finds that the evidence in the record does not support the Arbitrator's finding that the Petitioner's average weekly wage in the year prior to the accident was \$800.00. First, it should be noted that arbitration hearing was conducted without the presence of the employer or its insurer, and was being defended solely by the Injured Workers' Benefit Fund, which it appears did not have access to the records of the employer, Pinpoint Marketing. Petitioner testified that she was paid solely on a commission basis, 25% of sales, without a base salary. While she also testified that she was claiming she consistently made \$1,500.00 per week, and that her sales quota was \$4,000.00 to \$6,000.00 per week, she also testified that she had received a \$1,500.00 check at one point that was hung on the wall of the office because it was the largest check the employer ever paid out. If that was the largest check ever given out, this contradicts the Petitioner's testimony that she regularly earned this amount.

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The Petitioner submitted Petitioner's Exhibit 3 into evidence. This exhibit consisted of pay stubs from 2008, as well as handwritten weekly goal sheets, all of which post-dated the accident and involved her 2008 return to work. While these records do not reflect earnings in the year prior to the accident date, they nevertheless indicate earnings of the Petitioner which do not approach \$1,500.00 per week.

Additionally, the Petitioner failed to provide any other documentary evidence which would have been in her control, such as the W2 forms she testified she received or her income tax returns. Thus, the Commission is left with a difficult determination of an actual average weekly wage in this case. The Commission does believe that the evidence supports a finding that the average weekly wage in the year prior to the accident exceeds the minimum temporary total disability and permanency rates for the date of accident with four dependents. As such, the Commission finds that what would be fair to both Petitioner and the Illinois Injured Workers' Benefit Fund would be to find the average weekly wage is equal to the \$300.00 minimum rates in effect on December 27, 2007.

As noted by the Arbitrator, the Illinois State Treasurer as ex-officio custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. The benefit awards in this case have been entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers Benefit Fund.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$300.00 per week for a period of 19-5/7 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 \$300.00 per week for a period of 15 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the loss of 3% of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner all reasonable and necessary medical bills of IPMR for dates of service from July 15, 2008 through December 2, 2008 and Lannert Chiropractic for dates of service from January 22, 2008 through July 25, 2008, pursuant to §§8(a) and 8.2 of the Act.

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

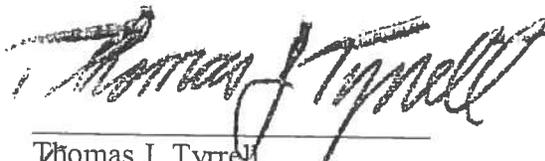
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

14IWCC0483

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$14,800.00. 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:
TJT: pvc
o 4/22/14
51

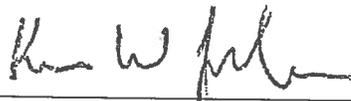
JUN 19 2014



Thomas J. Tyrrell



Michael J. Brennan



Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HARRIS, CASEY

Employee/Petitioner

Case# **08WC007981**

**PINPOINT MARKETING AND THE ILLINOIS
STATE TREASURER AS EX-OFFICIO
CUSTODIAN OF THE INJURED WORKERS'
BENEFIT FUND**

Employer/Respondent

14IWCC0483

On 7/16/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

1824 STRONG LAW OFFICE
SEAN OSWALD
3100 N KNOXVILLE AVE
PEORIA, IL 61603

PINPOINT MARKETING
METRO DIRECTORIES
3521 N CALIFORNIA
PEORIA, IL 61603

ASSISTANT ATTORNEY GENERAL
ERIN DOUGHTY
500 S SECOND ST
SPRINGFIELD, IL 62706

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

<input checked="" type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

CASEY HARRIS,
Employee/Petitioner

Case # 08 WC 7981

v.

Consolidated cases: _____

PINPOINT MARKETING and
THE ILLINOIS STATE TREASURER AS
EX-OFFICIO CUSTODIAN OF THE INJURED
WORKERS' BENEFIT FUND,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **6/14/13**. 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 _____

FINDINGS

On **12/27/07**, 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 **\$35,000.00**; the average weekly wage was **800.00**.

On the date of accident, Petitioner was **25** years of age, *single* with **4** dependent children.

Petitioner *has not* 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 **\$00.00** for TTD, **\$00.00** for TPD, **\$00.00** for maintenance, and **\$00.00** for other benefits, for a total credit of **\$00.00**.

Respondent is entitled to a credit of **\$00.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$533.33 week for 19-5/7 weeks, commencing 12/28/07 through 5/14/08, as provided in Section 8(b) of the Act.

Respondent shall pay all reasonable and necessary medical bills of IPMR for dates of service from 7/15/08 through 12/2/08 and Lannert Chiropractic for dates of service from 1/22/08 through 7/25/08, pursuant to Sections 8(a) and 8.2 of the Act.

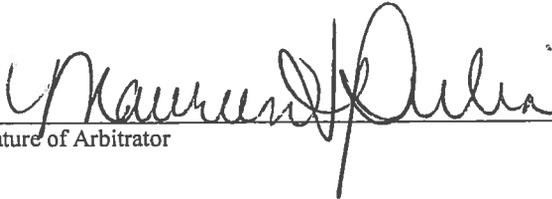
Respondent shall pay Petitioner permanent partial disability benefits of \$480.00/week for 15 weeks, because the injuries petitioner sustained caused the **3% loss of use of the petitioner's person as a whole**, as provided in Section 8(d)2 of the Act.

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

14IWCC0483

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

7/8/13
Date

ICarbDec p. 2

JUL 16 2013

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

This hearing was conducted via video teleconference in Peoria Illinois on 6/14/13. Petitioner currently resides in Georgia, and it would have been an undue hardship for her to travel to Peoria for the trial. As such, petitioner's attorney, and the Attorney General representing the Illinois Workers Benefit Fund, stipulated to this video teleconference trial. No one appeared on behalf of respondent Pinpoint Marketing.

On petitioner's initial Application for Adjustment of Claim she identified an accident date of 1/3/08. Petitioner then amended the date of accident to 12/27/07. When questioned regarding the change of the accident date petitioner testified that she had initially just wrote down the wrong date. She testified that she initially thought that the accident occurred after New Year's, but then recalled that it actually had occurred right after Christmas.

Prior to beginning her employment with respondent Pinpoint Marketing petitioner had worked with Matt Simmons, owner of Pinpoint Marketing, for four years at different advertising companies. When Simmons opened Pinpoint Marketing, on or about May 2007, petitioner was hired as a telemarketer working the hours of 8 AM to 5 PM.

Petitioner, a 25 year old telemarketer, alleges that on 12/27/07 she fell on black ice while walking from her car in the parking lot to enter the building. Petitioner testified that Pinpoint Marketing shared the building with a dentist's office. As such, an area of the parking lot was designated as "employee parking" for the employees of Pinpoint Marketing. These parking spots were not marked, but petitioner stated that Pinpoint Marketing's employees had been directed where to park by Matt Simmons. She testified that if an employee for Pinpoint Marketing parked in the spots designated for the dentist's office, they were told to move their car. Petitioner, and the other employees of Pinpoint Marketing, were instructed by Matt and Toscha Simmons that they must park in the parking spots that had been designated for Pinpoint Marketing. The rest of the parking lot was general parking for the dentist's office and its' customers. Petitioner testified that the maintenance of the parking lot was performed by the owner of the lot, as well as Pinpoint Marketing.

On 12/27/07 petitioner exited her car and attempted to enter the door designated for Pinpoint Marketing employees to enter. Petitioner testified that she was unable to enter the door because it was locked. Petitioner then descended the stairs back into the parking lot and headed towards another entrance off of the parking lot. As petitioner was walking through the parking lot to access the other entrance she slipped on some black ice in the parking lot and fell on her tailbone. Petitioner felt immediate pain shoot up her entire back to her neck.

Petitioner was four months pregnant at the time of the incident. Petitioner testified that she used the concrete barrier at the front of the parking spot to help her get up.

Following the incident petitioner got up and proceeded to enter the building and reported the injury to Samantha Hallberg the office manager, Roger Hallberg the general manager, and Matt Simmons the owner. Petitioner testified that Matt Simmons told her to go for medical treatment and then to file a claim with workers' compensation. Petitioner testified that a few days after the incident she provided a written statement to Matt Simmons. Petitioner stated that she was not given a copy of that statement.

Following the incident on 12/27/08 petitioner immediately presented to Kindred Obstetrics and Gynecology. Petitioner gave a consistent history of falling on the ice. On 1/4/08 petitioner returned to Dr. Kindred complaining of back pain and swollen feet since falling on 12/27/08. Petitioner continued follow-up with Dr. Kindred with complaints of back pain. On 1/22/08 Dr. Kindred referred petitioner for chiropractic treatment with Dr. Lannert for the pain in her tailbone.

On 1/22/08 petitioner presented to the Lannert Chiropractic Center for treatment of her back and neck. Petitioner gave a history of falling on black ice at work. Petitioner underwent approximately 26 chiropractic treatments through the beginning of May 2008.

On 2/18/08 Dr. Kindred drafted an off work note for petitioner. It stated "Casey Harris is off work starting 12/27/07 until six weeks postpartum, EDC 5/28/08. She is having complications with her pregnancy due to a fall at work 12/27/07."

In March 2008 Dr. Kindred gave petitioner a note for Childcare Connections. It stated "Casey Harris cannot provide care for her children due to falling at work. It has caused complications in pregnancy and she is unable to work until six weeks PP." On 3/5/08 Dr. Kindred drafted a note to IDPA stating that petitioner needed to be off work.

On 7/9/08 Dr. Kindred drafted a script stating "back injury due to fall during pregnancy. Petitioner needs evaluation and treatment."

On 7/15/08 petitioner began a course of physical therapy at the Institute of Physical Medicine and Rehabilitation. Petitioner was evaluated, and it was noted that petitioner had symptoms consistent with lumbar derangement. Petitioner complained of pain and difficulty with activities of daily living.

On 7/7/08 petitioner returned to work. She testified that she was unable to make her sales goals due to her back hurting. She testified that she could not stay at work long enough to make her goal.

Between 7/15/08 and 12/2/08 petitioner underwent approximately 18 sessions of physical therapy. On 12/2/08 petitioner was discharged due to a failure to show for treatment for two weeks. Petitioner called and requested a transfer to another office with later hours due to the fact that she was working a new job. Petitioner was told that she had been discharged and needed a new order to restart physical therapy

Petitioner testified that following the accident on 12/27/07 she was placed on restrictions by Dr. Kindred until six weeks after her baby was born on 5/15/08. Petitioner is alleging that she is entitled to temporary total disability benefits for the period 12/27/07 through 5/14/08. Petitioner testified that although she did not have a formal off work slip until 2/18/08, she did not work after the alleged accident on 12/27/08. Petitioner testified that after her baby was born on 5/15/08 she continued to have ongoing complaints of neck and back pain.

Petitioner testified that when she tried to return to work for Pinpoint Marketing in August 2008 Matt Simmons offered to pay her with a four wheeler. Petitioner testified that she did not accept the four wheeler because she could not use that to pay for food and necessities for her children.

Petitioner testified that she was paid by check through two different companies, Pinpoint Marketing and Metro Directories. Petitioner testified that she received two different checks every week. She stated that she was paid commission only, which was 25% of her sales. Petitioner received no base pay. Petitioner stated that taxes were withheld from her checks and she received a W-2 at the end of the year. Petitioner testified that her sales goals each week were between \$4000 and \$6000. Petitioner testified that in the year before the accident she made her sales goals almost every week, and sometimes even higher than that. At trial, petitioner alleged that she earned \$1,250 a week. However on her initial Application for Adjustment of Claim, as well as her amended applications, petitioner alleged that her average weekly wage was \$800 a week. Petitioner never made any changes to this rate.

Petitioner offered into evidence employee history and weekly goals sheets for periods post-accident. Petitioner failed to offer into evidence any payroll evidence regarding her earnings during the year preceding the injury. Petitioner testified that all her payroll receipts and tax records, including those for the year preceding her injury, were destroyed in a fire. Petitioner testified that a police report was taken but she did not have a copy of it. Petitioner did not contact the state or IRS for copies of her W-2s.

Petitioner testified that the documents were destroyed when she attempted to move out of one of her residences. Petitioner testified that the landlord moved all of her belongings into the backyard and started them on fire. She stated that the copies of her payroll checks and W-2s were destroyed in this fire.

Petitioner offered into evidence the bills from IPMR for treatment from 7/15/08 to 1/20/10 in the amount of \$2832.24, and bills from Lannert Chiropractic for treatment 1/25/08 through 7/25/08 in the amount of \$1462.00. Petitioner testified that none of these bills have been paid.

Petitioner testified that at some point she got a job at Dollar General, but could not work, even part-time, because her back hurt. Petitioner gave a history of a prior accident to her low back when she worked for McDonald's in 2003. Petitioner testified that following that incident she underwent some chiropractic treatment and physical therapy and was released to full duty work. Petitioner denied any treatment in 2006 or 2007 for her low back. She testified that following the accident at McDonald's she would still have some little aches in her back. Petitioner testified that following the accident on 12/27/07 her back pain has been much worse. She testified that she cannot play baseball with her kids, that her back hurts really bad, that she cannot sit up for long periods of time, and can't stand for long periods of time.

Petitioner alleges that she cannot maintain full-time employment. She testified that prior to the accident she always worked full duty. However since the accident she has not maintained any full-time employment, and only worked reduced hours for a while. Petitioner denied that she has had any further medical treatment other than that she testified to, even though she has access to medical treatment, because she does not have the money to pay for transportation and a babysitter so that she can go get medical treatment.

Petitioner testified that her current pain level is 7 out of 10 on a daily basis. She testified that she takes Aleve and Tylenol. She does not take any prescription medications. Petitioner testified that she still does some home exercises. Petitioner testified that for pain relief she lays on the couch and takes over-the-counter medicine. She also testified that she sometimes uses heat, and her boyfriend massages her back.

Petitioner offered into evidence certified copies from the Illinois Worker's Compensation Commission dated 11/3/10 certifying that Pinpoint Marketing did not have any Worker's Compensation insurance on 12/27/07.

Petitioner testified that she is currently working for a company called Damsels in Defense. Petitioner hosts home parties. She testified that she does not conduct these parties even once a week. Petitioner testified that she has no health insurance through this company, but does have insurance through the state of Georgia and can see a doctor if she chooses.

Petitioner offered into evidence an article from the Journal Star dated 2/20/09. The article was with respect to bond being set at \$1.25 million for Matt and Toscha Simmons after both were charged with one count of

theft, a felony punishable by up to 15 years in prison, for an alleged advertising scam. The judge called the alleged advertising scam by the Simmons' "far-reaching" and "shocking". The article stated that the company the Simmons' ran had gone by many names including Pinpoint Marketing.

Petitioner offered into evidence a Corporation File Detail Report from Jesse White Secretary of State, with regards to Pinpoint Marketing. The status of this corporation was identified as "dissolved". The Agent Name was identified as Toscha Wood. The report indicated that there was an involuntary dissolution on 4/11/08.

Petitioner offered into evidence copies of certified mail sent to Toscha Stewart Wood Simmons at 1217 Chestnut, #4, Chillicothe, IL, 61523 on 4/23/13; and Pinpoint Marketing, 3521 N. California, Suite 2, Peoria Illinois, 61603. Both letters were "returned to sender, not deliverable as addressed, unable to forward". Petitioner also offered into evidence a printout from USPS.com with respect to three certified mail that were delivered on 5/16/13 in Peoria, Illinois, 4/24/13 in Jacksonville, Illinois, and 4/29/13 in Peoria, Illinois. A certified mail sent to Matthew Simmons, care of Jacksonville Correctional Center, 2268 E. Martin Ave., Jacksonville, IL was signed for on 4/24/13 by James Deen. Petitioner also offered into evidence copies of letters sent on 4/23/13 via regular mail to Toscha Stewart Wood Simmons care of First Call Advertising, 1150 W. Crow Sandberg Dr., Galesburg, IL; Toscha Stewart Wood Simmons at 1217 Chestnut, #4, Chillicothe, IL, 61523; and Pinpoint Marketing, 3521 N. California, Suite 2, Peoria Illinois, 61603. All letters were "returned to sender, not deliverable as addressed, unable to forward". All these letters and certified mail were sent in an attempt to notify respondent, Pinpoint Marketing, of the trial that was being held on 6/14/13.

Petitioner's attorney, Sean Oswald, stated that service attempts were made to Pinpoint Marketing at the address listed on the Illinois Worker's Compensation Commission website, and to Toscha Simmons and Matt Simmons via regular/certified mail at multiple different addresses, including the jail where Matt Simmons is currently incarcerated.

Petitioner offered into evidence the inmate record with the Illinois Department of Corrections for Matthew Simmons. The record indicates that Matt Simmons was sentenced to 12 years in jail for theft/deception in excess of \$500,000. Petitioner was taken into custody on 2/19/09, was admitted on 5/28/09, has a projected parole date of 2/19/15, and a projected discharge date of 2/19/18.

Petitioner offered into evidence as petitioner's exhibit number 17, photographs of the parking lot in which she fell on the ice on 12/27/07. The actual spot where petitioner fell is denoted by an "X" on one of the pictures.

A. WAS RESPONDENT OPERATING UNDER AND SUBJECT TO THE ILLINOIS WORKERS' COMPENSATION OR OCCUPATIONAL DISEASES ACT?

Petitioner presented un rebutted testimony that she was an employee of PinPoint Marketing on 12/27/07. PinPoint Marketing is in the business of selling advertising space. Petitioner testified that she began working there in May of 2007 and was hired to sell advertising space. Petitioner was paid commission for her sales. Petitioner worked from 8:30 AM to 5 PM every day. Respondent offered no evidence to rebut this. As such, the arbitrator finds the respondent was operating under and subject to the Illinois Worker's Compensation or Occupational Diseases Act.

B. WAS THERE AN EMPLOYEE-EMPLOYER RELATIONSHIP?

Petitioner presented un rebutted testimony that she was hired by Matt Simmons in May of 2007 to work at Pinpoint Marketing. Petitioner testified that she was hired by Matt Simmons to sell advertising space. Petitioner worked under the direct of Matt and Toscha Simmons. Petitioner was paid a commission based on the amount of sales she made. Petitioner was paid by check. Respondent Pinpoint Marketing offered no evidence to rebut this testimony.

Based on the above, as well as the credible record the arbitrator finds an employee-employer relationship existed between petitioner and respondent Pinpoint Marketing.

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?

Petitioner presented un rebutted testimony that on 12/27/07 she sustained an accidental injury that arose out of and in the course of her employment by respondent Pinpoint Marketing when she slipped and fell on her tailbone on some black ice in respondent Pinpoint Marketing's parking lot.

Pinpoint Marketing shared the building with a dentist's office. As such, an area of the parking lot was designated as "employee parking" for the employees of Pinpoint Marketing. These parking spots were not marked, but Pinpoint Marketing's employees were directed where to park by Matt Simmons. If an employee for Pinpoint Marketing parked in the spots designated for the dentist's office, they were told to move their car. Petitioner, and the other employees of Pinpoint Marketing, were directed by Matt and Toscha Simmons to park in the parking spots that had been designated for Pinpoint Marketing. The rest of the parking lot was general parking for the dentist's office and its' customers. The maintenance of the parking lot was performed by the owner of the lot, as well as Pinpoint Marketing.

On 12/27/07 petitioner was unable to enter the door designated for Pinpoint Marketing employees. Petitioner was unable to enter the door because it was locked. Petitioner then descended the stairs back into the parking lot and headed towards another entrance off of the parking lot. As petitioner was walking through the parking lot to access the other entrance she slipped on some black ice in the parking lot and fell on her tailbone. Respondent Pinpoint Marketing offered no evidence or testimony to rebut petitioner's testimony and evidence.

The arbitrator adopts the testimony of petitioner and finds that petitioner, and all other employees of respondent Pinpoint Marketing, were designated by respondent Pinpoint Marketing to park in a specific area of the parking lot Pinpoint Marketing shared with the dentist's office. The arbitrator further finds that if petitioner, or another employee of Pinpoint Marketing, parked in spots designated for use by the dentist's office they would be directed to move their vehicle. The arbitrator finds that in addition to directing their employees where to park in the parking lot, respondent Pinpoint Marketing had control over the parking lot and would maintain it when there was inclement weather.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that she sustained an accidental injury that arose out of and in the course of her employment by respondent on 12/27/07.

E. WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO RESPONDENT?

The petitioner presented un rebutted testimony that immediately after her fall on 12/27/07 she entered into respondent Pinpoint Marketing's place of business and reported her accident to Samantha Hallberg the office manager, Roger Hall Hallberg the general manager, and Matt Simmons the owner of Pinpoint Marketing. Respondent offered no evidence to rebut petitioner's testimony or evidence.

Based on the above, the arbitrator finds the petitioner provided respondent Pinpoint Marketing with timely notice of the accident. The arbitrator finds the petitioner provided respondent Pinpoint Marketing with notice of her accident on 12/27/07 immediately following the accident.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

Petitioner testified that prior to the accident on 12/27/07 she sustained a back injury while working for McDonald's in 2003. Petitioner received a short term of chiropractic and physical therapy treatment and was released to full duty work. Other than some minor aches, petitioner had no problems and received no further treatment for her low back until 12/27/07, following her slip and fall.

Following her slip and fall on 12/27/07 petitioner sought immediate treatment from Dr. Kindred. Petitioner was 4 months pregnant at the time of the injury. Petitioner underwent conservative treatment for her low back with Lannert Chiropractic through the beginning of May of 2008, and IPMR through 12/2/08. Petitioner testified that she still experiences pain in her low back of a 7 on a scale of 10. Petitioner denied any other injuries to her low back. Respondent Pinpoint Marketing offered no testimony or evidence to rebut petitioner's testimony and evidence.

Based on the above, the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that her current condition of ill-being as it relates to her low back is casually related to the accident she sustained while working for respondent Pinpoint Marketing on 12/27/07.

G. WHAT WERE PETITIONER'S EARNINGS?

Petitioner testified that she had no base pay and was only paid commission. Petitioner testified at trial that she was paid 25% commission on all advertising sales she made. Petitioner testified that she sold between \$4,000 and \$6,000 in advertising per week. Petitioner testified that based on these sales numbers she earned \$1,250.00 a week. Petitioner offered into evidence sparse payroll records and sales logs for periods following the accident on 12/27/07. Petitioner was unable to provide any evidence of her earnings in the year preceding the injury. She testified that her payroll records and W-2's were lost in a fire. She testified that her landlord set her belongs on fire when she was moving out and that these documents were destroyed. Petitioner made no effort to contact the State of Illinois or IRS to get copies of these records or her tax returns. She also could not recall where she did her banking while she was employed by respondent Pinpoint Marketing.

The arbitrator finds it significant that when petitioner filed her initial Application for Adjustment of Claim on 2/25/08, as well as her Amended Applications, she alleged an average weekly wage of \$800.00. Given the fact that petitioner was unable to present any evidence, other than her testimony, with respect to her wages in the year preceding her injury, and her initial and amended Applications for Adjustment of Claims represents an average weekly wage of \$800.00, the arbitrator finds the average weekly wage petitioner presented most contemporaneous to the accident on her Application for Adjustment of Claim more credible, especially given the fact that petitioner provided no credible evidence to support her claim at trial that she earned \$1,250 per week. The arbitrator finds the best evidence would have been copies of her tax returns for 2007 that she could have gotten from the Internal Revenue Service and the State of Illinois. Petitioner made no attempt to secure copies of these documents to support her claimed wages.

Based on the above, as well as the credible record, the arbitrator finds the petitioner earned \$35,000 in the year preceding her injury, and her average weekly wage, pursuant to Section 10 of the Act was \$800.

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?

As a result of injury petitioner sustained to her low back on 12/27/07 when she was 4 months pregnant, petitioner underwent treatment with Dr. Kindred at Kindred Obstetrics and Gynecology to ensure her baby was alright and her pregnancy was not in jeopardy. Petitioner also treated with Lannert Chiropractic through the beginning of May of 2008, and IPMR through 12/2/08. The petitioner received conservative treatment for her back injury. Petitioner was referred to Lannert Chiropractic and IPMR by Dr. Kindred based on her complaints of low back pain and neck pain. Respondent offered no testimony or credible evidence to rebut petitioner's testimony or evidence.

Based on the above, as well as the credible evidence the arbitrator finds the treatment petitioner received from Kindred Obstetrics and Gynecology, Lannert Chiropractic, and IPMR was reasonable and necessary to cure or relieve petitioner from the effects of her injury on 12/27/07 that arose out of and in the course of her employment by respondent.

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Petitioner is alleging she was temporarily totally disabled from 12/27/08 through 5/14/08, a period of 20 weeks. On 2/18/08 Dr. Kindred drafted a note indicating that petitioner was "off work from 12/27/07 until six weeks post partum.. she is having complications with her pregnancy due to a fall at work on 12/27/07". Petitioner had no problems with her pregnancy prior to the injury on 12/27/07. Petitioner is not claiming temporary total disability benefits as of 5/15/08, the date she gave birth. Between 12/27/07 and 5/14/08 petitioner was undergoing ongoing conservative treatment for her back with Lannert Chiropractic and treating with Dr. Kindred for the problems with her pregnancy due to the injury on 12/27/07. Respondent offered no testimony or evidence to rebut petitioner's testimony and evidence.

Based on the above as well as the credible evidence the arbitrator finds the petitioner was temporarily totally disabled from 12/28/07 (the date following the injury) through 5/14/08 (the date before she gave birth), a period of 19-5/7 weeks, at a rate of \$533.33 a week.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

As a result of the accident on 12/27/07 petitioner sustained an injury to her low back for which she underwent conservative treatment. Petitioner testified that she did receive some benefit from the treatment, but

still has subjective complaints of pain in her low back. Petitioner was discharged from physical therapy due to no-shows, and stopped treating with the chiropractor because it was no longer helping, and in fact was making her worse. Although petitioner continued to treat with Dr. Kindred up to the date she gave birth, petitioner gave birth without any complications.

Despite having access to medical care, petitioner has not sought any treatment since 2008 because she claim she had no money for transportation or child care. Petitioner claims she cannot work full duty, but provided no medical evidence to support this claim. Petitioner testified that her current pain level is 7 out of 10 on a daily basis. She testified that she takes Aleve and Tylenol. She does not take any prescription medications. Petitioner testified that she still does some home exercises. Petitioner testified that for pain relief she lays on the couch and takes over-the-counter medicine. She also testified that she sometimes uses heat, and her boyfriend massages her back.

Petitioner testified that she is currently working for a company called Damsels in Defense. Petitioner hosts home parties. She testified that she does not conduct these parties even once a week.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner sustained a 3% loss of use of her person as a whole pursuant to Section 8(d)2 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="text" value="up"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CANDICE CARUSO,

Petitioner,

vs.

NO: 11 WC 08404

COSTCO,

Respondent.

14IWCC0484

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, causation, temporary total disability ("TTD"), medical expenses and permanency, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission finds that the Petitioner had reached maximum medical improvement by the time of the April 19, 2013 hearing date, and that permanency could have been determined on Arbitration. The Commission finds that the Petitioner sustained the permanent loss of 15% of the man as a whole under Section 8(d)(2) of the Act.

While the Petitioner testified she saw Dr. Thangamani in February, 2013, no record of this visit was entered into evidence. She also testified that she had an upcoming visit with him in May of 2013. However, the records in evidence indicated that as of the April 19, 2013 hearing date the Petitioner had not undergone any actual treatment for her shoulder since July of 2011. Both parties stipulated that permanency was at issue at the time of hearing. The Petitioner had been back to work since February of 2012.

14IWCC0484

Petitioner was diagnosed with a Type 2 SLAP tear in the right shoulder with bicipital tendonitis and impingement. On May 12, 2011 she underwent surgery with Dr. Thangamani involving arthroscopic biceps tenotomy, labral debridement and subacromial decompression. The Petitioner has returned to work for the Respondent, but in a restricted capacity job that was different than the bakery job she had on the date of accident, as she is limited to lifting 20 pounds or less with no overhead or repetitive work with the affected extremity.

Pursuant to Section 8.1b of the Act, several factors are to be considered in determining permanent partial disability (“PPD”).

With regard to the initial factor, enumerated in Section 8.1b(a), no AMA impairment rating was submitted into evidence in this case. As such, this factor will not be part of the PPD determination.

With regard to factors two (the occupation of the employee) and four (the employee’s future earning capacity), as noted above, she was returned to work in a restricted capacity, resulting in a move from the baking department to a “greeter”-type job with Respondent. She is earning the same wage she was in the baking department. The Petitioner testified that she obtained a degree in athletic training from Lewis University, had planned to eventually become an athletic trainer, and that her restrictions would prohibit her from doing so, potentially inhibiting her future earning capacity. At the same time, she had already been out of school almost two years as of the accident date and had not worked as a trainer through that time. Thus, the injury has impacted her occupation to some degree with the Respondent. While it would likely impact a job as a trainer more significantly, whether the Petitioner would ultimately have an occupation in that field is speculation at this point, as is the wage she might be able to earn in such job.

As to the third factor, the age of the employee, Petitioner was only 25 years old at the time of the accident, which means she will have to deal with her work restrictions for a longer period of time than an older worker. Dr. Thangamani did indicate in his April 25, 2012 narrative report (Petitioner’s Exhibit 9) that the Petitioner would likely still improve over time, but that this could take a while.

The final factor involves evidence of disability corroborated by the treating medical records. The Petitioner testified that she continues to have aching in the shoulder with occasional sharp pains. She has bicep pain with long shifts, and noted occasional neck and shoulder cramping. The Petitioner’s testimony is corroborated by the records of Dr. Thangamani (Petitioner’s Exhibits 6 and 9), Athletico physical therapy (Petitioner’s Exhibit 3) and Dr. Palacci (Petitioner’s Exhibit 10).

Based on the above, the Commission finds support in its finding that the Petitioner sustained the permanent loss of 15% of the man as a whole. Pursuant to Will County Forest Preserve District v. Illinois Workers Compensation Commission, 2012 Ill.App. (3d) 110077WC, 90 N.E2d 16 (2012), permanent injuries to the shoulder are no longer considered to be percentages of loss of the arm, but rather as percentages of loss of the man as a whole.

14IWCC0484

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$220.00 per week for a period of 70-2/7 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 \$220.00 per week for a period of 75 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the permanent loss of 15% of the man as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$46,804.19 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.

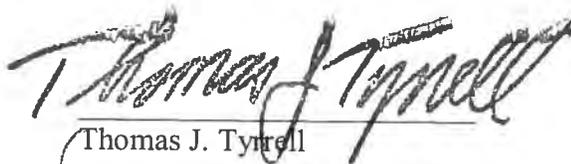
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit in the amount of \$24,054.67 (\$12,867.94 for short and long term disability; \$11,186.73 for medical expenses) under §8(j) of the Act; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

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 \$39,400.00. 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:
TJT: pvc
o 5/20/14
51

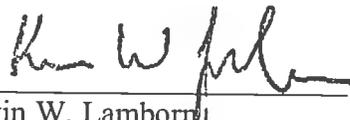
JUN 19 2014



Thomas J. Tyrrell



Michael J. Brennan



Kevin W. Lamborn

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

CARUSO, CANDICE

Employee/Petitioner

Case# 11WC008404

14IWCC0484

COSTCO

Employer/Respondent

On 6/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

0059 BAUM RUFFOLO & MARZAL LTD
RICHARD W BRAUM
33 N LASALLE ST SUITE 1710
CHICAGO, IL 60602

0210 GANAN & SHAPIRO PC
MICHELLE LaFAYETTE
210 W ILLINOIS ST
CHICAGO, IL 60654

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Candice Caruso

Employee/Petitioner

v.

Costco

Employer/Respondent

Case # 11 WC 8404

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Milton Black**, Arbitrator of the Commission, in the city of **Chicago**, on **April 19, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

14IWCC0484

On the date of accident, **October 2, 2010**, 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 **\$14,916.20**; the average weekly wage was **\$286.85**.

On the date of accident, Petitioner was **25** years of age, *single* with **no** dependent children.

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

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$12,867.94** for other benefits, for a total credit of **\$12,867.94**.

Respondent is entitled to a credit of **\$11,186.73** under Section 8(j) of the Act for medical benefits.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **\$220.00/week** for **70 2/7^{ths}** weeks, commencing **October 4, 2010** through **February 8, 2012**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from **October 3, 2010** through **April 19, 2013**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of **\$12,867.94** for **short term disability benefits** and **long term disability benefits** that have been paid and Respondent shall hold Petitioner harmless from any claims by any providers of those benefits for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay **\$46,804.19** for medical services, as provided in Section 8(a) of the Act. Respondent shall be given credit for **\$11,186.73** for **medical** benefits paid under Section 8(j) of the Act. Respondent is to hold Petitioner harmless for any claims for reimbursement from any health insurance provider and shall provide payment information to Petitioner relative to any credit due. Respondent is to pay any unpaid balances with regard to said medical expenses directly to Petitioner. Respondent shall pay any unpaid, related medical expenses according to the fee schedule or the negotiated rate and shall provide documentation with regard to said fee schedule or negotiated rate calculations to Petitioner.

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.

14IWCC0484

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

Milton Black

Signature of Arbitrator

June 5, 2013
Date

JUN - 5 2013

ICArbDec19(b)

STATEMENT OF FACTS

Petitioner testified that on October 2, 2010 she injured her right shoulder while she was working in the bakery department as a wrapper/closer for Respondent. Her job duties included moving and loading pans and trays of bakery products, moving them to and from ovens, and preparing products for baking and sale. The empty pans weighed as little as 2 ½ pounds and were moved 15 at the time. The empty muffin trays weighed as little as 3 pounds and were moved 10 at a time. Petitioner estimated that a single pan or tray filled with bakery products weighed about 10 pounds. She sometimes had to lift the stack trays which could weigh as much as 40 pounds.

On October 2, 2010 she was assigned the extra duties of pouring 90 pumpkin pies onto trays. There were two pumpkin pies per tray, and each tray weighed about 10 pounds. She testified that by the eightieth tray she was experiencing “stabbing” right shoulder pain and that she felt a “pop” in her right shoulder.

Petitioner had previously injured her right shoulder in June of 2010 when she was helping bring her wheelchair-bound grandmother down the stairs of their home. Petitioner noticed right shoulder pain the following day. On June 14, 2010, Petitioner sought treatment for right shoulder pain from Dr. Ilah Heller-Bair, her family physician. Dr. Heller-Bair prescribed Relafen and Cyclobenzaprine, imposed work restrictions of no lifting, pushing or pulling over 5 pounds and no reaching above shoulder level (RX4). When the symptoms persisted, Dr. Heller-Bair prescribed physical therapy, which was done at Athletico, and ordered an MRI, which

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was interpreted by the radiologist to show no rotator cuff or labral tear and a normal biceps tendon (PX2).

Petitioner was released to return back to work without restrictions effective August 6, 2010. Petitioner returned to work to regular work activities. Her symptoms persisted, and on September 22, 2010 she returned to Dr. Heller-Bair. Petitioner was referred to Dr. Robert Welsh, an orthopedic physician at M & M Orthopedics. He examined her on September 29, 2010, administered an injection, and told her to follow up in one month (RX3).

Petitioner testified that on October 2, 2010, three days later, she sustained a work injury to the same shoulder. Respondent sent Petitioner to Physicians Immediate Care on October 4, 2010, where a history of the work accident was taken and she was assessed with a right shoulder rotator cuff strain (PX1).

Petitioner returned to Dr. Heller-Bair on October 4, 2010 where she gave a history of the “pop” at work and a “stabbing pain.” Dr. Heller-Bair noted on examination “Right shoulder sore, pain with internal rotation, can’t abduct over 90 degrees”. On October 7, 2010, Dr. Heller-Bair diagnosed a shoulder strain, found a right shoulder re-injured on October 2, 2010, and referred Petitioner back to Dr. Welch (PX1).

After returning to M&M Orthopaedics on November 1, 2010, Petitioner went through physical therapy from November 9, 2010 through the date of her surgery in May 2011. Dr. Welch ordered radiology studies. Thereafter, Dr. Vijay Thangamani at M&M Orthopaedics took over Petitioner’s care (PX6).

Since she was not getting relief from rest, medications and physical therapy and after a second opinion from Dr. Aaron Bare at OAD Orthopaedics (PX5), Dr. Thangamani recommended surgery. Right shoulder surgery was performed by Dr. Thangamani at Naperville Surgical Center on May 12, 2011. The surgery revealed “moderate fraying at the base of the bicep tendon at the tubercle of the superior glenoid”. When the biceps was pulled intra-articularly, significant inflammation, as well as partial tearing was noted on its substance.” Dr. Thangamani performed a right shoulder arthroscopic biceps tenotomy and labral debridement and a right shoulder subacromial decompression (PX8).

Petitioner underwent post-surgical physical therapy (PX3). She testified that she continued to follow up with Dr. Thangamani. She testified that she was released to return to work with restrictions of no

repetitive work no overhead work and no lifting more than 20 pounds. She testified that she puts ice on her shoulder at times and takes over-the-counter medications. When she lifts anything heavy, her shoulder hurts.

Respondent could not immediately accommodate her restrictions but did put her back to work as a greeter performing lighter work within her restrictions at a different store on February 8, 2012. She continues to work there and still has the same restrictions. Petitioner testified that she continues to see Dr. Thangamani to the present date. She testified that her last appointment was in "February" and that her next scheduled appointment was for May 20, 2013. Dr. Thangamani's most current chart note is dated July 1, 2011, and it stated that she was six weeks status post right shoulder arthroscopy, biceps tenotomy, and subacromial decompression. She was to continue physical therapy and return in 6 to 10 weeks for repeat evaluation (PX6). His April 25, 2012 medical report did not place her at maximum medical improvement (PX10).

Petitioner testified that her plans were to be an athletic trainer. She went to Lewis University and received a bachelor's degree in that field. She had planned a career in that field but cannot do so at this time because that job requires lifting.

Dr. Liana Palacci examined petitioner at the request of Petitioner's attorney. Dr. Palacci opined that Petitioner's current shoulder condition and subsequent surgery were directly related to her work accident (PX10).

Dr. Gregory Nicholson examined Petitioner at Respondent's request. He opined that Petitioner had an ongoing, pre-existing condition that was exacerbated by the events of October 2, 2010 with "no new injury" (RX1).

ACCIDENT

Petitioner was the only witness to testify. The substance of her testimony regarding accident was that she had a previously weakened right shoulder that was aggravated by repetitive lifting at work on October 2, 2010. She was a nervous witness, and she was straightforward and credible in her testimony. Her testimony was

corroborated by the medical records and the opinions of the treating physicians. Additionally, her testimony was consistent with the sequence of events.

Based upon the foregoing, the Arbitrator finds that on October 2, 2010 petitioner sustained an accident that arose out of and in the course of her employment.

CAUSATION

Petitioner testified credibly that the pain she felt after her accident was worse than what she had experienced previously. The medical records and the opinions of her treating physicians are corroborative. Although Petitioner received active medical treatment only three days three days before her accident, her right shoulder condition was seriously exacerbated on the accident date. The prescription for surgery came after, not before, her work accident.

Based upon the foregoing, the Arbitrator finds that petitioner's current condition of ill being is causally related to the accident.

MEDICAL

Based upon the medical records and the opinions of the treating physicians, the Arbitrator finds that the claimed medical charges are reasonable, necessary, and related to the accident.

TEMPORARY TOTAL DISABILITY

Based upon the nature of the injury, the medical records, and the disability notes, the Arbitrator finds that temporary total disability benefits should be awarded commencing with the first medical appointment of October 4, 2010.

NATURE AND EXTENT

Petitioner testified she continues to see Dr. Thangamani for medical treatment. She indicated that she last saw him in February 2012 and that her next appointment was scheduled for May 20, 2012. Dr. Thangamani's most current chart note is dated July 1, 2011, and it stated that she was six weeks status post right shoulder arthroscopy, biceps tenotomy, and subacromial decompression. She was to continue physical therapy

14IWCC0484

and return in 6 to 10 weeks for repeat evaluation. His April 25, 2012 medical report does not place her at maximum medical improvement.

Accordingly, a finding of permanency cannot be made at this time. Petitioner's has testified that she remains under active medical treatment, and her treating physicians have not placed her at maximum medical improvement.

As an additional matter, the Arbitrator notes that the most current medical treatment records have not been submitted, resulting in incomplete medical evidence.

In no instance shall this finding be a bar to subsequent hearing and determination of the nature and extent of Petitioner's injury.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="text" value="down"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EILEEN PAULE,

Petitioner,

vs.

NO: 09 WC 21900

SCHNUCKS,

14IWCC0485

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by both the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, temporary total disability, prospective medical treatment, choice of physicians and penalties and attorney fees, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission finds that the Petitioner is not entitled to temporary total disability from July 23, 2010 through July 10, 2011. There are no progress notes or off work slips which indicate work status over this period of time. It is the Petitioner's responsibility make certain that she produces evidence to support off work status. Dr. Sprich did not take the claimant off work during this time period. The records of Dr. Thom also do not indicate off work status during this period of time. Dr. Thom testified (Petitioner's Exhibit 5) that he believed that Dr. Sprich was responsible for Petitioner's work status during this time, and that it was possible that the Petitioner could have performed light duty work during that time. No opportunity to provide such work was presented to the Respondent due to the failure of these physicians to indicate the work status, and the failure of Petitioner to provide same to Respondent. The first note in the record of evidence regarding Petitioner's work status was from Dr. Gornet on July 11, 2011, when he took Petitioner off work completely.

14IWCC0485

Based on the above, the Commission finds that Petitioner was entitled to temporary total disability from July 11, 2011 through the April 16, 2013 date of hearing.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$329.61 per week for a period of 92-1/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the causally related medical expenses included in Petitioner's Exhibit 10 under §8(a) of the Act, pursuant to Section 8.2 of the Act (Fee Schedule), and with Respondent entitled to credit for any amounts previously paid.

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

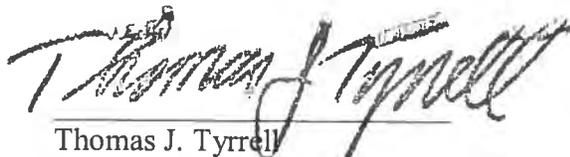
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

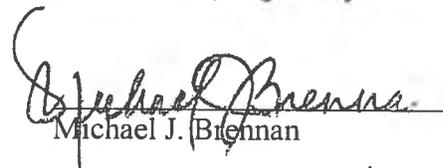
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

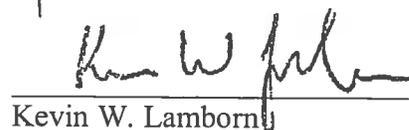
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$47,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
TJT: pvc
o 4/21/14
51

JUN 19 2014


Thomas J. Tyrrell


Michael J. Brennan


Kevin W. Lamborn

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

PAULE, EILEEN

Employee/Petitioner

Case# **09WC021900**

SCHNUCKS

Employer/Respondent

14IWCC0485

On 6/17/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

0299 KEEFE & DEPAULI PC
JAMES K KEEFE JR
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

0180 EVANS & DIXON LLC
JAY LORY
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

14IWCC0485

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Eileen Paule
Employee/Petitioner

Case # 09 WC 21900

v.

Consolidated cases: _____

Schnucks
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Herrin**, on **04/16/13**. 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 **Choice of caregiver under Section 8(a)**

14IWCC0485

FINDINGS

On the date of accident, **05/02/09**, 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 **\$24,720.56**; the average weekly wage was **\$494.41**.

On the date of accident, Petitioner was **42** years of age, *single* with **0** dependent children.

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

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$0**.

ORDER

SEE ATTACHED DECISION

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

June 11, 2013

Date

ICArbDec19(b)

JUN 17 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

14IWCC0485

EILEEN PAULE,

Petitioner,

vs.

SCHNUCKS – SWANSEA,

Respondent.

No. 09 WC 21900

ADDENDUM TO ARBITRATION DECISION

Procedurally, this matter was originally tried pursuant to Sections 8(a) and 19(b) of the Act before Arbitrator Teague on July 22, 2010. The Arbitrator's award was entered August 17, 2010 and was appealed to the Commission for review. On May 3, 2011, the Commission affirmed and adopted the Arbitrator's award in 11 IWCC 0437. The Commission decision was appealed to the St. Clair Circuit Court, receiving case number 11 MR 133. On September 20, 2011, Judge McGlynn affirmed the Commission decision as not being against the manifest weight of the evidence. The case was thereafter appealed to the Appellate Court. On September 20, 2012, the Appellate Court affirmed the Circuit Court's ruling. This matter was not appealed further and was thereafter remanded to the arbitration level for further proceedings. The Appellate Court order with the earlier attached decisions was introduced as Arbitrator's Exhibit III as the controlling law of the case. See, e.g., *Help at Home vs. Illinois Workers' Compensation Commission*, 405 Ill.App.3d 1150 (4th Dist. 2010). On April 16, 2013, this matter was again tried pursuant to Sections 8(a) and 19(b).

STATEMENT OF FACTS

The petitioner, currently 46 years of age, worked for the respondent as a grocery checker. She last worked for them in May 2009 and was formally terminated in July 2010. She testified she has not worked since May 2009. She asserts repetitive trauma causing cervical spine pathology with an effective date of loss of May 2, 2009. Accidental injuries were disputed at the original trial and found by the Arbitrator, as was causal connection to her medical condition at that time.

Medically, the claimant had neck pain stemming back at least until November 2008, when she was treated in the emergency room and with Dr. Bertelsman, a chiropractor, and also underwent an MRI scan revealing multilevel disk bulges. On or about May 2, 2009, she experienced a recurrence of pain at work. She sought treatment

with Dr. Bertelsman on May 5, 2009 and several dates thereafter. The petitioner was referred to Dr. David Kennedy, as well as to a neurologist. See generally Arb.Ex.III.

The petitioner ceased treatment with Dr. Bertelsman and Dr. Kennedy, and then selected Dr. Wade as her second choice of physician. See Arb.Ex.III. Dr. Wade thereafter referred the claimant to Dr. Sprich, who first recommended injections and ultimately performed a C5-6 fusion on March 15, 2010. She underwent postoperative care in 2010 at his prescription; the surgery and follow-up care was the focus of the prior hearing. See generally Arb.Ex.III.

The prior Arbitrator decision authorized a follow-up appointment with Dr. Sprich. That appointment apparently never took place; Dr. Sprich authorized injections, and the claimant pursued such treatment with Dr. Thom, who also assumed control of the medication prescriptions. PX5. Dr. Thom performed multiple injections in and about the cervical spine and prescribed medication between June 23, 2010 and May 25, 2011. See PX5. Dr. Thom did not write off work prescriptions; in deposition, he testified he believed Dr. Sprich was doing so. He did not express familiarity with her pre-injury job duties or testify as to what limits she might have on her activities at what times during that treatment period; he prepared a written report for the petitioner's counsel which suggests she would not have been able to work full-time or in more than a light duty capacity. On April 29, 2011, Dr. Thom's associate placed permanent restrictions of limited pushing, pulling and lifting. On May 25, 2011, Dr. Thom provided a referral to a surgeon, Dr. Gornet, at the claimant's request.

The petitioner had first seen Dr. Gornet on August 17, 2009. The petitioner was apparently recommended to go there by a family friend. At that time he examined her and did not recommend further treatment at that point. See PX6. This Arbitrator notes that Dr. Gornet's records either were not provided to the prior Arbitrator, or else she did not see fit to comment upon them. Regardless, Dr. Gornet did not provide follow-up treatment following that time until May 31, 2011. At that time, he examined her and reviewed X-rays which he interpreted as showing a failed fusion. A CT scan also suggested a failed fusion and Dr. Gornet since recommended revision surgery in the form of C5-6 fusion and C4-5 disk arthroplasty. He has also maintained the claimant off of work while surgery is pending. PX6.

On October 3, 2011, the petitioner saw Dr. Mirkin for a Section 12 exam at the respondent's request. Dr. Mirkin opined that the original surgery performed by Dr. Sprich had been likely to fail. He further noted that the petitioner's comorbidities had persisted, in particular her continuing to smoke, and opined that further surgery, while not necessarily medically unreasonable, had significant likelihood of failure and he would recommend against pursuing such an option. He further noted she did not appear likely to return to the workforce regardless of surgical intervention and noted that as long as she continued to smoke she should not undergo fusion surgery. See RX1.

Dr. Mirkin further noted the petitioner had concordant psychiatric issues and a histrionic personality, which were referenced in the medical records as predating this

injury. The Arbitrator notes that this is thoroughly corroborated by the petitioner's demeanor at trial, including but not limited to her breaking down in tears at one point while discussing her mother's death which had occurred approximately four years prior to the hearing. At trial, the petitioner acknowledged a long history of smoking with periodic attempts to quit. She testified she wants to undergo the surgery proposed by Dr. Gornet. She further testified that she had never sought to return to work after the surgery in 2010, and instead had sought and was receiving Social Security Disability benefits.

OPINION AND ORDER

Regarding the 2010 fusion surgery and the proposed revision, the Arbitrator notes that the petitioner was apparently not in the best of either physical or mental health before the surgery, and in fact before the asserted date of loss. It is ironic that the surgeon now proposing a two-level revision surgery had in fact originally recommended against the first one-level surgery, and given the overall results of that surgery, it indeed appears that surgery may well have been ill-advised to undertake. Regardless, the 2010 surgery does appear to have been aimed at relieving neural entrapment symptoms and has been determined to be reasonable and medically necessary by the prior Arbitrator. Whether that determination was made without the benefit of Dr. Gornet's 2009 presurgical evaluation is irrelevant at this point. The law of the case has established an aggravation to the petitioner's pre-existing condition and further has established a causal connection between that aggravation and the 2010 surgery performed by Dr. Sprich. See Arb.Ex.III.

Relative to the choice of provider under Section 8(a), Dr. Gornet appears to have been sought by the petitioner on her own; no documentation that the chiropractor made the referral to Dr. Gornet was presented, and Dr. Gornet testified she sought him without a medical referral. Her testimony to the contrary lacks credibility. However, his 2009 bills were not presented and he provided no treatment between 2009 and 2011. Given that gap, the Arbitrator assesses the referral from Dr. Thom suffices to place Dr. Gornet in that referral chain, rather than a circumvention to allow a third treating provider.¹

The medical bills incurred to date (see PX10) shall be paid to the providers within the confines of Section 8.2 of the Act. Regarding the proposed medical course, the respondent is likely correct that the petitioner's smoking impeded her recovery, and the petitioner's insistence that she was not briefed about the implications of such strains credulity. However, it appears clear that the need for the proposed surgery is causally related to the first surgery, which in turn has been determined to be related to the accident in question. Accordingly, the respondent shall authorize and pay for the proposed two-level surgery subject to the limits of Sections 8(a) and 8.2 of the Act.

¹ Dr. Gornet could, chronologically, in fact be the second choice of provider, based on his 2009 evaluation. In that analysis, Dr. Wade, Dr. Sprich and Dr. Thom's referral chain would be the excessive provider choice under Section 8(a). In such a circumstance, the result would be their bills would be excluded under 8(a) and credit for payments made due to the respondent, rather than a denial of Dr. Gornet's care, either in 2009 or in 2011 and continuing. However, while that may be true, this Arbitrator feels bound by the prior Arbitrator's finding that Dr. Wade's referral chain was the second choice under 8(a).

While the petitioner did not receive lost time slips from Dr. Thom, she was assessed off work through the date of the original trial and was still in postsurgical recovery while under his care. The Arbitrator finds the petitioner to have been medically excluded from her regular occupation from July 23, 2010, through April 16, 2013, inclusive, which is 142 & 4/7 weeks. The respondent shall pay TTD benefits of \$329.61 per week for this period, a total liability of \$46,992.97.

Regarding the claimant's request for penalties and fees, this request is denied. Dr. Thom did not produce work status slips during his treatment course and attempted to effectively back-date a light duty restriction. Moreover, he lacked any apparent foundation for the petitioner's physical demands of pre-injury employment. Respondent secured a Section 12 examination in 2011, while this matter was on appeal, that opined the claimant could work her regular job. The respondent's dispute as to choice of provider was not frivolous; Dr. Gornet's prior involvement with the petitioner was a valid point to assert in defense, and the claim that he was not a treating physician because he did not prescribe invasive care lacks any foundation. The respondent's concerns regarding further invasive care are understandable; the petitioner's unrelated psychiatric concerns and her continued smoking is likely to impede her recovery and may well prevent a successful outcome. As noted above, these concerns and defenses were not successful, but do serve to convince this Arbitrator that the respondent has not been proceeding in bad faith.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
CHAMPAIGN)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="text" value="down"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TRACEY ATTERBERRY,

Petitioner,

vs.

NO: 07 WC 14064

14IWCC0486

PORTA COMMUNITY SCHOOL DISTRICT,

Respondent.

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 causation, temporary total disability ("TTD"), medical expenses and prospective medical treatment, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission denies any medical expenses that were awarded by the Arbitrator which were incurred prior to October 1, 2007. An 8(a)/19(b) hearing was previously held on that date, and any incurred medical expenses which predate that hearing should have been submitted into evidence at that time. Each Section 19(b)/8(a) hearing is a separate matter. As noted by the Supreme Court in Hughey v. Industrial Commission, 76 Ill.2d 577, 394 N.E.2d 1164 (1979), the doctrine of *res judicata* extends to not only matters that have already actually been determined,

but also to matters which could properly have been raised and determined therein. The Court further stated: "This rule applies to every question relevant to and falling within the purview of the original action, in respect to matters of both claim or grounds of recovery, and defense, which could have been presented by the exercise of due diligence". The Petitioner herein had the opportunity at the initial Section 8(a)/19(b) hearing to submit unpaid medical expenses that were incurred prior to October 1, 2007. She failed to do so, and thus those medical expenses are denied. (Id at p. 582, 1166).

Additionally, the Commission modifies the Arbitrator's award of prospective medical care, including the surgery prescribed by Dr. Rhode. The evidence in this case clearly shows a discrepancy regarding whether the cervical spine, the left shoulder, or both, are responsible for the Petitioner's symptoms. As this remains unclear, the Commission vacates the award requiring the Respondent to authorize left shoulder surgery. Dr. Rhode himself noted that the Petitioner did not return to him for ten months subsequent to diagnostic injection (see Petitioner's Exhibit 10, and Petitioner's Exhibit 12, pp. 15-22). Additionally, he testified that if there was any question about whether this April 2011 injection was effective or not and what this indicated diagnostically, he would want to perform an additional injection and to have the Petitioner follow up with him promptly thereafter. Dr. Kolb, Respondent's Section 12 examining physician, testified that he believed the Petitioner's condition could be related to her cervical spine.

Based on the Commission's review of the medical evidence in this case, we award prospective medical treatment as follows: 1) Respondent shall authorize an updated left diagnostic acromioclavicular injection with Dr. Rhode, as well as a prompt follow up visit with Dr. Rhode, after which both Dr. Rhode and Dr. Kolb will be allowed to review the results and provide their treatment opinions; 2) Respondent shall authorize a cervical work-up with a cervical spine specialist if recommended by Dr. Rhode following the updated diagnostic injection; and, 3) Respondent shall authorize examination with Dr. Romeo as recommended by Dr. Kolb in his February 4, 2011 report (see Respondent's Exhibit 1). If the parties come to agreement as to the proper course of treatment prior to completion of all three of these prospective medical awards, they may agree to disregard any remaining prospective medical awards. If the parties do not both agree to disregard any remaining prospective medical awards, the Respondent shall authorize same.

The Commission has ongoing questions as to whether the Petitioner's physical complaints are related to her cervical spine or left shoulder, and believes it is important that this issue be further investigated before a shoulder surgery is performed which may not be needed. If the parties cannot agree on a course of treatment subsequent to the opinions generated by the three prospective medical awards noted above, the Petitioner certainly has the option of filing for an updated hearing pursuant to Sections 19(b) and 8(a) of the Act in order to allow the Arbitrator to determine and award the proper course of further treatment.

14IWCC0486

As noted above, the Arbitrator's decision with regard to causation and TTD is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$200.00 per week for a period of 282-6/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the reasonable and necessary medical services set forth in Petitioner's Exhibit 13 (as more fully discussed in the Memorandum of Decision of Arbitrator, which is attached hereto and made a part hereof) which were incurred subsequent to October 1, 2007 as medical expenses under §8(a) of the Act, and subject to the medical fee schedule, Section 8.2 of the Act.

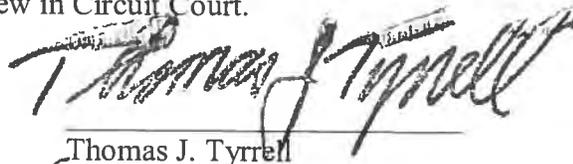
IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written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

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

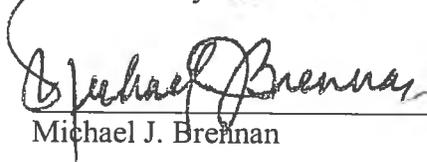
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

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

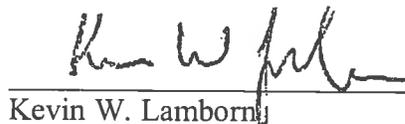
DATED: JUN 19 2014
TJT: pvc
o 5/6/14
51



Thomas J. Tyrrell



Michael J. Brennan



Kevin W. Lamborn

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

ATTERBERRY, TRACEY

Employee/Petitioner

Case# 07WC014064

PORTA COMMUNITY SCHOOL DIST

Employer/Respondent

14IWCC0486

On 8/30/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% 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:

1824 STRONG LAW OFFICES
EDWARD J PRILL
3100 N KNOXVILLE AVE
PEORIA, IL 61603

2904 HENNESSY & ROACH PC
STEPHEN J KLYCZEK
2501 CHATHAM RD SUITE 220
SPRINGFIELD, IL 62704

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

TRACEY ATTERBERRY

Employee/Petitioner

v.

PORTA COMMUNITY SCHOOL DIST.

Employer/Respondent

Case # 07 WC 14064

14IWCC0486

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 **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Urbana**, on **July 22, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **September 27, 2006**, 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 **\$10,400.00**; the average weekly wage was **\$200.00**.

On the date of accident, Petitioner was **43** years of age, *married* with **3** dependent children.

Petitioner *has not* 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 **\$2,000.00** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$2,000.00**.

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

ORDER

Respondent shall pay reasonable and necessary medical services set forth in Petitioner's Exhibit 13 (as more fully discussed in the Memorandum of Decision of Arbitrator), as provided in Section 8(a) of the Act, and subject to the medical fee schedule, Section 8.2 of the Act.

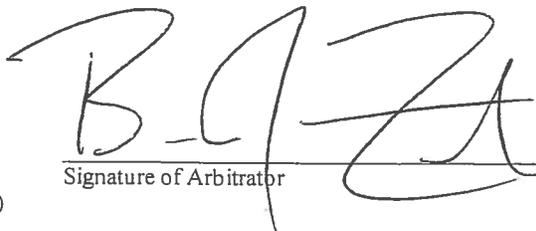
Respondent shall authorize and pay for the left shoulder surgery recommended by Dr. Blair Rhode, pursuant to Section 8(a) of the Act, and subject to the medical fee schedule, Section 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of \$200.00/week for 282 6/7 weeks commencing 10/01/2007 through 02/23/2010, and again from 07/16/2010 through 07/22/2013, as provided in Section 8(b) 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

08/26/2013
Date

STATE OF ILLINOIS)
)SS
COUNTY OF CHAMPAIGN)

14IWCC0486

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)**

TRACEY ATTERBERRY
Employee/Petitioner

v.

Case # 07 WC 14064

PORTA COMMUNITY UNIT SCHOOL DIST.
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, Tracey Atterberry, has offered as Petitioner's Exhibit 3 a decision of Arbitrator Stephen Mathis issued December 13, 2007. This trial was heard pursuant to Section 19(b) of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act"), and took place on October 1, 2007, where issues existed with regard to accident, causal connection, the reasonableness and necessity of the medical services, entitlement to temporary total disability (TTD) benefits, penalties, and prospective medical treatment. (Petitioner's Exhibit (PX) 3). Petitioner further offered as Petitioner's Exhibit 2 a Transcript of Proceedings of that trial, including all previous exhibits and testimony offered by Petitioner and witnesses for Respondent, Porta Community School District. Arbitrator Mathis specifically held the following in his decision:

"With respect to the left shoulder, the Arbitrator also finds that the Petitioner's condition of ill-being, with respect to the left shoulder, to be causally connected to Petitioner's 9/27/06 slip and fall accident."

(PX 3, p. 8).

This decision was affirmed by the Illinois Workers' Compensation Commission (hereafter the "Commission") in all respects on October 2, 2008. (PX 4). The Commission decision was affirmed by the Circuit Court of Menard County, Illinois on July 28, 2009. (PX 5). The Circuit Court decision was further affirmed in all accounts by the State of Illinois Appellate Court, Fourth District, with the Order entered on May 4, 2010, whereby the Appellate Court affirmed the Commission decision and did not disrupt the Commission and Arbitrator Mathis' decision that there was a causal relationship between Petitioner's left shoulder and her September 27, 2006 work accident. (PX 6).

The matter which is the subject of this decision was heard on July 22, 2013. (See also Arbitrator's Exhibit 1). Petitioner testified that, following the October 1, 2007 hearing, she continued to visit with her then-treating orthopedic surgeon, Dr. Rodney Herrin, of the Orthopedic Center of Illinois. (See also PX

9). The December 17, 2007 record from the visit with Dr. Herrin reflects ongoing problems with Petitioner's left shoulder. The medical records further reflect Dr. Herrin's discussion with Petitioner of a potential resection at the superior medial border of the scapula, but that it was a very extensive procedure with the results not completely predictable, and this would be performed only as a last resort. Dr. Herrin's last visit with Petitioner was on August 23, 2010. At that time, the complaints offered by Petitioner continued to be problems with her left shoulder, including complaints of pain and popping in the posterior aspect of the left shoulder. Once again, Dr. Herrin's medical records discuss a surgical option with the resection of the superior border of the scapula. Petitioner's testimony and Dr. Herrin's medical records reflect that surgery was not actually recommended and surgery was not performed to the left shoulder. (PX 9).

Petitioner testified that she was then referred for a second opinion regarding her left shoulder condition to Dr. Blair Rhode. Petitioner offered the medical records of Dr. Rhode, identified as Petitioner's Exhibit 10. Petitioner further offered the evidence deposition testimony of Dr. Rhode, which is identified as Petitioner's Exhibit 12. Dr. Rhode testified that he first medically visited with Petitioner on September 29, 2010, with a reported history of injury to her left shoulder. (PX 12, p. 5). The "History" section of the medical report of Dr. Rhode dated September 29, 2010 identifies that Petitioner presented as a referral from Dr. Herrin for evaluation of a work-related shoulder injury on September 27, 2006. (PX 10). Dr. Rhode testified that Petitioner reported to him that there was a previous steroid injection performed on the back of the shoulder, or posteriorly, which Dr. Rhode stated would suggest this was a subacromial injection, which were typically performed for rotator cuff issues. (PX 12, pp. 5-6). Dr. Rhode opined that Petitioner's condition of ill-being was evidence of rotator cuff symptomatology, rotator cuff tendinopathy without a tear, and an acromioclavicular (AC) injury. (PX 12, pp. 7-8). Dr. Rhode further testified that treatment options at that point in time would be to proceed with an arthroscopic subacromial decompression and distal clavicle excision given her failed conservative treatment options and previous plans and recommendations. (PX 12, p. 8). Dr. Rhode further testified that on April 6, 2011, he had performed a diagnostic therapeutic injection into the AC joint to see if that at least temporarily removed the pain, which would then confirm that it is more of an AC issue more than a cervical issue. (PX 12, pp. 12-13). The testimony was in response to a cervical spine MRI that was performed on April 21, 2011. (PX 11). Dr. Rhode's interpretation of the MRI was left-sided C5-6 disc with foraminal compromise. (PX 12, p. 15). Dr. Rhode testified that if the injection he provided in April 2011 provided some relief (*e.g.*, ten minutes of relief or a month's worth of relief), the diagnostic therapeutic injection would in turn establish that the AC joint is the component of Petitioner's symptoms and not the cervical spine. (PX 12, p. 16). On February 8, 2012, Dr. Rhode reported that Petitioner stated that the injection worked great for approximately three weeks. (PX 10).

Petitioner testified that after she underwent the injection performed by Dr. Rhode, she had about three weeks of relief of pain to her left shoulder, and then her symptoms returned to the manner in which they existed before the injection was performed. Petitioner testified that she had not had any complaints of neck pain and that she had not sought any medical treatment for neck complaints that were in any way associated with or related to her September 27, 2006 work accident.

On February 4, 2011 and August 9, 2011, Petitioner was evaluated at Respondent's request by Dr. Edward Kolb pursuant to Section 12 of the Act. Respondent offered the testimony of Dr. Kolb. Dr. Kolb testified that it was his belief that Petitioner's problem was more of a cervical issue and not related to the left shoulder. (RX 1, pp. 18-20). Dr. Kolb testified his diagnosis of Petitioner was degenerative disc disease of the cervical spine. (RX 1, p. 10). Dr. Kolb also testified that Petitioner's current condition is not

related to the accident. Dr. Kolb explained that his opinion was based on Petitioner appearing to have symptoms originating more in the cervical spine and that the shoulder workup had been relatively unremarkable. Dr. Kolb went on to testify that it was his opinion that Petitioner likely had a long standing degenerative condition of the cervical spine not associated with the accident. Dr. Kolb also testified that Petitioner did not require any specific restrictions pertaining to the accident. (RX 1, pp. 13-14). Dr. Kolb testified that it is very common that cervical conditions will cause shoulder pain. The doctor testified he was never able to elicit any pain over the anterior aspect of Petitioner's shoulder in the region of her AC joint and therefore did not feel she had any findings consistent with AC joint arthropathy as diagnosed by Dr. Rhode. Dr. Kolb also testified he felt the diagnosis made by Dr. Herrin can present in similar fashion to a cervical problem. (RX 1, pp. 33-34).

Petitioner testified that she was terminated from her employment. This was established in the previous trial. (PX 2, Transcript p. 20). Petitioner testified that she was provided restrictions and the medical records of Dr. Herrin suggest that she was given a restriction of no repetitive use of the left upper extremity. (PX 9). Petitioner testified that she searched for employment with this restriction at places such as Wal-Mart, County Market, Sports Authority, Jewel's Cleaning Service, and other places of employment located in and around Springfield, Illinois. Petitioner testified that she was able to secure employment through the U.S. Department of Census Bureau for the dates of February 23, 2010 through July 15, 2010. She testified that this was the only employment she was able to secure despite her attempt to find employment with the restrictions. Dr. Rhode, upon first examination on September 29, 2010, placed Petitioner on restriction of no use of the left upper extremity. He then changed the work status recommendation to completely off work effective April 6, 2011, and reiterated the work status slip on February 8, 2012. (PX 10). This is the work status note for which Petitioner was operating under at the time of trial on July 22, 2013.

Petitioner offered into evidence a series of medical invoices she claims she incurred as a result of the work accident and that remain outstanding, totaling \$9,946.74. (PX 13).

CONCLUSIONS OF LAW

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

The evidence establishes that Arbitrator Mathis made a court finding on October 1, 2007 that Petitioner's left shoulder condition was causally connected to her work accident of September 27, 2006. The Commission, the Circuit Court, and the Appellate Court all affirmed this decision. Petitioner testified to ongoing medical treatment visits which occurred after the October 1, 2007 trial. The medical records reflect visits with Dr. Herrin in December 2007 through August 2010. The records reflect that Dr. Herrin discussed a certain type of surgical procedure for ongoing left shoulder complaints with Petitioner, but that due to the complications and risks, a surgery was not actually performed or recommended by Dr. Herrin. The evidence establishes that there was a referral from Dr. Herrin to Dr. Rhode, who is Petitioner's current treating orthopedic surgeon. Dr. Rhode recorded a history of an injury occurring on September 27, 2006. He further performed a diagnostic therapeutic injection into Petitioner's left shoulder on April 6, 2011. The evidence clearly establishes, through the credible testimony of Petitioner and Dr. Rhode's medical records for the visit of February 8, 2012, that the left shoulder injection only provided about three weeks of relief, at which point in time her complaints of pain returned to the way they were before the injection occurred. Dr. Rhode testified that this was a diagnostic injection, and given any feelings of relief (whether ten minutes long or a month long) and due to the fact that the needle is being

inserted directly into the location of pain in the shoulder, the clinical impression of the AC joint problem as opposed to a cervical spine problem was confirmed. Petitioner credibly testified that she had never sought medical treatment for her neck. She had never had complaints to her neck that she in any way associated to her September 27, 2006 work injury. The only evidence that exists in the record from the first hearing to the second hearing with regard to neck complaints is an examination performed by Dr. Kolb at the request of Respondent where Dr. Kolb is of the opinion that Petitioner's problems derive from her neck. MRI testing of the cervical spine revealed mild degenerative changes with foraminal compromise most pronounced on the left at C5-6. Petitioner's medical records do not offer any evidence or suggest that she was complaining of neck pain at any point in time. All of her complaints are consistently identified as left shoulder complaints. Petitioner offered medical records identified as Petitioner's Exhibit 8 (Menard Medical Center), which show that Petitioner did have visits following the first trial with that medical facility as well. Those medical records clearly identify and record a history of complaints that pertain to her left shoulder.

Given the Commission's previous finding that Petitioner's left shoulder condition was causally related to her September 27, 2006 work accident, and given Dr. Rhode's testimony regarding the injection and the temporary relief that it provided to her shoulder, the Arbitrator finds that Petitioner, once again, has established that her left shoulder condition of ill-being is causally related to her work accident of September 27, 2006. The Arbitrator simply does not find the testimony of Dr. Kolb that Petitioner's problems are related to her cervical spine as opposed to her left shoulder to be compelling. The Arbitrator concludes that Petitioner has proven that her left shoulder condition is causally related to her September 27, 2006 work accident.

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?

Having found Petitioner's current condition of ill-being regarding her left shoulder is causally related to the work accident, and after reviewing the medical invoices at issue, the Arbitrator awards Petitioner medical expenses as set forth in Petitioner's Exhibit 13, as set forth below:

• Memorial Medical Center	\$1,853.80
• Menard Medical Center	\$745.61
• Orland Park Orthopedics	\$4,190.33
• Orthopedic Center of Illinois	\$2,810.00
• Prairie Spine and Pain Institute	\$347.00
<u>TOTAL</u>	<u>\$9,946.74</u>

The foregoing medical bills shall be paid by Respondent, subject to the medical fee schedule set forth in Section 8.2 of the Act and any applicable credit that is due Respondent.

Issue (K): Is Petitioner entitled to any prospective medical care?

The Arbitrator finds the testimony and recommendations of Dr. Rhode to be compelling in this matter. Dr. Rhode recommends surgery to Petitioner's left shoulder, which he identified as an arthroscopic subacromial decompression and distal clavicle excision for her ongoing complaints to the left shoulder. The Arbitrator does not find the testimony of Dr. Kolb to be as compelling in this matter. Petitioner testified credibly that she would like to undergo the surgery as recommended by Dr. Rhode.

Given the previous finding of a causal relationship, the Arbitrator hereby awards Petitioner prospective medical care pursuant to Section 8(a) of the Act, in that Respondent is responsible to pay for all medical costs associated with said surgery recommended by Dr. Rhode, subject to the medical fee schedule, Section 8.2 of the Act.

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

Petitioner testified that she was terminated from her employment. This was established in the earlier trial. Petitioner testified that she has looked for work and has been unable secure new employment outside of a brief stint with the U.S. Department of Census Bureau. The medical records establish an ongoing recommendation from her doctors for work restrictions of no repetitive use of the left upper extremity. As stated, Petitioner obtained employment for a short period of time in 2010. The record indicates that said employment was within her restrictions. Beyond that, Petitioner has not been able to find employment. Petitioner's testimony was credible with regard to her attempts to find employment from the original date of trial of October 1, 2007, through the date of the trial at issue, July 22, 2013. The medical records reflect that Dr. Rhode then changed the work restrictions from no use of the left upper extremity to completely off work effective April 6, 2011. Respondent did not dispute the TTD period claimed, but rather disputed liability for payment of TTD benefits.

Based upon the credible testimony of Petitioner and the medical restrictions and off-work notes identified in the record, the Arbitrator awards payment of TTD benefits to Petitioner for two periods of time: October 1, 2007 through February 23, 2010 (at which time she obtained employment with the U.S. Census Bureau), and a second period of time from July 16, 2010 through July 22, 2013 (which reflects the period of time she last worked for the U.S. Census Bureau to the date of trial).

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="text" value="down"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KAREN WEIR,

Petitioner,

vs.

NO: 06 WC 51689

PLEASANT VALLEY SCHOOL,

Respondent.

14IWCC0488

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of the injury, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission vacates the Arbitrator's award of 5% of the man as a whole. While the Petitioner may have sustained an aggravation of her preexisting lumbar condition as a result of the accident at issue in this case, the Commission finds no evidence of permanency causally related to the September 25, 2006 accident. She had no initial complaints of low back pain contemporaneous to the accident date (see Petitioner's Exhibit 5 and the initial September 27, 2006 visit to Dr. D'Souza in Petitioner's Exhibit 3). Instead it appears she sustained a minimal strain to her back due to the change in her gait, and the diagnostic evidence in this case indicates findings of mild L4/5 disc protrusion with no significant spinal or foraminal stenosis. While there are medical records indicating complaints of radicular-type pain going down the lower extremities, the Petitioner's testimony before the Arbitrator was that her pain was traveling up her leg from the foot/ankle into the back. Pain radiating from the ankle into the back is an anatomic impossibility.

14IWCC0488

A November 11, 2010 EMG/NCV was read to be normal with regard to possible radiculopathy. Dr. Mulcroney testified that the lumbar MRI he reviewed showed no evidence of an acute injury. Preexisting back pain was noted as late as August 2, 2006 (Petitioner's Exhibit 2), less than two months prior to the accident in this case. Dr. Feather, who appears to have been the only treating physician of Petitioner after October 2010, testified that typically Petitioner's examination findings were localized to the foot and below the calf, and that her problem could be a peripheral neuropathy. Dr. Weiss testified that Petitioner's back pain was muscular, and that a change in gait does not cause a structural change to the lumbar spine.

The Commission finds that the greater weight of the evidence does not support that the Petitioner's lumbar spine condition contributed to her left ankle/foot symptoms, and that there was no acute radiculopathy. Based on this, the Commission finds that the Petitioner did not sustain any permanent injury to the low back or left hip as a result of this accident, but rather sustained a back strain that resolved and returned her back to her pre-accident baseline condition.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$225.32 per week for a period of 33.4 weeks, as provided in §8(e)(11) of the Act, for the reason that the injuries sustained caused the loss of use of 20% of the left foot.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$15,707.68 for medical expenses under §8(a) of the Act, subject to the provisions of the medical fee schedule as provided in §8.2 of the Act.

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

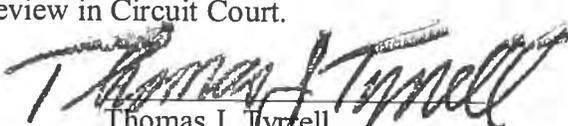
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit in the amount of \$8,475.14 under §8(j) of the Act; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

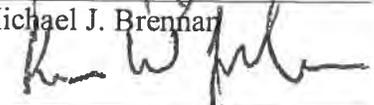
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
TJT: pvc
o 6/3/14
51

JUN 19 2014


Thomas J. Tyrrell


Michael J. Brennan


Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

WEIR, KAREN

Employee/Petitioner

Case# 06WC051689

PLEASANT VALLEY SCHOOL

Employer/Respondent

14IWCC0488

On 10/29/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

4707 LAW OFFICE OF CHRIS DOSCOTCH LLC
CASEY MATLOCK
2708 N KNOXVILLE AVE
PEORIA, IL 61604

2284 LAW OFFICE OF LAWRENCE COZZI
KATRINA ROBINSON
27201 BELLA VISTA PKWY #410
WARRENVILLE, IL 60555

STATE OF ILLINOIS)
)SS.
 COUNTY OF PEORIA)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

KAREN WEIR,
 Employee/Petitioner

Case # 06 WC 51689

v.

Consolidated cases: NONE.

PLEASANT VALLEY SCHOOL,
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Peoria**, on **May 29, 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 ____

FINDINGS

On **September 25, 2006**, 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 **\$10,092.31**; the average weekly wage was **\$240.29**.

On the date of accident, Petitioner was **51** years of age, *married* with **one** dependent child.

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

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

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

Respondent is entitled to a credit of **\$8,475.14** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of **\$225.32/week** for **25** weeks, because the injuries sustained caused the **5%** loss to her **person as a whole**, as provided in Section 8(d)2 of the Act.

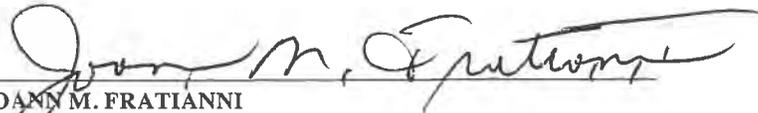
Respondent shall pay Petitioner permanent partial disability benefits of **\$225.32/week** for period of **33.40** weeks, because the injuries sustained caused the **20%** loss of the **left foot**, as provided in Section 8(e) of the Act.

Respondent shall pay reasonable and necessary medical services of **\$15,707.68**, subject to the provisions of the medical fee schedule, pursuant to Section 8(a) and 8.2 of the Act.

Respondent shall be given a credit for **\$8,475.14** in medical benefits that have been paid, and Respondent shall hold Petitioner safe and harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) 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.


JOANN M. FRATIANNI
Signature of Arbitrator

October 18, 2013
Date

OCT 29 2013

F. Is Petitioner's current condition of ill-being causally related to the injury?

L. What is the nature and extent of the injury?

Petitioner worked as a teacher's assistant for Respondent. On September 26, 2006, she was participating in a fire drill when she stepped in a hole injuring her left ankle. Petitioner reported the injury to her supervisor shortly after it occurred.

Petitioner first sought treatment at the emergency room of Proctor Hospital that same day. She was found to have pain and swelling over the dorsum aspect of the left foot.

Petitioner then saw Dr. D'Souza, an orthopedic surgeon, on September 27, 2006. Dr. D'Souza found a compression type fracture of the lateral border of the anterior process of the calcaneus. He placed her in a walking boot cast and released her to return to work. She then returned to Dr. D'Souza on October 11, 2006. Dr. D'Souza prescribed an MRI and expressed concern she may be developing complex regional pain syndrome (RSD).

Petitioner underwent the MRI on October 12, 2006. She then saw Dr. D'Souza on October 17, 2006 and reported pain to her left shoulder and arm. Dr. D'Souza noted the MRI did not reveal any structural reason for the pain and felt she was developing RSD. He referred her to a pain management doctor for evaluation.

Petitioner then saw Dr. Feathers, a pain specialist, on October 25, 2006. She reported the left ankle and foot continued to be numb and cold at times. She also reported left ankle pain with pain developing in her left calf and thigh and starting in the back, with occasional pain to the left shoulder and arm. Dr. Feathers following his examination, was of the opinion she was suffering from RSD of the left foot causing pain issues on her left side or possibly a radicular type pain from her lower back radiating down the left leg to the foot. Dr. Feathers prescribed an MRI of the lumbar spine and physical therapy.

The lumbar MRI was performed on October 25, 2006, which revealed lumbar radiculopathy. Petitioner then underwent physical therapy for a period of time, which failed to improve her symptoms.

Petitioner then returned to see Dr. D'Souza on April 10, 2007, as Dr. Feathers had left the area. Petitioner complained of ongoing pain in the left foot and leg. Dr. D'Souza then referred her to Dr. Lanzino, a neurosurgeon, for the radiculopathy radiating into the left leg. Dr. D'Souza also prescribed a lumbar MRI.

Petitioner saw Dr. Lanzino on May 3, 2007. She presented with numbness and pain to her left leg and foot. Dr. Lanzino following examination felt he could not determine if the pain was radicular from her spine or from the left ankle injury. He felt a lumbar MRI was required.

Petitioner returned to see Dr. D'Souza on January 17, 2008 and reported the workers' compensation carrier finally authorized the lumbar MRI. Dr. D'Souza prescribed the MRI and referred her to Dr. Mulconrey, an orthopedic surgeon. The lumbar MRI was performed on January 30, 2008.

Petitioner saw Dr. Mulconrey on April 7, 2008, who felt the MRI revealed mild degenerative changes of the lumbar spine and diagnosed left lower extremity radiculopathy. Dr. Mulconrey prescribed physical therapy. Respondent finally authorized the physical therapy on October 31, 2008. Petitioner underwent therapy through March 12, 2009. The physical therapy did not relieve her symptoms.

Petitioner then saw Dr. Mulconrey on June 15, 2009 with complaints of left foot and leg pain and pain into her lower back. Dr. Mulconrey prescribed another lumbar MRI. This was eventually performed on January 12, 2010, and revealed a central disc herniation at L4-L5 and degenerative disc disease at other levels.

Following this MRI, Dr. Mulconrey referred Petitioner to see Dr. Sureka. Petitioner first saw Dr. Sureka on March 4, 2010, who felt she might have a left lower extremity peripheral nerve injury. Dr. Sureka prescribed an EMG/NCV study. Respondent refused to authorize the EMG/NCV study.

Petitioner returned to see Dr. Sureka on September 9, 2010. Dr. Sureka referred Petitioner to see Dr. Feathers, as he had recently returned to the area.

Petitioner then saw Dr. Feathers on September 20, 2010, who noted left foot swelling, color changes, stiffness, shooting pain to the top of the left foot. Dr. Feathers felt she had RSD but also believed more testing was needed to rule out radicular pain as the cause. Petitioner returned to see Dr. Feathers on October 12, 2010, who felt an EMG/NCV study would be necessary to determine the source of pain, and also felt a lumbar sympathetic nerve block injection may rule out radicular pain as a cause.

Petitioner underwent an EMG/NCV study with Dr. Li on November 11, 2010. Dr. Li felt the findings ruled out neuropathy or lumbar radiculopathy as the source of pain. Dr. Li felt the symptoms and findings were consistent with Type I Complex Regional Pain Syndrome.

Petitioner returned to see Dr. Feathers on January 20, 2011. Dr. Feathers agreed with Dr. Li's impressions and diagnosed RSD of the lower extremity. Dr. Feathers prescribed a diagnostic transforaminal epidural injection into L5-S1 to determine if this would help relieve the pain. This epidural was performed by Dr. Feathers on January 20, 2012.

Petitioner then saw Dr. Feathers on January 30, 2012, who noted no improvement in pain symptoms to the foot following the injection. Dr. Feathers felt that if the pain is radicular from the lumbar area, she would have noted some symptom relief, and diagnosed RSD. Dr. Feathers indicated a treatment option of a spinal cord stimulator, which Petitioner declined.

Dr. Feathers testified by evidence deposition that the main question was whether or not the pain she was experiencing in the left leg and foot was from lumbar radiculopathy or peripheral neuropathy with RSD. Dr. Feathers felt Petitioner in fact suffers from RSD caused by the injury sustained on September 25, 2006 to the left foot. Dr. Feathers testified the transforaminal epidural injection to L5-S1 confirmed the pain symptoms were not caused by radicular pain from the lumbar spine. If the symptoms had been, then Petitioner would have experienced a relief of symptoms during and after the injection. Dr. Feathers felt the mechanism of injury of stepping in a hole and twisting the ankle could have caused the fracture that lead to the development of RSD.

Dr. Mulconrey also testified by evidence deposition. Dr. Mulconrey felt Petitioner's symptoms to her left ankle and back have been consistent since her injury of September 25, 2006. Dr. Mulconrey further felt this accident aggravated the lumbar condition at L4-L5.

Petitioner saw Dr. Weiss for examination. This was at the request of Respondent. Dr. Weiss testified by evidence deposition that he questioned the validity of the actual diagnosis of complex regional pain syndrome or RSD, or if it even exists. Dr. Weiss did admit he was not really qualified to answer whether the proposed spinal cord stimulator would have represented reasonable medical treatment.

Based upon the above, the Arbitrator finds the conditions of ill-being as diagnosed by the treating physicians to be causally related to the accidental injury of September 25, 2006. The Arbitrator finds the lower back condition was aggravated by this accident as well.

Based further upon the above, the Arbitrator further finds the conditions to be permanent in nature.

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?

Petitioner introduced into evidence the following medical charges that were incurred after this accidental injury:

Name of Provider	Amount	Balance Due
Proctor Hospital	\$ 1,144.00	\$ 0.00
Peoria Open MRI	\$ 2,850.00	\$ 0.00
Midwest Orthopedic Center	\$11,348.58	\$ 783.00
Associated Anesthesiologists	\$ 368.00	\$ 0.00
OSF St. Francis Medical Center	\$ 4,486.00	\$ 1,089.20
Illinois Regional Pain Institute	\$ 5,997.11	\$ 4,688.17
Prescription Partners	\$10,812.90	\$ 9,147.31
Center for Pain Management	\$ 1,140.00	\$ 0.00
Associated University Neurosurgeons	\$ 126.00	\$ 0.00
Totals:	\$38,272.59	\$15,707.68

See findings in "F" and "L" above.

Having found causal connection in this matter, the Arbitrator finds the above charges of \$15,707.68 to represent reasonable and necessary medical care and treatment designed to cure or relieve the conditions of ill-being caused by this accidental injury. Respondent is found to be liable to Petitioner for same.

Respondent is entitled to a credit of \$8,475.14 for medical expenses paid by the group health insurance carrier. Respondent is to keep Petitioner safe and harmless from all attempts at reimbursement in accordance with Section 8(j) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input type="checkbox"/>	PTD/Fatal denied
<input checked="" type="checkbox"/>	None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Ismael Diaz,
Petitioner,

vs.

NO: 07 WC 40520

Village of Montgomery,
Respondent.

14IWCC0489

DECISION AND OPINION ON REMAND

Respondent appealed Arbitrator Hennessy's decision, filed on May 18, 2010, finding that Petitioner sustained an accident arising out of and in the course of his employment with Respondent on May 29, 2007, and that his posttraumatic stress disorder condition is causally related to the accident. The Arbitrator awarded Petitioner permanent partial disability benefits representing a 15% loss of use to his person as a whole. The issues on review were accident, causal connection, and nature and extent of the injury. The Commission reversed the decision of the Arbitrator, finding the Petitioner had failed to prove compensable accidental injuries arising out of and in the course of his employment. This was affirmed by the Circuit Court of Kane County. The Illinois Appellate Court found that the Petitioner proved a compensable "mental-mental" injury under Illinois law, and remanded the matter to the Commission to make findings consistent with their decision. Pursuant to their order, the Commission, after considering the issues of accident, causation and permanency, and being advised of the facts and law, finds that the Petitioner sustained accidental injury arising out of and in the course of his employment with the Respondent on May 29, 2007, and awards benefits as indicated below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner, a 28 year old police officer, testified that he started working with Respondent in 2004 as a patrolman. On May 29, 2007, Petitioner was on active patrol working on the day shift. Petitioner was responding to a disturbance call between neighbors. They kicked in a door and, after a brief struggle, they took the offender into custody.

Petitioner explained a subsequent incident that occurred on May 29, 2007, approximately at 4:00 P.M. as follows:

“While on the disturbance dealing with the original call, there was a neighbor who got upset because there were squad cars blocking his driveway. Asked us if we could move the squad cars and we told him as soon as we were done handling the original call we would move the squad cars. He became upset because we didn’t move them immediately. He walked into his house, . . . and he came out and he was holding what appeared to be a gun.”

Petitioner testified that after seeing what appeared to be a handgun, he drew his weapon and commanded the subject to drop the gun. The subject did not comply and continued to walk toward Petitioner and Petitioner’s backup officer. Petitioner testified further as follows: “When he got approximately I want to say about 15 feet away from where I had taken cover behind a SUV, I saw that it had an orange tip.” Petitioner stated that the orange tip indicated to him that the gun was not a real gun, that it was possibly a BB gun or some type of toy gun. Petitioner also stated that he continued to command the subject to drop the gun and that he did not want to take any chances so he continued to stay behind cover.

The subject eventually retreated into his house, and a standoff began. Petitioner stated that Aurora’s special response team responded to the scene, secured the perimeter, and brought in a negotiator. Petitioner stated that he was on the scene until about 11:00 P.M.

Petitioner testified that he could not sleep the evening of the incident. The following day, Petitioner indicated that he started feeling anxiety.

Petitioner testified that on June 1, 2007, during roll call, he experienced the following:

“When we were in roll call for afternoon shift, I was sitting down at the roll call. I was reading something, and I remember I kind of lost vision on what I was reading. My vision got kind of blurred, and I felt a little dizzy. Got up and went out and got a drink of water. Came back and still felt the same. Had like heart palpitations. I was sweaty. Just felt like nervous.”

Petitioner thought that he was dehydrated. He got into his squad car and started to go on his patrol. When his symptoms did not pass, Petitioner returned to the police station and spoke with the deputy chief. Petitioner was transported by ambulance to Rush Copley Hospital.

Petitioner testified that he began treating at Dreyer Clinic on June 5, 2007. Petitioner was prescribed Lexapro for posttraumatic stress disorder on July 20, 2007. He continues to follow up at Dreyer Clinic every couple of months. Petitioner believes that his follow up visits at Dreyer Clinic will continue indefinitely. At the present time, a psychiatrist at Dreyer Clinic is prescribing Sertraline, an anti-depressant, which he takes on a daily basis, and Clonazepam, an anti-anxiety drug, which he takes on an as needed basis.

Petitioner described a prior incident that occurred approximately two years before the May 29, 2007, incident in early 2005. There was an emergency broadcast indicating that an officer needed assistance involving a man with a knife. Petitioner was the first backup officer that arrived at the scene. The subject was sitting in a chair outside a motel holding a machete in one hand and a knife in his other hand. Petitioner parked his squad car approximately 150 yards away from the subject.

Petitioner described the incident as follows:

“While on the scene, I was still standing by my squad car and Oswego chief of police, he was standing on the roadway I want to say probably about 100 feet away from where the guy was sitting. I’m not sure what he said to the guy. The guy didn’t appear to say anything. He just started walking to the chief waving the machete and knife. He’s walking towards him as they’re crossing Route 30, you know, so we all have our guns drawn and he just keeps coming and eventually one of the officers on scene did shoot him I want to say three times and I think the chief shot him once or twice at that time. The subject went down and he was taken into custody.”

Petitioner testified that after the incident in Oswego, he did not seek psychiatric treatment. Petitioner indicated that two to three days after the Oswego incident, he experienced anxiety for about a week and then the anxiety went away.

Petitioner testified further on cross examination that he did not experience gunfire during the May 29, 2007, incident. Petitioner estimated that about 10 to 15 seconds passed from the time that he first saw the subject to the time he realized the subject had a toy gun. Petitioner indicated that after he realized it was a toy gun, the closest that the subject got to him was about 10 feet. The subject never made physical contact with Petitioner.

Petitioner estimated that there were 15 to 25 officers on the scene. Petitioner was not at the scene when the incident resolved. He thinks that the special response team threw some tear gas, made entry, and took the subject into custody.

Also on cross examination, Petitioner testified that during the Oswego incident in 2005, he was not threatened directly by the suspect. When an officer shot the suspect, Petitioner was approximately 10 to 15 yards away.

14IWCC0489

Respondent presented Daniel Meyers, deputy chief of police. Mr. Meyers has worked with Respondent for 25 years. Mr. Meyers has been Petitioner's supervisor for Petitioner's entire career. He testified that he was present on the scene on May 29, 2007. Mr. Meyers indicated that the first call came in around 5:50 P.M. Mr. Meyers received a call at 6:13 P.M. and was at the scene at 6:33 P.M. When he arrived, there were about 10 to 15 officers at the scene. Mr. Meyers contacted the Aurora special response team, and approximately 30 members from the team arrived. In total, there were about 40 officers on the scene. Mr. Meyers confirmed that there were no shots fired during the standoff.

Mr. Meyers testified that when he arrived, Petitioner was on the perimeter behind a tree, about 50 to 60 yards away from the subject's house. Petitioner briefed him. Mr. Meyers also indicated that when he met with Petitioner, he did not notice whether Petitioner was in distress.

On cross examination, Mr. Meyers indicated that even though there was a belief that the subject had a toy gun, there was still a concern that the subject was potentially armed and dangerous. Up until the subject was actually subdued and under control by the special response team, the subject was considered to be armed and dangerous. The items found in the subject's home were "the two toy rifles or air soft rifle and air soft pistol."

The Commission previously determined that the Petitioner failed to prove he sustained accidental injury arising out of and in the course of his employment. Following affirmance by the Circuit Court of Kane County, the Illinois Appellate Court on April 16, 2013 reversed the decision, finding the Petitioner proved he sustained accidental injury arising out of and in the course of his employment within the necessary elements of proof with regard to a "mental-mental" case in Illinois as enunciated in Pathfinder v. Industrial Commission, 62 Ill.2d 556, 343 N.E.2d 913 (1976). The Court instructed the Commission to conduct further proceedings consistent with their decision.

Based on the Appellate Court's decision finding in favor of the Petitioner, the Commission finds that the Petitioner is entitled to temporary total disability benefits from August 1, 2007 through October 23, 2007, with Respondent receiving credit for the full salary paid to the Petitioner during said period. Medical expenses had been paid prior to hearing, and thus were not at issue on Arbitration.

The nature and extent of the Petitioner's permanent injury was one of the issues on arbitration, and thus evidence on this issue has already been presented and there is no need for remand to the Arbitrator for further proceedings. With regard to permanency, the Commission finds that the Petitioner sustained the loss of 7.5% of the man as a whole, as provided in Section 8(d)(2) of the Act. The Petitioner returned to full duty employment as of November 30, 2007. He continues to obtain psychological counseling and to take medications in relation to this injury. He testified that while he still may experience some level of anxiety in situations at work, he is able to control it and it goes away.

14IWCC0489

IT IS THEREFORE ORDERED BY THE COMMISSION that, pursuant to the order of the Appellate Court, the Commission finds that the Petitioner sustained injury arising out of and the course of his employment with the Respondent on May 29, 2007.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$733.33 per week for a period of 12 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent paid Petitioner full salary during said period of temporary total disability and shall receive full credit for same.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$619.97 per week for a period of 37.5 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused permanent loss to the degree of 7.5% of the person as a whole.

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

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

DATED:
TJT: pvc
O 06/3/14
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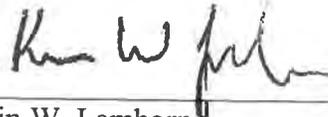
JUN 19 2014



Thomas J. Tyrrell



Michael J. Brennan



Kevin W. Lamborn

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

14IWCC0490

Dana Gaither,
Petitioner,

vs.

NO: 12 WC 23382

Caterpillar, Inc,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, temporary total disability, wages, notice, penalties 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. , 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 19, 2013 is hereby affirmed and adopted.

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

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

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

DATED: JUN 19 2014

KWL/vf

O-6/3/14

42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

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

14IWCC0490

GAITHER, DANA

Employee/Petitioner

Case# **12WC023382**

CATERPILLAR INC

Employer/Respondent

On 11/19/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

1824 STRONG LAW OFFICES
SEAN OSWALD
3100 N KNOXVILLE AVE
PEORIA, IL 61603

5035 CATERPILLAR INC
DARCY GIBSON
100 NE ADAMS ST
PEORIA, IL 61629-4320

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

19(b)

14IWCC0490

Case # 12 WC 23382

Consolidated cases: _____

DANA GAITHER,
Employee/Petitioner

v.

CATERPILLAR, INC.,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **10/24/13**. 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 _____

14IWCC0490

FINDINGS

On the date of accident, **10/4/11**, Respondent *was* operating under and subject to the provisions of the Act. On this date, an employee-employer relationship *did* exist between Petitioner and Respondent. On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment. Timely notice of this accident *was* given to Respondent. In the year preceding the injury, Petitioner earned **\$30,481.88**; the average weekly wage was **\$586.19**. On the date of accident, Petitioner was **47** years of age, *single* with **0** dependent children. Respondent *has* paid all reasonable and necessary charges for all reasonable and necessary medical services. Respondent shall be given a credit of **\$00.00** for TTD, **\$00.00** for TPD, **\$00.00** for maintenance, and **\$00.00** for other benefits, for a total credit of **\$00.00**. Respondent is entitled to a credit of **\$00.00** under Section 8(j) of the Act.

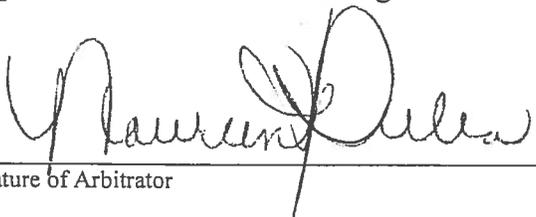
ORDER

The petitioner's claim for compensation is denied. Petitioner has failed to prove by a preponderance of the credible evidence that she sustained an accidental injury that arose out of and in the course of her employment by respondent on 10/4/11.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of temporary total disability, medical benefits, or compensation for a 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

11/14/13
Date

ICArbDec19(b)
**

NOV 19 2013

14IWCC0490

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 47 year old assembler alleges that she sustained an accidental injury to her right shoulder due to her repetitive work activities that arose out of and in the course of her employment by respondent and manifested itself on 10/4/11. Petitioner began working for respondent in April of 2011.

Petitioner alleges that the injury was caused while she was manually pushing fluids into the WDM tractor using the fuel primer. Petitioner did not begin working on the WDM tractor until August of 2011. She testified that her injury was caused by the motion required to operate the manual fuel primer on the WDM. Petitioner testified that she worked on 4-7 tractors a day. She denied that her injury was due to any other of her work activities. Petitioner had other work activities other than operating the manual fuel primer.

Petitioner testified that in order to operate the manual fuel primer she would squat down and with her arm at a 90 degree angle push the fuel primer button in approximately 2 1/2 -3 inches for about 3-4 minutes until the fuel fills the line. Pushing the button in at the beginning is very easy and gets more difficult as the fuel gets into the lines. Once it becomes difficult the fuel is in the line and the process is over. Petitioner testified that she exerted at most about 75% force. She claimed that she would perform about 250-300 pumps to get the fuel in the WDM tractor. Petitioner testified that she performed this task on anywhere from 1-4 WDM tractors per day.

Petitioner testified that about one month or so after she began working on the WDM tractors she began experiencing problems with her right shoulder. She testified that on 10/4/11 her right shoulder was really bothering her and her supervisor, Sara Medelman, sent her to medical for treatment. Petitioner also testified that she spoke to the safety coordinator and requested a tool to help her perform her job. She testified that she was given a tool, but it did not help.

On 10/10/11 petitioner presented to Community Health Care Clinic complaining of right shoulder pain. She did not report any injury. Petitioner was assessed with a strain and sent to physical therapy for evaluation and treatment.

On 11/4/11 petitioner presented to respondent's medical department. On cross-examination petitioner testified that the day she went to medical was the date she reported the incident to her supervisor. An Incident Report was completed that day. She described the injury as "The repetitive motion of pumping the plunger to prime the fuel for D9-WDM's has excessively inflamed my right shoulder. The pain has spread down into my back on the same side. The pain started in late August/early

14IWCC0490

September." Petitioner gave a history of a torn rotator cuff tear 29 years ago. She denied any future pain occurrence until this incident.

Petitioner gave a history of an onset of pain in the right shoulder down into her back about two months ago. She reported that when she got the new tractors on her line she had to start using the plunger to prime the fuel. She stated that she pushed the plunger 200-300 times for each tractor, 2-3 times a day. Petitioner was prescribed a course of physical therapy.

Petitioner followed up with respondent's medical department on 11/9/11. On 11/11/11 a note was placed in petitioner's medical records by Safety. The note stated that petitioner's only exposure was when she worked on the D9s, which is only at most, one per day. It was noted that this process only takes about 2 minutes. The force was identified as negligible throughout until it increases to 6 lbs at the end. It was noted that this activity required very short thrusts and low force. It was noted that all of petitioner's other work activities were considered light duty. Safety saw no viable exposure to shoulder or neck pain as a result of her job activities.

On 12/16/11 petitioner presented to respondent's medical asking for restrictions for her right shoulder. Petitioner was directed to her primary care physician since her injury was determined to be not work related. On 1/13/12 x-rays were taken of petitioner's right shoulder.

On 1/19/12 petitioner returned to Community Health Care Clinic. She complained of persistent right shoulder pain due to repetitive motion at work. She reported that workers' compensation denied her claim. She was diagnosed with possible biceps tendonitis. On 2/22/12, 3/22/12 and 6/7/12 she reported the same complaints. On 6/7/12 petitioner was given right shoulder restrictions.

On 4/11/12 petitioner underwent an MRI of the right shoulder. The impression was no rotator cuff tear, moderate tendinopathy of the supraspinatus tendon; suspected superior labral tear; and moderate tendinopathy and mild tenosynovitis of the long head of the biceps tendon.

On 6/26/12 petitioner was terminated by respondent for an event unrelated to this alleged accident. Petitioner is currently receiving unemployment benefits.

On 7/11/12 petitioner presented to Dr. Rhode for consultation of her right shoulder pain on the referral of Dr. McGinnis. She alleged that these symptoms were secondary to an injury while at work. She gave a history of performing a highly repetitive activity on a tractor line for respondent. She reported that she worked on the fill line and was required to manually fuel and prime fuel lines on a specific tractor. She stated that she was required to prime 3-4 tractors a day. She stated that she performed a

repetitive pushing motion approximately 300 times to prime a single tractor. She stated that she worked on this tractor from August of 2011 to October of 2011.

Following an examination Dr. Rhode assessed shoulder pain, frozen shoulder, rotator cuff strain and SLAP lesion. Dr. Rhode noted that diabetics are predisposed to develop frozen shoulders, but he believed her injury was caused by her work activities. Dr. Rhode injected petitioner's shoulder and prescribed a course of physical therapy.

Petitioner continued to follow-up with Dr. Rhode. On 7/25/12 he recommended a manipulation under anesthesia for her right shoulder. Petitioner underwent this procedure on 9/18/12. Following this procedure petitioner underwent a course of physical therapy.

On 7/6/12 petitioner filed her initial Application for Adjustment of Claim. She identified the date of injury as 11/4/11. She alleged that she injured both her arms while priming tractors for inspection/testing.

On 8/24/12 petitioner filed an Amended Application for Adjustment of Claim. The date of accident was amended to 10/4/11.

On 10/3/12 petitioner followed-up with Dr. Rhode and reported that she was doing well. Petitioner continued in physical therapy and following up with Dr. Rhode. On 12/12/12 she returned to Dr. Rhode complaining of deep pain.

On 11/28/12 petitioner underwent a Section 12 examination performed by Dr. Ira Kornblatt at the request of the respondent. Petitioner stated that she was considerably better, but continued to have loss of motion with pain at the extremes of motion. Petitioner reported a long history of diabetes for 40 years for which she takes NovoLog. Following an examination and record review Dr. Kornblatt diagnosed adhesive capsulitis, possibly with an associated degenerative superior labral tear. He opined that petitioner's right shoulder condition is not causally related to her work. He opined that her adhesive capsulitis was likely a spontaneous adhesive capsulitis, which is very common in diabetic patients. Dr. Kornblatt was of the opinion that petitioner is predisposed to having a frozen shoulder or any of the other right shoulder findings because of her diabetes. Dr. Kornblatt was of the opinion that petitioner's restrictions are not related to any work activities.

On 1/30/13 after an MRI that showed evidence of high grade cuff tendinopathy and no evidence of a frank SLAP tear, Dr. Rhode noted that petitioner had regressed in her range of motion. Dr. Rhode recommended an arthroscopic capsulotomy with assessment of the rotator cuff. On 3/13/13 Dr. Rhode

was of the opinion that petitioner's condition would be permanent without surgery. Her restrictions at that time were modified light work with an overhead of 5 pounds frequent and 10 pounds maximum.

On 4/10/13 the evidence deposition of Dr. Rhode was taken on behalf of petitioner. Based on the petitioner's description of her job of priming tractors Dr. Rhode opined that petitioner's highly repetitive job exposure was causative to her right shoulder condition.

Petitioner testified that if surgery was offered she might do it if the use of her shoulder were to increase to 75%. She reported that currently she cannot lift anything away from her body. She reported difficulty putting her coat on, getting dressed, and brushing her teeth. Petitioner testified that she did injure her right shoulder about 25 years prior when she was lifting a part of machinery.

Shawn Derry was called as a witness on behalf of respondent. Derry was petitioner's Section Manager in July of 2011. He testified that petitioner trained a month or two before beginning work on the WDM tractor fuel primer pump. Derry testified that the operator unscrews the plunger and then pushes it forward about 2 1/2 inches and then brings it back before repeating. Derry testified that operators would perform this task while squatting or kneeling. Derry testified that the force involved starts very easy and as the pressure builds and the fuel is pushed through there is some resistance. Derry testified that the maximum force when the fuel primer is fully primed is 4 pounds. He further testified that the time it takes to complete the priming on each tractor varies from 3-10 minutes. He stated that after five minutes if the resistance is not at maximum the employee knows to check for air leaks. Derry testified that filling the fuel line is just one step. He further testified that 1-4 tractors are done per shift.

Petitioner completed a Job Description for her attorney. Petitioner reported that she used a fuel primer plunger, click wrench, air gun, hydraulic air connectors, and 3" hose reels. Petitioner reported that she filled and ran anywhere from 4-7 tractors per shift. Petitioner claims the manual fuel primer on the WDM tractors is what caused her shoulder injury. Petitioner estimated that she performed 45 repetitions with her hands and arms per minute, 300 per hour and 1200 per day.

Respondent offered into evidence the WDM Production Information for 8/1/11-11/5/11. Based on these reports, petitioner worked on at most, 100 tractors during this entire period. Based on this report petitioner only worked on 1-3 tractors a day. Of the 63 days during this period that she worked on the WDM tractors she worked on 1 tractor on 36 days, 2 tractors on 20 days, and 3 tractors on 7 days. Petitioner worked on WDM tractors on 21 days in August, 18 days in September, 20 days in October, and 4 days in November between 8/1/11-11/5/11.

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

As a general rule, repetitive trauma cases are compensable as accidental injuries under the Illinois Worker's Compensation Act. In Peoria County Belwood Nursing Home v. Industrial Commission (1987) 115 Ill.2d 524, 106 Ill.Dec 235, 505 N.E.2d 1026, the Supreme Court held that "the purpose behind the Workers' Compensation Act is best serviced by allowing compensation in a case ... where an injury has been shown to be caused by the performance of the claimant's job and has developed gradually over a period of time, without requiring complete dysfunction.." However, it is imperative that the claimant place into evidence specific and detailed information concerning the petitioner's work activities, including the frequency, duration, manner of performing, etc. It is also equally important that the medical experts have a detailed and accurate understanding of the petitioner's work activities.

Since petitioner is claiming an injury to her right shoulder due to repetitive work activities, in Illinois, recovery under the Workers' Compensation Act is allowed, even though the injury is not traceable to a specific traumatic event, where the performance of the employee's work involves constant or repetitive activity that *gradually* causes deterioration of or injury to a body part, assuming it can be medically established that the origin of the injury was the repetitive stressful activity. In any particular case, there could be more than one date on which the injury "manifested itself". These dates could be based on one or more of the following, depending on the facts of the case:

1. The date the petitioner first seeks medical attention for the condition;
2. The date the petitioner is first informed by a physician that the condition is work related;
3. The date the petitioner is first unable to work as a result of the condition;
4. The date when the symptoms became more acute at work;
5. The date that the petitioner first noticed the symptoms of the condition.

Petitioner is alleging that she sustained an accidental injury to her right shoulder as a result of her repetitive work activities that arose out of and in the course of her employment by respondent that manifested itself on 10/4/11. The only activity petitioner claims caused her injury was manually pushing fluids into the WDM tractor using the fuel primer plunger. Petitioner performs other activities beside pushing fluids into the WDM tractor.

Petitioner began using the plunger to push fluids into the WDM tractors in August of 2011. Petitioner testified that she performed this task on 4-7 tractors a day. She stated that this activity involved squatting,

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holding her right arm at a 90 degree angle, and pushing the fuel primer plunger in about 2.5-3 inches for about 3-4 minutes until the fuel filled the lines. The force needed at the beginning is very easy and gets more difficult as the fuel fills the lines. When it becomes very difficult to push the process is complete. Petitioner alleged that she pushed to plunger about 250-300 times to get the fuel in the lines of each tractor.

The respondent offered into evidence the WDM Production Information Report for the period 8/1/11-11/5/11. Based on these reports, petitioner worked on at most, 100 tractors during this entire period. Based on this report petitioner only worked on 1-3 WDM tractors a day, not the 4-7 she alleged. Of the 63 days during this period she worked on the WDM tractors she worked on only 1 tractor on 36 of the 63 days, 2 tractors on 20 of the 63 days, and 3 tractors on 7 of the 63 days. Petitioner worked on WDM tractors on 21 days in August, 18 days in September, 20 days in October, and 4 days in November between 8/1/11-11/5/11. Based on these statistics, at most petitioner spent no more 3-4 minutes a day performing this task on more than half the total days she worked on the WDM tractors during this period. In total, petitioner would press the primer on average 275 times a day. Petitioner worked on 2 tractors on about 1/3 of the days. and on 3 tractors only 10% of the days. As was stated previously, petitioner had many other tasks that she performed on a daily basis, and the manual fuel priming that she did on multiple tractors in one day was not all done at the same time. There could be hours in between.

The arbitrator finds it significant that the petitioner testified that the manual fuel primer operation was the only task out of all her daily tasks that caused her any trouble. The arbitrator further finds it significant that petitioner gave a history of pain in her right shoulder starting as early as late August. By that time, petitioner had only worked 21 days on the WDM tractor, and on these days petitioner worked only on 1 tractor on 11 days, 2 tractors on 6 days, and 3 tractors on 4 days. The arbitrator finds the petitioner worked approximately one hour on the tractors over a 30 day period before first experiencing a problem with her right shoulder. The arbitrator finds the frequency, duration, and manner in which petitioner operated the manual fuel primer does not constitute a repetitive activity that could have *gradually* causes deterioration of or injury to her right shoulder.

For an injury to be caused by a repetitive work activity the petitioner must also show that the medical experts have a detailed and accurate understanding of the petitioner's work activities. In the case at bar the petitioner told Dr. Rhode that she performed a highly repetitive activity on a tractor line. She reported that she worked on the fill line and was required to manually fuel and prime lines on a specific tractor. She reported that she was required to prime 3-4 tractors a day and performed a repetitive pushing motion approximately 300 times. The arbitrator finds this history not consistent with the credible evidence. The arbitrator notes that petitioner never worked on 4 tractors a day; worked on only 1 tractor

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over 50% of the 63 days she worked on the WDM tractors from 8/1/11-11/4/11; and only worked on 3 tractors on 7 of the 63 days she worked on the WDM tractors from 8/1/11-11/4/11. There is also nothing in Dr. Rhodes records that reflect that petitioner ever told him the force with which she pushed the plunger.

Based on the above, the arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that she sustained an accidental injury that arose out of and in the course of her employment by respondent on 10/4/11.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

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?

Having found the petitioner has failed to prove by a preponderance of the credible evidence that she sustained an accidental injury that arose out of and in the course of her employment by respondent on 10/4/11, the arbitrator finds these remaining issues moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PASHA HUNT-GOLLIDAY,

Petitioner,

141WCC0491

vs.

NO: 06 WC 27109

COOK COUNTY FACILITIES,

Respondent.

DECISION AND OPINION PURSUANT TO SECTIONS 19(h) and 8(a)

This claim comes before the Commission on Petitioner's Petition for Review under Sections 19(h) and 8(a), filed September 5, 2012, and Petition seeking penalties and attorneys' fees under Sections 19(k), 19(l), and Section 16, filed October 10, 2012. No question has been raised concerning timeliness of Petitioner's 19(h) Petition. Commissioner Lamborn conducted a hearing in this matter on November 1, 2013, at which time counsel for Petitioner and Respondent were present and a record was made.

After considering the issues and being advised of the facts and law, the Commission denies Petitioner's Petition for Review under Sections 19(h) and 8(a), finding that Petitioner failed to prove a material increase in her disability since the date of Arbitration, January 27, 2011, and that Petitioner failed to prove her current condition of ill-being is causally related to her work related injury of February 20, 2006. Petitioner's demand for an award of medical expenses, temporary total disability benefits, and increased disability is denied.

Further, the Commission also denies Petitioner's Petition for Penalties and Attorneys' Fees under Sections 19(k), 19(l), and 16, finding that Respondent acted in an objectively reasonable manner under all of the existing circumstances.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner filed a workers' compensation claim against Respondent on June 22, 2006, claiming that she sustained injuries while working. On January 27, 2011, Arbitrator Kane heard Petitioner's case against Respondent. Petitioner was represented by counsel at the time of hearing.
2. On February 20, 2006, Petitioner was working for Respondent as a journeyman architectural ironworker. While she was replacing razor wire on top of a 20 foot fence she lost her balance on the ladder and cut her the palm of her left hand on the razor wire. Petitioner sought treatment at Cermak Hospital, at which time her left hand was sutured, and she received a tetanus shot in her right shoulder. Petitioner's right arm began to swell and feel heavy after she received the tetanus shot, and she developed problems closing her right hand. On February 22, 2006 Petitioner began treating for her right shoulder at Midway Clinic, was authorized off work, and began a course of physical therapy for her right shoulder. Based upon her continued right shoulder symptoms, Petitioner began treating with Dr. Chang, an orthopedic specialist, and subsequently underwent an MRI scan of the right shoulder on May 4, 2006, an EMG/NCV of the right upper extremity on July 25, 2006, and a continued course of physical therapy. On September 5, 2006, Dr. Chang referred Petitioner to an orthopedic surgeon for further evaluation. Petitioner began treating with Dr. Wolin on September 19, 2006, who diagnosed right shoulder persistent right subacromial bursitis with secondary impingement syndrome and opined her condition was causally related to the tetanus injection following her work-related injury. Petitioner underwent a course of subacromial injections and physical therapy, followed by a December 1, 2006 right shoulder bursectomy with Dr. Wolin. Dr. Wolin offered favorable causal connection opinion with regard to her right shoulder condition and the tetanus shot she received following her left palm laceration injury, that her tetanus shot aggravated an underlying right shoulder condition. Dr. Robertson evaluated Petitioner at her attorney's request on October 11, 2007, and he concurred with Dr. Wolin's causal connection opinion with regard to Petitioner's right shoulder condition of ill-being. Petitioner continued to treat with Dr. Wolin through May 16, 2007, at which time she was released at maximum medical improvement and was released to return to work full duty with regard to her right shoulder. Petitioner did not return to work for Respondent until July 7, 2007, due to an unrelated low back condition, for which she was given a sit down job performing doing data entry duties.
3. Petitioner testified that her shoulder had improved as of the date of the January 27, 2011 hearing, but that she currently experienced pain and tingling when sleeping on her shoulder, and pain when moving her arm to shoulder-level and above. Petitioner further testified she had not attempted to return to work as an ironworker based upon her restrictions for her unrelated low back condition, that she had continued to work light

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duty since July 7, 2007, and that she continued to make the same salary following her return to work. (1/27/11 Transcript, p. 38-39, 44-45).

4. On February 18, 2011 the Arbitrator issued a Decision, finding that Petitioner sustained accident injuries arising out of and in the course of her employment with Respondent on February 20, 2006, that her current condition of ill-being was causally connected to her work accident, that Petitioner was temporarily totally disabled for a period of 70-6/7 weeks, from February 21, 2006, through June 18, 2006, and June 24, 2006 through July 6, 2007, at \$898.13 per week, that Petitioner permanently lost 17.5% loss of use of the right arm under Section 8(e), and that Respondent is entitled to credit of \$14,848.00 for TTD paid, and a credit of \$27,410.19 under Section 8(j).
5. The Arbitrator, in addressing the issue of permanent partial disability, noted that Petitioner testified she had problems sleeping on her shoulder, as well as occasional right hand tingling and pain in the shoulder with strenuous activity. The Arbitrator further noted that Dr. Wolin's records indicated that while she was at maximum medical improvement as of May 16, 2007, she had continued complaints of pain in the anterior aspect of the shoulder, tenderness to touch, and grinding at the top of her shoulder.
6. On March 8, 2011, Respondent filed a Petition for Review of the February 18, 2011 Arbitration Decision, raising issues of accident, causal connection, medical expenses, temporary total disability benefits, and permanent partial disability. On October 17, 2011, the Commission affirmed and adopted the February 18, 2011 Arbitration Decision.
7. On September 5, 2012, Petitioner filed a Petition for Review under Section 19(h) and 8(a), as well as Petition for Penalties and Attorney's Fees. On October 24, 2012 a hearing on Review was held before Commissioner Lamborn, at which time both parties were present and a record of the proceedings was made.
8. At the time of the hearing on Review, Petitioner's counsel represented that Petitioner was seeking authorization for additional medical care, and payment of weekly benefits, and penalties and attorneys fees, and that Petitioner was entitled to same based upon Respondent's alleged refusal to accommodate Petitioner's permanent restrictions set forth in place at the prior hearing(T4-5).
9. Petitioner testified that following the Commission affirming and adopting the Arbitration Decision, Respondent subsequently paid out the award. Petitioner testified she continued to treat with Dr. Wolin subsequent to the date of the Commission Decision, from January 27, 2011 through the date of hearing on Review. (11/1/12 Transcript, p. 7-8).
10. Petitioner testified that from date of prior hearing on January 27, 2011 through December 20, 2011 she was performing light duty data entry work for Respondent, and that during that period she was working within work restrictions provided by Dr. Wolin. Petitioner testified she continued to treat with Dr. Wolin and underwent a course of injections, while continuing to work light duty for Respondent. Petitioner testified that on or about March 1, 2012 she went to Respondent's physician for a re-evaluation of her

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restrictions, after which time she was advised Respondent would no longer accept her restrictions. (T9-16).

11. A review of the record fails to reveal any right shoulder medical treatment for a period of over four-in-a-half years, from May 17, 2007, the date when Dr. Wolin released Petitioner to full duty at maximum medical improvement, through December 20, 2011, the date Petitioner was seen by Dr. Wolin with complaints of significant pain in the anterior aspect of her shoulder, began a course of conservative right shoulder treatment, and was given right upper extremity work restrictions.
12. Petitioner continued to receive conservative treatment with Dr. Wolin through August 14, 2012, during which time she underwent a course of injections, light duty was prescribed, and an MR arthrogram was recommended. (11/1/13 Transcript, PX2).
13. Petitioner testified she received no temporary total disability benefits or authorization for right shoulder medical care subsequent to March 1, 2012. (11/1/13 Transcript, p.17).

Based upon a review of the record as a whole, the Commission finds Petitioner is not entitled to the relief requested under Section 19(h) and 8(a), or to penalties and attorneys' fees. In so finding the Commission relies upon Dr. Wolin's May 16, 2007 full duty release and finding of maximum medical improvement, and the significant four-and-a-half years following that full duty release during which time Petitioner sought no right shoulder medical treatment. Petitioner returned to work for Respondent on July 7, 2007, at which time she was placed on light duty for her unrelated low back condition, for which she had undergone low back surgery on January 17, 2007. As of the date of the January 27, 2011 Arbitration hearing, Petitioner continued to work light duty desk work due to her low back condition.

Although P testified at time of 19(h)/8(a) hearing on Review that she continued to treat with Dr. Wolin for her right shoulder after the prior Arbitration hearing, there is no evidence in the record to support her testimony. Instead the medical records tendered into evidence indicate Petitioner sought no medical care for her right shoulder from May 17, 2007 until December 20, 2011, a period of over four-and-a-half years. Petitioner also testified at time of 19(h) hearing on Review that she was working that whole time in data entry under restrictions issued by Dr. Wolin. The Commission finds no evidence of any work restrictions from Dr. Wolin with regard to her right shoulder during that period of time. Instead Petitioner's work restrictions issued during that period of time were with regard to her unrelated low back condition. Petitioner testified that on December 20, 2011 Dr. Wolin renewed her restrictions for her right shoulder. However, Dr. Wolin's office notes reflect that this was the first date when he recommended light duty work for her right shoulder, and that prior to that time she was working light duty with regard to her low back condition. While it appears Petitioner's light duty work restrictions were no longer accommodated as of March 2, 2012, that was unrelated to Petitioner's work related injury of February 20, 2006. Petitioner testified she was seen by Respondent's physician on March 1, 2012 for a re-evaluation of her restrictions, but no record of that

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March 1, 2012 evaluation or restrictions from that visit are contained within the record.

Section 19(h) provides in pertinent part:

“An ... award under this Act providing for compensation in installments, may at any time within 18 months after such ... award be reviewed by the Commission at the request of either the employer or the employee, on the ground that the disability of the employee has subsequently recurred, increased, diminished or ended ... On such review, the compensation payments may be re-established, increased, diminished or ended.”

Based upon Petitioner’s release to full duty as of May 16, 2007, Dr. Wolin’s finding of maximum medical improvement as of May 16, 2007, and the lack of evidence of any relevant right shoulder medical treatment or right shoulder work restrictions from May 17, 2007 through December 20, 2011, a period of over four-and-a-half years, the Commission concludes Petitioner’s current condition of ill-being is not causally connected to her February 20, 2006 work-related injury, and that her present disability, if any, does not represent a recurrence of, or increase in, her disability within the meaning of Section 19(h). The Commission denies relief under Sections 19(h) and 8(a) because, in its view, Petitioner failed to prove a causal connection between her current condition of ill-being and her February 20, 2006 work-related injury, and failed to prove a material increase in her disability. The Commission also notes Petitioner made no complaints at the time of the hearing on Review which differed from those she described at the 2011 Arbitration hearing.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner’s Petition under Section 8(a) is denied.

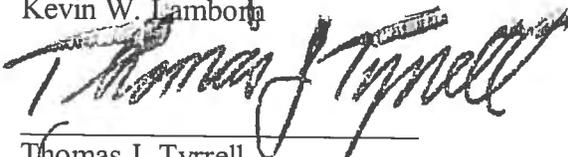
IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner’s Petition under Section 19(h) is denied.

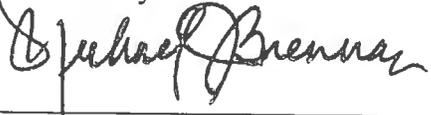
IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner’s Petition under Sections 19(k), 19(l) and 16 is denied.

The probable cost of the record to be filed as return to Summons is the sum of \$35.00, payable to the Industrial Commission of Illinois in the form of cash, check or money order therefore and deposited with the Office of the Secretary of the Commission.

DATED: JUN 19 2014
KWL/kmt
O-05/20/14
42



Kevin W. Lamborn


Thomas J. Tyrrell


Michael J. Brennan

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input type="checkbox"/> None of the above

Paula Thomas,
Petitioner,
vs.

14IWCC0492

NO: 11 WC 22890

MCDONALDS,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

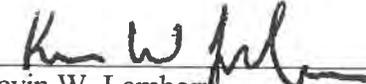
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 31, 2013 is hereby affirmed and adopted.

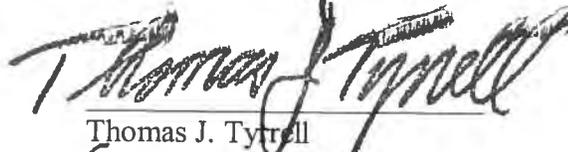
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

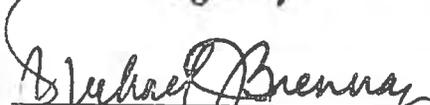
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

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

DATED: JUN 19 2014
KWL/vf
O-6/2/14
42


Kevin W. Lamborn


Thomas J. Tyrrell


Michael J. Brennan

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

14IWCC0492

THOMAS, PAULA

Employee/Petitioner

Case# **11WC022890**

McDONALD'S

Employer/Respondent

On 12/31/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

1846 BROWN & CROUPPEN
KERRY O'SULLIVAN
211 N BROADWAY SUITE 16TH FL
ST LOUIS, MO 63102

1256 HOLTKAMP LIESE ET AL
JOHN KAFOURY
217 N 10TH ST SUITE 400
ST LOUIS, MO 63101

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

19(b)

14IWCC0492

Case # 11 WC 22890

Consolidated cases: _____

Paula Thomas
Employee/Petitioner

v.

McDonald's
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on October 30, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

14IWCC0492

FINDINGS

On the date of accident, October 31, 2009, 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 not causally related to the accident.

In the year preceding the injury, Petitioner earned \$13,125.32; the average weekly wage was \$252.41.

On the date of accident, Petitioner was 54 years of age, married with 0 dependent child(ren).

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

Respondent shall be given a credit of \$1,676.16 for TTD, \$1,356.17 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$3,032.33. The parties stipulated TTD and TPD was paid in full.

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

ORDER

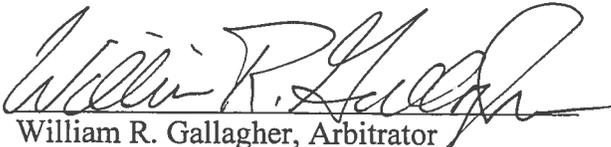
Respondent shall pay for the reasonable and necessary medical services provided to Petitioner through January 17, 2012, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

Based upon the Arbitrator's Conclusions of Law attached hereto, Petitioner's petition for prospective medical treatment is denied.

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.


William R. Gallagher, Arbitrator
ICArbDec19(b)

December 23, 2013
Date

DEC 31 2013

14IWCC0492

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment for Respondent on October 31, 2009. According to the Application, Petitioner was changing the ketchup while on her hands and knees and felt pain which caused her to sustained injuries to her back and left ribs. This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills as well as prospective medical treatment. There was no dispute that Petitioner sustained a work-related accident; however, Respondent disputed liability on the basis of causal relationship.

Petitioner testified that, on October 31, 2009, she was attempting to move a large bag of ketchup under a counter. The bag of ketchup contained 3 gallons and weighed approximately 25 pounds. Petitioner was on her knees adjacent to the counter and while she was lifting the bag up to hook it to some pegs under the counter, she felt a sharp pain across her back on the left side and down her left leg. Petitioner was unable to stand on her own and she required assistance to get up off the floor.

Subsequent to the accident, Petitioner was taken to the ER of Alton Memorial Hospital. The history in the ER record noted that Petitioner had left lower back pain which started when she was picking up a box at work.

Petitioner had a prior low back problem for which she had surgery by Dr. Rogalski in July, 1997. The surgical report was not submitted into evidence at trial; however, the surgery was for a herniated disc at L3-L4. At trial, Petitioner testified that she remained under Dr. Rogalski's care following the surgery and received physical therapy. Petitioner also stated that she had a chronic low back problem prior to the accident for which she had received treatment as recent as one month prior to the accident; however, she testified that the pain was limited to the low back and right side/leg and that there was no prior involvement of the left leg.

Respondent tendered into evidence medical records regarding treatment Petitioner received prior to the accident of October 31, 2009. On March 22, 1999, Petitioner had an MRI scan and myelogram performed of the lumbar spine for evaluation of low back and left leg pain. These procedures were performed at the direction of Dr. William Hoffman (Dr. Hoffman's records were not tendered into evidence at trial). On June 21, 1999, Petitioner was seen by Dr. Keith Bridwell, for low back and left lower extremity pain with the pain going down the back of the thigh and, on occasion, into the left foot. Dr. Bridwell's examination was benign, but he suggested the possibility of piriformis syndrome and suggested evaluation by Dr. Susan Mackinnon, a plastic surgeon (Respondent's Exhibit 6).

Dr. Mackinnon saw Petitioner on July 27, 1999, and her medical record noted that Petitioner had a long-standing problem of left lower extremity pain of approximately two years. Petitioner had pain in the buttock and in the posterior left thigh going to the foot but skipping the calf. Dr. Mackinnon suggested Petitioner have a surgical release of the sciatic nerve in the area of the piriformis (Respondent's Exhibits 6).

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On May 11, 2004, Petitioner was seen by Dr. Heidi Prather for low back, buttock, hip and thigh pain. Petitioner complained of right hip pain and right sided numbness as well as left ankle weakness. On June 18, 2004, Petitioner had an EMG performed because of her bilateral lower extremity symptoms. Over the next five years, Petitioner periodically saw Dr. Prather for lumbar and bilateral hip/lower extremity symptoms seeing Dr. Prather through September 21, 2009. Dr. Prather gave Petitioner several epidural steroid injections at both the right and left S1 levels to relieve the symptoms. Petitioner was experiencing radicular symptoms and, on September 21, 2009, Petitioner had a right and left SI transforaminal epidural steroid injection administered by Dr. Prather (Respondent's Exhibits 5 and 7).

Following her ER visit, Petitioner was seen at Midwest Occupational Medicine by Dr. George Dirkers. Dr. Dirkers' record of that date contained a history of the work-related accident and Petitioner complained of low back pain but without radiation. In regard to her prior back condition, the record noted, "She states she has really not had any problems since her back surgery. She states she gets an occasional stiffness in the morning, but otherwise no problems." (Petitioner's Exhibit 9). Dr. Dirkers ordered physical therapy and ordered an MRI which was performed on December 2, 2009. Dr. Dirkers saw Petitioner on December 7, 2009, and, in his medical record of that date, he noted that the MRI revealed chronic changes at multiple levels with disc bulging and foraminal narrowing. At that time, Petitioner complained of low back pain with lateral groin and lateral lower leg symptoms.

Petitioner was seen by Dr. Adam LaBore, on January 4, 2010. Dr. LaBore's medical record of that date contained the history of the work-related accident and that Petitioner had been previously treated by Dr. Prather for low back and right lower extremity pain. Dr. LaBore opined that Petitioner had L4 radicular low back pain which was an exacerbation of a pre-existing condition related to the lifting incident of October 31, 2009. Dr. LaBore treated Petitioner through December 2, 2010, and gave her several epidural steroid injections on the left side. When he saw her on December 2, 2010, he recommended that she have a functional capacity evaluation (FCE) performed (Petitioner's Exhibit 3).

At the direction of Respondent, Petitioner was examined by Dr. Glenn Johnson, an orthopedic surgeon, on November 8, 2010. In connection with his examination, Dr. Johnson reviewed medical treatment records and the MRI scans of July 7, 2006, and December 2, 2009. In regard to causality, Dr. Johnson opined that the work injury aggravated a pre-existing condition faster than what a normal progression would be and that the treatment provided to Petitioner was appropriate. He recommended some additional physical therapy, an FCE, and imposed work/activity restrictions.

Petitioner underwent an FCE on February 28, 2011, which indicated that she could work at the medium physical demand level (Respondent's Exhibit 3). On May 25, 2011, Dr. Johnson reviewed the FCE and opined that Petitioner could work with restrictions within the medium physical demand level (Respondent's Exhibit 4).

On July 1, 2011, Petitioner was examined by Dr. Matthew Gornet, an orthopedic surgeon. Dr. Gornet's record of that date included a history of the work-related accident as well as the fact that Petitioner previously had back surgery in 1997. Dr. Gornet reviewed the December, 2009, MRI

14IWCC0492

scan and opined that it revealed more of a central disc protrusion at L4-L5 and a subtle lateral disc herniation at L2-L3. He opined that Petitioner's symptoms were causally related to the accident of October 31, 2009.

When Dr. Gornet saw Petitioner on August 29, 2011, he was able to review the earlier MRI scan and compare it to the scan of December, 2009. Dr. Gornet opined that Petitioner sustained a recurrent disc herniation at L3-L4 on the left side because it was now much larger than what it had been previously. He recommended that Petitioner have some steroid injections and imposed light duty work restrictions. Dr. Gornet then administered some steroid injections to Petitioner at the L5-S1 level on the left side.

When Dr. Gornet saw Petitioner on October 24, and December 15, 2011, she informed him that the injections only provided minimal relief. Dr. Gornet restated his opinion as to causality and recommended Petitioner have a spinal fusion and decompression surgical procedure performed (Petitioner's Exhibit 7).

At the direction of Respondent, Petitioner was examined by Dr. Robert Bernardi, a neurosurgeon, on January 17, 2012. In connection with his examination, Dr. Bernardi reviewed Petitioner's medical records for treatment received subsequent to the accident of October 31, 2009, as well as the MRI scans of July 7, 2006, and December 2, 2009. When seen by Dr. Bernardi, Petitioner complained of low back pain with pain/numbness in the left leg going all the way to the foot. Dr. Bernardi described Petitioner's complaints as being consistent with L5 nerve root pressure; however, his review of the MRIs did not reveal any pathology at that level. In comparing the 2006 and 2009 MRIs, Dr. Bernardi opined that there was some progression of the degenerative disc disease at L2-L3, but that the scans were essentially identical. He stated that Petitioner's back/leg complaints were of unknown etiology. Ultimately, Dr. Bernardi opined that Petitioner was forthright and credible and that her ongoing complaints were related to the October 31, 2009, work injury. However, Dr. Bernardi stated that this opinion in respect to causality was subject to his review of Dr. Prather's pre-accident treatment records. He recommended that Petitioner undergo a lumbar myelogram.

Subsequent to his examination of Petitioner, Dr. Bernardi reviewed various pre-accident treatment records including those of Dr. Prather and he prepared a supplemental report. Dr. Bernardi noted that when Petitioner was being treated by Dr. Prather, she periodically gave her epidural steroid injections on both the right and left sides of the lower back which he noted was indicative of Petitioner having left leg complaints long after the 1997 surgery. Based on this and the lack of any post-traumatic abnormalities found on the MRI scan, Dr. Bernardi changed his opinion and stated that Petitioner's symptoms were not work-related. Dr. Bernardi agreed that the work accident may have produced a strain/sprain or aggravation of the pre-existing degenerative disc disease but that this would have resolved and Petitioner would have been back to her baseline in approximately four to six weeks post accident. Dr. Bernardi also opined that Petitioner was at MMI and that surgery was not indicated.

Dr. Gornet saw Petitioner on March 15, 2012, and reviewed Dr. Bernardi's medical reports. Dr. Gornet reaffirmed his opinion that the MRIs revealed increased disc pathology at L2-L3 and L3-L4 and that while there were symptoms consistent with L5 nerve involvement, the injection at

that level only gave Petitioner minimal relief. He did agree with Dr. Bernardi's recommendation that Petitioner have a myelogram (which he indicated to be a CT/myelogram). On May 14, 2012, a myelogram and CT scan were performed which revealed disc bulging at L2- L3 and L3-L4 but no disc pathology at L4-L5 or L5-S1. Dr. Gornet saw Petitioner that same day and reviewed the diagnostic studies opining that they revealed a lateral disc herniation at L3-L4. He referred Petitioner to Dr. Kaylea Boutwell for some facet blocks. Dr. Boutwell saw Petitioner on May 21, 2012, and performed a left nerve block at L4-L5.

Petitioner was seen again by Dr. Gornet on August 13, 2012, and reported that the facet block relieved some of her symptoms. Dr. Gornet restated his surgical recommendation and described it in further detail, as a left side laminotomy and foraminotomy at L4-L5 with fixation and microfusion.

Dr. Bernardi was deposed on December 11, 2012, and his deposition testimony was consistent with his medical reports. In regard to his opinion as to causality, Dr. Bernardi agreed that he changed his opinion following his review of the pre-accident records, primarily those of Dr. Prather. Dr. Bernardi specifically noted that Petitioner informed him that all of her prior symptoms had been on the right side and that she had not experienced any left side symptoms until after the accident. This was contrary to Dr. Prather's records which clearly indicated that Petitioner had bilateral radiculopathy and numerous epidural injections on both the right and left sides. Dr. Bernardi also noted that Petitioner did experience a transient aggravation of her pre-existing condition, but that her pain levels subsequently returned to a pre-accident state. He also reaffirmed his opinion that the Petitioner was at MMI and that surgery was not a good option for her (Respondent's Exhibit 1).

Dr. Gornet was deposed on June 13, 2013, and his deposition testimony was consistent with his medical records. Dr. Gornet reaffirmed his opinion that there was increased disc pathology at L2-L3 and L3-L4 and that additional treatment, including surgery, was indicated.

At trial, Petitioner testified that she has chronic back pain going into the left leg down to the foot and that she is presently only able to work five hours per day. She testified that she can only perform very limited household tasks and that her husband actually does most of them. Petitioner wants to proceed with the treatment recommendation of Dr. Gornet.

Conclusions of Law

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

The Arbitrator concludes that Petitioner's current condition of ill-being is not causally related to the accident of October 31, 2009.

In support of this conclusion the Arbitrator notes the following:

In regard to her back condition prior to October 31, 2009, Petitioner testified that the prior symptoms were in the low back and right side/leg and that there were no symptoms referable to

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the left leg prior to October 31, 2009. When seen by Dr. Dirkers on November 2, 2009, Petitioner denied any significant problems since her prior back surgery.

The medical records of Dr. Bridwell and Dr. Mackinnon clearly indicate that Petitioner had left leg symptoms and radiculopathy in June and July, 1999, with Dr. Mackinnon even suggesting that Petitioner have a surgical release of the sciatic nerve in the area of the piriformis.

The medical records of Dr. Prather revealed that Petitioner was treated for low back problems from May 11, 2004, through September 21, 2009, for low back and bilateral lower extremity symptoms. Petitioner received several epidural steroid injections for bilateral lower extremity symptoms during that period of time.

Petitioner's testimony that she had no prior left lower extremity symptoms before October 31, 2009, is contrary to the medical treatment records and is not credible.

While Dr. Bernardi initially opined that Petitioner's symptoms were related to the accident of October 31, 2009, he clearly stated that this was subject to change pending his review of Petitioner's pre-accident treatment records. It was subsequent to his review of those pre-accident records, in particular, those of Dr. Prather, that Dr. Bernardi changed his opinion in regard to causality.

In regard to the issue of causality, the Arbitrator finds the opinion of Dr. Bernardi to be more persuasive than that of Dr. Gornet.

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

The Arbitrator concludes that all of the medical treatment provided to Petitioner through January 17, 2012, was reasonable and necessary and that Respondent is liable for payment of the medical bills associated therewith.

Respondent shall pay for the reasonable and necessary medical services provided to Petitioner through January 17, 2012, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

In support of this conclusion the Arbitrator notes the following:

Dr. Bernardi examined Petitioner on January 17, 2012, and opined that she was at MMI and that no further medical treatment, including surgery, was necessary for her.

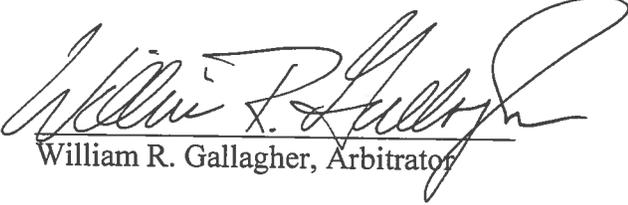
In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is not entitled to prospective medical treatment.

In support of this conclusion the Arbitrator notes the following:

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As aforesated, the Arbitrator concluded that Petitioner's current condition of ill-being is not causally related to the accident of October 31, 2009, that Petitioner is at MMI and that Petitioner is not in need of any further medical treatment.



William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

<input type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm 992542m with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input checked="" type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Edward L. Shelvin,

Petitioner,

14IWCC0493

vs.

NO: 12 IWCC 1427
10 WC 05154

Nascote Industries,

Respondent.

DECISION AND OPINION ON REVIEW ON REMAND

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

In the December 6, 2011, arbitration decision, Arbitrator Robert Falcioni stated that Petitioner failed to prove that he had had bilateral carpal tunnel syndrome as evidenced by the EMG/NCV reports between 1995 and 2010, claiming "Petitioner's nerve conductions [sic] studies were almost identical if not better as recently as 2010 in comparison to 1995." As both EMG/NCV studies were admitted into evidence, the Commission was afforded the opportunity to review them and, in doing so, comes to conclusions different from those expressed by Arbitrator Falcioni. Next, concerning itself as to whether or not Petitioner's bilateral carpal tunnel syndrome arose out of and in the course of his employment as well as whether or not Petitioner's current condition of ill-being was causally related to the claimed accident, the Commission again finds opposite of what Arbitrator Falconi found. The Commission finds both that Petitioner's bilateral carpal tunnel syndrome arose out of and in the course of his employment and Petitioner's current condition of ill-being to be causally related to the claimed accident

On July 27, 1995, Petitioner underwent bilateral EMG/NCV testing conducted by a Dr. James Goldring, testing that led Dr. Goldring to find no abnormalities to either one of Petitioner's wrists. Petitioner underwent a second EMG/NCV test, this time limited only to his right upper extremity, on December 11, 2009, which resulted in a Dr. Latha Ravi finding of mild right carpal tunnel syndrome. On March 30, 2010, Petitioner's treating physician, Dr. Harvey Mirly, recorded that Petitioner was seen again by Dr. Ravi on March 11, 2010, for a nerve conduction study of his left carpal tunnel and that this study resulted in a finding that there was some slowing of the median sensory latency at 3.8 and sensory conduction velocity at 36.1 On the basis of this test and of the December 11, 2009, test, Dr. Mirly found

Petitioner to exhibit evidence of bilateral carpal tunnel syndrome. The Commission finds these two positive tests evidence that Petitioner had carpal tunnel syndrome at that the time of the 2009 and 2010 tests. These tests, furthermore, contradict Arbitrator Falcioni's assertion that Petitioner's diagnosed 2010 bilateral carpal tunnel syndrome was "almost identical if not better" than the findings on the 1995 test as Petitioner was found negative for carpal tunnel syndrome in either wrist in 1995 but positive for the same in the right wrist in 2009 and in the left in 2010. The Commission asserts, under these circumstances, going from negative bilaterally to positive bilaterally not to be a change for the better.

Turning away from the question of whether Petitioner had bilateral carpal tunnel syndrome, the Commission next addresses Petitioner's claim that his condition was the result of his work for respondent as he claims. Petitioner testified to having worked for Respondent for fifteen years, working four of those years as a gauge layout technician. In this capacity, he stated that his typical workday is eight hours and includes time off for lunch and breaks and to using various hand tools to gauge fixtures, including wrenches, gauges, drills and vibratory knives. Petitioner also testified to spending varying amounts of times working with the coordinate measuring machine and performing computer work. With respect to the coordinate measuring machine, Petitioner acknowledged that he might run that machine for as long as two hours using joysticks, but he also acknowledged that it may take him up to eight hours to setup the program. He also acknowledged sometimes, but not typically, that he might spend two or three hours on performing computer work but other times spending only a half hour doing so.

Ernie Mulvaney, Petitioner's then- and current supervisor and witness on behalf of Respondent, testified he works with Petitioner but does not see the job activities Petitioner performs on a daily basis as he works the first shift and Petitioner the second shift. He testified to knowing the everyday job activities of Petitioner because those same activities are performed on the first shift as well, and he corroborated Petitioner's testimony concerning his workday, noting the normal workday was eight hours with a twenty to thirty minute lunch break and two ten to fifteen minute breaks. He stated Petitioner's actual time work was between seven hours and seven hours and twenty minutes. Notice is taken that Mulvaney's description of Petitioner's job activities often included qualifications. He stated that Petitioner "could spend as much as two hours a day working on a computer." The Commission finds, implicitly, Petitioner could also have spent considerably less than two hours a day on a computer. Similarly, Mulvaney's testimony that Petitioner could drive a forklift only once a day or up to five or six leaves open the question how often and for how long Petitioner might operate a forklift on a given day. Most notable about Mulvaney's testimony was his recollection of Petitioner's usage of his hands to perform his job activities, stating that, on a typical day, Petitioner would spend two hours twisting spring-loaded clamps and threading fasteners. He added that manual material handling activities and forceful gripping were involving in Petitioner performing his job duties.

In addition to the testimony of Petitioner and Mulvaney, the Commission was provided approximately eight minutes of video footage that purportedly depicts Petitioner's job duties. The Commission finds, while the video illustrates the job activities performed by Petitioner, it cannot be definitively relied upon as evidence as to the manner in which Petitioner performed these duties. Absent from the footage is any indication as to how fast or with how much force Petitioner used in performing his job duties.

The Commission finds Petitioner and Mulvaney both testified credibly and finds further that Mulvaney's testimony provides support to Petitioner's claim that his work activities aggravated his bilateral carpal tunnel syndrome. It finds further support in the medical records and opinions offered into evidence by Petitioner.

The medical opinion Petitioner relies on is that of Dr. Mirly. Dr. Mirly testified, when he first saw Petitioner on February 16, 2010, Petitioner had already been diagnosed with right-sided carpal tunnel. In

reviewing the EMG report that supported this diagnosis, he found, while it showed abnormalities, he found the EMG to be normal. He took a job description from Petitioner in which Petitioner stated that he, once or twice a week, worked on a coordinate measuring machine that required him to clamp and pins to a frame or gauge. Petitioner informed Dr. Mirley that he performed 6,800 turns in a day. Petitioner also reported to Dr. Mirly of using calipers and micrometers. Upon taking this description and conducting an examination of Petitioner's hands, Dr. Mirly did not display "classic" carpal tunnel syndrome symptoms and even suggested to Petitioner that there might be some other cause for his symptoms. Nevertheless, Dr. Mirly ordered Petitioner to undergo a nerve conduction study of Petitioner's left hand and administered an injection into Petitioner's right carpal tunnel. The results of these actions were that Petitioner's found to be positive for carpal tunnel syndrome to the left hand and also that Petitioner experienced relief from the injection previously administered. He found Petitioner's positive reaction to the injection to be a clinical confirmation of right-sided carpal tunnel syndrome.

Dr. Mirly, on July 8, 2011, provided testimony, during which he expressed his opinion that, based on the history and information Petitioner provided him concerning his work activities, he believed that those work activities either was the cause of an aggravating factor for Petitioner's bilateral carpal tunnel syndrome. He acknowledged that he assumed Petitioner worked eight-hour workdays and five-day workweeks and also that all he knew about Petitioner's work was that it involved pegs and other activities.

The Commission acknowledges Dr. Mirly did not articulate a thorough knowledge of Petitioner's work activities when he was deposed, but it finds Dr. Mirly's notes from his initial meeting with Petitioner provided him at least an adequate basis to form an opinion concerning causal connection.

This particular matter presents the Commission with two physicians who are initially presented with situations in which they doubted what was presented to them. Dr. Mirly, initially questioned Petitioner's claim of having right-sided carpal tunnel syndrome despite Dr. Ravi's diagnosis based on how Petitioner articulated his symptoms. Dr. Mirly took it upon himself to address his own concerns and submitted Petitioner to both an injection into his right carpal tunnel that, if it brought about relief, would indicate Petitioner being positive for carpal tunnel syndrome on the right side as well as a nerve conduction study to Petitioner's left hand. With both diagnostic tests, Dr. Mirly allowed himself to reverse his prior position that Petitioner might not have bilateral carpal tunnel syndrome and came to the conclusion that Petitioner was positive, bilaterally, for carpal tunnel syndrome. The Commission finds Respondent's physician, Dr. Mitchell Rotman, took a different approach.

The Commission specifically found two instances in which Dr. Rotman appears to dismiss objective evidence that conflicts with his position. The first occurred when Dr. Rotman found Dr. Ravi's interpretation of Petitioner's EMG to be unreliable simply because he *expected* Petitioner's motor latencies to be lower than they were. Rather than address the findings as they presented themselves, he took issue with Dr. Ravi's interpretation of them. Nevertheless, Dr. Rotman used Dr. Ravi's findings to declare Petitioner's motor latencies to be *fairly* normal. The Commission notes Dr. Rotman's qualified declaration indicated that Petitioner's motor latencies were, in fact, not normal.

The second such instance was Dr. Rotman's dismissal of Dr. Mirly's findings after Dr. Mirly injected steroids into Petitioner's carpal tunnel. Dr. Rotman questioned the presence of bilateral carpal tunnel in Petitioner's wrists as Petitioner's complaints of pain and tingling were not consistent with a classic carpal tunnel presentation and dismissed these complaints as "subjective." He acknowledged that a positive response to a steroid injection into the carpal tunnel could be indicative of the presence of carpal tunnel, but, when presented with evidence of Petitioner experiencing a positive response to such a steroid injection, Dr. Rotman suggested the positive reaction was the result of a "placebo effect" and not a possible confirmation that Petitioner did, in fact, have bilateral carpal tunnel syndrome.

14IWCC0493

Further damaging Dr. Rotman's credibility in this particular case was his unwillingness to state, within a degree of medical certainty, that Petitioner did not suffer from bilateral carpal tunnel syndrome despite his expressing his belief during his evidence deposition that Petitioner did not have bilateral carpal tunnel syndrome.

Rather than rely on the opinion of Dr. Rotman, the Commission finds, in comparing Petitioner's EMG tests from 1995 and 2010, that there is a demonstrated worsening of the condition of his wrists bilaterally, albeit perhaps only to a modest extent. This, in conjunction with Petitioner's positive response to Dr. Mirly's steroid injection, leads the Commission to conclude that Petitioner was afflicted with bilateral carpal tunnel and, in reliance to the testimonies of Petitioner and Dr. Mirly, that this condition was causally connected to his work for Respondent.

Given its findings of accident and causal connection, the Commission finds it only appropriate to compensate Petitioner for the medical expenses incurred but not paid, for wages lost during his period of temporary total disability and for the permanent partial disability he has sustained.

The only testimonial evidence concerning Petitioner's medical treatment came from Dr. Mirly, Petitioner's treating physician. He found all of Petitioner's treatment and the charges that resulted from said treatment to be reasonable and necessary save one, the charge for a June 4, 2009, injection of Rocephin, an antibiotic. With the exception for the expense related to the injection, the Commission holds Respondent liable for all other medical expenses submitted in conjunction to Petitioner's claim.

The Commission also relies on Dr. Mirly's testimony to determine Petitioner's period of temporary total disability. Dr. Mirly testified that Petitioner was unable to work for eight weeks following the October 18, 2010, right carpal tunnel release. It was during this time that Petitioner also underwent a carpal tunnel release of his left wrist. The Commission notes no evidence was presented that implied Petitioner was capable of working during the eight weeks that followed his October 18, 2010, right carpal tunnel release. Accordingly, the Commission finds Respondent liable for payment of temporary total disability benefits to Petitioner for a period of eight weeks.

The Commission also finds Respondent liable to Petitioner for the permanent partial disability to both his left and right hands to the extent of 17.5% loss of use of both hands. The Commission is reluctant to find Petitioner's hands are permanently partially disabled to a greater extent given the medical and testimonial records. Though Petitioner testified that he reported continued problems with his hands to Dr. Mirly, Dr. Mirly's final entry in Petitioner's chart record did not record any problems. The Commission notes Petitioner's specific complaints of hand weakness were elicited on redirect examination and then only to the extent that he dropped tools once in a while.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$521.33 per week for a period of eight (8) 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 \$469.20 per week for a period of 35.875 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 17.5% loss of use of his right hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$469.20 per week for a period of 35.875 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 17.5% loss of use of his left hand.

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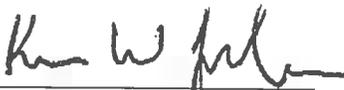
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner for all medical expenses incurred under §8(a) of the Act except for the cost of the Recophin injection administered on June 4, 2009.

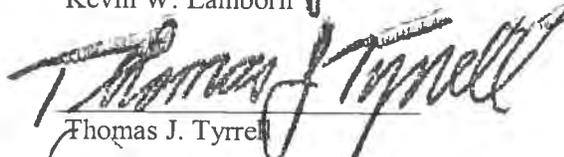
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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 \$38,000.00. The probable cost of the record to be filed as return to Summons is the sum of \$35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: JUN 19 2014
KWL/mav
O: 6/2/14
42


Kevin W. Lamborn


Thomas J. Tyrrell


Michael J. Brennan

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jenessa Lundgren,
Petitioner,
vs.

14IWCC0494

NO: 10 WC 31122

CITY OF MACOMB,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, temporary total disability, 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.

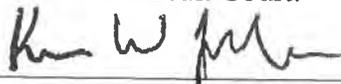
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 26, 2013 is hereby affirmed and adopted.

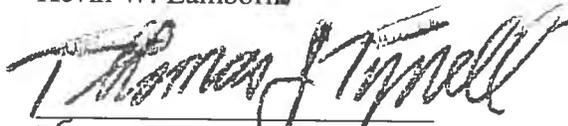
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

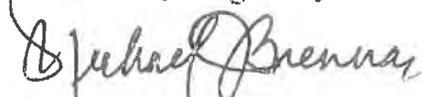
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$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: JUN 19 2014
KWL/vf
O-6/2/14
42


Kevin W. Lamborn


Thomas J. Tyrrell


Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0494

Case# 10WC031122

LUNDGREN, JENESSA

Employee/Petitioner

CITY OF MACOMB

Employer/Respondent

On 11/26/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0892 SIMPSON LAW OFFICE
DAVID SIMPSON
205 E MAIN ST SUITE 402
GALESBURG, IL 61401

2337 INMAN & FITZGIBBONS LTD
JENNIFER BATES
33 N DEARBORN ST SUITE 1825
CHICAGO, IL 60602

STATE OF ILLINOIS)

)SS.

COUNTY OF PEORIA)

- 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**

14IWCC0494

Case # 10 WC 31122

JENESSA LUNDGREN,
Employee/Petitioner

v.

Consolidated cases: NONE.

CITY OF MACOMB,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Peoria**, on **May 29, 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: _____

14IWCC0494

FINDINGS

On **October 7, 2009**, 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 **\$46,956.00**; the average weekly wage was **\$903.00**.

On the date of accident, Petitioner was **27** years of age, *married* with **no** dependent children.

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

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

Respondent shall be given a credit of \$ **3,265.20** for TTD, \$ **0.00** for TPD, \$ **0.00** for maintenance, and \$ **0.00** for other benefits, for a total credit of \$ **3,265.20**.

Respondent is entitled to a credit of \$ **28,608.72** under Section 8(j) of the Act.

ORDER

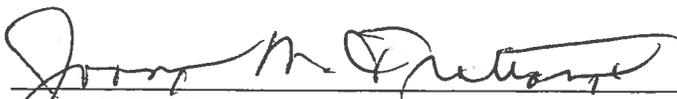
Respondent shall pay Petitioner temporary total disability benefits of **\$602.00/week** for **14** weeks, commencing **July 28, 2011** through **November 2, 2011**, as provided in Section 8(b) of the Act.

Respondent shall further pay Petitioner permanent partial disability benefits of **\$541.80/week** for **175** weeks, because the injuries sustained caused the **35%** loss to her **person as a whole**, as provided in Section 8(d)2 of the Act.

Respondent shall pay reasonable and necessary medical services of **\$11,160.36**, as provided in Sections 8(a) and 8.2 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.


JOANN M. FRATIANNI
Signature of Arbitrator

November 25, 2013
Date

NOV 26 2013

F. Is Petitioner's current condition of ill-being causally related to the injury?

L. What is the nature and extent of the injury?

Petitioner testified that on October 7, 2009, she worked for Respondent as a patrol officer. On that date, Respondent assigned her to work in a school, where a student became disorderly. Petitioner attempted to place the student under arrest and the student resisted, causing Petitioner to fall to the floor onto her outstretched left arm with the student during the struggle. Petitioner at that time felt pain to her neck and left arm.

After this accident, Petitioner sought treatment with Dr. Michelle Reeves, her family physician. She first saw Dr. Reeves on October 14, 2009 with complaints of sharp pain followed by a cold sensation that extended through the neck to the left arm into her hand. Petitioner also complained of tingling and numbness in her left hand and fingers. Petitioner remained under the care of Dr. Reeves who treated her conservatively. Petitioner was prescribed a cervical MRI that was performed on January 30, 2009. This revealed a mild disc bulge at C5-C6 with no frank herniation seen.

Dr. Reeves prescribed another cervical MRI on April 22, 2010, that revealed disc bulging at C5-C6 with no evidence of disc herniation. Following this MRI, Dr. Reeves prescribed epidural steroid injections and physical therapy.

Petitioner then saw Dr. MacGregor, an orthopedic surgeon, on June 28, 2010. Dr. MacGregor prescribed an EMG/NCV study, which was performed that same day. This revealed left C5-C6 radiculopathy and bilateral media nerve compressive neuropathy.

Petitioner then remained under the care and treatment of Dr. MacGregor, who noted that she failed conservative treatment. Dr. MacGregor then prescribed an anterior cervical decompression and arthrodesis.

On August 2, 2011, Petitioner underwent surgery with Dr. MacGregor, in the form of an anterior cervical decompression and arthrodesis.

Petitioner saw Dr. Steven Delheimer for an examination on December 6, 2010. This examination was performed at the request of Respondent. Dr. Delheimer testified by evidence deposition that Petitioner had mildly positive Tinel's sign of the left ulnar nerve. Dr. Delheimer felt Petitioner's current complaints were consistent with a mild C8 radiculopathy, but there were no changes on the MRI scan at that level that were significant or consistent with her complaints. Dr. Delheimer felt that surgery would not be recommended by him under these circumstances, and felt she was capable of working with no restrictions and had "long since" reached maximum medical improvement. Dr. Delheimer further testified he had further recommendations for treatment as it related to her October 7, 2009 accident or current complaints.

Dr. MacGregor testified by evidence deposition in this matter on two occasions. Dr. MacGregor testified that she reviewed both MRI tests that were taken both before and after the injury of October 7, 2009, and felt the herniated disc at C5-C6 was larger after the October 7, 2009 injury. Dr. MacGregor was of the opinion that the incident with the student was causally related to her cervical condition in that it was a contributing factor in her eventual need for surgery.

Dr. MacGregor further testified that when she had treated Petitioner prior to the work incident of October 7, 2009, she did not restrict her in any way.

Petitioner testified she suffered a prior cervical injury in 1998 while cheerleading when she fell off a pyramid formation. She was then diagnosed with a muscle strain for which she received treatment, and the symptoms were resolved. Petitioner later sought treatment with Dr. Michelle Reeves, her family physician, in March of 2009, who referred her to see Dr. MacGregor, an orthopedic surgeon. She saw Dr. MacGregor later that month, who felt she was not a surgical candidate, and then experienced no further symptoms to her neck.

Based upon the above, the Arbitrator adopts the opinions of Dr. MacGregor, the treating physician, as to the issue of causal connection. The Arbitrator notes that Dr. MacGregor treated Petitioner before and after the incident of October 7, 2009 and was in a far better position to render a causal connection opinion than Dr. Delheimer in this case.

Based further upon the above, the Arbitrator finds the conditions of ill-being, as appropriately diagnosed by Dr. MacGregor, to now be permanent in nature.

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?

Petitioner introduced into evidence certain outstanding medical bills and charges that were incurred after this accidental injury:

McDonough District Hospital	\$ 3,259.00
Dr. Reeves Family Practice Associates	\$ 211.70
Springfield Clinic	\$ 124.52
Memorial Medical Center	\$ 6,614.10
Advanced Rehab	\$ 471.82
Out of Pocket Medical Expenses	\$ 479.22

These charges total \$11,160.36.

See also the findings of this Arbitrator in "F" and "L" above.

Based further upon the above, the Arbitrator finds that Respondent is liable to Petitioner for the above reasonable and necessary medical expenses, as they were designed to cure or relieve the condition of ill-being caused by this accidental injury.

The parties did not submit information as to any payments made by workers' compensation or group health insurance other than a general figure. Respondent is entitled to credits made by said insurance carriers and the parties will be responsible for determining those payments and any credits due Respondent under this award.

K. What temporary benefits are in dispute?

See findings of this Arbitrator in "F" and "L" above.

14IWCC0494

Arbitration Decision
10 WC 31122
Page Five

Petitioner testified she was placed off work from July 28, 2011, or just prior to her August 2, 2011 surgery, and remained off of work until released on November 3, 2011. This testimony was corroborated by the testimony and medical records of Dr. MacGregor in evidence.

Based upon the above, the Arbitrator finds that as a result of this accidental injury, Petitioner became temporarily and totally disabled from work commencing July 28, 2011 through November 2, 2011, and is entitled to receive benefits from Respondent for this period of time.

STATE OF ILLINOIS)
) SS.
COUNTY OF HENRY)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="text" value="up"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STEVEN LAUBER,

Petitioner,

vs.

NO: 06 WC 17071

ILLINOIS DEPT. OF TRANSPORTATION,

14IWCC0495

Respondent.

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

The Commission finds that the Petitioner sustained the loss of use of 15% of the right leg pursuant to §8(e)12 of the Act.

The Petitioner, a road worker for the Respondent, was struck in the leg by thorns that were among branches and brush that he was removing from the roadway along I-74 on the date of accident. This resulted in an infection, which led to cellulitis and sepsis in the right knee and thigh areas. The October 18, 2012 report of Dr. Paul Nord, Petitioner's examining physician, opined that the Petitioner had an improved area of infection, but that he would be at a much higher risk of a future infection in the knee, and that Petitioner should put as little stress as possible on the knee. He also indicated that the Petitioner still lacked range of motion and that his current level of knee arthritis would worsen over time. Dr. Capecci opined that any need for a future total knee replacement in Petitioner's right knee would be contraindicated due to the previous infection. The Petitioner was able to return to his regular work duties in April 2011. He retired on October 31, 2011. He testified that he had ongoing restriction in his right knee

14IWCC0495

extension and flexion, that he lacks strength and that he cannot stand for more than an hour.

It should be noted that a prior final decision of the Commission determined that while the above condition was causally related to the March 7, 2006 accident, the Petitioner's meniscal tears in the right knee were not. It is difficult to determine, based on the evidence in the record, whether the lack of range of motion and the level of arthritis in the knee are due to the infection, the meniscal tears, or a combination of both. Based on this intermingling of related and unrelated conditions in the right knee, the findings noted above including infection and abscess in the thigh, and a review of prior septic knee awards, the Commission finds that the Petitioner lost the use of 15% of the right leg as a result of the March 7, 2006 accident.

The Commission affirms and adopts the Arbitrator's denial of penalties and attorney fees.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$677.79 per week for a period of 52-5/7 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 \$591.77 per week for a period of 32.25 weeks, as provided in §8(e)12 of the Act, for the reason that the injuries sustained caused the loss of use of 15% of the right leg.

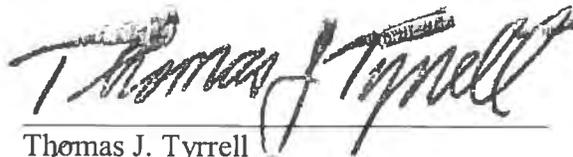
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,310.00 for medical expenses under §8(a) of the Act.

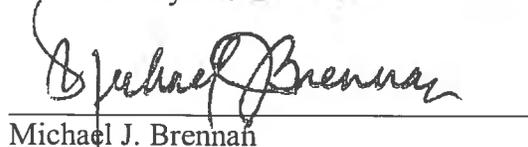
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

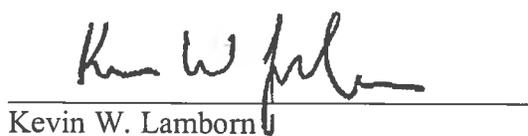
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED:
TJT: pvc
O 06/2/14
51

JUN 20 2014


Thomas J. Tyrrell


Michael J. Brennan


Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

LAUBER, STEVEN C

Employee/Petitioner

Case# 06WC017071

IL DEPT OF TRANSPORTATION

Employer/Respondent

14IWCC0495

On 3/6/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% 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:

2028 JAMES M RIDGE & ASSOC PC
JOHN E MITCHELL
415 N E JEFFERSON AVE
PEORIA, IL 61603

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0988 ASSISTANT ATTORNEY GENERAL
BRETT D KOLDITZ
500 S SECOND ST
SPRINGFIELD, IL 62706

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

1430 DEPARTMENT OF TRANSPORTATION
WORKERS COMPENSATION MANAGER
PO BOX 19208
SPRINGFIELD, IL 62764-9208

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

MAR 6 2013




KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF HENRY)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

STEVE C. LAUBER _____,
Employee/Petitioner

Case # 06 WC 17071

v.

Consolidated cases: NONE

ILLINOIS DEPARTMENT OF
TRANSPORTATION _____,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Kewanee**, on **December 6, 2012**. 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: _____

FINDINGS

On **March 7, 2006**, 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 alleged accident *was* given to Respondent.

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

In the year preceding the alleged injury, Petitioner earned **\$52,860.00**; the average weekly wage was **\$1,016.54**.

On the date of accident, Petitioner was **59** years of age, *married* with **no** dependent children.

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

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

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

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

ORDER

That heretofore on to-wit: **September 18, 2006**, a decision of Arbitrator James J. Giordano was entered and filed with the Commission under the provisions of paragraph (b) of Section 19, for the reason that the disabling condition of said Petitioner, as the result of the accident sustained on **March 7, 2006**, Petitioner was awarded temporary total disability benefits of **\$677.69/week** for a period of **24** weeks, from **March 7, 2006** through **August 22, 2006**, penalties pursuant to Section 19(l) in the amount of **\$4,620.00**, and attorneys fees pursuant to Section 16 in the amount of **\$924.00**. An unspecified credit pursuant to Section 8(j) was allowed in the amount of **\$2,264.00** per month commencing **March 7, 2006**.

Following a Petition for Review, on **August 29, 2007**, the Decision of the Arbitrator was modified by the Commission that found the meniscectomies to be not causally related to this accidental injury.

After hearing additional testimony, the Arbitrator finds that the disabling condition of said Petitioner, as a result of the accident sustained on **March 7, 2006**, has now reached a permanent condition, and the following award shall be in addition to the compensation hereinbefore awarded.

Respondent shall pay Petitioner temporary total disability benefits of **\$677.69/week** for **52-5/7** weeks, commencing **March 7, 2006** through **August 22, 2006**, and again commencing **August 23, 2006** through **March 11, 2007**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **\$591.77/week** for **16.125** weeks, because the injuries sustained caused the **7.5%** loss of use of the **right leg**, as provided in Section 8(e) of the Act.

ORDER (Continued)

14IWCC0495

Decision of Arbitrator
06 WC 17071
Page Three

Respondent shall pay to Petitioner the reasonable and necessary medical services, pursuant to the medical fee schedule, of **\$1,310.00** for out of pocket medical expenses, as provided in Sections 8(a) and 8.2 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 JOANN M. FRATIANNI

February 28, 2013
Date

MAR 6 - 2013

14IWCC0495

Preliminary Findings

This matter was previously tried as a Section 19(b) and 8(a) hearing on August 22, 2006 before Arbitrator Giordano. Arbitrator Giordano found Petitioner's right knee and thigh septic arthritis, right thigh abscess and partial menisectomies to the right knee were causally related to the accidental injury of March 7, 2006. The Arbitrator awarded 24 weeks of temporary total disability from March 7, 2006 through August 22, 2006, penalties pursuant to Section 19(l) and attorneys fees pursuant to Section 16.

On review, the Commission modified in part the decision of the Arbitrator and found that the menisectomies were not causally related to this accidental injury and affirmed the balance of the decision.

The Arbitrator adopts the findings of fact regarding treatment rendered and the description of the accident as contained in the Commission decision in this case, No. 07 IWCC 1138.

F. Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator notes that the Commission has previously found that the meniscal tears to the right knee were not caused by this accidental injury. Petitioner does have evidence of septic right knee arthritis and a thigh abscess.

Following the hearing before Arbitrator Giordano, Petitioner continued to seek treatment with Dr. Below for his right thigh and knee infection disease. Dr. Below referred Petitioner to see Dr. Piero Capeci. Petitioner saw Dr. Capeci on October 11, 2006. Dr. Capeci found during examination a relatively normal gait and no active infection in the right knee. His assessment was that of severe tricompartmental osteoarthritis to the knee which he felt was not really disabling.

Following that examination, Petitioner saw Dr. Below who prescribed physical therapy. Petitioner underwent such therapy from January 4, 2007 through January 31, 2007. Following therapy, Dr. Below prescribed a functional capacity evaluation, which was performed on February 12, 2007. This revealed that Petitioner fell into the medium physical demand level and limited him in activities such as crouching. Following this FCE, Dr. Below released Petitioner to return to work effective March 12, 2007.

Petitioner introduced into evidence a report of Dr. Nord who felt that his current condition of ill-being is related to the accident. Dr. Nord's report is inadequate in that it fails to address injuries to the right knee both prior to and after the accident and failed to differentiate what aspects of his conditions are residual from the meniscal tears. Further, Dr. Nord failed to address the discrepancies between the condition of ill-being when Petitioner was released to return to work on March 12, 2007, as compared to his current condition of ill-being.

Based upon the above, the Arbitrator finds that the medical evidence reveal an aggravation of Petitioner's septic right knee arthritis as well as a right thigh abscess, which was caused by this accidental injury. Based further upon the above, the Arbitrator finds that the right medial meniscus tears are not causally related to this accidental injury.

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?

See findings of this Arbitrator in "F" above.

Petitioner introduced into evidence certain out of pocket medical charges that were incurred after this accidental injury and following the initial hearing before Arbitrator Giordano, which total \$1,310.00. Respondent has agreed to reimburse Petitioner for these charges.

In addition, Respondent has stipulated to the payment of reasonable and necessary medical bills and the Commission has previously determined that Respondent would hold Petitioner safe and harmless from all attempts at reimbursement made by the group health insurance provider.

Based upon the findings of this Arbitrator in "F" above, the Arbitrator further finds the above the charges to represent reasonable and necessary medical care and treatment related to this accidental injury and further finds Respondent to be liable to Petitioner for same, subject to the provisions of the Act and the medical fee schedule created therein.

K. What temporary benefits are in dispute?

Petitioner after the hearing before Arbitrator Giordano continued to remain off of work from the prescriptions issued by Dr. Below. Dr. Below released Petitioner to return to work effective March 12, 2007.

See also the findings of this Arbitrator in "F" above.

Based upon said findings, the Arbitrator further finds that as a result of this accidental injury, Petitioner following the hearing before Arbitrator Giordano remained temporarily and totally disabled from work commencing August 23, 2006 through March 11, 2007, and is entitled to receive benefits from Respondent for that period of time.

L. What is the nature and extent of the injury?

See findings of this Arbitrator in "F" above.

Based upon said findings the Arbitrator further finds that as a result of this accidental injury, Petitioner sustained an aggravation of septic arthritis to his right knee along with a septic infection. Petitioner has returned to work on March 12, 2007.

Petitioner testified to a loss of strength in the right knee and soreness at the end of a workday. Dr. Below noted a full range of motion to the right knee with no evidence of effusion. Petitioner was discharged and advised to return by Dr. Below as needed.

Based upon the above, the Arbitrator finds the above conditions of ill-being to be permanent in nature at this time.

M. Should penalties and fees be imposed upon Respondent?

Petitioner has not filed a new Petition for penalties and attorneys fees in this matter, indicating what fees and penalties are being requested. In addition, the prior Section 19(b) award indicated Petitioner was being paid SERS benefits while off of work.

Based upon the above, the Arbitrator declines to award further penalties and attorneys fees to Petitioner in this matter.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gregory Webb,

Petitioner,

vs.

NO: 11 WC 4444

State of Illinois Pickneyville
Correctional Center,

14IWCC0496

Respondent.

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, notice, causation, 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).

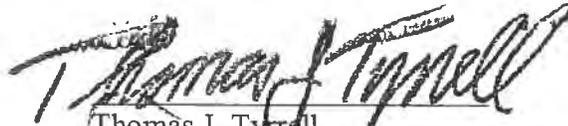
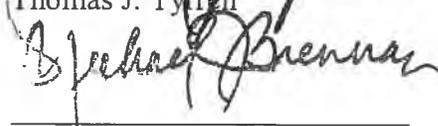
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 7, 2013, is hereby affirmed and adopted.

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.

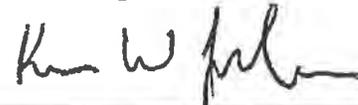
DATED: JUN 23 2014
TJT:yl
o 4/22/14
51


Thomas J. Tyrrell


Michael J. Brennan

DISSENT

I respectfully dissent from the decision of the majority. After a thorough review of the evidence I find that Petitioner's case fails to meet its burden of proof. I would vacate and reverse the arbitrator's decision.



Kevin W. Lamborn

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

WEBB, GREGORY

Employee/Petitioner

Case# 11WC004444

SOI/PINCKNEYVILLE CORRECTIONAL
CENTER

Employer/Respondent

14IWCC0496

On 8/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

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

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0558 ASSISTANT ATTORNEY GENERAL
FARRAH L HAGAN
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

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

BERTIFIED as a true and correct copy
pursuant to 820 ILCS 265/14

AUG 7 2013




KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Gregory Webb
Employee/Petitioner

Case # 11 WC 04444

v.

Consolidated cases: n/a

State of Illinois/Pinckneyville Correctional Center
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on June 11, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

14IWCC0496

FINDINGS

On the date of accident (manifestation), January 17, 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 \$64,382.50; the average weekly wage was \$1,238.13.

On the date of accident, Petitioner was 49 years of age, married with 1 dependent child(ren).

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 \$0.00 for other benefits, for a total credit of \$0.00.

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

ORDER

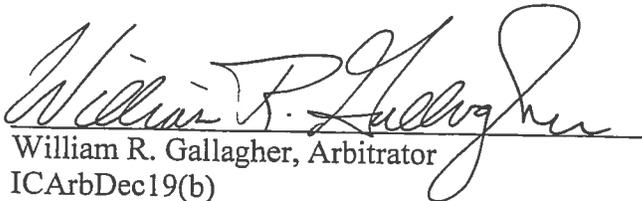
Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall authorize and make payment for the medical treatment recommended by Dr. Brown and Dr. Paletta including, but not limited to, surgery.

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.


William R. Gallagher, Arbitrator
ICArbDec19(b)

August 5, 2013
Date

AUG 7 - 2013

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. The Application alleged a date of accident (manifestation) of January 17, 2011, and that Petitioner sustained repetitive trauma to his right and left hands and right and left arms/elbows. Respondent disputed liability on the basis of accident, notice and causal relationship. This case was tried as a 19(b) proceeding and Petitioner sought an order for medical bills and prospective medical treatment.

Petitioner began working for Respondent in 1993 as a Correctional Officer. He worked in that capacity at Centralia Correctional Center from 1993 to 1998 when he was transferred to the Big Muddy River facility where he also worked as a Correctional Officer until 2003. In 2003, Petitioner began working as a Correctional Officer at Pinckneyville Correctional Center and he worked in that capacity until 2008 when he was promoted to Correctional Sergeant. In 2005, Petitioner received training to be a firearms range instructor and he assisted with firearms training from 2005 to 2008. In 2010, Petitioner was promoted to Correctional Lieutenant and, at that time, he was also assigned to be the Fire Safety Officer. In March, 2013, Petitioner was transferred to the DuQuoin Impact Incarceration Program which was where he was working at the time this case was tried.

While working as a Correctional Officer, Correctional Sergeant and Correctional Lieutenant, Petitioner testified that he had to use both regular size and Folger-Adams keys on a continual basis and that it was common for locks to stick on a regular basis. Many times turning the locks required the use of both hands, especially in the segregation units where there are locks on both doors and chuckholes. Folger-Adams keys were used for the chuckholes and it was very common for these locks to get stuck because food and other objects would get into them and interfere with their operation. Petitioner testified that he would turn keys and forcefully open and close chuckholes hundreds of times during a shift. Petitioner had to work at a rapid pace because certain tasks needed be completed within a specified time.

Petitioner was also required to perform wing checks where he would walk through every wing of the facility and pull forcefully on the doors to make certain that they were shut and this activity required constant pulling with both hands. Petitioner also performed shakedown and inspections of property boxes, these activities also required the active and repetitive use of his arms and hands.

Petitioner also testified that he had to cuff and uncuff inmates and, that over the course of his career, he had done so thousands of times. In 2010, this activity increased because, in addition to the cuffing/uncuffing that he would normally do, he was assigned to the transfer bus. During this procedure, each inmate was cuffed twice and each cuff was double locked. Because of the fact that cuffs are used every day and required cleaning after every use, many of them became very difficult to operate.

When Petitioner worked as the Fire Safety Officer, he was required to inspect all of the fire extinguishers in the facility on a monthly basis which required locking/unlocking either boxes or

locking/unlocking multiple doors to get to where the fire extinguishers were located. During the time Petitioner worked as a Firearms Range Instructor from 2005 to 2008, he testified that he fired thousands of rounds of ammunition at which time he noted increased vibration to his hands.

Petitioner testified that all of his job duties increased when the facility was on lockdown. During these times, Petitioner had to perform a variety of tasks such as carrying laundry and trash, moving food carts, etc., many jobs that were normally performed by the inmates. Petitioner also testified that as a Correctional Lieutenant, he would perform duties identical to Correctional Officers or Correctional Sergeants stating that he believed in teaching his subordinates the appropriate way to perform tasks and to lead by example.

Respondent obtained DVDs of the activities of a Correctional Officer and Correctional Lieutenant which Petitioner viewed. Petitioner disputed the accuracy of the DVD of the Correctional Officer stating that it did not accurately depict the pace at which he worked, the frequency of the tasks he performed and that it did not show locks sticking, difficulties encountered when opening/closing doors or chuckholes.

Respondent tendered into evidence a Job Site Analysis for a Correctional Officer; a Job Analysis Report for a Correctional Lieutenant; Demands of the Job form for a Correctional Lieutenant and a Key Estimation Study. Petitioner testified at length that he disagreed with many of the statements about the job duties described in these reports.

Petitioner's counsel tendered into evidence the deposition transcripts and DVDs of Correctional Officers Donna Jones, Jaelene Bryan and Jimmy Phillips, all of whom testified about the duties performed by Correctional Officers and the use of their arms/hands at Pinckneyville Correctional Center. Petitioner testified that he reviewed these depositions and was in agreement with their testimony. Petitioner's counsel also tendered into evidence the deposition testimony and DVDs of Lieutenant Jason Thompson, the individual who did the Key Estimation Study, and Robert Shuchart, the locksmith at Pinckneyville Correctional Center. Thompson testified that the duties of a Correctional Officer were hand intensive and that they included force and stress. Shuchart testified the locks at Pinckneyville Correctional Center had a substantial amount of wear and tear on them throughout the years and he described their overall condition as being fair to poor.

Petitioner testified that over time he developed numbness and tingling in both of his hands, in particular, the ring and little fingers. The symptoms intensified and Petitioner initially sought medical treatment from Dr. David Brown on January 17, 2011. At that time Petitioner informed Dr. Brown of his occupation and his repetitive keying and cuffing/uncuffing inmates. Dr. Brown referred Petitioner to Dr. Dan Phillips for nerve conduction studies which revealed mild bilateral ulnar neuropathies across the elbows. Dr. Brown reviewed these studies and examined Petitioner and opined that Petitioner had mild bilateral cubital tunnel syndrome. Dr. Brown noted that Petitioner had no other medical risk factors for development of this condition and opined that the work activities could be an aggravating factor. Dr. Brown recommended conservative care including the use of splints and anti-inflammatory medications.

Petitioner testified that he had not been diagnosed with cubital tunnel syndrome prior to the time he was seen by Dr. Brown on January 17, 2011. Petitioner also stated that he had no history of

14IWCC0496

gout, diabetes, hypothyroidism or rheumatoid arthritis. On February 4, 2011, Petitioner completed and signed a form entitled "Workers' Compensation Employee's Notice of Injury" which stated that he had sustained injuries to the left and right wrist and left and right elbows as a result of 18 years of continuous use of keys, locks, doors and gates. The date of injury was alleged as January 17, 2011. On March 23, 2011, Major D. Malcolm completed and signed a form entitled "Supervisor's Report of Injury or Illness" which stated Petitioner had sustained "ulna[r] nerve damage" in right and left elbows as a result of repetitive trauma. It also gave a date of accident of January 17, 2011.

Petitioner was seen by Dr. Brown on March 21, 2011, and reported that the use of the splints helped with the symptoms at night but did not provide him with any relief during the day. Dr. Brown opined that Petitioner had persistent bilateral cubital tunnel syndrome. Given the fact that Petitioner was not responsive to conservative treatment, he recommended surgery. Dr. Brown did authorize the Petitioner to continue to work.

Petitioner had nerve conduction studies repeated by Dr. Phillips on November 10, 2011, and their findings were consistent with what they had been previously in January, 2011. Petitioner was seen by Dr. George Paletta, an orthopedic surgeon associated with Dr. Brown, on December 7, 2011, and Petitioner also informed him of the same occupational history that he had previously provided to Dr. Brown. Dr. Paletta agreed with Dr. Brown's diagnosis of bilateral cubital tunnel syndrome as well as his surgical recommendation. Dr. Paletta also opined that Petitioner's repetitive work activities were either the cause or an aggravating factor of his bilateral elbow conditions.

Respondent did not obtain a Section 12 examination of Petitioner but did obtain a review of his medical records by Dr. James Williams, an orthopedic surgeon, who also reviewed the various job analysis reports and DVDs, Key Estimation Study as well as personally touring the Pinckneyville Correctional Center. Dr. Williams opined that Petitioner's job duties did not cause or aggravate his bilateral cubital tunnel syndrome.

Dr. Paletta was deposed on February 1, 2013, and his deposition testimony was received into evidence at trial. Dr. Paletta's testimony was consistent with his medical records and he reaffirmed his opinion that Petitioner's bilateral elbow condition was either related to or aggravated by his repetitive work activities and that surgery was indicated. In arriving at this opinion, Dr. Paletta specifically noted the lack of any other medical risk factors for development of this condition.

Dr. Williams was deposed on June 21, 2012, and his deposition testimony was received into evidence at trial. Dr. Williams' testimony was consistent with his medical report and he reaffirmed his opinion that Petitioner's bilateral elbow condition was not related to his work activities. Dr. Williams did agree that if the information provided to him about Petitioner's work activities was inaccurate that his opinion in regard to causality might be subject to change.

Petitioner testified that while he has continued to work, he still has ongoing symptoms in his arms and hands and wants to have the surgery performed that was recommended by Dr. Brown and Dr. Paletta.

Conclusions of Law

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

The Arbitrator concludes that Petitioner sustained a repetitive trauma injury to his right and left arms/hands arising out of and in the course of his employment for Respondent that manifested itself on January 17, 2011, and that his present condition of ill-being in the right and left arms/hands is causally related to same.

In support of this conclusion the Arbitrator notes the following:

The Petitioner credibly testified that he performed work as a Correctional Officer, Correctional Sergeant and Correctional Lieutenant that required the repetitive use of both arms and hands. The repetitive use of Petitioner's arms and hands included the use of Folger-Adams keys, forcefully opening/closing doors and chuckholes, cuffing/uncuffing inmates, performing shakedowns, moving property boxes, lifting and the duties of both a Firearms Range Instructor and Fire Safety Officer. The fact that Petitioner was promoted to the ranks of Correctional Sergeant and Correctional Lieutenant did not have any appreciable effect on the repetitive use of his arms and hands because he continued to perform many of the same job duties that he had previously performed.

In view of the credible testimony of the Petitioner in regard to his job duties, the Arbitrator finds that the accuracy of Respondent's Job Site Analysis, Job Analysis Report, Demands of the Job, Key Estimation Study and DVDs are questionable.

Petitioner's unrebutted testimony was that he had no prior treatment or diagnosis of cubital tunnel syndrome until he was examined by Dr. Brown on January 17, 2011.

The Arbitrator finds the opinions of Petitioner's treating physicians, Dr. Brown and Dr. Paletta, to be more persuasive than that of Dr. Williams. When deposed, Dr. Paletta had a thorough understanding of Petitioner's job duties and specifically noted that Petitioner had no other medical risk factors for the development of cubital tunnel syndrome.

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

The Arbitrator concludes that Petitioner gave notice to Respondent within the time required by the Act.

In support of this conclusion the Arbitrator notes the following:

It is undisputed that Petitioner informed Respondent of his having sustained a work-related injury on February 4, 2011. As noted herein, the date of manifestation is January 17, 2011, so notice was given by Petitioner to Respondent well within the time prescribed by the Act.

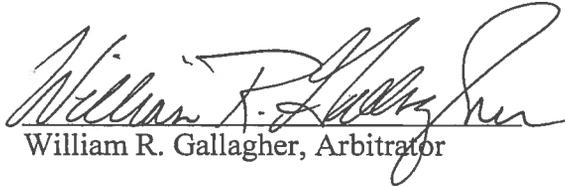
In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

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

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

The Arbitrator concludes that Petitioner is entitled to prospective medical treatment including, but not limited to, the surgery recommended by both Dr. Brown and Dr. Paletta.


William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="checkbox"/> up	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL PYLE,

Petitioner,

vs.

NO: 12 WC 09720

14IWCC0497

CDS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and the Respondent herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of the disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator awarded Petitioner permanent partial disability benefits of 45% loss of use of the right leg. We increase the Arbitrator's award to 50% loss of use of the right leg based on the factors discussed in detail below.

According to Section 8.1(b) of the Act, for injuries that occur after September 1, 2011, in determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

- 1) The reported level of impairment pursuant to the AMA Guidelines;
- 2) The occupation of the injured employee;
- 3) The age of the employee at the time of the injury;
- 4) The employee's future earning capacity; and
- 5) Evidence of disability corroborated by the treating medical records.

- 1) The reported level of impairment pursuant to the AMA Guidelines.

Dr. League performed an impairment rating on Petitioner on April 16, 2013. He gave Petitioner a lower extremity impairment rating of 9%. Dr. League's impairment rating was based on the "mild misalignment seen both on the clinical examination with external rotation of the right ankle and based on the x-ray indicating mild malalignment of the distal tibia with recurvatum deformity." He added that Petitioner's calf atrophy, right ankle swelling and malalignment of the right distal tibia were likely to be permanent.

Dr. League found Petitioner was at maximum medical improvement but would likely have permanent issues with his right ankle and calf. Dr. League's 9% impairment rating reflects Petitioner's lasting physical issues. The AMA impairment rating does not equate to a disability rating; yet a higher impairment rating suggests Petitioner should be awarded higher permanent partial disability benefits.

- 2) The occupation of the injured employee.

Petitioner is an event manager, which requires him to walk or stand for at least five hours during each eight hour work day. While he is able to and successfully performs his full work duties, his occupation requires significant use of his injured right leg. Petitioner complained of continued pain and stiffness and stressed he has hardware permanently implanted in his leg. Petitioner's injury and permanent disability affect his employment more than one who works at a sedentary job with less physical activity. This factor is important because Petitioner's job necessitates continued use of his right leg and Petitioner is entitled to higher permanent partial disability benefits because of such significant use.

- 3) The age of the employee at the time of the injury.

Petitioner was 45 years old at the time of the injury and will likely be employed for many more years. Petitioner's younger age suggests that the loss of use of his right leg will be significant because he will have to live with the disability for a long period of time.

- 4) The employee's future earning capacity.

Petitioner has not demonstrated that he lost any future earning capacity based on his injury and this factor is given less weight. Petitioner has been medically cleared to return to work without restrictions, and he has resumed the same duties he had prior to the injury. Moreover, Petitioner received a merit increase, which suggests Petitioner's permanent partial disability is not limiting his future earning capacity with respect to his current employment.

- 5) Evidence of disability corroborated by the treating medical records.

The medical records corroborate Petitioner's disability and his complaints. Petitioner suffered a significant injury to his right leg, underwent extensive surgery and

still has hardware in his right leg. Petitioner testified that he feels pain in his right leg when he stands or walks for long periods of time, and that he takes four Aleve each day to help deal with the pain associated with the disability. Petitioner's physical therapy discharge records also reflect that he suffers from continued pain. Additionally, Petitioner testified that his coordination is "very unsteady and uncomfortable on uneven surfaces" and that his coordination is unsteady when he walks down a set of stairs as well. In Dr. Schafer's note from August 23, 2012, he opined that it would be difficult for Petitioner to walk on uneven ground because of his loss of subtalar joint motion. Dr. Schafer opined Petitioner's condition will be permanent. The medical records support Petitioner's continuing complaints and permanent limitations he will experience as a result of his work injury and subsequent extensive medical treatment.

Taking into account the factors enumerated in Section 8.1(b), we find that Petitioner is entitled to permanent partial disability benefits of 50% loss of use of the right leg. He testified that he constantly feels pain and discomfort in his foot and ankle with occasional numbness in his foot. Petitioner added that he feels pain in his right leg when he stands for long periods of time and also feels "pain to nagging discomfort" when there is a weather change. In the evening, his right leg is "uncomfortable" anytime he has been on his feet for a long period of time. Petitioner's job requires him to stand and be on his feet for the majority of the day and thus necessitates extensive use of his right leg. Petitioner has permanent right leg issues from his injury that he will live with for the rest of his life. We therefore award Petitioner additional permanent partial disability benefits.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is modified as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$461.54 per week for a period of 107.5 weeks, as provided in §8(e)(12) of the Act, for the reason that the injuries sustained caused the 50% loss of use of Petitioner's right leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$53.10 for medical expenses under §8(a) of the Act.

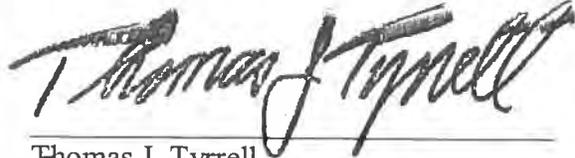
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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.

14IWCC0497

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$49,700.00. 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: JUN 23 2014
TJT: kg
O: 5/20/14
51



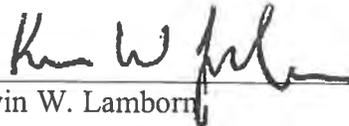
Thomas J. Tyrrell



Michael J. Brennan

DISSENT

I respectfully dissent from the majority's decision. The Arbitrator's decision in this matter is thorough, grounded in the evidence and compliant with Section 8.1(b) of the Act. I would affirm and adopt this decision in its entirety and without modification.



Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

PYLE, MICHAEL

Employee/Petitioner

Case# 12WC009720

CDS

Employer/Respondent

14IWCC0497

On 12/11/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0247 HANNIGAN & BOTHA LTD
KEVIN BOTHA
505 E HAWLEY ST SUITE 240
MUNDELEIN, IL 60060

2284 LAW OFFICE OF LAWRENCE COZZI
ASHLEY VONAH
27201 BELLA VISTA PKWY #410
WARRENVILLE, IL 60555

14IWCC0497

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION
NATURE AND EXTENT ONLY

Michael Pyle
Employee/Petitioner

Case # 12 WC 09720

v.

CDS
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Anthony C. Erbacci**, Arbitrator of the Commission, in the city of **Waukegan**, on **October 29, 2013**. By stipulation, the parties agree:

On the date of accident, **February 28, 2012**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned **\$40,000.48**, and the average weekly wage was **\$769.24**.

At the time of injury, Petitioner was **45** years of age, *single* with **0** dependent children.

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

Respondent shall be given a credit of **\$73.26** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$73.26**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

14IWCC0497

ORDER

Respondent shall pay Petitioner the sum of **\$461.54/week** for a further period of **96.75 weeks**, as provided in Section **8(e)12** of the Act, because the injuries sustained caused **45% loss of use of the Petitioner's right leg**.

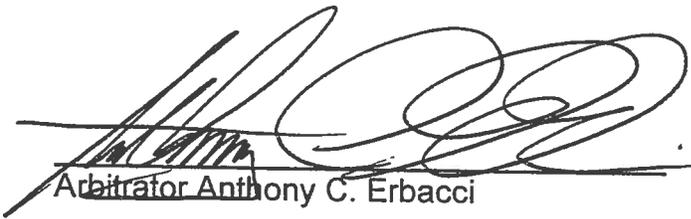
Respondent shall pay Petitioner compensation that has accrued from **April 25, 2012** through **October 29, 2013**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay to the Petitioner **\$53.10** in medical expenses pursuant §8(a) of the Act.

Respondent shall received credit in the amount of **\$73.26** for one day overpayment of temporary total disability benefits.

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

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


Arbitrator Anthony C. Erbacci

December 4, 2013
Date

DEC 11 2013

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FACTS:

On February 28, 2012 the Petitioner sustained undisputed accidental injuries arising out of and in the course of his employment with the Respondent as an event manager. The Petitioner testified that at the time of the accident he was 45 years old and had been employed with the Respondent since March 2011. On February 28, 2012, the Petitioner was walking into the Costco store where he worked and he slipped and fell on black ice. He testified that he felt immediate pain in his right leg and that his leg was folded under him. He was transported by ambulance from the scene of the accident to Lake Forest Hospital where he was treated emergently.

Upon admission, X-rays of the right tibia/fibula showed acute spiral fractures of the right distal fibula and tibia with mild displacement. The Petitioner underwent an open reduction and internal fixation of the right tibial shaft fracture and open reduction and internal fixation of the right distal fibular fracture. The surgery was performed by Dr. David Schafer. Post surgical x-rays showed interval placement of fixation plates and screws traversing the fractures of the distal right tibia and fibula. An anatomic alignment was noted. On March 2, 2012 the Petitioner was discharged from Lake Forest Hospital and transferred to Whitehall Rehabilitation Center in Deerfield, Illinois and remained under the care of Dr. Schafer.

Petitioner testified that during his admission at Whitehall Rehabilitation Center, he received inpatient physical therapy on a daily basis and he was discharged from Whitehall Rehabilitation Center on March 23, 2012. He followed up with Dr. Schafer and was released to sedentary work on April 19, 2012. Dr. Schafer also prescribed outpatient physical therapy which the Petitioner began on April 23, 2012. The Petitioner testified that he returned to work on April 24, 2012. He continued to follow up with Dr. Schafer and to participate in outpatient physical therapy at ATI Physical Therapy. On August 14, 2012, the Petitioner was discharged from physical therapy.

On August 23, 2012, the Petitioner followed up with Dr. Schafer who noted that the surgical incisions were healed, there was no swelling, but he did have continued loss of subtalar joint motion with no instability. He had loss of endurance to repetitive testing. The persistent loss of subtalar joint motion is considered permanent. Dr. Schafer noted that in the future, it would be difficult for the Petitioner to walk on uneven ground because of his loss of motion, but he allowed the Petitioner to return to all activities as tolerated. The Petitioner was placed at maximum medical improvement and discharged from care.

At hearing, the Petitioner testified that Dr. Schafer placed two metal plates and 17 screws in his leg and that these remain in place presently. The post surgical x-ray pictures of the Petitioner's leg were introduced into the record as a part of Petitioner's Exhibit 2. (Px2 p. 52/65 through 54/65)

On April 18, 2013 the Petitioner was seen by Dr. Alan League for an impairment rating. On examination, the Petitioner was noted to have normal alignment of the hind foot and ankle when viewed from anterior, posterior, medially, and laterally without any side-to-side

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difference noted. With his knees flexed 90 degrees and his feet flat on the floor, he was noted to have approximately 10 degrees of external rotation of the right foot compared to 5 degrees external rotation of the left foot. Range of motion in the right ankle showed 17 degrees of dorsiflexion and 45 degrees of plantar flexion compared to the left ankle 22 degrees of dorsiflexion and 45 degrees of plantar flexion. Subtalar range of motion was 10 degrees of eversion and 20 degrees of inversion to bilateral feet. Dr. League concluded that the Petitioner was at maximum medical improvement and his findings were permanent in nature including mild restriction of ankle dorsiflexion of the right ankle, calf atrophy, ankle swelling, and mild malalignment of the right distal tibia as seen on x-rays and appreciated clinically with some mild increased external rotation of the right ankle. Dr. League gave a final lower extremity impairment rating of 9% based on extra articular tibia fracture Class 1, mild motion deficit and mild misalignment or 4% impairment of a person.

The Petitioner testified that as an event manager he worked forty-hours per week, from 8:30 a.m. until 5:30 p.m. from Tuesday through Saturday. His job requires him to walk the floor at a Costco store and supervise the various presentations and displays. Petitioner testified that during an eight-hour day he is on his feet, walking or standing for approximately five hours. The Petitioner testified that he takes two Aleve in the morning and two Aleve in the evening after work. He testified that prior to the accident he was an avid walker and would walk approximately three to five miles, three to four days per week. He testified that subsequent to the accident he can no longer walk for exercise. He notices an increase in pain at the end of the day as well as with weather changes. He indicated that he has stiffness in the right leg and foot and is constantly using a heel-toe, heel-toe walking technique which he learned in physical therapy. He testified that his right foot is somewhat rotated outward and that he has occasional numbness in the foot and ankle area. The Petitioner testified that he cannot run or move quickly and that this is a cause for concern when he is attempting to cross a busy street. He testified that with certain movements such as twisting, he can feel the metal hardware in his right leg. He also testified that his right calf muscle is smaller than the left. He further testified that the outward rotation of his right foot has caused him to stumble on a few occasions. He testified that he has problems and pain walking on uneven surfaces and problems walking down stairs. The Petitioner has not received any further treatment since being discharged from care by Dr. Schafer on August 23, 2012. He was released to full-duty work without restrictions on July 12, 2012. He works the same amount of hours and receives the same pay as before the accident.

CONCLUSIONS:

The Petitioner's undisputed accident occurred after September 1, 2011. Therefore, Section 8.1(b) of the Act requires consideration of the following criteria in determining the level of permanent partial disability:

- * The level of impairment reported by a physician licensed to practice medicine in all of its branches which includes an evaluation of medically

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defined and professionally appropriate measurements of impairment that establish the nature and extent of the impairment based upon the most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment.

- * the occupation of the injured employee;
- * the age of the employee at the time of the injury;
- * the employee's future earning capacity; and
- * evidence of disability corroborated by the treating medical records.

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

In the instant case, the Petitioner suffered acute spiral fractures of the right distal fibula and tibia with mild displacement. The Petitioner underwent an open reduction and internal fixation of the right tibial shaft fracture and open reduction and internal fixation of the right distal fibular fracture. The surgery included the placement of two metal plates and 17 screws in the Petitioner's leg and that hardware remains in place presently. The Arbitrator notes that the post surgical x-ray pictures of the Petitioner's leg demonstrate the extensive hardware that remains in the Petitioner's leg.

With regard to the reported level of impairment pursuant to Section 8.1(b), the level of impairment reported by Dr. Alan League is 9% of the lower extremity, which translates to 4% of the person as a whole. The Arbitrator notes that impairment does not equate to permanent partial disability under the Workers' Compensation Act.

With regard to the occupation of the injured employee, the Petitioner's occupation is that of an event manger and his job requires him to walk or stand for at least five out of eight hours of the work day. The Arbitrator concludes that the Petitioner's ability to perform the duties of his employment will be more adversely affected by his permanent partial disability than would the ability of an individual who performs work which does not require as much standing and walking. Thus, the Arbitrator concludes that the Petitioner has sustained a greater amount of permanent partial disability than an individual who's work requires less physical activity.

With regard to the age of the employee at the time of injury, the Petitioner's age at the time of injury was 45 years old. The Arbitrator considers the Petitioner to be a younger individual and concludes that the Petitioner's permanent partial disability will be more extensive than that of an older individual because he will have to live with the permanent partial disability longer.

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With regards to the employee's future earning capacity, the Arbitrator notes that at the present time the Petitioner's earning capacity appears to be undiminished because he has been medically cleared to return to full duty work and is receiving the same rate of pay. The Petitioner however used to own a restaurant and although he has no present plan to go back to the restaurant business in the future, as a result of this injury and longer time on one's feet, he feels he is unable to return to the restaurant business in the future. The Arbitrator concludes that this may negatively affect the Petitioner's future earning capacity.

With regard to the evidence of disability corroborated by the treating medical records, the Petitioner credibly testified that he currently takes four Aleve per day for pain, he experiences stiffness, pain and occasional numbness in the right leg and foot, outward rotation of the right foot, problems navigating uneven surfaces and going down stairs. He also testified that Dr. Schafer placed 17 screws and 2 plates in his right leg. The Petitioner's complaints and disability regarding his right leg are corroborated by Dr. Schafer's medical records that noted continued loss of subtalar joint motion which is permanent, loss of endurance to repetitive testing and difficulty walking on uneven ground because of loss of motion. The hardware can be clearly viewed in the records of Dr. Schafer (Px2 p. 2/65 through 54/65). His complaints and disability were further corroborated by Dr. League who noted permanent external rotation of the right foot, reduced dorsiflexion of the ankle, right calf atrophy, right ankle swelling and malalignment of the right distal tibia both radiographically and clinically. The Petitioner's complaints as supported by the medical records, evidences a disability as indicated by Commission decisions regarded as precedent pursuant to Section 19(e).

The determination of permanent partial disability is not simply a calculation but an evaluation of all 5 factors as stated in the Act. In making this evaluation of permanent partial disability, consideration is not given to any single enumerated factor as the sole determinant. Therefore, having considered the factors enumerated in Section 8.1(b) of the Act, 820 ILCS 305/8.1(b), the Commission decisions regarded as precedent pursuant to Section 19(e), the extent of the hardware which presently remains in the Petitioner's leg, and the Petitioner's credible testimony, the Arbitrator finds that as a result of his accidental injuries the Petitioner has sustained a 45% disability to his right leg.

The Arbitrator further finds that the Respondent shall pay the Petitioner the sum of \$461.54 per week for 96.75 weeks as provided for in Section 8(e)12 of the Act, and that Respondent shall receive a credit in the amount of \$73.26 for one day overpayment of temporary total disability benefits as stipulated by the parties.

Further the Arbitrator finds that the Respondent shall pay to the Petitioner \$53.10 in medical expenses pursuant §8(a) of the Act for the transportation from Lake Forest Hospital to Whitehall of Deerfield on March 2, 2012.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL COURTNEY,

Petitioner,

vs.

NO: 11 WC 48244

BOND STEEL ERECTORS,

Respondent.

14IWCC0498

DECISION AND OPINION ON REMAND
FROM THE CIRCUIT COURT OF COOK COUNTY

This case comes before the Commission on remand from the Circuit Court of Cook County in case number 13 L 050109. On May 7, 2012, Arbitrator Mason issued a decision finding that Petitioner proved he sustained a work accident on December 2, 2011, but found that his current condition of ill being was not causally connected to the work accident. Petitioner appealed the Arbitrator's decision. On January 7, 2013, the Commission issued a decision affirming and adopting the Arbitrator's decision with Commissioner Tyrrell filing a dissent.

Petitioner timely appealed his case to the Circuit Court of Cook County. On July 18, 2013, Judge Sherlock issued an order, stating in full:

"The circuit court hereby remands the above case to the Illinois Workers Compensation Commission for the Commission to set forth the factual basis for its finding that the Petitioner's preexisting back injury was not aggravated as a result of the work place injury so the court can determine whether the decision is against the manifest weight."

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Additionally, Petitioner timely filed his Petition for Review under §19(b). The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission affirms and adopts the Arbitrator's findings of facts and conclusions of law. The Commission further specifically incorporates the Arbitrator's decision and factual findings that Petitioner's preexisting back injury was not aggravated by the December 2, 2011, work injury as its own findings.

The Arbitrator's findings of fact and conclusions of law are restated below:

ARBITRATOR'S FINDINGS OF FACT

Petitioner has been employed as a journeyman ironworker for about fifteen years. T. 61. He is a member of Local 1 in Chicago. T. 61. He works for different contractors for varying lengths of time. Local 1 does not have a hiring hall. He obtains job assignments through superintendents or "word of mouth."

Petitioner testified he began working for Respondent in approximately May of 2011. Between May of 2011 and December 6, 2011, Petitioner worked for Respondent at different sites, including 500 North Lake Shore Drive.

Petitioner testified he believed he was in the Chicago area and not on vacation during the week before December 2, 2011. Petitioner recalled work being "rained out" once or twice during that week. T. 58. Petitioner believed he worked for Respondent at a high-rise at 500 North Lake Shore Drive before December 2, 2011. A foundation was being constructed at that site. Petitioner did not indicate exactly when he worked for Respondent during the period before December 2, 2011. T. 58-59.

On December 2, 2011, a Friday, Petitioner worked for Respondent at a DePaul University construction site at Racine and Fullerton in Chicago. T. 13. This was the first day he worked at this site. T. 33, 57. When Petitioner worked for Respondent before December 2, 2011, he typically signed in and out each day. On December 2, 2011, however, "there was no sheet to sign in or sign out with." T. 33.

Petitioner testified he reported for work at 7:00 AM on December 2, 2011. The supervisor at the site was named "Louie." Petitioner was not sure of this individual's last name. Petitioner received an assignment to build a "gray beam" on the perimeter of the building. He "partnered up" with Andy Krawczyk, another ironworker, and they began carrying rebar to the southwest corner of the building, where other ironworkers were working below ground level

“inside the gray beam.” T. 28. Each piece of rebar was 24 feet long and weighed somewhere between 75 and 100 pounds. T. 16-17.

Petitioner testified that the construction site was “very, very muddy” on December 2, 2011. T. 16. He believed it had rained the day before. The site was a “complete swamp” and this made walking with the rebar extremely difficult. T. 16. There are different ways to carry rebar but, due to the muddy conditions, Petitioner and Krawczyk were “suitcasing” the rebar, i.e., carrying it at their sides, so as to keep the center of gravity low. T. 17. Krawczyk was in the front, facing south, and Petitioner was in the back. T. 17, 55. When Petitioner and Krawczyk got about two feet away from the other ironworkers who were working below ground level, Petitioner swung his end of the rebar around so he could “drop it down” to the workers below. As Petitioner did this, his left foot sunk down into the mud, “almost to the bottom of [his] knee.” T. 28, 55. Petitioner tried to pull his left foot out of the mud but “the clay completely stopped it.” Petitioner “yanked” on his foot “pretty hard” but could not extricate it. When he did this, he “felt a pain go up the left side of [his] hip and butt area.” T. 28. After Petitioner and Krawczyk handed the rebar off to the other ironworkers, Petitioner started unlacing his work boot so that he could pull his foot out but he was then “able to free” the boot. T. 56. Petitioner believed that Andy Krawczyk saw his foot get stuck in the mud. Petitioner indicated that, while he was stuck, Krawczyk went back to get another piece of rebar but would have had to wait for Petitioner since he would not have been able to carry that piece by himself. T. 56. After Petitioner freed himself, he and Krawczyk began carrying out additional rebar. Petitioner could not recall how many pieces of rebar they moved that day. Later in the day, a crane was used to move a “bulk bundle” of rebar closer to the ironworkers who were working below ground. The crane “only had so much boom range” but the movement of the “bulk bundle” resulted in Petitioner and Krawczyk having to carry the rebar twenty rather than thirty feet. T. 57.

Petitioner testified the boot incident took place sometime between 7:00 AM and the morning coffee break. That day, the morning coffee break was a little later than usual. T. 29-30.

After Petitioner and Krawczyk moved more rebar, the supervisor, Louie, instructed Petitioner and another ironworker to move steel with a crane. Petitioner performed this task for a couple of hours. Petitioner testified this task did not require him to lift a lot. He just had to put “chokers,” or straps, on steel and have the crane lift the steel. While Petitioner performed this task, he was feeling pain going up his back into his left hip. T. 30-31.

The lunch break that day was later than usual. It took place “well after” 1:30 PM but before 3:15 PM. Shortly after lunch, Petitioner began building stationary steel columns. Petitioner testified this task consisted primarily of using pliers to cut wire. Petitioner left work at quitting time that day.

Petitioner testified he complained to Louie about the muddy conditions in the morning on December 2, 2011, when he and Krawczyk started carrying out the rebar. There was an

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excavator at the site and Petitioner asked Louie, "why don't you have the guy spread some stone for us?" Louie told Petitioner there was "no time for that."

Petitioner acknowledged that, on December 2, 2011, he did not tell Louie he had gotten his foot caught in the mud.

On the night of Friday, December 2, 2011, Petitioner went to a bar called the "Twisted Shamrock" to attend a Christmas party for the ironworkers. This bar is at the corner of 6500 South Central in Chicago. Petitioner's brother-in-law owns this bar. Petitioner's ex-wife works at this bar, as do a "couple of nephews." Petitioner denied working at this bar but acknowledged he "helps out" when necessary. Petitioner denied performing any work at this bar during the weekend following December 2, 2011. T. 36.

Petitioner testified that, when he woke up on Saturday, December 3, 2011, he "was in pain" and felt as if he had "tweaked" his back or hip. He might have "taken a hot tub" later that day but really did not think much about his pain because his job is very physical and he is accustomed to being in pain. T. 37.

Petitioner testified that, by Sunday, December 4, 2011, he was experiencing increased pain "up the left side of [his] buttocks area." T. 37. He stretched out his back and hamstring area at home so as to gear up for returning to work the next day. T. 37.

On Monday, December 5, 2011, Petitioner returned to the same jobsite at Racine and Fullerton. T. 37. On that day, he and two other ironworkers built rebar walls on the north perimeter of the building. Such walls are built "piece by piece from bottom to top." Petitioner and one co-worker were hanging off the wall via heavy nylon belts that were attached to wall hooks. Their feet were on rebar and their hands were free. As they built the wall, they would climb up and reposition the wall hooks. The other worker was handing 30-foot bars up to them on a 45-degree angle and Petitioner had to drag each bar over the wall hook, move the end of the bar down to the other worker and then secure and tie the bar. Petitioner testified he was able to perform this work but the work aggravated his back. T. 39.

Petitioner testified he and his two co-workers built rebar walls "almost the whole day" on Monday, December 5, 2011. In between, they set a few steel columns. T. 43. The areas around the walls were "very slick and muddy." T. 46.

Sometime before 3:00 PM on Monday, December 5, 2011, Petitioner noticed that Sean Bond, Respondent's general foreman or superintendent, was at the jobsite. Petitioner was "in such pain" that he decided to go talk with Bond. He told Bond he had "tweaked" his back the previous Friday after getting his foot stuck in mud. He asked Bond whether he could leave early to see a chiropractor named "Dr. Mei." Petitioner had gotten Dr. Mei's name from a co-worker earlier that day. Bond allowed Petitioner to leave early. Petitioner testified he was not required

to sign in or out on December 5th. Nor was he required to complete any incident report or other document. T. 45.

Petitioner testified he “had made an appointment with Dr. Mei” for 4:00 PM on December 5th. The doctor’s office was in the Bridgeport area, on West 31st Street. Petitioner went from the jobsite to the doctor’s office.

Dr. Mei’s handwritten note of December 5, 2011 reflects that Petitioner complained of 8/10 low back pain radiating into his left calf “since 12/2/11 – happen [sic] at work.” Dr. Mei noted Petitioner had tried to keep working only to have his pain worsen. Dr. Mei also noted Petitioner had seen a chiropractor twenty years earlier due to low back pain. Dr. Mei took Petitioner off work and prescribed ice, rest and pain pills. PX 7.

Petitioner testified that, after seeing Dr. Mei, he contacted “Sean Bond or possibly Harry Bond” and “told them that the back was really bothering [him] and that [he] might need to take a couple days off.” Petitioner also testified he has not resumed working since December 5, 2011. T. 47.

On Tuesday, December 6, 2011, Petitioner saw another chiropractor, Dr. Abele. Petitioner acknowledged having previously treated with Dr. Abele. T. 48. On direct examination, Petitioner did not elaborate as to when this previous treatment occurred. An itemized bill offered into evidence by Respondent reflects Petitioner saw Dr. Abele for “massages and adjustments” on November 21, 2011, only ten days before the alleged work accident. RX 2. The doctor’s handwritten treatment notes concerning that visit and the visits of December 6, 2011 and December 9, 2011 appear on one page:

“11/21/11 _____ L glut weak
70% healed 70% prob L4-5 disc
L 5 6 derm__ L calf hot 1 HRMT

12/6/11 4L x 5L aggravated
boot stuck in mud 1 HRMT

12/9/11 sl worse walking w/ limp
46L __ plpC after 1 HRMT MRI RX

Another note, dated December 6, 2011, states: “pt injured @ work boot stuck in mud while carrying.” PX 2.

On December 7, 2011, Petitioner returned to Dr. Mei and reported “mild improvement.” Petitioner continued to complain of pain running down his left leg into his calf. The note states: “thinking problem may be long term.” Dr. Mei gave Petitioner the option of seeing a “specialist for pain pills and epidurals.” PX 7.

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Petitioner saw Dr. Mei again on December 10, 2011 and complained of low back pain, hip pain and left calf pain. On examination, Dr. Mei noted a positive Kemp's sign and positive straight leg raising. He recommended Petitioner return in three days. There is no indication Petitioner returned. PX 7.

On December 13, 2011, Petitioner underwent the lumbar spine MRI scan prescribed by Dr. Abele. The radiologist interpreted this scan as showing "moderate disc degeneration at the L5-S1 level with mild disc dehydration at L3-L4 and L4-L5, multi-level annulus bulging from L1 through L5 causing mild to moderate encroachment on the neural foramina bilaterally, most pronounced at the L3-L4 and L4-L5 levels" and diffuse annulus bulging and a "small, broad-based right paracentral disc protrusion" at L5-S1 with degenerative changes "causing severe encroachment on the left L5-S1 neural foramen." PX 2.

Petitioner saw Dr. Gireesen on December 14, 2011. Petitioner testified that Dr. Abele referred him to Dr. Gireesen. T. 51.

Dr. Gireesen's note of December 14, 2011 sets forth the following account of Petitioner's work injury:

"Michael was walking at work with rebar 24 feet long on his right shoulder with another co-worker. The ground was wet and muddy and he was having a hard time putting [sic] his foot out of the mud to make progress. When he attempted to lift this left leg, he was unable to free his leg. He informed [sic] rebar and had to pull the cuff [sic] out. He started experiencing pain in the left buttock area radiating down left leg ever since. The injury happened on December 2, 2011 at intersection of Racine and Fullerton."

Petitioner indicated he was having difficulty sleeping and walking more than twenty feet.

With respect to Petitioner's past medical history, Dr. Gireesen noted only "high blood pressure" and surgery to the left hand in 2001. There is no mention of the chiropractic care Petitioner underwent prior to December 2, 2011.

On examination, Dr. Gireesen noted a normal gait, negative straight leg raising bilaterally and 5/5 strength. He interpreted the MRI as showing a "asymmetric herniated disc at L5-S1." He diagnosed "displacement of lumbar intervertebral disc without myelopathy." He prescribed medication (Lyrica, Celecoxib and Norco), physical therapy and a series of epidural injections. PX 3.

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Petitioner retained counsel on December 17, 2011 and filed an Application for Adjustment of Claim on December 21, 2011. Arb Exh 2.

Petitioner returned to Dr. Gireesen on December 21, 2011 and complained of persistent left leg pain which was preventing him from sleeping. The doctor prescribed Ambien and wax-B treatments. He instructed Petitioner to remain off work. PX 3.

Petitioner underwent an initial evaluation at Core Physical Therapy on December 21, 2011. Petitioner described his work accident and complained of 9/10 pain in his left leg. Petitioner attended therapy thereafter through January 5, 2012, with the therapist noting ongoing complaints of severe pain. PX 8.

A Blue Cross/Blue Shield payment print-out offered into evidence by Respondent shows that Petitioner went to Oberheide Chiropractic on December 22 and 27, 2011. RX 4. The transcript does not contain any records from Oberheide Chiropractic.

Petitioner called Dr. Gireesen's office on December 29, 2011 and indicated he was in "a lot of pain." Petitioner requested "another order for injections" and told the doctor he "will now be going to Midwest Chiropractic." Dr. Gireesen indicated he would schedule Petitioner for injections at a pain clinic. PX 3.

Petitioner went to Midwest Chiropractic on December 29, 2011 and completed a form indicating he was injured at work between 7:00 and 9:00 AM on December 2, 2011. Petitioner complained of left-sided back pain radiating down his left leg. Petitioner denied having experienced similar symptoms in the past. Another note reflects Petitioner's foot "sank into a hole" while he was lifting steel at work on December 2, 2011. It does not appear Petitioner underwent any treatment on December 29, 2011. The Midwest Chiropractic bill states "no charge" for December 29, 2011.

Petitioner called Dr. Gireesen again on January 5, 2012 and indicated that Norco was not controlling his pain. He told the doctor he had scheduled injections at both Northwestern Memorial Hospital and Little Company of Mary Hospital. The doctor told Petitioner to "take the earliest appointments." The doctor started Petitioner on Nucynta. PX 3.

On January 6, 2012, Petitioner saw Dr. Bernadino at Countryview Medical Center d/b/a Illinois Back Institute and complained of left hip pain radiating down into his left leg and foot. Petitioner also complained of numbness in his left foot. The doctor noted Petitioner's pain began on December 1, 2011 when he "fell in a hole carrying steel." Petitioner underwent traction and other treatment with Dr. Bernadino through January 24, 2012. PX 9.

On January 10, 2012, Petitioner underwent an L4-L5 and L5-S1 transforaminal steroid injection on the left. Dr. Patel administered this injection at Little Company of Mary Hospital.

Dr. Patel noted Petitioner had been referred by Dr. Gireesen, “an orthopedic surgeon at Northwestern Memorial Hospital.” He also noted Petitioner had been injured at work about forty days earlier when his foot “got caught in soft mud” while he was carrying a 200-pound iron rod with a co-worker, causing him to “drop the weight and perhaps hyper-extend his back.” Dr. Patel also noted that Petitioner had seen “an acupuncturist as well as a chiropractor” after seeing Dr. Gireesen but had not obtained any relief. With respect to Petitioner’s past medical history, Dr. Patel noted Petitioner underwent hand surgery in 2001 and treatment for hypertension.

Petitioner returned to Dr. Gireesen on January 25, 2012 and complained of pain in the left side of his back going into his left buttock and running down the back of his left leg into his foot. Petitioner also complained of numbness in the top of his left foot.

Dr. Gireesen’s note of January 25, 2012 sets forth a slightly different account of Petitioner’s work accident in that it reflects Petitioner and a co-worker were carrying the rebar like a suitcase rather than on their shoulders. Dr. Gireesen also recorded the following new information concerning Petitioner’s past medical history:

“Massage for the entire body in the past – with
chiropractor. Car accident with some back pain.
He had treatment and he got better and went back
to work without restrictions.”

On examination, Dr. Gireesen noted positive straight leg raising on the left at 50 degrees. He assessed “intervertebral disc disorder of lumbar region with myelopathy” with “pain down the left leg as a result of a work-related injury 12/2/12 [sic].”

Dr. Gireesen told Petitioner to continue taking Norco and start Robaxin. He also directed Petitioner to stay off work, continue therapy and undergo a second injection. PX 3.

Dr. Patel administered a second injection on February 17, 2012. PX

Petitioner returned to Dr. Gireesen on February 28, 2012. The doctor’s office note of that date is not in evidence but other notes reflect he continued the Norco and Robaxin and instructed Petitioner to remain off work. PX 3.

Petitioner testified he was still off work and still in pain. He was experiencing pain in his left leg. He described his left foot as “completely numb” and his left calf area as “kind of dead.” He denied having any similar complaints prior to December 2, 2011. T. 53-54. He began receiving about \$300 per week through Local 1’s Welfare Fund about three weeks before the hearing. He had submitted his medical bills to Blue Cross/Blue Shield, his group carrier. T. 52-53.

Petitioner denied being involved in any kind of accident after December 2, 2011. T. 60.

Petitioner also denied unloading any beer trucks at his brother-in-law's bar from December 2, 2011 through the hearing. Petitioner indicated he "might open a door or meet somebody" at the bar but denied doing any physical work there. T. 60. He acknowledged having gone to the bar since December 2, 2011. T. 60.

Under cross-examination, Petitioner acknowledged that his union has rules and by-laws. He was not sure whether new union members are told they must immediately report any work injuries. T. 63. He "might have" received a new employee orientation packet when he started working for Respondent. T. 63-64. After being shown this packet (RX 1), Petitioner acknowledged that documents therein state an employee must report any injury to his supervisor "at or near the time of the injury," even if no treatment is required, and may be subject to immediate termination if he fails to do so. Petitioner did not recall ever seeing RX 1 before the hearing. T. 69. Petitioner reiterated he did not complete any notice of injury form on December 2, 2011. T. 70. He did not remember whether he said anything about his injury to Andy Krawczyk. He did mention the injury to Peter O'Malley. When asked whether he and O'Malley are friends, he answered, "I know Peter O'Malley." T. 72. He did not tell Lewis Giamurusti, Sean Bond or Brian Hurst about his injury on December 2, 2011. T. 73. To his knowledge, Brian Hurst is an ironworker. T. 74. It was not until Monday, December 5, 2011, that he informed Sean Bond of his injury. He approached Bond before 3:00 PM that day. T. 74-75. He worked with Andy Krawczyk and Brian Hurst on December 5, 2011. A fellow ironworker referred him to Dr. Mei. T. 77. He retained counsel three days after his first visit to Dr. Gireesen. T. 77-78. He does not currently have any other workers' compensation claims pending. He believes he settled workers' compensation claims in the remote past but could not recall how many such claims he pursued. T. 79. He believes he injured his back on one occasion in the past. He recalled being involved in a work-related car accident but could not recall exactly when this occurred. T. 80-81. He could not recall when he last received treatment following that accident. T. 83. The following exchange then occurred:

Q. Within a year prior to December 2nd, 2011, had you ever received treatment to your back?

A. Treatment, yes.

Q. Isn't it true that you had been getting massage therapy treatments prior to December 2nd, 2011?

A. Yes.

Q. And you were seeing . . . chiropractor James Abele?

A. Yes.

Q. And isn't it true that you had adjustments from

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Chiropractor Abele on November 21, 2011?

- A. I'm not sure of when I was at him, but I've seen Dr. Abele. I'm not sure of all the exact dates.
- Q. But would you agree that you saw him in November of 2011?
- A. I'm not sure of when I seen him, so I'm not going to give you an incorrect answer.

T. 83-84.

Petitioner acknowledged spending some time at the "Twisted Shamrock Pub" after December 2, 2011. He denied having any ownership interest in this business. T. 88-89.

On redirect, Petitioner testified that Sean Bond did not send him for a drug test or give him an injury form to complete on December 5, 2011. He has not been terminated by Respondent. T. 90. To his knowledge, Respondent has not filed any grievances against him since December 2, 2011. Respondent did not have an office, or "shanty," at the jobsite on December 2, 2011. He is not sure where Respondent's main office is. T. 91. On December 2, 2011, he saw Sean Bond as he (Petitioner) was pulling away from the jobsite. He did not see Sean Bond at the jobsite earlier that day. T. 92. He was involved in a motor vehicle accident in 1993. Between 1996, when he became an ironworker, and December 2, 2011, he did not take time off due to back pain stemming from the motor vehicle accident. T. 92. He was able to perform his ironworker duties between 1996 and December 2, 2011. T. 93. He has never previously testified at the Commission. He has never filed any other workers' compensation claims against Respondent. T. 93. He never worked for Respondent before 2011. When he started working for Respondent in 2011, he did not go to a safety meeting. He has attended safety meetings scheduled by general contractors, however. T. 95. It is the general contractors who are responsible for keeping walkways clear. T. 96.

Respondent stipulated it does not have a copy of RX 1 bearing Petitioner's signature. T. 100.

Under re-cross, Petitioner acknowledged having retained counsel to investigate a claim against O'Neil, the general contractor, with respect to the December 2, 2011 accident. No such claim had been filed to date. T. 101.

Petitioner called Peter O'Malley, a fellow ironworker, to testify. O'Malley testified he installed grid beams at the DePaul University construction site on the morning of December 2, 2011. The weather was warm that day. O'Malley believed it had rained earlier that week because the conditions were very muddy and swampy. Petitioner and Andy Krawczyk brought

pieces of rebar over to where O'Malley was working. Krawczyk was in the front and Petitioner was in the back. Krawczyk had his back to Petitioner. Krawczyk would pass the front end of the rebar off to O'Malley and Petitioner would walk in a semi-circle and hand off the back end of the rebar to the man who behind O'Malley. T. 111. At some point that morning, O'Malley saw Petitioner sink and get stuck in the mud. Petitioner was able to free himself only "with a lot of struggle and pain." O'Malley saw Petitioner "wince." Petitioner was about ten to twenty feet away from O'Malley at this time. T. 115. Three-inch pieces of stone could have been laid, via an excavator, to improve the workers' footing. Some stone had been laid but only on the ramp at the entrance to the site and not in the area where Petitioner and Krawczyk were walking. T. 115-117. Mud can make carrying rebar more difficult. Mud can be slick and can cause falls. T. 119-120.

Under cross-examination, O'Malley clarified he was working in a trench when he saw Petitioner get stuck in the mud. O'Malley was the union steward at this jobsite. T. 122. He "supposed" it fell to him, as the steward, to report a co-worker's injury if that co-worker came to him and said, "hey, I got hurt." T. 122. To his knowledge, his union does not require that an ironworker immediately report any injury. T. 123. He worked for Respondent prior to December 2, 2011 but had no idea how long he worked at the DePaul University site before that date. T. 123. He did not receive an orientation packet from Respondent prior to December 2, 2011. T. 124. On December 2, 2011 he did not inform Respondent of what he had observed about Petitioner. T. 124. The following exchange then occurred:

Q. Isn't it true you worked for [Respondent] also on December 5th, 2011, correct?

A. I think so.

Q. That Monday?

A. Yeah.

Q. And isn't it true also that on December 5, 2011, you failed to inform anyone at [Respondent] that you saw [Petitioner] injure himself on Friday, December 2nd, 2011?

A. I never seen him injure himself. I seen him get stuck and his facial expressions – proves he's struggling to get through the day on the job. I never says he got injured.

Q. So he never came up to you and said I got injured on December 2nd, 2011?

A. He says he pulled his back.

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T. 125-126. On December 5, 2011, he did not inform anyone at Respondent that Petitioner had pulled his back. T. 126. Andy Krawczyk did not have to walk through the same muddy area that Petitioner walked through while delivering the rebar. When two men are carrying a piece of rebar, the man in back has to "come around" to effect a delivery so he is not directly following the lead man. T. 127. He no longer works for Respondent. He denied quitting Respondent after requesting additional hours. T. 128. He considers Petitioner a friend "at work." T. 128.

On redirect, O'Malley testified that, on December 2 and 5, 2011, he did not believe it was his responsibility to report Petitioner's injury to a supervisor. T. 129.

Respondent called Andrew Krawczyk. Krawczyk testified he has been a member of Ironworkers Local 1 for nineteen years. He has worked as a journeyman ironworker for Respondent for seven years. T. 133. On December 2, 2011 he worked for Respondent at the DePaul University jobsite. That day, Respondent was "doing footings," or "in-ground work." T. 134. He and Petitioner carried pieces of rebar together for about an hour in the morning. Each piece weighed between 80 and 115 pounds. T. 135. The ground was "muddy" during the entire time he and Petitioner worked together that morning. T. 136-137. He and Petitioner both walked through mud. "It was equally muddy throughout the job." T. 137. Krawczyk could not recall Petitioner getting stuck that morning but acknowledged it was "awkward at times to walk in the mud." T. 137-138. To his knowledge, Petitioner did not appear to be in pain at any time on December 2, 2011. Nor did Petitioner report any work injury to him that day. T. 138. He and Petitioner carried the pieces of rebar to a trench. Peter O'Malley was working about six feet below ground level in that trench. O'Malley could have looked up and seen them carrying the rebar but he would not have had a "good, clear shot," vision-wise. T. 139. In the area where Krawczyk and Petitioner walked that morning, there was a point where the mud would have come up about five inches, almost to the top of their boots. T. 140. The following exchange then occurred:

- Q. Now, if at any time [Petitioner] had gotten his left foot stuck in the mud up to his – up to just below his knee, do you believe wouldn't you have noticed that?
- A. If I was looking at him, yes, I would have noticed it.
- Q. Wouldn't that have caused you to probably drop the rebar that the two of you were carrying together?
- A. You could. It didn't happen. I mean I didn't drop the rebar, but it could happen.

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T. 141. Krawczyk also performed lifting and carrying with Petitioner at the DePaul University jobsite on Monday, December 5, 2011. He was not aware of Petitioner exhibiting any signs of pain that day. A little before 3:00 PM that day Petitioner reported a work injury to him. T. 143.

Under cross-examination, Krawczyk testified ironworkers are trained to work in muddy conditions. Stone could have been laid over the mud to make it easier to work. Krawczyk did not recall an excavator at the DePaul University jobsite. Nor did he recall seeing stone there. T. 144-145. At some point during the day, a crane was used to bring the rebar closer to where O'Malley was working. T. 145-146. He was in front of Petitioner when they carried rebar and thus could not see Petitioner. O'Malley was one of four or five ironworkers to whom he and Petitioner handed off the rebar. T. 148. At the point at which he and Petitioner handed off the rebar, he could see Petitioner by looking to his right. T. 149. Muddy conditions can make his job more difficult. It is unsafe to work in mud but an ironworker's job is inherently unsafe, mud or no mud. T. 152. He did not see any sinkholes or "wash-outs" at the jobsite on December 2, 2011. T. 153-154.

On redirect, Krawczyk testified the jobsite was muddy but not swamp-like on December 2, 2011. T. 154.

Respondent also called Lewis Giamarusti. Giamarusti is a member of Local 1. He has worked for Respondent for thirteen years. He is a foreman. His duties including setting up jobs and making work assignments. T. 159-160. If someone reported a work injury to him, he would notify his superintendent. Sean Bond was the superintendent at the DePaul University jobsite on December 2, 2011. Giamarusti observed Petitioner working at this site on that date. Between 7:00 AM and 7:30 AM that day, he observed Petitioner and Krawczyk carrying out rebar to the gray beams that were being worked on. The two men carried out rebar for about twenty or thirty minutes. He observed Petitioner walking in muddy areas at that jobsite. He did not see Petitioner fall or otherwise injure himself on December 2, 2011. On December 2, 2011 no one advised him Petitioner had been injured while working in the mud. T. 163. After the end of the workday on December 2, 2011, he next saw Petitioner on Monday, December 5, 2011. There was nothing different about Petitioner on December 5, 2011. Petitioner, Hurst and a couple of other ironworkers worked on foundation walls that day. Petitioner was either passing iron to other workers or was up on the wall tying the iron up. The iron Petitioner passed weighed between 20 and 100 pounds. He did not observe Petitioner throughout the entire day on December 5, 2011. Petitioner did not report any injury to him that day. Nor did O'Malley report Petitioner having been injured. At about 3:30 PM, Sean Bond and told him Petitioner had reported an injury. T. 166.

Under cross-examination, Giamarusti testified that, prior to December 2, 2011, he had worked with Petitioner on one or two prior occasions. T. 167. He believes Petitioner to be an experienced ironworker. T. 167. An excavator was at the jobsite on December 2, 2011 but it was under the control of the general contractor, not Respondent. Sometimes the excavator operator will move iron for Respondent. T. 170. He did not recall giving Petitioner a safety

meeting report to sign on December 2, 2011. When Krawczyk and Petitioner carried rebar on December 2, 2011, Krawczyk was sometimes in front of Petitioner. After Petitioner finished carrying rebar that day, he assigned Petitioner the task of unloading a truck. The muddy conditions at the jobsite "possibly could" have presented an unsafe condition. T. 173. He has known Harry and Sean Bond for a long time. He purchased a home from Harry Bond. T. 174.

On redirect, Giamarusti estimated that there were msybe six inches of mud on the ground at the DePaul University jobsite on December 2, 2011. T. 174. When he observed Krawczyk and Petitioner carrying rebar that day, they were both walking through the same muddy areas. T. 174-175.

Respondent also called Brian Hurst. Hurst testified he has been a member of Ironworkers Local 1 for 25 years. He has worked for Respondent for about 14 years. T. 178. He worked for Respondent at the DePaul University jobsite on December 2, 2011 and saw Petitioner there. Petitioner did not report an injury to him that day. T. 181. He worked directly with Petitioner at the same jobsite on Monday, December 5, 2011. They worked together most of that day. They were building walls. Petitioner did not report an injury to him that day. T. 183.

Under cross-examination, Hurst testified he was not Petitioner's supervisor on December 2, 2011. T. 184. Some areas of the jobsite were muddy that day. T. 186. It was muddy where Petitioner was working that day. T. 187. He could not estimate the depth of the mud. He saw Petitioner carrying rebar that day but he was working in another area and did not directly observe the area in which Petitioner was working. T. 188-189. He worked as a foreman on Monday, December 5, 2011. Safety meetings are held on Mondays but he did not recall having a safety meeting with Petitioner on Monday, December 5, 2011. T. 190. Respondent's employee orientation book should have been available each day. The book would typically be in the trailer. There was a trailer at the DePaul University jobsite on December 2, 2011. He does not know whether Petitioner received the book that day or Monday, December 5, 2011. T. 191.

Respondent then called Sean Bond. Bond testified that he has worked for Respondent for about 14 years. His present job title is field superintendent. He oversees workers and makes sure they are supplied. T. 195. Respondent hires through the union. Respondent sometimes employs 50 or 60 workers. At other times, it might only employ 20 or 25. T. 196. On December 2, 2011, Respondent's task at the DePaul University site was to install rebar. T. 197. When a new employee arrives at a jobsite, he gives that individual the orientation book and a tax-related document to complete. Respondent tries to give each employee an orientation book on a yearly basis. Typically, Respondent would not give this book to an existing employee who shows up to work at a jobsite he has not worked at before. T. 199. He oversees more than one jobsite at a time so his habit is to travel from one jobsite to another to check on the work. T. 199. On Friday, December 2, 2011, Petitioner did not report any injury to him. Nor did any Giamarusti, Krawczyk or Hurst report Petitioner having been injured that day. T. 200. On Monday, December 5, 2011, he (Bond) went to the DePaul University site at 10:30 AM and again a little before 3:00 PM. T. 201. When he went to the site at 10:30 AM he observed

Petitioner handing up bars to Hurst and other men who were working on the north foundation wall. Petitioner appeared to be working in a normal fashion at that time. T. 201-202. At about 3:05 PM that day, Petitioner walked down the ramp and told him he “tweaked his back” at about 7:30 on Friday. Bond was a “little put off” by this and upset because Petitioner had failed to report this on Friday. He asked Petitioner, “what do you want me to do?” Petitioner told him he would maybe rest his back for a couple of days and “see what happens.” T. 202. He is well versed in handling accidents that are reported to him. He did not have to deal with any major work accidents during the last year. T. 203.

Under cross-examination, Bond testified he is “pretty sure” he has an orientation book bearing Petitioner’s signature at Respondent’s office. He did not bring this signed book to the Commission. He brought only an unsigned copy because this is what Respondent’s counsel asked him to bring. T. 205. He did not recall if he or his colleague gave Petitioner the book to sign. T. 205. He did not give a book to Petitioner at the DePaul University jobsite. T. 205. Nor did he conduct a safety meeting with Petitioner when Petitioner arrived at that jobsite. T. 206. A safety meeting, or “tool box talk,” would have been held at the jobsite on Monday, December 5, 2011. He did not conduct this meeting and did not know whether Petitioner was in attendance. T. 206. Petitioner worked for Respondent a total of six or seven months. Respondent “possibly” hired Petitioner in May. Petitioner initially worked for Respondent at the Ronald McDonald House. He did not recall giving Petitioner an orientation book at this site. He did not send Petitioner for a drug test on Monday, December 5, 2011. He did not initiate any termination proceedings against Petitioner arising out of Petitioner’s reporting. Nor did he file any union grievance. T. 208-209. He did not bring the employee acknowledgement forms to the hearing. T. 209-210. (RX 1, pp. 12-13). He was not asked to bring these forms. T. 210. These forms are very important. T. 210. He recalls being at the DePaul University jobsite at exactly 3:05 PM on Monday, December 5, 2011. T. 211. If he saw a mud-related hazard at a jobsite it would be his job to address it but it would be the general contractor’s responsibility to actually correct it. T. 212-213. He possibly went to the DePaul University jobsite on the morning of December 2, 2011. He definitely stopped by that jobsite between 1:00 and 3:00 that afternoon. T. 213. He noticed muddy areas “down by the gray beams” where Petitioner worked. T. 213.

On redirect, Bond testified no one at the DePaul University jobsite reported a mud-related hazard to him on December 2, 2011. Petitioner did not appear to be under the influence of drugs on December 5, 2011, when Petitioner told him about his injury. T. 214.

Respondent also called Robert Szulczewski. Szulczewski obtained surveillance video of Petitioner on February 15, 2012. RX 3. The duration of the video is 1 minute, 20 seconds. Szulczewski denied obtaining any other video of Petitioner. T. 224. The Arbitrator viewed the video during the hearing. It shows Petitioner talking on a cell phone, bending forward and using one hand to open a door or window covering.

On rebuttal, Petitioner testified that the video obtained on February 15, 2012 shows him lifting a spring-loaded shutter at his brother-in-law’s bar. The bar’s window and door are

covered by these shutters to protect against burglars and damage. There were a few days on which he opened the bar for his brother-in-law because his brother-in-law had a new child. T. 225-226.

Under cross-examination, Petitioner testified that opening the bar consisted of lifting the spring-loaded shutters, entering the rear door of the bar, turning the lights on and letting the cleaning lady in. His brother-in-law employs a doorman and "bar backs" who set up the bar at night. T. 227.

Petitioner's ex-wife, Dawn Courtney, also testified on rebuttal. She testified there are shutters on the door and front window of her brother's bar. The shutters are "air injected" and can be easily opened by using only one hand. Her mother, who is 63 and undergoing chemotherapy, can open these shutters, as can her young children. T. 231-232.

In addition to the exhibits previously discussed, Petitioner offered into evidence various medical bills and prescription receipts. PX 4, 6-10, 12-13. Respondent offered a group of documents, including forms entitled "Employee Orientation" and "Job Safety Checklist," and several unsigned employee acknowledgement/receipt forms. The "Employee Orientation" document provides that "notice [of a work injury] must be made at or near the time of the injury and on the same day of the injury" and that the injured employee "must report the injury to their [sic] supervisor, i.e., foreman, superintendent, project manager, etc." This document also states that "failure to report an injury immediately . . . is a violation of safety policy and may subject the employee to immediate termination." It further provides that any persons involved in an accident involving personal injury or damage to property "will be required to submit themselves to drug testing." [RX 1, p. 4].

Arbitrator's Credibility Assessment

Petitioner was calm while describing the DePaul University jobsite and his alleged work accident of December 2, 2011. Petitioner became agitated and evasive, however, during cross-examination when Respondent's counsel questioned him about prior claims and his pre-accident treatment with Dr. Abele. Petitioner acknowledged undergoing chiropractic adjustments with Dr. Abele prior to December 2, 2011 but was unable to state whether he saw the doctor in November of 2011. He indicated he was "not sure of all the exact dates." T. 83-84.

On direct examination, Petitioner denied having complaints relative to his left buttock and left calf prior to the alleged accident. T. 53-54. Dr. Abele's treatment note of November 21, 2011 calls this denial into question. That note, while brief and handwritten, specifically mentions the left calf and weakness of the left "glut." Dr. Abele's other notes, concerning "all the exact dates" of treatment prior to November 21, 2011, are not in evidence.

It also appears that Petitioner was less than forthright with his providers concerning his medical history. On December 5, 2011, Dr. Mei noted that Petitioner had lower back pain

twenty years ago and saw a chiropractor “then.” PX 7. Dr. Gireesen’s initial history of December 14, 2011 reflects that Petitioner’s left buttock and leg pain began at the time of the alleged work accident. It was only in early 2012 that Dr. Gireesen expressed any awareness of pre-accident chiropractic care, which he believed consisted of “whole body massages.” On December 29, 2011, Petitioner completed and signed a form at Midwest Chiropractic in which he denied having undergone treatment for any health condition during the preceding year. PX 11. In his history of January 10, 2012, Dr. Patel noted that Petitioner’s left-sided lower back pain began at the time of the alleged accident.

Did Petitioner sustain an accident arising out of and in the course of his employment by Respondent?

As indicated above, Petitioner provided detailed testimony concerning the configuration of the DePaul University jobsite and the muddy conditions that existed on December 2, 2011. Petitioner’s testimony on these points was largely corroborated by Andy Krawczyk, who testified on behalf of Respondent. While Krawczyk did not go so far as to liken the jobsite to a “swamp,” he acknowledged there was mud “throughout the job” and that this mud came up to the top of his boots. T. 140. He also acknowledged it was “awkward at times to walk in the mud” (T. 137-138) and that mud can create an unsafe work environment. T. 153. He did not see Petitioner’s left foot get stuck in the mud but clarified he would only have been likely to notice this had he been looking at Petitioner. Under cross-examination, he acknowledged Petitioner was sometimes behind him, and thus out of view, when they carried rebar. T. 147.

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Petitioner’s testimony concerning the specific mechanism of his alleged injury was corroborated by Peter O’Malley. O’Malley was working in a trench below ground level when the alleged injury occurred but Krawczyk admitted O’Malley could have seen Petitioner had he looked up. O’Malley testified he saw Petitioner “sink” and “wince” while struggling to extricate his foot from the mud. O’Malley “presumed” Petitioner was in pain based on Petitioner’s facial expression. T. 115-116.

To a large extent, the histories set forth in the treatment records are consistent with Petitioner’s account of his alleged accident. Dr. Gireesen’s initial note contains a variance, in that it reflects Petitioner and a co-worker were carrying a piece of rebar on their shoulders, but a subsequent note documents the type of “suitcase” transport Petitioner described at trial.

At trial, Petitioner’s counsel devoted a great deal of time to the issue of jobsite safety while Respondent’s counsel focused primarily on the timing of Petitioner’s accident reporting. The Arbitrator is much less concerned with these issues than with the issue of causation. The Arbitrator finds it likely that the incident Petitioner described, i.e., getting his left foot stuck in the mud and having difficulty extricating his foot, happened. For the reasons set forth below, however, the Arbitrator finds that Petitioner failed to prove this incident was a cause of his current lumbar spine condition of ill-being.

Did Petitioner establish causal connection?

A claimant seeking benefits under the Act bears the burden of proving that his claimed accident was a cause of his condition of ill-being. Majercin v. Industrial Commission, 167 Ill.App.3d 894, 899 (3rd Dist. 1988). In the Arbitrator's view, Petitioner failed to meet this burden.

Causation can be established via a "chain of events," without the need for a specific medical opinion, so long as the claimant is able to show "a previous condition of good health, an accident and a subsequent injury resulting in disability." Williams v. Industrial Commission, 216 Ill.App.3d 536, 539 (1991). Petitioner did not make this showing. Petitioner denied having left buttock or leg symptoms prior to the mud-related incident of Friday, December 2, 2011, but that denial is not credible. Dr. Abele's note of November 21, 2011 specifically references the left calf and gluteal area. Petitioner admitted to undergoing treatment with Dr. Abele on more than one occasion prior to December 2, 2011 but did not offer the doctor's complete records or explain why he saw the doctor. Petitioner testified to working for Respondent prior to December 2, 2011 but was vague as to the dates on which he worked, except to say that some workdays prior to December 2, 2011 were "rained out" and December 2, 2011 was the first day he worked at the DePaul University jobsite. The mud-related incident of December 2, 2011 had no immediate effect on Petitioner's ability to perform iron work or engage in recreation. He resumed carrying heavy rebar for a period of time after extricating his foot from the mud and built columns thereafter until the end of his shift. He attended an ironworkers' Christmas party at a bar that evening. He testified he felt as if he had "tweaked" his back or hip on rising

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the next morning but was able to take his children to a skating meet. He rested and stretched on Sunday but was able to resume full duty the next day. On that day, Monday, December 5, 2011, he performed work he described as strenuous until just before the end of his shift. This sequence does not permit the Arbitrator to find causation under a "chain of events" theory.

The only causation-related comment that appears in Petitioner's medical records is Dr. Gireesen's January 23, 2012 assessment of "pain down the left leg as a result of a work-related injury of 12/2/2011." PX 3. The Arbitrator assigns little weight to this comment as it is based on an incomplete history. At the initial visit, on December 14, 2011, Dr. Gireesen noted Petitioner's left leg complaints began at the time of the work incident. On January 23, 2012 Dr. Gireesen expressed awareness of prior chiropractic care but indicated this care consisted of "massage for the entire body." There is no evidence that Petitioner made Dr. Gireesen aware of his November 21, 2011 complaints and treatment relative to his left leg and gluteal area.

In his proposed decision, Petitioner, for the first time, advanced an aggravation theory. This theory is not compatible with Petitioner's testimony. Petitioner specifically denied having left leg or buttock complaints prior to December 2, 2011. T. 53-54.

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Based on the foregoing, the Arbitrator finds that Petitioner failed to establish a causal connection between the mud-related work incident of December 2, 2011 and his current condition of lumbar spine ill-being. The Arbitrator views the remaining disputed issues as moot.

The Commission has the same view of the evidence below as the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 7, 2012 is hereby affirmed and adopted.

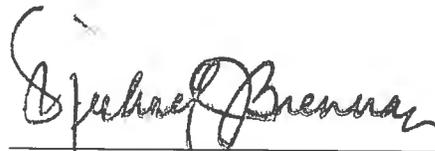
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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

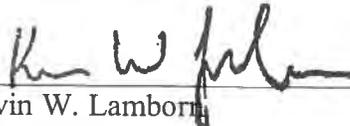
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
TJT: kg
O: 4/21/14
51

JUN 23 2014



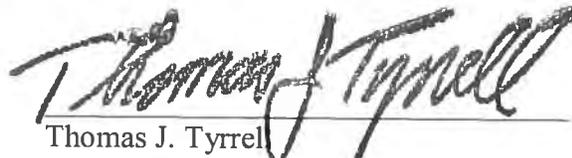
Michael J. Brennan



Kevin W. Lamborn

DISSENT

I continue to stand by my previously filed dissent, where I maintained that Petitioner overwhelmingly proved his current condition of ill being is causally related to his December 2, 2011, work related accident.



Thomas J. Tyrrel

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Terry Reed,

Petitioner,

14IWCC0499

vs.

NO: 10 WC 45813

Centre State International Trucks,

Respondent.

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 temporary total disability, medical expenses, accident 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 22, 2013 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.

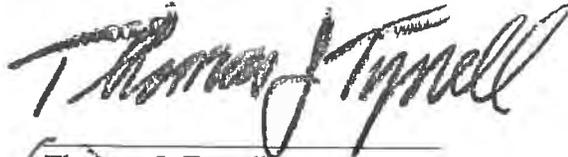
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$24,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 24 2014

KWL/vf

O-4/21/14

42



Thomas J. Tyrrell



Michael J. Brennan

DISSENT

I dissent; I find that Petitioner failed to prove any injury was sustained by him on March 28, 2008. Two witnesses testified to Petitioner being symptomatic for low back pain immediately before March 28, 2008. There is no evidence of Petitioner performing the work he claimed on March 28, 2008. There is no evidence the Kecir truck the Petitioner claimed to have been working on was in the shop on that date. Petitioner produced no witnesses to corroborate any aspect of his claim though he testified that he had two co-workers working with him on the repair of the Kecir truck. The Petitioner failed to meet his burden. The Commission should reverse this matter and find Petitioner failed to prove he sustained accidental injuries on March 28, 2008 that arose out of and in the course of his employment



Kevin W. Lamborn

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

14IWCC0499

REED, TERRY

Employee/Petitioner

Case# 10WC045813

**CENTRE STATE INTERNATIONAL
TRUCKS**

Employer/Respondent

On 10/22/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0225 GOLDFINE & BOWLES PC
ATTN: WORK COMP DEPT
124 S W ADAMS ST SUITE 200
PEORIA, IL 61602

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD
JOHN MACIOROWSKI
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606-3833

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0499

Case # 10 WC 45813

Consolidated cases: NONE.

TERRY REED

Employee/Petitioner

v.

CENTRE STATE INTERNATIONAL TRUCKS,

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Peoria**, on **November 28, 2012**. 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: _____

14IWCC0499

FINDINGS

- On the date of accident, **March 8, 2008**, 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 **\$54,526.68**; the average weekly wage was **\$1,048.59**.
- On the date of accident, Petitioner was **50** years of age, *married* with **no** dependent children.
- Petitioner *has* received all reasonable and necessary medical services.
- Respondent *has in part* paid all reasonable and necessary charges for all reasonable and necessary medical services.
- Respondent shall be given a credit of **\$ 107,590.43** for TTD, **\$ 0.00** for TPD, **\$ 0.00** for maintenance, and **\$ 0.00** for other benefits, for a total credit of **\$ 107,590.43**.
- Respondent is entitled to a credit of **\$ 0.00** under Section 8(j) of the Act, and under Section 8(a) of the Act.

ORDER

- Respondent shall pay Petitioner temporary total disability benefits of **\$699.00/week** for **131-1/7** weeks, commencing **April 14, 2008** through **October 27, 2008**, and again commencing **November 10, 2008** through **November 2, 2010**, as provided in Section 8(a) of the Act.
- Respondent shall pay to Petitioner reasonable and necessary medical services in the amount of **\$40,599.44**, pursuant to the medical fee schedule as created by Section 8(a), and Section 8.2 of the Act.
- Respondent shall not authorize and pay for the prescribed spinal cord stimulator, as such a device does not represent reasonable and necessary medical care and treatment designed to cure or relieve the condition of ill-being caused by this accidental injury.
- 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 JOANN M. FRATIANNI

October 18, 2013
Date

OCT 22 2013

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

Petitioner worked for Respondent on March 28, 2008. He initially worked as a truck mechanic and was promoted to a journeyman, then lead mechanic or supervisor. He ultimately became the second shift supervisor, overseeing approximately 16 mechanics working on large vehicles, trucks and commercial vehicles.

Before this injury, he sustained a variety of injuries for Respondent, a wrist fracture requiring two surgeries which was settled pro-se, and other smaller injuries such as metal in his thumb, and metal shards in his eyes. Petitioner was also involved in a diving accident at the Pekin Pool when he was 11 years old, injuring his neck. He was also involved in a four-wheeler accident. These last two accidents resulted in 8 non-work related cervical fusion procedures between 1991 and 2007. Petitioner testified he missed 3-6 months of work following each of those fusion surgeries and always returned to full duty work for Respondent. Petitioner takes prescription pain medication, some of them narcotics, on a continuing basis as a result of these cervical injuries.

On March 28, 2008, a Friday, Petitioner was on prescription medication at the time of his accident that same day. On that day, Petitioner moved a customer's Macir tool truck into a shop by pushing it with a forklift. Petitioner testified he did this so the truck would not be left out all night and be broken into. While moving the tool truck in such a fashion, the forks bent the rear diamond plate aluminum bumper. Petitioner and a co-employee then attempted to fix the damaged bumper. Petitioner testified he laid on the ground underneath the truck and used a long pry bar to forcibly bend the aluminum bumper back into its normal shape. Petitioner had to brace his legs on the truck's undercarriage for support and to increase his leverage. Petitioner testified he was able to fix the bumper by pulling on the pry bar and pushing with his legs against a truck cross beam, but injured his lower back in the process when he felt a "pop" and sudden pain.

Later that same day, Petitioner was bent over holding a starter in place for a co-employee, Mr. Doug Moul, who was working on a GTT truck. As he straightened up, he experienced shooting pain down his right leg.

Petitioner testified he informed Mr. Vernon Hicks, his supervisor, of his lumbar injury the next work day, a Monday.

Mr. Vernon Hicks testified on behalf of Respondent. Mr. Hicks testified he is Respondent's service manager. Mr. Hicks testified that pursuant to shop policy, if a vehicle of a customer becomes damaged by an employee, the damage is repaired and the customer is not billed. Shop policy requires all damage to be reported to him, photographed, and then Mr. Hicks decides if the vehicle will be repaired in house or referred to Respondent's insurance. Mr. Hicks testified that Petitioner did not inform him of the damage to the bumper. Mr. Hicks further does not recall Petitioner informing him of this injury.

Following this incident, Petitioner continued working without medical treatment until April 10, 2008. On that date, Petitioner insisted on having his lower back examined. Pursuant to shop policy, Mr. Hicks testified no Respondent authorized treatment is allowed until a written report is completed. On April 10, 2008, Petitioner a "First Report of Injury or Illness" form (Px1). That form indicates that on March 28, 2008 at 8:00 p.m., he was straightening a bent bumper on a Kacir truck and then later while helping "Tech 9" (Doug Moul - now deceased) on a GTT truck, that he injured his back. The form also indicates that Respondent was notified of the injury on March 31, 2008. Mr. Hicks printed his name on the form that same day. Mr. Hicks testified he did not sign the form because he did not agree with it. Initially he claimed he never read the report and just forwarded it to the workers' compensation carrier, but later claimed he read it and disagreed with it, even voicing his doubts to the insurance carrier.

Mr. Hicks testified he never investigated this incident until the Spring of 2011, when he was contacted by the insurance carrier's attorney. Mr. Hicks then reviewed time cards and work orders dated March 28, 2008 and March 31, 2008. (Rx14, Rx15, Rx16) The work orders for Tech 9, Doug Moul, include a GTT truck that would not start and was repaired on March 28, 2008. This work order confirms half of the accident history reported on the First Report of Injury or Illness form (Px1). No work orders for a Macir tool truck appears on either day. (Rx14, Rx15, Rx16). Mr. Hicks testified he did not check work orders for March 26, March 27 or April 1, because Petitioner did not claim to be hurt on those dates. Mr. Hicks testified he did not recall Macir tool truck being at the shop, and denied that a tool truck would be placed in a work bay and locked up at night for security, because there are fences around the property.

Petitioner testified he moved the tool truck inside for security from theft, and stated this was the shop's usual policy.

Petitioner testified he first sought treatment on April 7, 2008 with Dr. Knight, his family doctor. Petitioner then was referred to Proctor First Care by Respondent. He first saw this clinic April 10, 2008 with a chief complaint of low back pain onset week ago – worsening” He gave a history of injury “was laying under truck trying to straighten a bumper . . . shooting pain down right leg. (Px3)

Petitioner was then seen at Proctor First Care on April 13, 2008. Petitioner gave them the same history of injury as given to Proctor First Care. The physician took Petitioner off of work, prescribed an MRI, and referred him to Dr. Howard for pain management. (Px3)

Based upon the above, the Arbitrator makes two specific findings:

1. That the history of injury Petitioner provided to Respondent and to the medical providers are consistent;
2. That the testimony of Mr. Hicks is not as credible as it could be, due to a limited investigation performed years after the initial injury, and his attempts to minimize employee efforts to secure the tool truck;

Based upon these findings, the Arbitrator further finds that on March 28, 2008, Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent.

F. Is Petitioner's current condition of ill-being causally related to the injury?

See findings of this Arbitrator in “C” above.

On April 15, 2008, Petitioner was taken off of work by Proctor First Care, prescribed a lumbar MRI, and referred to see Dr. Howard for pain management. (Px3)

The lumbar MRI was performed on April 22, 2008. This revealed degenerative changes at L4-L5 an L5-S1 with right neural foraminal stenosis and disc bulges at both levels. Following the MRI, Petitioner was referred by Proctor First Care for physical therapy and referred to Dr. Howard. Dr. Howard recorded a history of pushing and pulling under a truck – pushing off cross member with legs. (Px11)

Petitioner was then referred by Proctor First Care to see Dr. Marchosky, a neurosurgeon. (Px6) Petitioner gave a history of accident consistent with his testimony to Dr. Marchosky, when first seen on June 17, 2008. Following examination, Dr. Marchosky diagnosed degenerative disc disease, disc protrusion with foraminal stenosis and radiculopathy at L4-L5 and L5-S1. Dr. Marchosky prescribed physical therapy and a lumbar myelogram and post-myelogram CT scan.

Petitioner underwent the myelogram and post CT scan on July 24, 2008. These tests revealed a disc bulge to the right with stenosis at L4-L5, and a bulged disc at L5-S1 with an osteophyte formation and stenosis. On July 25, 2008, Dr. Marchosky prescribed a surgical decompressive laminotomy and referred Petitioner to see Dr. Purvines for a surgical consultation. (Px6)

Petitioner saw Dr. Purvines on October 23, 2008. Dr. Purvines recorded a history of "pushing with feet off a cross member under a semi-truck – attempting to straighten bent rear bumper – had 4' pry bar on shoulder – prying and pushing in an awkward position." Following examination, Dr. Purvines prescribed decompressive surgery and a lumbar fusion. (Px7)

Petitioner then saw Dr. Lange on August 19, 2008. This examination was at the request of Respondent. Petitioner gave Dr. Lange a history of injury consistent with his testimony. Dr. Lange testified by evidence deposition that he diagnosed spinal stenosis, most likely at L5-S1. Dr. Lange felt this condition was causally related to the work injury of March 28, 2008. Dr. Lange's opinion did not change when presented with evidence of long-standing cervical fusions and thoracic spine pain. (Px9)

Petitioner underwent surgery on March 4, 2009 in the form of an L4-L5 and L5-S1 laminectomy, bilateral facetectomy, complete discectomy, interbody arthrodesis, and pedicle screw instrumentation at L4-L5 and L5-S1. Dr. Purvines performed the surgery. On March 9, 2009, Dr. Purvines surgically re-explored the site for a suspected CSF leak and found a weakened dura. On February 8, 2010, Dr. Purvines performed additional surgery, removing the hardware from the lumbar spine. (Px7)

Dr. Purvines testified by evidence deposition (Px7) that he is a board certified neurosurgeon. Dr. Purvines initially diagnosed a right L5 radiculopathy and back pain related to foraminal stenosis and degenerative disc disease. Dr. Purvines performed three surgeries on Petitioner as noted above, and saw him on May 6, 2010. On that date, Dr. Purvines prescribed a functional capacity evaluation that was performed on May 17-18, 2010. Dr. Purvines noted the FCE indicated Petitioner gave maximal effort and release him to light duty work. Dr. Purvines was of the opinion that the degenerative disc disease and L5 radiculopathy was either caused or aggravated by the March 28, 2008 accident. Petitioner last saw Dr. Purvines on July 13, 2010. (Px7)

Petitioner began pain management treatment with Dr. Gheith, on referral of Dr. Purvines. Petitioner gave Dr. Gheith a history of injury consistent with his testimony. Dr. Gheith administered a series of caudal epidural steroid injections, and now has prescribed a dorsal column spinal stimulator. (Px10)

Dr. Graham performed a medical record review on November 2, 2010. This record review was at the request of Respondent. Dr. Graham felt Petitioner was at maximum medical improvement, was in no further need of pain medication, pain treatment, or a spinal cord stimulator. Dr. Lange testified he did not believe Petitioner was in need of a spinal cord stimulator. Dr. Wehner also disagreed with a spinal cord stimulator.

Petitioner saw Dr. Wehner on February 21, 2011. This examination was at the request of Respondent. Dr. Wehner testified by evidence deposition (Rx11) that she reviewed extensive pre-accident treatment records pertaining to the 8 cervical spine surgeries, the thoracic spine chronic pain, and a thoracic MRI performed in 1999. Dr. Wehner was of the opinion that the act of merely arising from a bent over position would not cause the need for a lumbar fusion. Dr. Wehner also felt the MRI findings of April, 2008, were all pre-existing and were likely the cause of the chronic back pain that Petitioner complained to Dr. Knight.

On cross-examination, Dr. Wehner testified she refers all complicated surgeries to other spine specialists. Dr. Wehner testified she only performs "simple" back surgeries, and not fusions. Dr. Wehner testified she was unable to identify a single pre-existing treatment record prior to this accident that specifically referenced lumbar spine treatment or complaints.

Petitioner testified that he did not experience lumbar spine symptoms or treatment prior to March 28, 2008. Petitioner admitted to having a chronic cervical condition with 8 surgeries and a chronic thoracic spine condition from a four-wheeler accident in 1999.

The Arbitrator does note the September 1999 thoracic MRI study does show the lumbar spine and some early lumbar disc degeneration. All of the medical records predating the accident of March 28, 2008 make for interesting reading, but fail to reveal lumbar symptoms or treatment.

Based upon the above, the Arbitrator makes two findings:

1. Respondent has failed to prove evidence of pre-existing lumbar spine symptoms or treatment in this matter that predate the accidental injury of March 28, 2008.
2. The medical opinions as to causation in this case as testified to by Dr. Purvines and Dr. Lange are more persuasive than those of Dr. Wehner, who appears to base her opinion on the fact this accident never occurred.

Based upon the above, the Arbitrator finds that the above conditions of ill-being are causally related to the accidental injury of March 28, 2008.

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?

Petitioner introduced into evidence the following medical charges that were incurred following this accidental injury:

Dr. Mark Montefolka/Proctor 1 st Care	\$60.00
Dr. Ramis Gheith/SSM Health Care	\$45.00
Pekin Hospital #5656216-0001	\$2,748.00
Pekin Hospital #5681870-0001	\$2,748.00
Pekin Hospital #5682039-0001	\$1,666.00
Pekin Hospital #5682039-0002	\$3,374.00
Pekin Hospital #5682039-0003	\$2,862.00

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19(b) Arbitration Decision
10 WC 45813
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Pekin Hospital #5811059-0001	\$4,722.00
SSM St. Joseph Hospital West #1102600018	\$1,065.85
SSM St. Joseph Hospital West #1104000004	\$1,950.50
Knight Center for Integrated Health	\$50.00
Blue Cross /Blue Shield Insurance	\$4,364.47
Injured Workers' Pharmacy	\$19,392.24
Petitioner Out-of-Pocket Expenses	\$1,639.38

These charges total \$46,680.44.

See findings of this Arbitrator in "C" and "F" above.

The Arbitrator finds the above charges with the exception of the Knight Center for Integrated Health (\$50.00) and Pekin Hospital #5811059-0001 (\$4,722.00), and certain Out-of-Pocket Expenses (\$1,309.10) to represent reasonable and necessary medical care and treatment designed to cure or relieve the conditions of ill-being caused by this accidental injury. Respondent is found to be liable to Petitioner for same.

The charges of the Knight Center in the amount of \$50.00 are denied as it is not clear whether or not the treatment rendered for those charges were work related. The charges of Pekin Hospital in the amount of \$4,722.00 are denied as these were for a sleep clinic. No evidence was presented that such treatment was related to this accidental injury. Finally, out-of-pocket expenses in the amount of \$1,309.10 are denied as it is not clear whether or not those charges are related.

Charges thus awarded total \$40,599.44 and are as follows:

Dr. Mark Montefolka/Proctor 1 st Care	\$ 60.00
Dr. Ramis Gheith/SSM Health Care	\$ 45.00
Pekin Hospital #5656216-0001	\$ 2,748.00
Pekin Hospital #5681870-0001	\$ 2,748.00
Pekin Hospital #5682039-0001	\$ 1,666.00
Pekin Hospital #5682039-0002	\$ 3,374.00
Pekin Hospital #5682039-0003	\$ 2,862.00
SSM St. Joseph Hospital West #1102600018	\$ 1,065.85
SSM St. Joseph Hospital West #1104000004	\$ 1,950.50
Blue Cross /Blue Shield Insurance	\$ 4,364.47
Injured Workers' Pharmacy	\$19,392.24
Petitioner Out-of-Pocket Expenses	\$ 323.38

K. Is Petitioner entitled to any prospective medical care?

Petitioner claims the need for a lumbar spinal cord stimulator.

See findings of this Arbitrator in "C" and "F" above.

Dr. Graham performed a medical record review on November 2, 2010. This record review was at the request of Respondent. Dr. Graham felt Petitioner was at maximum medical improvement, was in no further need of pain medication, pain treatment, or a spinal cord stimulator. Dr. Lange testified he did not believe Petitioner was in need of a spinal cord stimulator. Dr. Wehner also disagreed with a spinal cord stimulator.

Based upon the above, the Arbitrator finds that Petitioner has failed to prove that such treatment would represent reasonable and necessary medical care designed to cure or relieve the condition of ill-being caused by this accidental injury, and declines to order Respondent to authorize and pay for same.

L. What temporary benefits are in dispute?

See findings of this Arbitrator in "C" and "F" above.

Petitioner underwent a FCE on May 17-18, 2010. The evaluator noted Petitioner's past cervical fusions limited his motion and strength in the cervical and thoracic spine affecting his lifting abilities. He also noted great restrictions in range of motion of the cervical spine. The FCE results indicated Petitioner was capable of lifting floor to waist 40 pounds occasionally, 45 pounds rarely, front carry 50 pounds occasionally, waist to crown 35 occasionally, carry 60 pounds rarely, crouch at a frequent level and perform standing work at a frequent level. Petitioner also demonstrated no limitations with sitting, walking, standing, kneeling or crouching. (Px12)

During his examination of May 6, 2010, Dr. Purvines noted good strength, sensation and gait. Dr. Purvines last saw Petitioner on July 13, 2010.

Respondent performed a labor market survey dated October 22, 2010. This labor market survey indicated Petitioner was employable performing assembly, field inspections, light industrial, delivery, service advisor and security positions, and that Petitioner was employable in the labor market. (Rx9)

Dr. Graham performed a medical record review on November 2, 2010. This record review was at the request of Respondent. Dr. Graham felt Petitioner was at maximum medical improvement, was in no further need of pain medication, pain treatment, or a spinal cord stimulator. Dr. Lange testified he did not believe Petitioner was in need of a spinal cord stimulator. Dr. Wehner also disagreed with a spinal cord stimulator.

Petitioner commenced a job search in December of 2010 and performed 9-10 attempts at job interviews, with the last being May of 2011, mailed 4 other resumes with the last being in August of 2011, and made numerous job application entries on line. Petitioner was not hired through these efforts. Petitioner testified he informed all potential employers of his medical limitations and informed them his lifting was limited to 30 pounds and he would need to alternate sitting and standing.

Based upon the above, the Arbitrator finds that as a result of this accidental injury, Petitioner became temporarily and totally disabled from work commencing April 14, 2008 through October 27, 2008, and again from November 10, 2008 through November 2, 2010, the date of Dr. Graham's opinion that he was at maximal medical improvement. Petitioner is entitled to receive temporary total disability benefits from Respondent for these periods of time.

14IWCC0499

19(b) Arbitration Decision
10 WC 45813
Page Nine

Based further upon the above, the Arbitrator finds that Petitioner's claims for temporary total disability benefits commencing November 3, 2010 through the date of hearing are denied, based the releases for work and MMI opinions as stated above, and based further upon what appears to be a causal effort at seeking employment subsequent to the Labor Market Survey.

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mary Jordan Patterson,

Petitioner,

vs.

NO: 10 WC 09500

First Student Transportation,

14IWCC0500

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, medical expenses, prospective medical expenses, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 6, 2013 is hereby affirmed and adopted.

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

DATED: JUN 25 2014

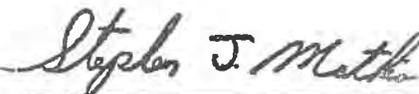
MB/mam
o:5/28/14
43



Mario Basurto



David L. Gore



Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

JORDAN PATTERSON, MARY

Employee/Petitioner

Case# 10WC009500

14IWCC0500

FRIST STUDENT TRANSPORTATION

Employer/Respondent

On 3/6/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% 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:

1824 STRONG LAW OFFICES
ED PRILL
3100 N KNOXVILLE AVE
PEORIA, IL 61604

0299 KEEFE & DEPAULI PC
MICHAEL KEEFE
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

14IWCC0500

STATE OF ILLINOIS)
)SS.
COUNTY OF Sangamon)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Mary Jordan Patterson
Employee/Petitioner

Case # 10 WC 009500

v.

Consolidated cases: N/A

First Student Transportation
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Springfield**, on **1/11/13**. 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 _____

14IWCC0500

FINDINGS

On **2/23/10**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

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

In the year preceding the injury, Petitioner earned **\$15,878.72**; the average weekly wage was **\$305.36**.

On the date of accident, Petitioner was **52** years of age, *single* 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.

Petitioner was temporarily totally disabled from March 1, 2010 through November 10, 2010, a period of 36 3/7 weeks.

Respondent shall be given a credit of **\$17,493.06** in TTD, **\$0** in TPD, **\$0** in maintenance, **\$0** in non-occupational indemnity disability benefits, and **\$0** in other benefits for which a credit may be allowed under Section 8(j) of the Act.

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

ORDER

Petitioner failed to prove she sustained an accident that arose out of her employment with Respondent. No benefits are awarded. Her claim for compensation is denied.

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

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



Signature of Arbitrator

2.28.13

Date

MAR 6 - 2013

14IWCC0500

Mary Jordan Patterson v. First Student Transportation, 10 WC 009500

At the time of arbitration Petitioner testified that she got married after she filed her Application for Adjustment of Claim. An oral motion was made to amend the Application for Adjustment of Claim to reflect Petitioner's married name of "Patterson." Petitioner's motion was granted without objection.

The Arbitrator finds:

At the time of arbitration Petitioner was living in Joliet, Illinois, having moved there from Springfield in May of 2012. Petitioner's move to Joliet was personal and unrelated to her workers' compensation claim.

Petitioner testified that she worked for Respondent as a bus driver from October of 2009 through March of 2010. As such, she transported elementary school children to and from school ("morning runs" and "afternoon runs") and transported high school and, occasionally, pre-school, students to various school-related functions ("charter trips"). Petitioner testified that she worked approximately forty hours per week. Petitioner testified that her morning run usually ended between 9:00 and 9:15. She would then have an afternoon run which began between 2:00 and 2:30. Petitioner testified she could go home between runs if she wished. On occasion, Petitioner would also do a noon run. Petitioner testified that if she did a noon run she would stay in the break room provided by Respondent.

According to Petitioner, Respondent's break room was available for drivers, monitors, and dispatchers. There were approximately five to six tables where employees could sit, stand, and talk. The room was only to be used by employees or someone picking up an employee. Petitioner also testified that employees could sit in their personal vehicles if they so wished. Petitioner also testified that during this time, employees stayed on the clock.

On February 23, 2010 Petitioner reported an accident at work. According to her statement, "I was sitting in a chair in the break [room]. I left my food and purse near the chair. I went over to the table to talk to some of the other co-workers; I was returning to the chair. Bus Driver 11 [Hank] was over there. I was telling him that I was sitting over there and my things are over there. I sat in the chair, he lifted the chair while I was in it. I told him to stop, he can have the chair, I had to brace myself against the wall to keep from being throwed out of it. My back is hurting." (RX 3) Petitioner provided the names of several other people involved. (RX 3)

Petitioner sought medical attention with Dr. Blaum that same day. She provided a history to him reporting that she was sitting in a chair when another employee decided it was his and picked it up, with her on it, and she fell backwards into a wall. Petitioner immediately began experiencing pain in her neck, upper back, and both arms. Doctor Blaum noted moderately severe spasms in Petitioner's paraspinous and deltoid muscles bilaterally. Any motion of Petitioner's neck enhanced her pain, especially that of extension. Petitioner was diagnosed with a cervical strain and treated with ultrasound and ibuprofen.

14IWCC0500

Petitioner was told to refrain from driving for 24 hours and to return on February 25th to see if she could return to work. Petitioner was given a work slip to that effect. (PX 4)

As instructed, Petitioner returned to see Dr. Blaum on February 25, 2010. Petitioner reported increasing discomfort in her neck and more stiffness. Dr. Blaum noted Petitioner worked as a bus monitor and the bouncing in the back of the bus was enhancing her pain significantly. Petitioner's diagnosis remained unchanged. Flexeril was added to her treatment regimen. Petitioner was taken off work and given a note to that effect. It was anticipated she might be able to return to full duty on March 2, 2010. Petitioner was to return on Tuesday for a re-evaluation. (PX 4)

Petitioner underwent therapy for her neck on February 23 and February 25, 2010. (PX 4)

Petitioner was examined by Dr. William Hankinson on March 1, 2010. Petitioner provided a history of her accident on February 23, 2010. Her complaints included neck pain and headaches. Dr. Hankinson wrote a note to Respondent indicating he was taking her off work for ten days effective March 1st. His diagnosis was a cervical sprain/strain with radiation to both shoulders and the mid-back. (PX 5)

Petitioner underwent therapy for her neck on March 2, 2010. (PX 4)

Petitioner's Application for Adjustment of Claim was filed with the Commission on March 2, 2010, alleging Petitioner her neck and shoulder when she was tipped over in a chair by a co-worker. (AX 1)

Dr. Hankinson released Petitioner to return to work on March 15, 2010 with restrictions. He noted Petitioner's range of motion of her spine had increased and her pain levels had decreased. However, Petitioner was still experiencing shooting pain into her right shoulder and down her arm. Dr. Hankinson recommended an MRI and a referral to Dr. Warach. Petitioner's restrictions included: no lifting with her right arm over 5 lbs; no repetitive motion with her right arm or shoulder; no repetitive motion of her head from right to left continually for over one minute; no traction with either arm; and no lifting over ten lbs. and not repetitive. (PX 5)

Petitioner underwent a right shoulder MRI on March 25, 2010 which revealed evidence of a full thickness re-tear of the distal supraspinatus tendon and tendinosis or tendinopathy of the supraspinatus tendon. There was also evidence of degenerative changes of the humeral head and hypertrophic osteoarthritis of the acromioclavicular joint suggestive of type II impingement. (PX 5)

Petitioner was referred to Dr. Kube for further evaluation. Dr. Kube examined Petitioner on April 6, 2010. Dr. Kube's office note contains a history of Petitioner being "thrown out of a chair by a co-worker," the doctor's notes go on to describe "some kind of altercation" between Petitioner (sitting in a chair) and a gentleman who tried to lift the chair and her out of it while she was still in it. Afterwards Petitioner had "pretty significant" pain in her neck and her arm on the right side which has persisted despite chiropractic and non-operative measures. Petitioner had pain in her right upper back, forearm, shoulder, and upper arm. Petitioner had weakness in her right arm, forearm, and shoulder. She also described numbness and difficulty picking up small objects, tripping frequently, and problems with balance. Coughing and sneezing sometimes increased her pain. Petitioner had missed two weeks of

work. On physical examination Petitioner had significantly decreased range of motion in all planes with only about 40 degrees of active flexion and abduction in Petitioner's right shoulder, compared to her left. The doctor described Petitioner's shoulder as fairly stiff and a little frozen. Dr. Kube's impression was that Petitioner was suffering from sprains and strains and, at a minimum, an aggravation of her previous right rotator cuff with some frozen shoulder and maybe a partial tear. She also had a cervical strain all of which he felt were probably related to the altercation she had in the office. Dr. Kube recommended ongoing therapy but referred her to another orthopedic surgeon, Dr. Rhode, who specializes in rotator cuff injuries. Cervical spine x-rays taken that day showed degenerative disc disease with severe osteophytes from C4 – C7 and foraminal stenosis. (PX 5, 6)

Petitioner was referred to Dr. Blair Rhode, a surgeon affiliated with Orland Park Orthopedics. Petitioner treated with Dr. Rhode beginning on April 15, 2010. Dr. Rhode noted Petitioner's history of a February 23, 2010 accident in which Petitioner struck her head and shoulder against a wall while being rocked in a chair by a co-worker. He performed an examination and recommended surgery for Petitioner's right shoulder which, according to an MRI, had sustained a high grade partial thickness tear. Surgery occurred on May 22, 2010. Petitioner underwent a subacromial decompression, arthroscopic rotator cuff repair, and suprascapular nerve block. His office notes note Petitioner's symptoms were secondary to a work injury. Dr. Rhode described Petitioner's condition as "plateaued" when he saw Petitioner in November of 2010. He believed she would require permanency in the form of medium duty with "no overhead restriction of 10/20 pounds." He did not feel she was capable of commercial vehicle driving. He believed her restrictions would be permanent and that she was at maximum medical improvement and could be released to return as needed. As of November 14, 2011 Dr. Rhode found Petitioner to be at maximum medical improvement and released her to return as needed. His notes indicate ongoing lateral arm pain. He continued her permanent restrictions. (PX 7, PX 8)

Dr. Kube continued to monitor Petitioner's neck condition and in July of 2010 ordered a cervical MRI. That was performed on August 17, 2010 at Peoria Imaging Center and showed cervical spondylosis with moderate central and foraminal stenosis at C3-4, C4-5, and C5-6. Petitioner also had a small broad-based central disc herniation at C6-7. (PX 6)

Petitioner underwent EMG/NCV studies with Dr. Trudeau on August 26, 2010. His studies confirmed Dr. Kube's suspicion of a right C7 radiculopathy, mild in testing terms. (PX 6)

Petitioner returned to see Dr. Kube on September 9, 2010. According to his office notes, Petitioner was still experiencing pain in her shoulder which the doctor felt was consistent with the C7 radiculopathy on the right. He described the disc at C6-7 as bulging. He saw no reason for surgery although epidural steroid injections and pain management might be beneficial. In the interim, Dr. Kube recommended light duty for her neck. (PX 6)

Dr. Blaum evaluated Petitioner on September 24, 2010 post-suprascapular nerve block. Petitioner's past history included "some type of shoulder injury that involved having surgery in May. Petitioner was still having a great deal of pain and tenderness with range of motion. Petitioner also reported that the block she received last week had helped a great deal with both her pain and range of motion. Petitioner's

exam did show definite improvement in her range of motion. She was instructed to continue therapy with Dr. Hankinson and return in one week. (PX 5)

Dr. Kube re-examined Petitioner on October 14, 2010, at which time Petitioner reported mild progress with her condition and treatment methods. Dr. Kube recommended she continue with her current course – ie. interventional pain management. He felt she could perform permanent light-medium to medium activity. He felt her shoulder would be her predominant restriction and he would defer that to Dr. Rhode. (PX 6)

Petitioner returned to see Dr. Blaum on October 8, 2010. Her complaints included additional neck pain with radiation into her right upper arm but stopping before the elbow. Physical examination findings were unchanged. Dr. Blaum's assessment was cervical nerve root injury with secondary weakness of the arm and neck muscles. Petitioner was advised to continue physical therapy with Dr. Hankinson and return in three weeks. (PX 5)

On June 14, 2011, and at Respondent's request, Dr. Russell Cantrall, a board certified physician in physical medicine and rehabilitation, examined Petitioner. Dr. Cantrall is a licensed physician in Missouri but not in Illinois. Dr. Cantrall examined and interviewed Petitioner and reviewed medical records. He was of the opinion Petitioner sustained a rotator cuff tear for which she underwent surgery with residual subjective pain complaints. She also sustained a cervical strain-type injury. Since her rotator cuff tear appeared to be a recurrent one, Dr. Cantrall believed some reasonable restrictions might be helpful to minimize the chances of another tear. He recommended she lift less than fifty pounds from floor to waist level, less than thirty pounds from waist to shoulder, and less than twenty pounds in an over the shoulder position. Dr. Cantrall saw no reason to restrict her from commercial driving. He did have some uncertainty about whether she had to really pull a 100 pound sack as part of a fitness for duty exam and wanted more information on that. He also thought an FCE might be helpful.

At the time of arbitration Petitioner testified that she was in the break room on February 23, 2010 in between runs. According to Petitioner, there were too many people in the break room and not enough chairs. Petitioner had finished a noon run, stopped and picked up fish for lunch and gone to the break room. Petitioner testified that the tables were full so she got a chair and put it by a door. She left her purse and food on the chair to go speak with a co-worker. Petitioner testified that she then noticed another co-worker, Hank, heading towards her chair. Petitioner testified that she went over to "her" chair and sat on it. The chair had no arms. Hank then picked up the chair with Petitioner on it. As Hank did so, Petitioner braced herself on the chair and her head hit the wall. Petitioner described it as a hard impact and she was nervous.

Petitioner denied any prior problems with Hank. She had no reason to be upset with him or for him to be upset with her. Petitioner denied that they were engaged in any horseplay. Petitioner thought Hank was trying to get her chair.

Petitioner testified that afterwards, her back hurt and she was sore, embarrassed, and scared. She filled out a report and wanted to see a doctor.

Petitioner testified that she had sustained a prior rotator cuff injury in 2008 but she was over that and "cured."

Petitioner testified that she always provided her work restrictions to Respondent. She testified she repeatedly requested work as a bus monitor but it was denied. Petitioner testified she was terminated in 2011. Prior to her termination she provided Respondent with her permanent restrictions from Dr. Rhode. Petitioner also testified that she demanded vocational rehabilitation. Petitioner testified that she met with David Morgan in early 2011 and looked for work. She kept logs regarding her job searches. (PX 13, 14) Petitioner testified she was never offered a job until December 5, 2011 when she began working for A & R Security on North Grand in Springfield. She was paid \$9.25/hour. Petitioner transferred to Joliet and works there. It is now called Universal Protection Services. Petitioner works light duty and earns less than she did for Respondent. Petitioner described the pay difference as "small" – maybe a dollar. Petitioner denied working anywhere between March of 2011 and December 5, 2011.

Petitioner's medical bills are found in PX 15.

Petitioner testified she has limited mobility. She used to drive a commercial vehicle and no longer can. She cannot lift 40 lbs. She cannot push or pull repetitively. Petitioner testified that if she constantly moves her right arm, it is painful and she feels a "digging" sensation. When Petitioner swings gates at work, it hurts. Petitioner takes ibuprofen every day. She cannot take controlled substances. Petitioner also testified that if she turns her neck too sharply it feels like her head will pop off her shoulder. Petitioner denied having any of these problems before February 23, 2010.

On cross-examination Petitioner testified there were about ten to eleven people in the break room. There were more than eleven chairs. Petitioner agreed on cross-examination that the incident was about the chair. She described Hank as being sixty to seventy years of age. There was nothing defective about the chair. Petitioner explained that she was sitting in the chair when Hank lifted it and "rocked and rolled it." They were face to face with one another. Petitioner further testified that her right shoulder symptoms began while she was bracing herself in the chair. She acknowledged that the accident report did not mention her shoulder. She further testified that the company doctor, Dr. Blaum, checked her neck and shoulder so she believes her shoulder should also be mentioned in the report. Petitioner also agreed that after the morning run, she is free to go home, sit in her car, or go the break room – one is free to do as one wishes.

Karen Sharp testified on behalf of Respondent. She, too, is a bus driver for Respondent. She knows Petitioner and witnessed the events of February 23, 2010.

Ms. Sharp testified that she completed a report and turned it in on February 23, 2010. Ms. Sharp testified that she was at a table when she noticed someone carrying on and screaming. Hank was carrying a chair. According to Ms. Sharp, Petitioner was on Hank's back. Petitioner hit her head on the wall. Ms. Sharp was about three to four feet away from what was happening. According to Sharp, Petitioner came around Hank and "flopped" into the chair and her head hit the wall. Sharp denied that Hank ever picked up the chair with Petitioner in it.

On cross-examination, Sharp testified that employees and their relatives may use the break room. When employees are there, they are off the clock. RX 2 is the report Sharp completed. It is dated February 22, 2010, a day before the accident. When confronted with this, Sharp testified, "Oh, it sure is." She identified her signature and acknowledged she wrote the report. She agreed the events did not occur on the 22nd. Others completed reports, too. On re-direct, Sharp explained that she wrote out the report the day of the event.

Sharp denied hearing any verbal discussions between Petitioner and Hank.

PX 2 is the First Report of Injury. According to it, Petitioner injured her low back when she braced herself against a wall. The accident was described as " [Employee] had got up from chair in break room; went back to get her chair. Another employee came up and attempted to get chair; 1st employee sat in chair & while she was in chair the other employee attempted to pick up chair with her in it, she had to brace herself up against wall & hurt her lower back." (PX 2) Petitioner testified she did not recall seeing PX 2.

Petitioner completed an accident report as described above. (RX 3)

Karen Sharp completed a report dated February 22, 2010. (RX 2) In it she stated, "Mary [Petitioner] came running up the back of Hank who was bent over with his right hand on back top of chair and his left hand on the seat and bent over and all of a sudden here comes Mary very aggressively and behind Hank just as he was coming up with the chair – she started yelling and flopped around Hank's left side and flopped onto the chair, lost her balance and fell slightly against the wall. The table leaning against the wall fell towards Mary as she straightened up in the chair. (RX 2)

Petitioner acknowledged that she is 6'2" tall.

The Arbitrator concludes:

The primary issue is whether Petitioner's accident arose out of her employment with Respondent. After considering all of the evidence, the Arbitrator concludes that it did not.

The Arbitrator notes discrepancies as to what actually occurred and what part(s) of Petitioner's body may have been injured at the time of the incident. She also observed Petitioner while testifying and noted a tendency towards exaggeration. Petitioner claims Hank lifted a chair with no arms and shook it while Petitioner was sitting in it. Ms. Sharp claimed Petitioner "flopped" into the chair and hit her head on the wall. In her statement Hank was lifting the chair before Petitioner was sitting on it. Petitioner is 6'2" and Hank's age was believed to be between 60 and 75. Other people were identified as witnesses (or present in the room) (RX 2). None of those people were called by either party to testify. The Arbitrator believes that Hank was probably picking up the chair before Petitioner was sitting on it but that she did "flop" into it as he was lifting it, thereby hitting her head against the wall.

Petitioner failed to prove she sustained an accident arising out of her employment. Petitioner testified there were more chairs than people in the room. Petitioner was injured as a result of a dispute over a chair. The evidence suggests that Petitioner was concerned that Hank was going to take her chair and she was injured asserting her "right" to the chair. That is not a risk associated with her employment.

14IWCC0500

Petitioner's accident was caused by actions personal to her and she voluntarily assumed and increased her risk of an injury. Petitioner agreed that the exchange between Hank and herself had nothing to do with work activities. Petitioner claimed no defect with the chair. Whether what occurred constituted horseplay or not, it was unrelated to work. Petitioner's accident occurred because she "flopped," sat or jumped onto the chair.

Petitioner's claim for compensation is denied and no benefits are awarded.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Terrence Doyle,
Petitioner,

vs.

NO: 10 WC 17413
14 IWCC 0501

State of Illinois DJJ IYC Joliet,
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of nature and extent and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 4, 2013 is hereby affirmed and adopted.

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 in the amount of \$122,565.12 in temporary total disability benefits paid to or on behalf of the Petitioner on account of said accidental injury.

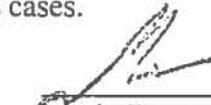
No bond or summons for State of Illinois cases.

DATED: **AUG 04 2014**

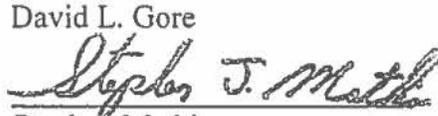
MB/jm

O: 6/5/14

43


Mario Basurto


David L. Gore


Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
AMENDED

DOYLE, TERENCE

Employee/Petitioner

Case# 10WC017413

14IWCC0501

STATE OF IL DJJ IYC JUSTICE

Employer/Respondent

On 10/4/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.04% 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:

0924 BLOCK KLUKAS & MANZELLA PC
MICHAEL D BLOCK
19 W JEFFERSON ST SUITE 100
JOLIET, IL 60432

1368 ASSISTANT ATTORNEY GENERAL
DAVID PAEK ESQ
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

BERTIFIED as a true and correct copy
PURSUANT to 220 ILCS 305/14

OCT 4 2013



[Signature]
KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

14IWCC0501

STATE OF ILLINOIS)
)SS.
COUNTY OF WILL)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
AMENDED ARBITRATION DECISION

TERRENCE DOYLE
Employee/Petitioner

Case # 10 WC 17413

v.

Consolidated cases: _____

STATE OF IL DJJ IYC JOLIET
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **GEORGE ANDROS**, Arbitrator of the Commission, in the city of **NEW LENOX, IL**, on **JULY 12, 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 _____

14IWCC0501

FINDINGS

On **04/24/10**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$87,135.88**; the average weekly wage was **\$1,675.69**.

On the date of accident, Petitioner was **50** years of age, *married* with **2** dependent children.

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

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

Respondent shall be given a credit of **\$122,565.12** for TTD, \$ for TPD, \$ for maintenance, and \$ for other benefits, for a total credit of **\$122,565.12**.

Respondent is entitled to a credit of **\$365.00** under Section 8(j) of the Act.

ORDER

Maintenance

Respondent shall pay Petitioner maintenance benefits of **\$1,117.13/week** for **1 3/7** weeks, commencing **10/6/2012 through 10/15/2012**, as provided in Section 8(a) of the Act.

Temporary Partial Disability

Respondent shall pay Petitioner temporary partial disability benefits of **\$1,117.13/week** for **127 6/7** weeks, commencing **4/25/2010 through 10/5/2012**, as provided in Section 8(a) of the Act.

Medical benefits

Respondent shall pay reasonable and necessary medical services of **\$54,786.88**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit of **\$365.00** for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Permanent Partial Disability: Wage differential

Respondent shall pay Petitioner permanent partial disability benefits, commencing **10/16/2012**, of **\$697.23/week** for the duration of the disability, because the injuries sustained caused a loss of earnings, as provided in Section 8(d)1 of the Act.

14IWCC0501

THIS AWARD SUPERCEDES ANY AWARD THAT HAS BEEN ISSUED BY THE WORKERS COMPENSATION COMMISSION.

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.

#01 George J. Andros
Signature of Arbitrator

9/26/13
Date
as Amended Award

OCT 4 - 2013

STATEMENT OF FACTS 10 WC 17413

In Support of the Arbitrator's Decision regarding "L" (Nature and Extent), the Arbitrator makes the following findings and conclusions:

This matter involves an 8(d)(1) wage differential claim where accident and causal connection have been stipulated (Arb. Ex. 1).

Petitioner, a 50 year old shift supervisor at IYC Joliet, responded to an inmate altercation and injured his right knee on April 24, 2010. He was treated by Dr. Bradley Dworsky at Hinsdale Orthopedics (Pet's. Exs. 3 -4a) from May 3, 2010 through April 4, 2013. He had surgery of the right knee October 12, 2010, consisting of a parapatellar retinacular release, and a chondroplasty of the medial and lateral facets of the patella, including the patellar trochlear groove and plicectomy of the medial plica of the right knee at Provena St. Joseph Medical Center (Pet's. Ex. 2). Following surgery, Petitioner underwent physical therapy at Newsome Physical Therapy Center (Pet's. Ex. 7) and injections by Dr. Dworsky. Dr. Dworsky's records show limited improvement through October 5, 2012. At that time, Dr. Dworsky noted that Petitioner would be considered at maximum medical improvement at a level less than his ability to return to work. Moreover, he would need continued Synvisc injections in the future given his history of chondromalacia, to return on an as needed basis (Pet's. Ex. 4, p. 50). The physical therapy records from Newsome (Pet's. Ex. 7), show limited improvement throughout extensive physical therapy, with the note of September 27, 2012 suggesting a return for strengthening, and the note of October 16, 2012, showing that therapy was stopped because of lack of approval for more physical therapy from the claims administrator. (Pet's. Ex. 7, p. 131). The last physical therapy narrative note, which was for treatment from November 2nd through November 29, 2011, more than a year after his surgery, showed that Petitioner continued to have problems with knee pain, difficulty with weight bearing activities involving knee flexion such as descending stairs or trying to squat, and walking. He noted that physical therapy only provided temporary relief, and his ability to progress with function and strengthening remained limited by anterolateral knee pain, and that his current limitations would not allow him to return to performing normal duties as a correctional officer (Pet's. Ex. 7, p. 42).

Petitioner's most recent medical treatment was when he received a Synvisc injection April 4, 2013. At that time Dr. Dworsky limited him to no inmate contact, no stairs, and no running (Pet's. Ex. 4a). Petitioner was also examined at Respondent's request pursuant to Section 12 by a Dr. Nikhil Verma of Midwest Orthopedics at Rush, who found the current diagnosis to be aggravation of pre-existing patella chondromalacia related to the injury of April 24, 2010, that injections would be required, and that as of that time Petitioner would not be capable of performing full duties. Dr. Verma did a supplemental report, (Resp. Ex. 1) where he recommended a functional capacity evaluation, but that based on the complaints at the time of the Section 12 exam, he opined that the restrictions of no stairs or running and no inmate contact appeared appropriate (Resp. Ex. 1 p. 2).

Petitioner testified that his job involved extensive standing, walking, and involvement in inmate altercations. All the medical evidence is to the effect that Petitioner can no longer perform those duties. He prematurely took his pension at a financial loss due to the injury.

Based upon the totality of the evidence, the Arbitrator finds Petitioner in the case at bar partially incapacitated from pursuing his usual and customary line of employment within the meaning of Section 8(d)1.

14IWCC0501

Accordingly, the Arbitrator finds as a matter of law the Petitioner is entitled to 2/3rds of the difference between the average amount which he would have been able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident, and the average amount of what he is earning or is able to earn in some suitable employment or business after the accident.

Regarding the former, the parties stipulated that Petitioner would currently earn \$7,652.00 per month or \$1,765.85 per week in his usual and customary occupation (Arb.'s Ex. 1). This is further supported by Exhibit 10, where wages for a shift supervisor are within the same range. With regard to what Petitioner is currently earning, the Petitioner testified that he began looking for work in approximately May of 2012, interviewing for jobs in the \$15.00 an hour range for 40 hours.

The Petitioner sought gainful employment in diligent fashion. He sought employment with the local State's Attorney interviewing for a job which to his knowledge was \$15.00 to \$20.00 an hour for 40 hours a week. He applied for full-time work. Instead he was offered a job for 8 hours a day, 3 days a week, or 24 hours a week total, but at a higher wage scale of \$30.00 per hour.

The benefit of this situation to the employer was that benefits would not have to be paid, and those part-time positions were the only types being offered currently for the position, which was as an investigator. The testimony is supported by Petitioner's Exhibit 11 that he had started with the county on October 16, 2012, earning \$30.00/hr. for 24 hours a week. He had already been there 9 months at the time of hearing, and there were only 2 additional days where he worked, one being an emergency and the other being to train someone else. Accordingly, the Arbitrator finds as material fact that Petitioner is currently earning \$720.00/week.

Susan Entenberg, a Certified Vocational Counselor gave evidence both by report (Pet's. Ex. 8) and deposition (Pet's. Ex. 9). This is the only vocational evidence in the case. She opined that Petitioner had an earning capacity of \$15.00 to \$17.00/hour, in the areas of investigator, security, and armored car driver. She noted that direct placement was the first choice, although Petitioner was capable of further training (Pet's. Ex. 8, p. 4). Ms. Entenberg noted it more common that you see a lot of part-time jobs being offered, especially less than 30 hours a week, because then they are not paying for health insurance. They are saving in that respect, so they can pay more as part-time employment (Pet's. Ex. 9, p. 13).

When asked whether, having secured this job, it would not make sense for Petitioner to look for further work, and whether this would be an optimum job, Ms. Entenberg opined that this was a good job for him. It's right exactly the type of job she was recommending. It is within his level of expertise and skill, it's within his restrictions, and he is earning overall an appropriate wage (*Id.* pp. 14 - 15).

If the \$720.00/a week he was making was spread over 40 hours, it would come out to \$18.00/hour, which is very close to and slightly higher than the range Ms. Entenberg had recommended for job seeking, which was \$15.00 to \$17.00/hr. (*Id.* p. 10). Ms. Entenberg reaffirmed that she would base his earning capacity on the wage he is earning for the amount of hours that he is working a week, which comes out to \$17.00 to \$18.00/hour on a full-time basis, as even though the pay is \$30.00/hour, they limit him to 24 hours a week (*Id.* @ 34).

Petitioner also testified to the jobs he looked for prior to accepting a job with the State's Attorney's office, and they were all in approximately the \$15.00/hour range. The Arbitrator notes that the State has never had to pay a vocational counselor to assist Mr. Doyle in placement, and that the

14IWCC0501

maintenance awarded in this case is limited to 10 days, evidencing that Petitioner conducted a diligent and successful job search.

The actual amount that Petitioner is earning, which is one of the two alternatives, and the preferred alternative in Section 8(d)1, is \$720.00/week. The other alternative, Petitioner's earning capacity based on the average of some suitable employment, is generally only used if current earnings are non-existent or inappropriate, and in this case all the evidence is that the job Petitioner sought on his own and accepted is both appropriate and optimum. Based on Petitioner's job search and the testimony of Ms. Entenberg, he could be expected to make, if able to secure a full-time job, \$15.00 to \$18.00/hour, and he already is earning the equivalent of that, although the job is only part-time.

This is not a case where Petitioner voluntarily took a part time job although full time was available. By Petitioner's testimony full time was not being offered to any investigator, and the Arbitrator finds Petitioner's testimony credible and the job to be suitable. This is simply a mutually beneficial situation where the employee works less hours and the employer pays higher because it does not have to pay benefits such as medical insurance. Where appropriate, the Commission has used a part-time job to calculate wage differential benefits. See *Rausch v. John Keno & Co.*, 09 IWCC 1013 and cases cited therein, also as to elements of proof.

Thus, the Arbitrator finds as material fact and as a matter of law Petitioner's earning capacity, the average he is able to earn in some suitable employment, the second alternative, also to be \$720.00/week.

Accordingly, Petitioner is awarded from the Respondent at bar as a matter of law pursuant to Section 8(d)1 the sum of \$697.23/week, representing 2/3rd of the difference between the stipulated amount of \$1,765.85/week less \$720.00/week, commencing October 16, 2012, which award shall be for the duration of the disability.

In Support of the Arbitrator's Decision regarding "K" (TTD and Maintenance), the Arbitrator makes the following findings and conclusions:

The parties stipulated and agreed that TTD was paid from April 25, 2010 through May 31, 2012 in the appropriate amount of \$122,565.12 for 109 5/7ths weeks. An additional amount of TTD was claimed and agreed to from June 1, 2012, when Petitioner took a retirement pension, through October 5, 2012, when Petitioner was declared by Dr. Dworsky to be MMI, consistent with the *Interstate Scaffolding* case for an additional 18 1/7th weeks, or a total of 127 6/7ths weeks.

During this period Petitioner remained under active treatment, had extensive physical therapy, and as of the MMI date of October 5, 2012, he was still receiving shots. Limited improvement was noted up until that time.

Regarding maintenance, Petitioner actually secured employment which began October 16, 2012, so that the claimed period is only 10 days from October 6, 2012 through October 15, 2012, being 1 3/7 weeks.

Petitioner testified that he had been looking for work, and while his job search was limited it was of extremely short duration and successful. Petitioner is to be commended for securing excellent employment within a very short period of time, and the Arbitrator finds the period of maintenance to be most reasonable.

In conclusion, the Arbitrator awards as a matter of law temporary total disability of 127 6/7 weeks and maintenance of 1 3/7 weeks, with Respondent to have credit for the 109 5/7 weeks it paid.

14IWCC0501

In Support of the Arbitrator's Decision regarding "J" (Medical Expenses), the parties stipulated that the bills would be admitted into evidence and that Respondent could pay them directly to providers pursuant to the fee schedule or agreement.

The only unpaid bills appear to be for the emergency room physician at the time of the accident, for the pathologist at the time of knee surgery for Hinsdale Orthopedics who was the only treaters for the knee condition, including surgery, and for Newsome Physical Therapy, which was extensive.

Thus total bills are awarded as a matter of law the sum of \$54,786.88 (See Arbitrator's Exhibit 2), after deducting \$19,476.00 which Workers' Compensation paid towards the Newsome Physical Therapy bill.

Petitioner's group insurance paid \$365.00 towards the Associated Pathologist bill for surgery, the total bill being \$392.00, and Respondent shall have an 8(j) credit for that and hold Petitioner harmless with respect thereto. The Arbitrator notes that Respondent's Section 12 physician, Dr. Verma had states opposition or disagreement as to the reasonableness and necessity of the treatment Petitioner received. The Arbitrator finds as a matter of fact and law the treatment is reasonable and necessary.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Silvestre Juarez,
Petitioner,

vs.

NO: 12WC 08906
12WC 38727

Air & Supreme Lobster & Seafood,
Respondent,

14IWCC0502

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 causation, medical, fees, penalties 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 5, 2013, is hereby affirmed and adopted.

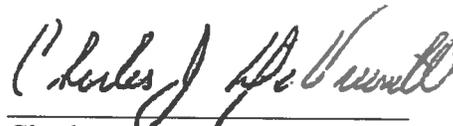
IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written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

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:
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CJD/jrc
049

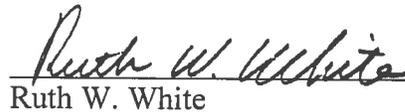
JUN 25 2014



Charles J. DeVriendt



Daniel R. Donohoo



Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR
& 8(A)

JUAREZ, SILVESTRE

Employee/Petitioner

Case# **12WC008906**

12WC038727

AIR & SUPREME LOBSTER & SEAFOOD

Employer/Respondent

14IWCC0502

On 7/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

0815 LUIS A ACEVES & ASSOCIATES PC
EMILIANO PEREZ JR
1931 N MILWAUKEE AVE
CHICAGO, IL 60647

2542 BRYCE DOWNEY & LENKOV LLC
RICHARD W WARNER
200 N LASALLE ST SUITE 2700
CHICAGO, IL 60601

14IWCC0502

STATE OF ILLINOIS)

)SS.

COUNTY OF Cook)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION 19(B) & 8(A) DECISION

Silvestre Juarez

Employee/Petitioner

v.

Air & Supreme Lobster & Seafood

Employer/Respondent

Case # 12 WC 08906

Consolidated cases: 12 WC 38727

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 **Kurt Carlson**, Arbitrator of the Commission, in the city of **Chicago**, on **April 29, 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 _____

FINDINGS

On **02/16/12 & 10/30/12**, 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 **\$34,735.48**; the average weekly wage was **\$667.99**.

On the date of accident, Petitioner was **56** years of age, *married* with **1** dependent children.

Petitioner *has not* 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 Petitioner the temporary total disability benefits that have accrued from February 23, 2012 through May 20, 2012 and November 8, 2012 through April 29, 2013, and shall pay the remainder of the award, if any, in weekly payments.

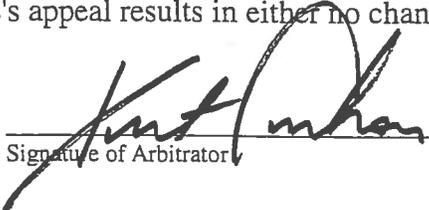
Respondent shall pay reasonable and necessary medical services of \$48,349.00, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay for and approve the surgical treatment recommended by Dr. Erickson.

Respondent shall pay to Petitioner penalties of \$3,295.42, as provided in Section 16 of the Act; \$8,238.54, as provided in Section 19(k) of the Act; and \$10,000.00, as provided in Section 19(l) 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

July 3, 2013
Date

JUL 5 - 2013

14IWCC0502

STATE OF ILLINOIS)
)
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SILVESTRE JUAREZ,)
)
Petitioner,)

vs.)

I.W.C.C. No.: 12 WC 8906
Consolidated with: 12 WC 38727

AIR & SUPREME LOBSTER &)
SEAFOOD,)
)
Respondent.)

FINDINGS OF FACT

Petitioner is a 57 year old married man with one dependent child. (Tr. 8) Petitioner testified that he began working for the Respondent approximately 8 years ago his work accident of February 16, 2012. (Tr. 10) Petitioner testified that his work duties included completing fish orders for companies, supermarkets and restaurants. (Tr. 8) He testified that he would fill boxes with fish and ice to complete the orders then place the filled boxes onto a pallet. (Tr. 8-9) Petitioner further testified that he typically carried 10-20 filled boxes per hour the boxes with those boxes weighing anywhere from 15-100+ lbs. (Tr. 9).

12 WC 8906:

On February 16, 2012, it was Petitioner's uncontroverted testimony that he was carrying a box filled with fish and ice that weighed between 30-35 lbs. when he slipped on a piece of fish and fell onto the floor. (Tr. 10) Petitioner testified that he felt immediate pain to his neck and back (Tr. 11) Petitioner tried to work through the pain, but was unable to complete the work day (Tr. 11) He reported this incident to his supervisor, J.J. Stromaglia. (Tr. 11) Petitioner was immediately sent to the company clinic, Premier Occupational Health, that same day. (PX. 1, Tr.

11)

On February 16, 2012, Petitioner was seen at Premier Occupational Health with complaints to his neck, back and knee. (PX. 1, pg. 5) Petitioner described his back pain as severe with movement causing pain in both his neck and back. (PX. 1, pg. 5) Petitioner was prescribed an Analgesic balm and Naproxen and ordered to return to work with restrictions of no lifting over 10 lbs. and no bending. (PX. 1, pg. 6, 7)

On February 20, 2012, Petitioner returned to Premier Occupational Health for a follow-up evaluation where he identified his pain as constant. (PX. 1, pg. 10) An x-ray of his lumbar was performed and revealed mild lumbar spondylosis. (PX. 1, pg. 14) Petitioner was released back to work with the same restrictions of no lifting over 10 lbs. and no bending. (PX. 1, pg. 11) He was instructed to take Dendracin cream, Cyclobenzaprine and Tramadol. (Id.) He was further instructed to begin a home exercise program. (Id.)

On February 23, 2102, Petitioner sought treatment with Dr. Alan Olefsky of Michigan Avenue Medical Associates. (PX. 2, pg. 1, Tr. 12-13) Dr. Olefsky ordered Petitioner to undergo MRI's of his cervical and lumbar. (PX. 2, pg. 2) Dr. Olefsky further ordered Petitioner to begin physical therapy three to four times per week and ordered him off of work. (Id.) (Tr. 13-14)

On February 24, 2012, Petitioner underwent both cervical and lumbar MRI's performed at Advantage MRI – Logan Square. The cervical MRI revealed disc herniations at C4-5, C6-7 and C7-T1 with a large disc herniation at C5-6. (PX. 4, pp. 1-2) The lumbar MRI revealed disc herniations at the L4-5 and L5-S1. (PX. 4, pp. 3-4)

On March 22, 2012, Petitioner returned for a follow-up visit with Dr. Olefsky. Dr. Olefsky noted that the physical therapy had resulted in some improvement (PX. 2, pg. 6) Dr. Olefsky further noted that Petitioner could not walk more than a couple of blocks without pain

and that Petitioner had difficulty sleeping secondary to discomfort. (Id.) Dr. Olefsky agreed with the findings contained in the MRI reports of the cervical and lumbar. (Id.) Dr. Olefsky recommended another month of physical therapy. (Id.)

On April 17, 2012, Petitioner returned to Michigan Avenue Medical Associates where he was seen by Dr. Riera for his follow-up evaluation. Dr. Riera noted that Petitioner was responding to physical therapy so he ordered one more month. (PX. 2, pg. 12)

On May 15, 2012, Petitioner returned to see Dr. Riera, who noted Petitioner to still be complaining of neck and back pain. (PX. 2, pg. 16) Reluctantly, Dr. Riera released Petitioner back to work due to economic factors, including Respondent's failure to pay TTD benefits. (PX. 2, pg. 16, Tr. 14-15) Despite Petitioner's release to work, Dr. Riera still suggested he follow-up with a pain specialist to explore the possibility of injections. (Id.) Petitioner's testimony supported the medical records that it was necessary for him to return to work for economic reasons. (Tr. 14)

From May 21, 2012 through October 22, 2012, Petitioner worked in a full-duty capacity with the Respondent. (Tr. 15) On October 22, 2012, Petitioner returned to Michigan Avenue Medical Associates with increased back pain secondary to work and the cold. (Tr. 15) Petitioner was evaluated by Dr. Riera for similar complaints to his neck and back. (PX. 2, pg. 20) Petitioner rated his pain to be a 9 on a scale of 0-10. (Id.) Petitioner further complained of pain radiating down his thigh. (Id.) Dr. Riera referred Petitioner to neurosurgeon, Dr. Robert Erickson. (Id.)

On October 26, 2012, Petitioner was seen by Dr. Robert Erickson also of Michigan Avenue Medical Associates. (PX. 2, pg. 24) Dr. Erickson opined that Petitioner's cervical and lumbar radiculopathy were secondary to his cervical and lumbar herniations (PX. 2, pg. 25) Dr. Erickson recommended that Petitioner undergo an anterior cervical discectomy and fusion from

C4through C6. (Id.) Dr. Erickson further recommended that lumbar injections be performed.

(Id.)

12 WC 38727:

On October 30, 2012, it was Petitioner's uncontroverted testimony that he was carrying a bag of seafood when the bag slipped out of his hands and he bent to catch it aggravating his neck and back injury. (Tr. 17) Petitioner testified he felt an immediate and strong pain to primarily his back. (Tr. 17) Petitioner testified that the bag weighed approximately 35-45 lbs. (Tr. 18) Petitioner reported this accident the next day to his supervisor, J.J. Stromagia. (Tr. 19)

Petitioner was sent by Respondent to their company clinic, Concentra, on October 31, 2012. (PX. 5, Tr. 20) The initial medical records from Concentra state: "Silvestre presents for a reaggravation of a previous injury from February 16, 2012. He bent over to pick up a 35# bag and made his right low back pain worse..." (PX. 5, Pg. 1) Petitioner was ordered to undergo physical therapy at Concentra 3 times per week and provided work restrictions of no lifting, pushing, pulling over 20 lbs. and no bending. (PX. 5, pg. 3)

On November 2, 2012, Petitioner returned to Concentra with his symptoms unchanged. (PX. 5, pg. 10) The physical examination revealed palpation to be, "positive for mild pain in L2-L5 areas bilateral." (Id.) Petitioner's pain was noted to radiate down his left leg to the foot. (Id.) His work restrictions remained the same. (Id.)

On November 8, 2012, Petitioner returned to see Dr. Riera. (PX. 6, pg. 1) Dr. Riera noted the new injury and ordered repeat MRI of Petitioner's back. (Id.) Additionally, Petitioner was taken off of work. (PX. 6, pg. 3)

On November 12, 2012, Petitioner underwent the recommended MRI to his lumbar. The MRI revealed "no significant interval change since the previous examination." (PX. 8, pg. 1)

On December 6, 2012, Petitioner returned to Michigan Avenue Medical Associates where he was seen by Dr. Herba in Dr. Riera's absence. (PX. 6, pg. 8) Dr. Herba diagnosed Petitioner with "lumbar radiculopathy, resulting from the injury described." (Id.) Dr. Riera further ordered Petitioner to continue with physical therapy three times per week for four weeks and remain off work. (Id.)

On January 18, 2013, Petitioner was seen by neurosurgeon, Robert Erickson, M.D. Dr. Erickson opined the following: "I regard him as an excellent surgical candidate for anterior cervical discectomy and fusion from C4 through C6 which should be performed in advance of a possible lumbar spine procedure in light of the early cord compression seen on MRI scanning." (PX. 6, pg. 12)

On March 1, 2013, Petitioner returned to see Dr. Erickson for a follow-up evaluation. Dr. Erickson reiterated his opinion that Petitioner requires surgical intervention:

"The examination has not changed. On MRI scanning, there is evidence of significant cord compression, and it is our hope that we may proceed to anterior cervical discectomy and fusion from C4 through C6 as soon as possible.

It also seems quite likely that he will need minimally invasive lumbar decompression at a later date based upon the chronicity and severity of his low back pain and sciatica." (PX. 6, pg. 16)

On March 4, 2013, Petitioner underwent a Section 12 examination performed by Dr. Michael Kornblatt. Dr. Kornblatt opined that Petitioner sustained a "work-related lumbosacral strain occurring on October 30, 2012." (RX. A, pg. 5) Dr. Kornblatt opines that the Petitioner's lumbar radiculopathy symptomatology is related to the work incident of October 30, 2012 for approximately 8-12 weeks. (RX. A, pg. 5) After that, he attributes the back pain to "lumbar degenerative disc disease, deconditioned state, longevity of inactivity." (Id.) Dr. Kornblatt does

not provide a basis for this opinion. Furthermore, it is apparent from the physical therapy records that Petitioner was not inactive; at the time of this evaluation, he was undergoing continuous physical therapy at Premier Physical Therapy. (PX. 7) Despite this assertion, Dr. Kornblatt does not find Petitioner to be at MMI. Dr. Kornblatt writes:

“I do not feel that Mr. Juarez has reached maximum medical improvement for the work-related lumbosacral strain occurring on October 30, 2012 secondary to longevity of inactivity and deconditioned state. I do feel he will reach maximum medical improvement after performing 4 weeks of restricted duty as noted above or a 4-week work conditioning program.” (Id.)

Arbitrator notes that Dr. Kornblatt did not address off time, retrospectively.

On March 29, 2013, Petitioner returned to see Dr. Erickson. Dr. Erickson did not dispute that Petitioner may have some degenerative issues, however, opined that Petitioner’s condition is more than degenerative disc disease. Dr. Erickson pointed to the objective findings including spinal cord compression. (PX. 6, pp. 20-21) Dr. Erickson concludes:

“Based upon the finding of spinal cord compression within the cervical spine, it remains my firm opinion that we should proceed to anterior cervical discectomy and fusion from C4 through C6 as soon as possible. Of course, during the postoperative period, we would revisit the progress and need for possible surgery for his lumbar spine problem. (Id.)

Petitioner testified that he wishes to pursue the treatment that has been recommended by Dr. Erickson. (Tr. 21) Petitioner testified that prior to these work injuries he never felt similar symptoms to his neck or back. (Id.) He further testified that he has never sought medical treatment for any neck or back condition. (Id.)

On cross-examination, Petitioner testified that he had sustained a number of falls throughout his years with the Respondent, but did not suffer any physical problems or seek medical treatment because of those falls. Arbitrator notes that Petitioner was very credible and

forthcoming throughout his testimony.

CONCLUSIONS OF LAW

With respect to Issue C, whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent?

It was Petitioner's uncontroverted testimony that he was performing activities in furtherance of his employment on February 16, 2012 and October 30, 2012 when he sustained these injuries. Respondent failed to offer any evidence contradicting Petitioner's version of both work accidents. In fact, the contemporaneous medical records, including Dr. Kornblatt's IME report of March 4, 2013, all support the fact that Petitioner sustained an accident arising out of and in the course of his employment by Respondent.

According, Arbitrator concludes that Petitioner has proven by a preponderance of the evidence that he sustained work injuries on February 16, 2012 and October 30, 2012.

With respect to Issue F, whether Petitioner's condition of ill-being is causally related to the injury, the Arbitrator concludes:

Petitioner testified that he performed various lifting-related duties for Respondent in his eight years prior to his work accidents of February 16, 2012 and October 30, 2012. There is no evidence suggesting Petitioner had difficulty performing those duties or underwent any back or cervical-related care prior to February 16, 2012. Petitioner provided prompt notice of his accidents and provided all physicians with a consistent account of his injury. In fact, Respondent's Section 12 examiner, Dr. Kornblatt, does not dispute that Petitioner sustained a work accident and requires additional treatment. Dr. Kornblatt simply argues against surgery.

Based on the foregoing, along with Petitioner's credible testimony concerning his ongoing back complaints, the opinions of his treating physicians and the objective findings

(multi-level disc herniations indicated in the MRIs), the Arbitrator finds causal connection between the work accident and Petitioner's current cervical and lumbar spine condition.

With respect to Issue J, were the medical services that were provided reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Arbitrator concludes based on the totality of the evidence that the medical treatment that has been rendered has been reasonable and necessary. No evidence was submitted by Respondent indicating otherwise. Arbitrator further concludes that Respondent has not paid all appropriate charges.

Accordingly, Arbitrator finds Respondent liable for all outstanding medical expenses pursuant to the fee schedule.

With respect to Issue K, whether Petitioner is entitled to prospective medical care, Arbitrator concludes:

Arbitrator concludes that Petitioner is entitled to prospective medical care by way of the cervical surgery recommended by Dr. Erickson. This is based on the positive MRI findings, causal connection and Petitioner's persistent pain complaints.

With respect to Issue J, is Petitioner entitled to temporary total disability benefits, Arbitrator concludes:

Petitioner has been ordered by his treating physicians to either remain off work from February 23, 2012 through May 20, 2012 and again from November 8, 2012 through the date of this hearing (April 29, 2013). Although Petitioner was returned to work on May 21, 2012, Arbitrator acknowledges this was at his request due to economic factors. Following Petitioner's subsequent October 30, 2012 accident, his treating physicians ordered him to remain off work. Respondent failed to provide any evidence to dispute these off work orders.

Accordingly, Petitioner is entitled to 37 weeks of temporary total disability benefits for

the time he ordered off work by his treating physicians.

With respect to Issue M, should penalties or fees be imposed upon Respondent, Arbitrator concludes:

In McMahan v. Industrial Commission, 183 Ill.2d 499, 516 (1998), the Illinois Supreme Court clarified that Section 19(k) penalties are discretionary while Section 19(l) penalties are a "late fee." Furthermore, Illinois Workers' Compensation Commission Rule 7110.70(b) states:

"When an employer begins payment of temporary total compensation and later terminates or suspends further payment before an employee in fact has returned to work, the employer shall provide the employee with a written explanation of the basis for the termination or suspension of further payment no later than the last payment of temporary total compensation."

50 Ill. Adm. Code § 7110.70(b).

Relative to 12 WC 8906, in March of 2012, Respondent terminated Petitioner's TTD benefits and never provided Petitioner written basis for their decision to do so as is required by Illinois Workers' Compensation Commission Rule 7110.70(b). (Tr. 14)

Petitioner made numerous demands for TTD benefits and medical treatment through his attorney to Respondent's claims adjuster, Sandy Poplar. (PX. 10) Respondent provided no evidence that it responded to Petitioner's demand for TTD benefits within 14 days as mandated by Section 19(l). Additionally, Respondent raised numerous issues at Arbitration that did not represent genuine issues of dispute. (PX. 12)

Arbitrator further finds Respondent's behavior in failing to abide by the Rules of this Commission to be vexatious. Accordingly, Respondent shall pay Petitioner penalties pursuant to Section 19(k) (50% of \$16,477.09 in outstanding TTD benefits totaling \$8,238.54) with corresponding Section 16 attorney's fees (20% of \$16,477.09 totaling \$3,295.42).

Accordingly, Arbitrator concludes that Respondent is liable for Section 19(l) penalties in

14IWCC0502

the amount of the maximum of \$10,000.00 (\$30 per day for over 365 days – March 2012 through the present).

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jason Hansen,
Petitioner,

vs.

Springfield Park District,
Respondent,

NO: 08WC 39945

14IWCC0503

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 causation, medical, 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.

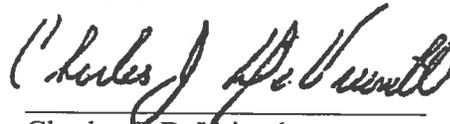
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 5, 2013, is hereby affirmed and adopted.

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

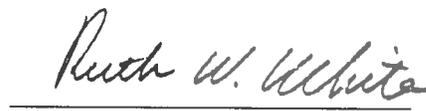
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

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

DATED: JUN 25 2014
o061814
CJD/jrc
049


Charles J. DeVriendt


Daniel R. Donohoo


Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HANSEN, JASON

Employee/Petitioner

Case# **08WC039945**

SPRINGFIELD PARK DISTRICT

Employer/Respondent

14IWCC0503

On 12/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

1130 BUCKLIN LAW OFFICE
BRAD BUCKLIN
984 CLOCK TOWER DR SUITE A
SPRINGFIELD, IL 62704

0332 LIVINGSTONE MUELLER ET AL
KEN BIMA
620 E EDWARDS ST POB 335
SPRINGFIELD, IL 62705

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STATE OF ILLINOIS)
)SS.
COUNTY OF Sangamon)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

Jason Hansen

Employee/Petitioner

v.

Springfield Park District

Employer/Respondent

Case # **08 WC 39945**

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Springfield**, on **July 12, 2013 and October 8, 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 _____

14IWCC0503

FINDINGS

On **7/30/08**, 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$27,876.16**; the average weekly wage was **\$536.08**.

On the date of accident, Petitioner was **31** years of age, *married* with **1** dependent child.

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

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

Petitioner was temporarily totally disabled from **September 25, 2008** through **November 19, 2008** and **November 21, 2008** through **December 16, 2008**, a period of **11 5/7** weeks.

Respondent shall be given a credit of **\$4,075.99** for TTD, **\$N/A** for TPD, **\$N/A** for maintenance, and **\$N/A** for other benefits, for a total credit of **\$4,075.99**.

Respondent is entitled to a credit for any medical bills paid through its group medical plan for which credit may be allowed under Section 8(j) of the Act.

ORDER

With respect to Petitioner's left shoulder injury, Respondent shall pay Petitioner permanent partial disability benefits of **\$321.65/week** for **10** weeks, because the injuries sustained caused the **2%** loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

With respect to Petitioner's lumbar spine injury, Respondent shall pay Petitioner permanent partial disability benefits of **\$321.65/week** for **10** weeks, because the injuries sustained caused the **2%** loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

Pursuant to the fee schedule, Respondent shall pay all medical bills related to Petitioner's left upper extremity injury through November 10, 2008. Additionally, pursuant to the fee schedule, Respondent shall pay all medical bills related to Petitioner's lumbar condition through March 16, 2009.

Respondent shall pay Petitioner temporary total disability benefits of **\$357.35/week** for **11 5/7** weeks, commencing **September 25, 2008** through **November 19, 2008** and **November 21, 2008** through December 16, **2008**. Respondent is entitled to a credit for any temporary total disability benefits previously paid pursuant to the stipulation of the parties.

Respondent shall pay Petitioner compensation that has accrued from July 30, 2008 through October 8, 2013 and shall pay the remainder of the award, if any, in weekly payments.

14IWCC0503

14 CC 1503

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

December 2, 2013

Date

ICArbDec p. 2

DEC 5 - 2013

This case originally proceeded to hearing on July 12, 2013; however, proofs were left open to address some medical bills. Proofs were subsequently closed on October 8, 2013. The disputed issues are causal connection, temporary total disability, medical expenses, and permanency. Petitioner was the sole witness at the hearing.

The Arbitrator finds as follows:

Petitioner worked for Respondent as a heating and cooling technician in its maintenance department. Petitioner began working for Respondent in 2005. Petitioner testified that prior to July 30, 2008 he had no problems with his left shoulder, back or elbows. On July 30, 2008 Petitioner was in the process of performing some maintenance on air conditioning equipment in the basement of the Lincoln Park Pavilion when he slipped down the concrete stairs falling on his back and elbows.

Petitioner was seen at the emergency room of Memorial Medical Center on July 30, 2008. The history in that record states, "The patient is a 31 years old male who presents with PT fell down approx 8 concrete steps this a.m. 0700 at work. C/o left elbow and low back pain, did not hit his head and no LOC. Denies other areas of pain or apparent injury." X-rays were secured of Petitioner's left shoulder, back and left elbow. The shoulder and low back x-ray was interpreted as being unremarkable. The left elbow x-ray showed a possible non-displaced radial fracture. Petitioner was diagnosed with a left elbow and shoulder contusion/sprain and a low back contusion. Petitioner was prescribed pain and anti-inflammatory medication. Petitioner asked to follow up with Dr. Rodney Herrin as Dr. Herrin had previously performed surgery on Petitioner's right shoulder and left knee (RX2).

Petitioner first saw Dr. Herrin on July 31, 2008. The history in that record states "Mr. Hansen is a 31 year old gentleman who states that he was at work for the Springfield Park District yesterday. He states that he was carrying some tools down the steps and the steps had algae on them. He slipped and fell. He landed onto both of his elbows. He is unsure of exactly how he injured his shoulder." Dr. Herrin reviewed the x-ray film and opined that Petitioner had sustained a contusion to the elbow and a strain to the shoulder. He wanted Petitioner to wean himself of the sling. Petitioner was placed on light duty (RX1; PX 6).

Petitioner returned to Dr. Herrin on August 7, 2008 with continued left upper extremity complaints. Since Dr. Herrin could not definitely rule out a fracture to Petitioner's left elbow, he waited on any therapy. Petitioner remained on light duty. Petitioner returned to Dr. Herrin on August 21, 2008 with continued complaints to his left shoulder and elbow. Dr. Herrin repeated the left elbow x-ray and interpreted as being normal. Dr. Herrin did not believe that Petitioner sustained a fracture but, rather, had strains. He didn't rule out an episode of shoulder instability given Petitioner's complaints. Dr. Herrin prescribed physical therapy and continued to place Petitioner on restrictions (RX1; PX 6).

Petitioner worked light duty for Respondent between July 30, 2008 and mid-August of 2008. (RX 9)

On August 27, 2008 Petitioner signed his application for adjustment of claim (PX1).

Petitioner returned to Dr. Herrin on September 8, 2008 with continued problems in his left shoulder and elbow. For the first time, Petitioner complained of pain to his right elbow. Both conditions were diagnosed as strains. Dr. Herrin continued to recommend physical therapy for both the shoulder and elbows. Also on that date, Petitioner asked about obtaining a second opinion. Work restrictions were given. (PX6).

On September 9, 2008 Petitioner was seen again at the emergency room of Memorial Medical Center¹. According to the Discharge Instructions, Petitioner was to see Dr. Pineda as scheduled, sooner if needed and was to continue using Vicodin and Ibuprofen as directed. Petitioner was given a work note – no lifting greater than 10 lbs. and alternate sitting and standing every 15 minutes. (PX5)

On September 18, 2008 Petitioner completed a Patient History form for Dr. Pineda. Petitioner noted that he was having neck and back pain of about 3-4 weeks duration which had been brought on by sitting and/or standing for long periods of time. He described his July 30, 2008 accident and explained that his pain/problems began gradually thereafter. (PX 7)

On September 23, 2008 Petitioner presented to Dr. Pineda for an orthopedic spine consultation. The history in Dr. Pineda's record states, "This is a 31 year old gentleman who had a work related event. He said that it occurred in July. He fell down some stairs and landed on his back and arms. Shortly thereafter, about two weeks later, he developed pain and the pain that we are evaluating is running from his neck down to his lumbar spine, most notable in the lumbar spine and middle of the back." Dr. Pineda noted that Petitioner had a broad area of pain complaints. Pineda noted that Petitioner had no gross neurologic deficit. Dr. Pineda recommended treatment with Petitioner's primary care physician; however, he was willing to see him again if needed. (PX7)

On September 25, 2008, Petitioner presented to Dr. Joshua Ellison with regard to his back pain. On that date, Petitioner complained of back pain at a level of 7/10. It was noted that Petitioner was already in physical therapy and he was reportedly working light duty. Petitioner reported upper mid, and lower back pain worse with movement and sitting for too long. Petitioner had full range of motion with his back although popping was noted when Petitioner leaned forward from the low back. Straight leg raise testing was negative. Petitioner was prescribed Tramadol. Petitioner was taken off work. (PX11)

Petitioner cancelled his September 29, 2008 therapy appointment. When he presented the next day, he reported consistent popping in his elbows and a feeling in his left shoulder like it was going to dislocate. He denied any progress whatsoever with therapy. He was asked if he had noticed any functional improvement in what he could do at home and he replied he hadn't tried anything so he didn't know. His primary care doctor had reportedly taken him off work entirely for his back and ordered therapy. The same doctor then called him to tell him his work could now accommodate him. Petitioner then told his primary care doctor he couldn't go back to work because he had to lay down every hour or so due to pain. Petitioner remained off work. (RX 9, p. 51)

Petitioner returned to Dr. Herrin on October 1, 2008. Petitioner noted that he has been in physical therapy for about a month with no significant improvement. Petitioner complained of left shoulder and bilateral elbow pain. Due to continued complaints, Dr. Herrin prescribed an MR arthrogram. The arthrogram proceeded on 10/31/08 and revealed a partial tear of the supraspinatus tendon but no evidence of a labral tear. Petitioner returned to Dr. Ellison on 10/08/08 at which time he was placed on light duty requiring frequent breaks and no lifting over two pounds. Dr. Ellison could not determine what was causing Petitioner's back pain. He wrote, "If it was due to the fall, I would think the pain would have resolved by now, [as] all the x-rays were negative." If Petitioner's back pain wasn't better with therapy, Dr. Ellison proposed repeat x-rays and perhaps a back specialist. Petitioner was noted to be using quite a bit of medications in a 24 hour period and refills were to be done with caution. Dr. Ellison felt a return to work with restrictions could help. However, Petitioner candidly reported that he didn't want to go back to work as he would be losing money and wouldn't really get the breaks

¹ The records of that visit are incomplete as PX 5 only contains page "1 of 3."

he needed. The physical therapist was consulted and agreed with a return to work. A letter to that effect was issued. (PX 11)

Petitioner continued with physical therapy but denied any improvement. At the time of his therapy visit on October 23, 2008 Petitioner described his pain as "off and on." Petitioner was reportedly taking Vicodin for his back pain "as much as possible, about 4 to 6 times per day" and had run out the day before and, therefore, hadn't taken any that day. Petitioner rated his pain level at "3/10" for his neck and "4-5/10" for his back. Petitioner felt therapy was making him stronger but not fixing his problem. He also felt therapy was a distraction. (RX 9, p. 55)

By letter dated October 28, 2008 Dr. Ellison modified Petitioner's restrictions and noted he had referred Petitioner to a back specialist. (PX11)

Petitioner underwent a physical therapy discharge evaluation on October 6, 2008. Petitioner reported no change in his shoulder or elbow pain levels or improvement in his range of motion or strength. Progression was noted to be limited by Petitioner's reports of pain. (PX 6)

On October 31, 2008 Petitioner underwent a left shoulder MRI and arthrogram injection. According to the radiologist's report, Petitioner had an abnormal irregularity along the articular surface of the distal supraspinatus tendon consistent with a partial tear. There was no evidence of a full-thickness rotator cuff tear or other significant abnormality. There was also a type II acromion with mild anterior and lateral down-sloping. No significant hypertrophic degenerative changes were noted. (PX 6)

Petitioner returned to Dr. Herrin on November 10, 2008, regarding his left shoulder and elbows. They reviewed the arthrogram which showed a partial tear of Petitioner's distal supraspinatous tendon. Petitioner was somewhat guarded in his shoulder motion and displayed discomfort with anterior and posterior stressing. Petitioner's elbows were mildly tender along the posterior and lateral aspects but motion was satisfactory and no instability was noted. Dr. Herrin was perplexed as to why Petitioner was still symptomatic in his elbow and Dr. Herrin could not explain why Petitioner continued to have difficulties with his elbow. Regarding the left shoulder, Dr. Herrin noted that Petitioner had no signs of a labral injury. Dr. Herrin further stated, "At this time, I cannot find anything from an objective standpoint to determine why he has continued to have this degree of symptoms. Overall, I would think that things should have healed up adequately and he should be able to work without any restrictions; however, I think that it would be reasonable to obtain an additional opinion to confirm that this is indeed the case. . . Again, I see no objective reason for continuing to have any restrictions, as far as his work is concerned." Petitioner was advised that a second opinion or IME would be reasonable. Dr. Herrin also noted that Petitioner had undergone physical therapy and was still off work for his back condition which was being managed by another doctor. Petitioner was advised to continue his shoulder and elbow rehabilitation on his own. (PX6)

On November 18, 2008, Petitioner returned to Dr. Pineda regarding "work rehabilitation issues." Petitioner noted that his neck, middle back and lower back had gotten a little better and he wanted to treat at Midwest Occupational Health Associates (MOHA). Dr. Pineda noted that he had no objection with this. (PX7)

Petitioner first presented to MOHA on December 16, 2008 as MOHA was "taking over his care and treatment for his work injury." Petitioner denied any improvement in his condition since the accident. He reported working light duty until mid-August but being off work entirely since then. When he did work light duty he had

a helper for awhile and then he sorted nails and bolts. According to Petitioner those activities, as well as standing and sitting for too long, aggravated his condition.

On that date Petitioner's primary complaints were to his neck, left shoulder, bilateral elbows and low back. Petitioner rated his pain as a 6/7. Petitioner denied any radiation of pain into his extremities. He reported that his elbows occasionally locked up on him albeit not as frequently as after the accident. Physical therapy had been of no help and he had been taking lots of Vicodin and Ultram, the latter of which wasn't very helpful. He hadn't tried any anti-inflammatories, just pain medication. Petitioner's left shoulder exam showed limited range of motion with abduction and adduction, and internal and external rotation. Discomfort was noted over his AC joint and anterior shoulder area. Strength in the left upper extremity was good. He had a diminished Achilles reflex on the left. Straight leg raising was negative in a sitting position bilaterally. Lower extremity muscle strength was excellent. Petitioner was placed on light work restrictions and prescribed a myelogram. No pain medications were refilled. (RX 9, pp. 41-43)

Petitioner was seen at MOHA on December 18, 2008 after he had been at work and was painting a raised picnic table which fell on him. (RX 9, p. 17)

Petitioner, accompanied by his wife, returned to MOHA on December 22, 2008. Dr. Clem noted Petitioner had been back to work in July of 2008 for two days when he was painting a picnic table and "it came down on his head." On the 22nd Petitioner complained of a painful back. He was taking Tramadol. His MRI had been rescheduled and was now scheduled for the complete spine and not just the thoracic spine as originally planned. Petitioner complained of diffuse pain from the C6-7 area to the L5-S1 area. He moved slowly. Straight leg raising was negative. He was neurologically intact. Dr. Clem recommended a TENS unit. He was kept on light duty. Petitioner's diagnoses included a possible rotator cuff tear and spinal pain secondary to his fall. According to his pain drawing, Petitioner had no shoulder or elbow complaints that day. (RX 9)

A "Case Management Note" dated December 22, 2008 described Petitioner as a "therapeutic challenge." Petitioner was calling the office one to two times per day reporting that his back was "killing him" and requesting narcotic medication. He was being seen in the office every other day due to his complaints. After Dr. Clem had examined Petitioner earlier in the day and ordered the TENS unit, it was issued the same day and Petitioner called MOHA approximately three hours later stating it was doing nothing for him and he wanted additional medication. Petitioner was advised to take over the counter anti-inflammatories since he was stopped on the prednisone pre-myelogram. He was also told to give the TENS unit a chance to work. The case manager noted the matter needed to be monitored closely. (RX 9, p. 20)

Petitioner underwent an initial evaluation at Memorial Industrial Rehab on December 23, 2008. Petitioner's complaints included low, mid, and upper back pain, neck pain and left shoulder pain. He had received his TENS unit the day before. Petitioner reported his symptoms began when he fell on July 30, 2008. Petitioner told the therapist he had also torn his rotator cuff but was waiting to hear from a second opinion before undergoing surgery. He also reported a 200 lb. table fell on him on December 18th and he felt okay until the next day. He was then seen at MOHA. When he returned to work his low back pain ranged from 2-6/10 but it had increased since the additional injury. Petitioner was currently on light duty but was unable to identify his restrictions. He noted that he hadn't been back to work because he can hardly get out of bed. Petitioner described pain everywhere and that anything he did caused his pain to increase and it was driving him nuts. Petitioner reported some relief with the TENS unit - 4-5/10. He has difficulty performing his activities of daily living due to increased pain and has difficulty finding a comfortable position when attempting to sleep. Other activities he

participated in included hockey, football, baseball, and playing with his five year old son. He hoped to "get the back right" during therapy.

At his physical therapy session on December 30, 2008 Petitioner reported he wasn't feeling that great. He had his TENS unit on that day which he reported distracted him from his pain because he cranks it up to a "7.0." He was scheduled for a myelogram the next day. (RX 9, p. 80)

Petitioner worked on December 29, 2008 and thereafter reported for physical therapy presenting with pain described as "5/10." Petitioner was doing alright. When asked what seemed to decrease his pain, he responded "nothing in particular." He also reported experiencing a daily shooting pain that goes through his entire spine when he moves the wrong way. Petitioner's primary complaint continues to be his low back and left shoulder/arm. Petitioner reported he had been using his TENS unit but the electrodes came off. He also reported being unable to perform his home exercises at work which he felt was when he needed to do them. He further reported he was using his vacation time to come in for therapy but "it will all even out in the end." When lying on his stomach the night before he felt a pop in his low back which increased his pain. Petitioner required cues in order to perform his home exercises. (RX 9, pp. 82-83)

The myelogram proceeded on December 31, 2008 and was interpreted as demonstrating a bilateral Pars defects at L5-S1. Petitioner returned to MOHA on January 9, 2009 with continued complaints. The history in that record states, "His injury happened six months ago, and he has had no improvements. I think at this point we need to order an IME on Mr. Hansen, and then we can see him back after the IME has been done and the report is available." Petitioner rated his pain on that day as a 5/10. (RX9, p9. 57, 60 - 64)

Petitioner returned to MOHA on January 5, 2009 regarding back and left shoulder pain. Subjectively, Petitioner denied any improvement. Dr. Clem noted the myelogram showed chronic-type degenerative changes and a bilateral pars defect at L5-S1 with moderate narrowing of the L5-S1 neuroforamen. Petitioner had been working light duty. He felt his entire back constantly hurt and was worse with everyday activities. Petitioner also reported that his elbows would lock up and pop occasionally (usually when he would go to lift himself up). Petitioner had been using Ibuprofen and Ultram, although the latter didn't seem to help much. Petitioner also told Dr. Clem that his toes had started to become numb more often. Petitioner further denied that the physical therapy was really helping him. On examination, Petitioner was guarded with his left shoulder but also displayed limited range of motion. He also had limited cervical range of motion and lumbar range of motion. PA-C Frank's assessment was generalized spinal pain that originated after the 2008 fall and right shoulder pain (possibly a rotator cuff tear) for which Petitioner had seen Dr. Herrin. Ms. Frank discussed Petitioner's case with Dr. Clem. He recommended x-rays of Petitioner's spine and ongoing physical therapy as well as a back brace which Petitioner was to wear while working and with activity. Petitioner expressed interest in returning to see Dr. Pineda. He was advised to use his medications as needed. (RX 9, pp. 26-28)

Petitioner presented for physical therapy on January 5, 2009 reporting 6-7/10 low back pain, 5/10 mid to upper back pain, and 3/10 left shoulder pain. Petitioner reported not being as sore since his previous session. After his myelogram on December 31, 2008 Petitioner was confined to bed, per his doctor, for 48 hours because of a headache. Petitioner had not really done any exercises until January 4th due to ongoing headaches. He attempted to use the TENS unit on his neck but woke up the next morning with increased tension/neck pain and hasn't used it since. Petitioner was instructed to continue using it on his low back. Petitioner also reported that he had been to MOHA, received a back brace and was told "his whole spine is pretty screwed up." However, he wasn't sure what changes were found. (RX 9, p. 77)

Lumbar spine x-rays taken January 6, 2009 showed a bilateral L5 pars defect with grade 1 spondylolisthesis. (RX 9, pp. 56, 58-59)

Ms. Frank re-examined Petitioner on January 9, 2009 at which time Petitioner reported no change or improvement in his condition. He was working light duty and undergoing physical therapy. He had undergone the myelogram and x-rays of his spine. Petitioner's complaints that day included left shoulder, bilateral elbow, and spinal pain. He was not taking any medications and described his pain as "5/10." Petitioner was kept on the same work restrictions – no lifting over five pounds and "up and down" as needed for comfort. Ms. Frank spoke with Sandra Elliott, nurse practitioner, and Sue Mullen, internal case manager regarding Petitioner. She wrote, "His injury happened six months ago, and he has had no improvement. I think at this point we need to order an IME on Mr. Hansen, and then we can see him back after that IME has been done and the report is available." (RX 9, p. 22)

Petitioner had therapy on January 9, 2009. His shoulder felt better after ultrasound but later Petitioner thought he may have "over done it and his shoulder was worse, posteriorly." (RX 9, p. 75)

Petitioner was late for physical therapy on January 12, 2009 and didn't have his back brace or TENS unit. He felt pretty sore but his back popped after they started cervical traction and he thought that felt good. Petitioner advised the therapist he was working for Respondent painting signs and had to bend over to do some of it. Every now and then he would need to walk around. Petitioner reported he was doing his home exercises but couldn't remember which ones; rather he was "using the papers." (RX 9, p. 74)

On January 14, 2009 Petitioner presented for his physical therapy late and with neither his back brace nor his TENS unit. Petitioner's shoulder pain was rated at a "6/10." On examination Petitioner's shoulder was positive for Hawkin's, O'Brien's, Neer's and Jobe's. Petitioner reported minimal pain following his treatment commenting that he felt much better than when he came in. (RX 9, p. 72)

Petitioner attended physical therapy on January 16, 2009 reporting his pain level was about the same at a "5/10." He had been working but had to leave early on the 15th because his boss had him doing something he shouldn't be. He was supposed to clean up an area where drums of oil were stored and he had to "put down oil dry and then clean it up after it picked up the oil." (RX 9, p. 71)

At his January 22, 2009 physical therapy appointment Petitioner reported soreness earlier in the week. His water pipe at home had broken and he had to get into the crawl space to fix it. It was very low and hard to get around in. (RX 9, p. 70)

Petitioner's Discharge Evaluation for physical therapy was performed on January 26, 2009. Petitioner reported his back and shoulder were about the same (5/10 and 6/10, respectively) Petitioner reported his thoracic spine was not as back and "everything else" was about a 2-3/10. Petitioner reported he was doing his home exercise program. Therapy was placed on hold since Petitioner seemed to be getting little relief. (RX 9, p. 68)

On February 7, 2009, 32 minutes of surveillance was secured on Petitioner. Petitioner was observed walking in his yard, carrying a ladder, climbing up and down the ladder, repositioning the ladder around the yard, winding up Christmas lights, bending over as he picked up Christmas decorations from the yard, raising his left arm about his head as he removed the Christmas lights from the trim of the house, and placing the roll of Christmas lights into a plastic trash bag (RX6).

14IWCC0503

On February 24, 2009 Petitioner telephoned MOHA. According to the phone message, Petitioner called stating he fell down some steps in July of 2008 while at work. Petitioner had been seen at MOHA and was now being referred to another "opinion" by the workman's comp dep't., but he had not heard anything yet. Petitioner further stated that when he fell he hurt his lower and mid-back, both elbows, and both shoulders. Petitioner reported that the pain has been an achy to stabbing pain over the last week. Petitioner's right shoulder which had been reconstructed twice previously felt like it was going to pop out of its socket. His shoulder and back pain was described as "7/10." Petitioner stated he had a five pound lifting restrictions and was to refrain from lifting overhead. Petitioner was seeking direction. After checking with Dr. Brower, Petitioner was told to report to MOHA the next morning. (RX 9, p. 21) Petitioner did not do so.

At the request of Respondent, Petitioner was seen for an independent medical evaluation by Dr. Stephen Delheimer on March 16, 2009. Dr. Delheimer is a board certified neurosurgeon. During the evaluation, Petitioner complained of wide-spread pain which he rated as an 8 out of 10. Petitioner complained of pain from his low back up to his cervical spine. Petitioner denied any radicular symptoms. Petitioner noted that "He cannot even do simple chores like taking out the garbage or lift a laundry basket, and his wife agrees with him. If he does lift, his back hurts. He has not attempted to squat or stoop, so he is uncertain if he can perform either of those maneuvers." As part of his evaluation, Dr. Delheimer reviewed Petitioner's medical records and the cervical and lumbar CT/myelograms. Dr. Delheimer's neurologic examination was noted to be unremarkable. Dr. Delheimer opined that that as a result of the accident, Petitioner sustained a soft tissue injury that would have reached maximum medical improvement four-six weeks following the accident date. Dr. Delheimer felt that Petitioner could return to full duty work. Dr. Delheimer noted that based on Petitioner's normal physical examination and normal diagnostic studies, Petitioner's subjective complaints were not supported by the objective evidence (RX4).

On March 22, 2009 Petitioner presented to the emergency room at Memorial Medical Center complaining of neck pain and stating, "injured [neck] long time ago but continue to hurt – recent exacerbation of cervical thoracic pain." Additional history indicates Petitioner reported "on and off neck and back pain" since a fall down stairs on "7.8.08." A few days earlier Petitioner was taking off his shirt, felt a "pop" in his neck and upper back and had noticed moderate pain since then. (PX 5) Cervical and thoracic spine x-rays were taken and Petitioner was diagnosed with neck and upper back strains. He was given a prescription for pain medication, discharged, and told to follow up with Dr. Ellison in 1-2 days. (PX 5)

Petitioner presented to Dr. Ellison on March 27, 2009 regarding neck pain "of unsure etiology, but he claims it is same as last time." Dr. Ellison noted he was unsure if Petitioner had anything to gain from having this neck pain, but "malingering is still on the differentials. Additional history reflected the incident with the shirt a few days earlier. Regarding the work accident, the office note stated it had occurred about nine months earlier and while physical therapy and occupational therapy helped him get better, Petitioner never felt he was back to 100%. (PX 11) Tramadol was removed as a medication and replaced with Norco. (PX 11)

Petitioner was seen by Dr. Nichole Mirocha of the SIU School of Medicine on May 11, 2009 with chronic back pain reportedly stemming from last July. Petitioner denied any change in his pain since then and denied any radiculopathy. Dr. Mirocha performed an osteopathic manipulation which Petitioner believed helped. On May 19, 2009 Petitioner returned to Dr. Ellison with continued neck pain. Petitioner denied that the physical therapy had been beneficial. Manipulation helped for a few days and then the pain returned. His neck pain is still poorly controlled and his shoulder and elbows continued to be painful. Dr. Ellison's record on that date states:

"Not doing any better. He is to follow up with Dr. Mirocha again for possible

manipulation since it did help in some way. Will refer to ortho for evaluation, since I still do not have a great diagnosis other than post traumatic neck pain for this gentleman. Also, they could provide second opinion on his shoulder and elbow pain related to same incident at that time if they could. Also, I am concerned patient has shown some drug seeking behavior though I continue to reserve any judgment on that for sure, but malingering for disability and pain medicine is in the differential. I would like evaluation also by pain clinic as they may have something further to offer.” (PX 11)

On June 5, 2009 Petitioner returned to Dr. Mirocha for an osteopathic manipulation. Dr. Mirocha’s record states “PT presents for OMT for back pain. He states that since I last saw him, his lower back is significantly better. He is still having pain between shoulder blades. Since he last came in, he returned to work but then got fired that day supposedly because he called in late. In the last few weeks he has been working a little-he does service work for heating and cooling as well as scrap metal work.” Petitioner was advised to follow up as needed (PX11).

On July 6, 2009 Petitioner presented to Dr. Mosquera at SIU Family for a second opinion regarding his left shoulder pain which Petitioner described as a torn rotator cuff for the which the doctor was unsure if Petitioner needed surgery. Petitioner reported it was getting worse and he was unable to lift weight. Petitioner denied any strength weakness but was experiencing numbness and tingling in his left arm and hand. Petitioner was referred to an orthopedist. (PX 11)

Per the referral of Dr. Mirocha, Petitioner was seen by Dr. Thomas Hansen for an orthopedic consultation on August 13, 2009. The history in his record states, “The patient states that he fell down some stairs on July 30, 2008 and injured the shoulder.” Dr. Hansen reviewed the MRI study from October of 2008 and felt that Petitioner had left shoulder pain possibly due to a partial thickness rotator cuff and/or labral injury. Dr. Hansen recommended surgery (PX12).

Surgery proceeded on September 16, 2009. On that date, Dr. Hansen performed an arthroscopic rotator cuff repair. Post-operatively, Petitioner followed up with Dr. Hansen on 9/28/09, 10/29/09 and 12/17/09 (PX12).

At the request of Respondent, Dr. George Paletta performed an independent medical evaluation on February 1, 2010. Dr. Paletta is a board certified orthopedic surgeon. Petitioner’s chief complaints were left shoulder pain, elbow pain and back pain; however, Dr. Paletta did not examine Petitioner’s back as he was not authorized to do so as part of the evaluation. (RX 5)

On that date, Petitioner was five months post rotator cuff repair and complained of significant pain which Dr. Paletta felt was out of proportion to what one would expect. As part of his evaluation, Dr. Paletta reviewed the complete medical records and diagnostic studies except for the physician notes from Petitioner’s initial emergency room visit. Dr. Paletta noted that based on the operative pictures, Petitioner’s tear appeared to be a relatively low grade tear and did not appear to be an obvious full thickness tear. Based on his physical examination and review of the medical records, diagnostic studies, and surveillance video, Dr. Paletta opined:

“With respect to the shoulder, the patient is status post arthroscopy with repair of a partial thickness rotator cuff tear. In my opinion, there was no indication for surgical treatment as the result of his work-related incident. The mechanism of injury is not consistent with that that would typically result in a tear of the rotator cuff. In addition, his current complaints are well out of proportion to what one

would expect given the pathology noted at the time of surgery and the surgical procedure that was performed. With respect to the elbow, there is no evidence that he ever had a fracture of the elbow. Again, his subjective pain is well out of proportion. The mechanism of injury would have been consistent with a contusion of the elbow, but I would have expected that symptoms would have resolved from that within four – six weeks of the initial injury. There are no objective findings to support his subjective complaints of continued pain. His pain is well out of proportion to what one would be expected. In addition, the level of activity documented on the surveillance video far surpasses that which the patient claims to be capable of. In addition, the surveillance video does not demonstrate any evidence of obvious outward expressions of pain or of limitations of functions secondary to pain. In my opinion, his treatment to date up to the point of surgery was reasonable, but I do not believe that the surgery was appropriate nor was it indicated as a result of the 7/30/08 accident. In my opinion, the patient has reached maximum medical improvement. He does not require any additional treatment for either his shoulder or his elbow. In my opinion, the patient has clearly demonstrated, based on the levels of activities shown in the video footage, that he is capable of a far greater level of activity and function than he claims. In my opinion, the patient can return to full duty and does not require any work restrictions. There are no restrictions required as a result of the work related incident. In my opinion, there are clear signs of symptom magnification. Again, his subjective complaints of pain and his pain scale ratings are well out of proportion to any objective findings and are not supported by the level of activity documented in the surveillance video. The patient does not examine like or act like a patient who has severe pain in the 8 out of 10 range.” (RX5).

On February 2, 2010 Petitioner contacted Dr. Hansen’s office and complained of new pain in his elbow. Petitioner requested a refill on his Norco which was denied as Petitioner had failed to attend the last two scheduled appointments. (PX 12)

Petitioner returned to the Family Medicine Center at SIU on February 8, 2010 where he was examined by Zachary Sims, PA-C. Petitioner’s primary concern was a need for pain medication as Petitioner reported being out of same for the last two weeks with resultant worsening back pain. Petitioner was given a script for Norco and advised all further medications would need to be handled by his primary care physician. (PX 11)

Petitioner was seen by Dr. Nicole Mirocha on February 22, 2010 and reported back pain occurring in the middle of the shoulder blades up to the base of his skull as well as the lower back. Petitioner also reported bilateral foot numbness of one year’s duration. Petitioner was uncertain just which toes were involved other than his big one. Dr. Mirocha performed manipulation. (PX 11)

During a follow-up appointment on March 1, 2010, it was noted that Petitioner was doing well following his shoulder surgery. However, Petitioner was complaining of bilateral elbow pain. Petitioner, on examination, had essentially full active elevation, internal and external rotation with 5/5 strength and minimal pain or tenderness. Petitioner was diagnosed with bilateral lateral epicondylitis. Dr. Hansen prescribed an MRI of both elbows. (PX 12)

Petitioner also started physical therapy on March 2, 2010, at Memorial Outpatient Therapy Services. Petitioner reported constant low back pain without radiation. The record further states “Patient was actually feeling better

eight days ago when he got an "adjustment" but moved some furniture and the pain returned. On March 3, 2010 Petitioner saw Dr. Naveen Abraham at the SIU School of Healthcare with complaints of continued back pain. Dr. Abraham noted "Upon physical examination, there was no evidence of pinched nerve or herniated disc, most likely strained muscle while lifting heavy objects." (PX 11) Petitioner reported that he felt good after Dr. Mirocha's prior manipulation but he had begun moving heavy televisions around and "threw out his back again." Most likely a strained muscle while lifting heavy objects." (PX 11)

The right elbow MRI proceeded on March 6, 2010. The left elbow MRI proceeded on March 29, 2010. (PX 12)

During a follow-up appointment with Dr. Hansen on April 1, 2010, Dr. Hansen interpreted the MRIs as being consistent with tendinosis of the ECRB origin. Petitioner declined a Cortisone injection and was prescribed braces. (PX 12)

Dr. Hansen last saw Petitioner on June 10, 2010. On that date, Dr. Hansen noted that Petitioner was doing well since his left shoulder arthroscopic rotator cuff repair. Petitioner reported he was "working out" and his shoulder was doing well. Dr. Hansen continued to diagnose Petitioner with bilateral lateral epicondylitis. Dr. Hansen advised Petitioner to follow up as needed (PX12).

Petitioner returned to Dr. Abraham on May 10, 2010 who noted that Petitioner had reached a plateau with physical therapy. On that date, Petitioner rated his pain as a 3/10. Petitioner was referred back to Dr. Mirocha and advised not to lift over ten pounds. Petitioner saw Dr. Mirocha on June 14, 2010 and underwent an additional manipulation (PX11).

On December 16, 2010 Petitioner was examined by Dr. John Lee at the SIU Family Medical Center due to complaints of bilateral shoulder pain (the right greater than the left). Petitioner was given a medication refill and offered physical therapy which he declined. (PX 12)

Petitioner underwent a right shoulder x-ray on February 10, 2011 due to a recent fall. Petitioner was then sent to see Dr. Jim Daniels, an orthopedist, that same day. Petitioner reported he was taking narcotics for chronic back pain as well as anti-inflammatories. Petitioner was noted to be self-employed as a heating and air conditioning man. One month earlier he was reportedly descending some steps with a bag slung over his shoulder when the bag got caught and "kind of pulled his arm and [h]e sort of felt something give." Dr. Daniels recommended conservative treatment initially. While Petitioner was concerned that he should get an MRI at that time, Dr. Daniels explained to him that that was only necessary if there was a concern about surgery and Petitioner had already undergone quite a bit of surgery. (PX 12)

Dr. Rodney Herrin's evidence deposition proceeded on June 30, 2011. Dr. Herrin was familiar with Petitioner since he had operated on his right shoulder in the past. Dr. Herrin testified that he first saw Petitioner a day after the July 30, 2008 incident. At that time, Dr. Herrin felt that Petitioner had a contusion to his left elbow and a left shoulder strain. Dr. Herrin recommended conservative treatment. During a visit on September 8, 2008, Petitioner, for the first time, complained of right elbow pain. Due to continued complaints, Dr. Herrin ordered an MR-arthrogram to evaluate the labrum as well as the rotator cuff. The MR-arthrogram proceeded and Dr. Herrin noted that this study "Wasn't very remarkable." Dr. Herrin noted that the study noted some irregularities in the undersurface of the supraspinatus. Dr. Herrin noted that Petitioner's symptoms were of instability which has nothing to do with the rotator cuff "so anything with the rotator cuff would be in my opinion irrelevant for his complaints of instability and pain. And so that is why I personally said this report was really not significant because his complaints were not really rotator cuff symptoms. At most, they were

instability. And the rotator cuff has really no relationship to instability of the shoulder.” Dr. Herrin testified that following his review of the MR-Arthrogram he could not understand why Petitioner was having the degree of problems that he was. Dr. Herrin could not find anything from an objective standpoint to explain this. At that point, Dr. Herrin recommended that Petitioner secure a second opinion or an independent medical evaluation. Dr. Herrin did not believe that Petitioner was a surgical candidate. Dr. Herrin testified that Petitioner’s complaints were not consistent with rotator cuff problems and that it is critical to correlate clinical examine findings with the MRI scan. Dr. Herrin testified that if surgeons operate strictly on MRI findings, they would be doing wrong surgeries all the time. Dr. Herrin testified that he recommended a second opinion because “I do not think I was continuing to be very comfortable with taking care of Mr. Hansen. I- it just didn’t add up. His complaints didn’t fit with the mechanism of injury.” Lastly, Dr. Herrin testified that he is familiar with Dr. George Paletta. Dr. Herrin agrees that he is a well known orthopedic surgeon with an excellent reputation. Dr. Herrin testified that he personally refers difficult shoulder cases to Dr. Paletta. (PX 8)

Petitioner saw Dr. Daniels again on August 24, 2011 and September 14, 2011. As of the second visit it was felt Petitioner had a full-thickness tear and surgery was recommended. (PX 12) Petitioner was examined by an orthopedic surgeon, Dr. El-Amin, on October 6, 2011 and surgery was again recommended; however, Petitioner declined preferring to try physical therapy first. (PX 12)

On December 6, 2011 Petitioner was seen at North Dirksen Medical Associates by Dr. Joshua Ellison with back complaints. The history states:

“The day before Thanksgiving he “threw” his back out, and then started to do better and then started working again and did the same thing when moving a furnace today. He misused his Norco the week after Thanksgiving and took about 8 Norco a day during that time. He usually needs about 4 per day for the shoulder. It is hurting bilateral lower back. Goes into buttocks on left more so than right but is both sides. No numbness or tingling. No fevers. No loss of bowel or bladder control. Happened by moving a furnace the first time, and this time he was moving a furnace off a trailer. He has had pain in his back like this before. He had MRI of his back a couple years ago and they told him he had degenerative disc disease. He takes Flexeril at bed time. He is out of those and Norco.”

Petitioner was advised to hold off working as much as possible and to start physical therapy if he did not see improvement (RX3).

Dr. Thomas Hansen’s evidence deposition proceeded on December 12, 2011. Dr. Hansen testified that he first saw Petitioner on August 13, 2009. At that time, Petitioner had left shoulder complaints. Dr. Hansen noted that at that time Petitioner had no symptoms of instability. Dr. Hansen testified that he reviewed the MRI study of October of 2008 and opined that it was consistent with his physical findings. Dr. Hansen testified that based on these findings, he proceeded with an arthroscopic rotator cuff repair. Dr. Hansen testified that the partial thickness tear was somewhat greater than 50% but less than 75%. Regarding the issue of causation, Dr. Hansen testified that the extent of his knowledge of how the accident took place is listed in his initial medical record. Dr. Hansen testified that the only medical records he reviewed throughout his treatment of Petitioner were his own. Dr. Hansen testified that there was a causal relationship between Petitioner’s rotator cuff tear and the accident. Dr. Hansen agreed that his causal connection opinion was based on the assumption that following the accident, Petitioner had complaints consistent with a rotator cuff tear. Dr. Hansen agreed that if Petitioner

would have injured his rotator cuff as a result of this incident, he would have had physical findings consistent with a rotator cuff tear. Dr. Hansen agreed that if Petitioner sustained a rotator cuff tear as a result of the accident, he would have had difficulty with overhead work and carrying items. Dr. Hansen could not opine whether Petitioner's bilateral elbow condition was caused by Petitioner's accident. (PX 9, pp. 11-12)

Petitioner returned to Dr. Ellison on December 27, 2011. On that date, Petitioner's medication was renewed. On January 16, 2012 Petitioner underwent a lumbar MRI which was interpreted as demonstrating bilateral L5 Pars defects with moderate bilateral neuroforaminal stenosis at L5-S1. Petitioner was seen at Memorial Outpatient Therapy Service on February 8, 2012 for lumbar radiculopathy. The history in that record states "Patient normally has low back pain off and on however this recent exasperation is different. There is the usually low back pain but there is also constant numbness of the right ankle and foot. The right foot feels cold and the patient is unable to lift his big toe." Petitioner was discharged from physical therapy on 3/05/2012 as the therapy was unable to alter Petitioner's symptoms. Petitioner had a positive straight leg raise and noticed numbness in his right foot (RX3).

At the request of Dr. Ellison, Petitioner was examined by Dr. Devin Amin on March 23, 2012 for a neurosurgical consultation. The history in Dr. Amin's record states, "This is a 34 year old male who has had a 3 ½ year history of back pain, which in the last three months has gotten progressively worse including a right-sided L5 radiculopathy where he has weakness of the extensor hallucis longus and numbness and pain on the lateral aspect of the right leg. He relates an accident at work where he was carrying tools as a heating ventilation technician down a concrete stairway, which was slippery with moss, and he had his feet go out from under him and then landed on one of the concrete stairs below." Dr. Amin recommended a CT scan and electrodiagnostic study. (PX 12)

Dr. Amin interpreted the CT scan as demonstrating bilateral pars fracture with Grade 1 spondylolisthesis. Dr. Amin felt that the electrodiagnostic study demonstrated right greater than left moderate to severe radiculopathy in the L5-S1 nerve root. Dr. Amin recommended surgery that proceeded on May 1, 2012. On that date, Dr. Amin performed a fusion at the levels of L4-5 and L5-S1. Dr. Amin's post-operative diagnosis was L5-S1 spondylolisthesis with bilateral S1 radiculopathy and instability. Post-operatively Petitioner responded favorably to surgery. During a follow-up appointment on May 14, 2012, Dr. Amin prescribed a course of physical therapy. During another follow-up appointment on August 3, 2012 Dr. Amin allowed Petitioner to return to full duty work activities. Dr. Amin stated, "We are delighted to see the recovery he has made. And that he is back to work three months after his surgery." (PX12)

Dr. Devin Amin's evidence deposition was taken on November 9, 2012. (PX 10) Dr. Amin is board eligible in neurosurgery. Dr. Amin testified consistent with his records discussed above. He further testified that he saw Petitioner at the referral of Dr. Ellison. With the exception of radiographic studies from 2008, Dr. Amin had not seen any of Petitioner's prior medical records. Dr. Amin testified that when he initially saw Petitioner, Petitioner related his back condition to an incident where he was carrying tools down a concrete stairway and he slipped striking his buttocks first. Dr. Amin testified that he was not aware of any subsequent accidents involving Petitioner's low back and if that information was incorrect, his opinion might also be. Dr. Amin testified that the bilateral foraminal narrowing seen on the January 16, 2012 MRI was a result of the bilateral pars fracture, which could be acute or longstanding and might also be consistent with the type of fall Petitioner had sustained. Dr. Amin testified that after the failure of conservative treatment, he performed a decompression and fusion. Following surgery Dr. Amin testified that Petitioner did very well and was released back to full duty work following his last visit on August 3, 2012. Regarding the issue of causal connection, Dr. Amin testified that the fall that Petitioner described could have caused or aggravated a bilateral pars fracture. Dr. Amin testified

that he could not say within a reasonable degree of medical certainty what caused the pars fracture. Dr. Amin was asked:

- Q: You'd agree, doctor, that without seeing this patient's prior medical records, you can't say within a reasonable degree of medical certainty whether this patient's condition of ill being to his back that you treated and the eventual surgery is causally related to this work accident that he described to you when you initially saw him in March of 2012?
- A: No. He described the mechanism which I believe is certainly sufficient to cause the type of findings we had on the imaging studies both from 2012 and 2008, but I do not have any specific evidence to link that to a specific point in time.
- Q: So again, you can't testify within a reasonable degree of medical certainty on the issue of causal connection?
- A: Correct.

Further on in the deposition, during re-cross-examination, Dr. Amin reiterated that "I cannot state causal connection." (PX 10)

At the arbitration hearing Petitioner denied any prior left shoulder, elbow, or back problems. He described his July 30, 2008 accident explaining that he was going down some stairs with about 50 lbs. of tools when he slipped and fell backwards landing on his back and elbows on the concrete steps.

Petitioner went on to testify that when he went to Memorial Medical Center thereafter he "believed" he told staff that his back, elbows, and left shoulder hurt; however, he acknowledged it was a long time ago and it would be hard to say with certainty.

Petitioner also testified that he was initially treated by Dr. Herrin for his left arm but he was still uncomfortable when Dr. Herrin last examined him. He then began treating with Dr. Hansen in 2009 and he eventually performed surgery on his left shoulder. Petitioner testified that during this time he was off work for awhile and then released to return to work with restrictions of no lifting over 5 lbs. and no overhead work. Petitioner couldn't recall when that restriction was lifted but it was before the surveillance that was done in February of 2009. Even if they hadn't been lifted Petitioner did not believe he was doing anything outside them. On further questioning, Petitioner believed Dr. Hansen had him off work from September 16, 2009 through March 2, 2010. He also recalled undergoing some additional therapy after his shoulder surgery.

Petitioner testified that throughout the time he was treating for his left arm/shoulder he was also experiencing back symptoms, including sharp pains at certain points, lots of tightness, burning sensations, and the inability to bend over and do things like he normally would. Some of these symptoms were constant; others were intermittent. Petitioner testified that he underwent therapy in 2009 and 2010 for his back but the symptoms never changed. Dr. Ellison put him on a pain contract and gave him pain killers. According to Petitioner, at some point Petitioner began experiencing a numb left foot and the inability to wiggle his left toes. He was then sent to a back specialist, Dr. Amin.

Petitioner acknowledged that he was working in 2011 and helping pick up a furnace and set it on top of an "A coil." While he did not know exactly what happened, he recalled it was very painful and he immediately called the doctor. Petitioner also testified that he was already experiencing problems with his left foot and toes before that accident.

Petitioner testified that when he went to Dr. Amin he took along his 2008 back films. Petitioner did not believe he ever provided those to Dr. Pineda or Dr. Delheimer. Petitioner testified that Dr. Amin decided to perform surgery just as soon as he looked at the 2008 film.

Petitioner testified that he currently has no restrictions regarding his shoulder; however, he doesn't feel it is "quite up to par" as it once was. He has noticed "a little bit" of loss of strength. He can no longer lift his 40 to 50 lb. tool belt with his left arm to put it on a counter. When asked what, if any, difficulties he was having bending with his back, Petitioner testified, "Everything." According to Petitioner when he bends over he can no longer put his palms on the ground; instead he can just get them to the middle of his shins and even that was painful, like someone stabbing him ("a good 8"). Lifting, as with his 35 lb. 2 year old or two 1 gallon milk containers, was also painful. All in all, Petitioner never really felt his back had been pain-free since the accident – probably a "3-4/10." Petitioner testified he was taking 10 mg. Norco four times a day. He no longer hikes, skis, rides a bike, "or anything." If he walks more than one-half a mile, Petitioner estimated his pain level increases to a "6/10."

On cross-examination Petitioner denied ("doubted") that he told Dr. Herrin the history recorded in the doctor's initial office note. He agreed that he didn't have any right elbow complaints or treatment until sometime after the accident but he wasn't sure when that was. He also agreed that Dr. Herrin allowed him to return to work on November 10, 2008 but he further testified that the doctor thought he should get a second opinion.

Petitioner testified that he treated with Dr. Pineda from September 23, 2008 through November 13, 2008. Petitioner then wanted to treat with MOHA. He did so briefly followed by an IME on his back. When examined by Dr. Delheimer for the IME, Petitioner agreed he described his back pain as an "8-9/10." He also agreed that he told the doctor he couldn't lift laundry or take out the garbage.

Petitioner acknowledged seeing Dr. Ellison on December 6, 2011 regarding the furnace episode and that it had occurred earlier that day. He did not recall having a similar episode with a furnace around Thanksgiving; however, the problems with his foot and toes began before Thanksgiving. Petitioner just couldn't recall exactly when.

Petitioner disagreed with Dr. Amin's office note wherein the doctor indicated Petitioner did great after his surgery.

The Arbitrator concludes:

1. **Credibility** – The Arbitrator finds Petitioner's credibility to be significantly compromised. The Arbitrator notes that throughout Petitioner's treatment, multiple treating doctors and both IME doctors document numerous signs of symptom magnification and the lack of objective findings to justify Petitioner's complaints. Dr. Herrin noted that Petitioner's complaints "didn't add up" and as such Dr. Herrin did not feel comfortable treating Petitioner further. Dr. Ellison, Petitioner's primary care physician, was concerned about drug-seeking behavior and "malingering for disability and pain medicine." The doctors at Midwest Occupational Health Associates, after treating Petitioner on several occasions, recommended an independent medical evaluation. Dr. Delheimer, after reviewing the surveillance video, noted that Petitioner's subjective complaints were not supported by the objective evidence. Despite reporting 8 out of 10 pain complaints and the inability to perform simple tasks like taking out the garbage, squatting or stooping, the surveillance video approximately a month earlier documented Petitioner performing numerous physical activities with no signs of discomfort. Dr. Paletta

noted numerous signs of symptom magnification and the lack of objective evidence to explain Petitioner's significant pain complaints. Dr. Paletta also documented that Petitioner did not examine like, or act like, a person who had severe pain in the 8 out of 10 range. Dr. Paletta also noted that the surveillance video contradicted Petitioner's subjective complaints.

The Arbitrator also notes the significant inconsistencies between Petitioner's current left shoulder and low back complaints and the documentation in the treating medical records. Petitioner would also give inconsistent reports to his physicians. For example, he told Dr. Ellison physical therapy helped (PX 11 – 3/27/09); yet told Dr. Mirocha it did not help (PX 11 – 5/11/09). He told Dr. Ellison his pain improved over time while telling Dr. Mirocha it did not.

The Arbitrator further notes that Petitioner appeared prone to exaggeration (as in the manner in which he described his level of pain, the frequency of pain, and the activities which triggered pain – “everything”). Petitioner's motivation for his ongoing pain complaints was also questionable as it appears to this Arbitrator that he was very reluctant to return to work and very much wanted to avoid light duty work for Respondent noting he stated as much to one doctor (he would make more money off work than on) and repeatedly telling therapists and doctors that work activities made his pain complaints worse. Petitioner's focus on pain medications is also troubling as he frequently seemed more concerned about obtaining additional pain medication than considering other courses of treatment or otherwise improving his condition.

2. Causation (Issue F.)

2.1 Petitioner's left shoulder. Petitioner injured his left shoulder in the July 30, 2008 accident.

Petitioner's accident was undisputed. The description of Petitioner's accident was consistent with a left shoulder injury. His left shoulder was x-rayed in the emergency room. The question is the extent of the left shoulder injury stemming from that accident. As a result of the July 30, 2008 accident, the Arbitrator concludes that Petitioner sustained a soft tissue injury to his left shoulder and left elbow which would have reached maximum medical improvement when Dr. Herrin last saw Petitioner on November 10, 2008.

Emergency room personnel diagnosed Petitioner's shoulder injury as a shoulder sprain/contusion. Dr. Herrin diagnosed it as a shoulder strain. He also considered the possibility of some shoulder instability in light of Petitioner's complaints. However, as he explained during his evidence deposition, he never suspected a rotator cuff tear as Petitioner's presentation did not suggest one. As of November 10, 2008 Dr. Herrin had no objective explanation for Petitioner's ongoing shoulder complaints. He felt Petitioner could work with no restrictions but should continue his home exercises. He did indicate a second opinion or IME would be reasonable.

Petitioner then initiated treatment with MOHA. However, contrary to Petitioner's testimony this was done at the referral of Dr. Pineda (who was treating him for his back) and not Dr. Herrin. While Petitioner presented with a myriad of complaints, they did include the left shoulder. Additionally, Petitioner did display limitations in his shoulder on physical examination and his shoulder condition was described as a possible rotator cuff tear secondary to his accident; however, the focus of MOHA's attention was Petitioner's back. Neither Dr. Clem nor the physician's assistant were deposed so it is not known how they arrived at a possible rotator cuff tear and/or felt it was secondary to the fall. There is no indication anyone at MOHA reviewed Petitioner's earlier

treatment records. Most importantly, regardless of Petitioner's examination during this time and possible diagnoses, the staff at MOHA eventually, as Dr. Herrin had, began to question Petitioner's ongoing symptoms and lack of improvement.

Petitioner was subsequently treated by Dr. Hansen who diagnosed and treated him for a rotator cuff tear. While Dr. Hansen was of the opinion the tear was caused by Petitioner's accident in 2008 he acknowledged during his deposition that he had not reviewed any prior treatment records and that if Petitioner had injured his rotator cuff in the accident Petitioner should have had physical findings consistent with a rotator cuff tear. Dr. Herrin, however, did treat Petitioner during that earlier time period and credibly testified that Petitioner's problems at that time centered around instability and not the rotator cuff. Additionally, Dr. Paletta did not believe Petitioner's shoulder surgery was due to his work accident. The Arbitrator finds the opinions of Dr. Herrin and Dr. Paletta to be consistent on this issue. Both doctors note that Petitioner's rotator cuff tear was an incidental finding and that Petitioner's contemporaneous left shoulder complaints were not consistent with a rotator cuff tear. The Arbitrator notes that Dr. Hansen saw Petitioner over a year after the accident and he was mistakenly under the assumption that Petitioner's contemporaneous complaints were consistent with a rotator cuff tear.

Based upon the foregoing and the more persuasive and credible testimony and opinions of Drs. Herrin and Paletta, as well as Petitioner's credibility problems addressed above, the Arbitrator concludes that Petitioner's left shoulder condition reached maximum medical improvement on November 10, 2008 when he was last examined by Dr. Herrin.

- 2.2 Petitioner's left elbow. Petitioner also injured his left elbow in his July 30, 2008 accident. This conclusion is based upon Petitioner's testimony, the emergency room records, and the records of Dr. Herrin. It is also consistent with the mechanism of injury. Petitioner was diagnosed with a sprain/contusion to his left elbow. He was never diagnosed with a radial fracture. Dr. Herrin released Petitioner on November 10, 2008 noting he was perplexed as to why Petitioner remained symptomatic in his left elbow as he could not find anything objectively wrong with it. He was advised to continue with his elbow rehabilitation when released. Petitioner then began treating at MOHA and, again, while he mentioned elbow complaints, MOHA's focus of medical care was to Petitioner's back. Indeed, at one point during his treatment with MOHA, Petitioner was no longer reporting elbow complaints (RX 9 – 12/22 visit). While the focus of care was on Petitioner's low back during this time Petitioner did occasionally report a feeling of "locking up" in his elbows. While Dr. Hansen ultimately diagnosed Petitioner with lateral epicondylitis he could not causally connect it to Petitioner's accident. The Arbitrator concludes that Petitioner suffered a soft tissue injury to his left elbow which reached maximum medical improvement on November 10, 2008.
- 2.3 Petitioner's right elbow. Petitioner failed to prove his right elbow condition was causally related to his July 30, 2008 accident. This is based upon Petitioner's delayed onset of right elbow complaints and the absence of any medical opinion establishing a causal connection. The Arbitrator also notes that Petitioner failed to provide any testimony concerning ongoing right elbow problems. Hence, any problems Petitioner may have had appear to have resolved.
- 2.4. Petitioner's low back. Petitioner injured his low back in his July 30, 2008 accident. He complained of low back pain at the emergency room but voiced no further low back complaints until he was seen at the emergency room on September 9, 2008. That the records from that visit are incomplete

is unfortunate and somewhat troubling as they might have shed more light on the history of Petitioner's back complaints. It is also unclear how Petitioner came to see Dr. Pineda. Petitioner only testified that he treated with him for a short period of time. Which doctor, if any, referred Petitioner to him is not known. This, too, is troubling. The question, as with Petitioner's left elbow and shoulder, is the extent of the injury. The Arbitrator concludes that Petitioner sustained a soft tissue injury to his lumbar spine and failed to prove ongoing causation after March 16, 2009 when he was examined by Dr. Delheimer at the request of Respondent. This conclusion is based on the treatment records of Dr. Pineda and MOHA noting Petitioner's broad pain complaints and no signs of a herniated disc or radiculopathy, the concerns of MOHA as documented on December 22, 2008 and January 9, 2009, and the surveillance of February 7, 2009. The Arbitrator adopts the findings of Dr. Delheimer. The Arbitrator also finds Petitioner's lifting incident of 12/06/2011 to be significant. Following that incident, Petitioner advised the physical therapist that his pain was different resulting in constant numbness of the right ankle and foot. The Arbitrator also notes that Dr. Amin did not have the opportunity to review any of Petitioner's prior medical records and that he was unable to say within a reasonable degree of medical certainty what caused Petitioner's current low back condition and need for surgery.

2.5. Petitioner's cervical, thoracic and mid-back regions. Petitioner failed to prove a causal connection between his cervical, thoracic and mid-back conditions and his accident of July 30, 2008. This is based upon the lack of complaints in those regions contemporaneous with the accident, the report of Dr. Delheimer, the visit to Memorial Medical Center on March 22, 2009 and the history provided at that time together with the subsequent office visit with Dr. Ellison on March 27, 2009.

3. Medical Bills (Issue J.)

Based upon her causation determination above, Respondent is responsible to pay pursuant to the fee schedule all medical bills for the left shoulder and elbow conditions through November 10, 2008. Respondent has no obligation to pay any medical bills for Petitioner's left shoulder and elbows subsequent to that date.

Similarly, based upon her causation determination above, Respondent is responsible for payment of all low back treatment through March 16, 2009, the date of Dr. Delheimer's IME report. Respondent has no obligation to pay any additional medical bills for Petitioner's low back thereafter.

4. Temporary Total Disability (Issue K.)

Based upon the Arbitrator's causation analysis and the stipulation of the parties, the Arbitrator concludes that Petitioner was temporarily totally disabled from September 25, 2008 to November 19, 2008 and November 21, 2008 through December 16, 2008, a period of 11 5/7 weeks. Respondent shall receive a credit of \$4,075.99 as stipulated to by the parties. (AX 1)

5. Permanent Partial Disability (Issue L.)

With regard to Petitioner's left shoulder and left elbow, Petitioner was diagnosed with strains and contusions and underwent physical therapy. As a result of the July 30, 2008 accident, the Arbitrator

finds that Petitioner sustained 2% loss of use of the person as a whole for his left shoulder condition and another 2% loss of use of a person as a whole for his lumbar condition.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
CHAMPAIGN)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kathryn McNabb Price,

Petitioner,

vs.

NO: 12 WC 2131

14IWCC0505

Plastipak Packaging, Inc.,

Respondent.

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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 6, 2013, 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.

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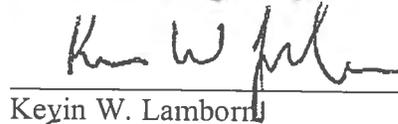
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

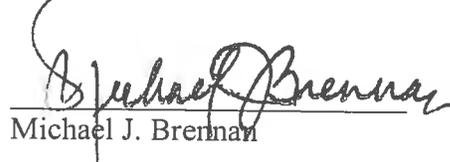
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

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

DATED: **JUN 26 2014**
TJT:yl
o 6/2/14
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Thomas J. Tyrrell


Kevin W. Lamborn


Michael J. Brennan

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

PRICE, KATHRYN McNABB

Employee/Petitioner

Case# 12WC002131

PLASTIPAK PACKAGING INC

Employer/Respondent

14IWCC0505

On 8/6/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0874 FREDERICK & HAGLE
PATRICK J HANLON
129 W MAIN ST
URBANA, IL 61801

1295 SMITH AMUNDSEN LLC
LES JOHNSON
150 N MICHIGAN AVE SUITE 3300
CHICAGO, IL 60601

STATE OF ILLINOIS)
)SS.
COUNTY OF Champaign)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Kathryn McNabb Price
Employee/Petitioner

Case # 12 WC 2131

v.

Consolidated cases: _____

Plastipak Packaging, Inc.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **D. Douglas McCarthy**, Arbitrator of the Commission, in the city of **Urbana**, on **June 24, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **August 21, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$35,141.60**; the average weekly wage was **\$675.80**.

On the date of accident, Petitioner was **46** years of age, *married* with **0** dependent children.

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

Respondent shall be given a credit of **\$N/A** for TTD, **\$N/A** for TPD, **\$N/A** for maintenance, and **\$N/A** for other benefits, for a total credit of **\$N/A**.

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

ORDER

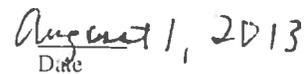
Arbitrator finds that Petitioner's present condition of ill-being is causally related to the accident and further orders that Petitioner is awarded prospective medical treatment for her bilateral carpal tunnel syndrome release surgeries. Arbitrator finds that the medical care the Petitioner has undergone to date is reasonable and necessary and is awarded to Petitioner.

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


Date

AUG 6 - 2013

STATEMENT OF FACTS

Petitioner Kathryn Price-McNabb testified that she is 48 years old and that in April, 1999 she became employed with Respondent as a forklift driver. She testified that she worked in this position until September of 1999 when she was promoted to Lead Driver. Petitioner described her job duties as a lead driver as supervising forklift drivers and doing data entry work on a keyboard. Petitioner testified that this position required her to drive a forklift approximately 20-26 hours per week. In January, 2005 she testified that she was promoted to shipping clerk which involved working at a keyboard, and supervising forklift drivers in the warehouse. Petitioner testified that she would occasionally be required to drive a forklift in this position but only 2-3 times per year and her estimate as to the time she has been on a forklift on an annual basis was 4-6 hours. Petitioner testified that she worked at a computer station in this position for approximately 7.5 hours of an 8 hour shift.

Petitioner testified that on April 15, 2011 she was transferred back to a forklift driver by the Respondent. Petitioner testified that she was required to work a 12 hour shift and that of the 12 hours that she worked, 10 hours were spent on a forklift. Of the 10 hours spent working on a forklift during her typical shift she testified that 9.5 of those hours was while the forklift was carrying a load. Petitioner testified that she worked a 2 week rotating schedule which required her to work 7 days out of every 2 weeks.

Petitioner testified that she began to notice problems with her wrist in February of 2011. Petitioner described the problems with her wrist as starting to fall asleep with numbness and tingling on a mild to moderate basis.

Petitioner testified that when she began to experience symptoms in February of 2011 that it caused her to miss no time from work and that she did not require her to seek out any medical care. Petitioner testified that she noticed a change in her symptoms in her wrist at the end of June, 2011. At this point in time she described the numbness in her hands as being dead asleep. In describing the difference of the symptoms of her arms after the end of June 2011 than previous, she states that the severity of the pain was much greater than before. Petitioner testified that she noticed a relation between her symptoms and work activities because she described the hands as constantly falling asleep while driving a forklift. Petitioner testified that while driving the forklift that she steered with her left hand which required significant gripping and steering of the wheel while extending the left wrist. Petitioner testified that the right hand was required to move the levers that control the attachments to the forklift. Petitioner testified that the difference between operating the forklift when it was carrying a load as opposed to not carrying a load was that the wheel was much heavier and harder to turn with a load.

Petitioner testified that she first reported the symptoms of the wrist to Keith Lyle, her supervisor, on August 21, 2011. Petitioner testified that the first time she sought out medical care for the condition was on September 7, 2011 at the Carle Clinic with Julie Schwartz, the physician's assistant for her primary care physician. Petitioner testified that during her annual physical on September 7, 2011 she mentioned her hands were falling asleep while at work and she was prescribed bilateral splints.

The medical note of September 7, 2011 shows that Petitioner "has been having trouble with her left hand and wrist. Fingers are tingling in the first 3 fingers." (PX 2). The medical note contains a history that shows that "she does drive a forklift, and this is her steering hand. It is also bothers her at night." The examination on that date showed that the left wrist did have positive Phalen and Tinel tests. (Id.) Julie Schwartz diagnosed probable carpal tunnel syndrome. The note also shows that she prescribed the splint to wear on the left wrist as much as possible but that she would not be able to wear it at work and if it did not improve, she would consider an EMG. (PX 2).

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Petitioner testified that she waited to seek medical attention for her carpal tunnel syndrome until September of 2011 because she was hoping that the symptoms would go away. Petitioner testified that she attempted to deal with the symptoms through Tylenol and Vitamin B-6. Petitioner testified that she wore the splints at night and was not able to wear them while driving the forklift. Petitioner testified that in January, 2012, she was referred to the Hand Surgery Clinic of the Carle Physician Group by Julie Schwartz. Petitioner testified that she saw Julie Young who is a physician's assistant to Dr. Clifford Johnson, a hand surgeon with the Carle Physician Group.

In the note of Julie Schwartz dated February 6, 2012, Petitioner gave a one year history of a sensation that her hands would go to sleep and that the left hand was worse than the right. (PX 2). Petitioner gave a further history that she feels that the symptoms have gotten worse since June and that the symptoms are exacerbated by driving a forklift truck at work. (Id). Further history by the Petitioner in the note revealed that she reports that her symptoms seem to be rapidly worsening when she started driving the forklift at work. (PX 2). The note further shows an EMG was completed with findings consistent with bilateral carpal tunnel syndrome with the left worse than right. (Id). The recommendation per the medical note was that since conservative management including activity modification, splinting and non-steroidal anti-inflammatories had been tried, that the next step would be the carpal tunnel release and to move forward with left carpal tunnel release. (Id).

The Petitioner submitted to evidence deposition of Dr. Clifford Johnson, hand surgeon with the Carle Physician Group. Dr. Johnson testified that Julie Ann Young, his physician's assistant, examined Petitioner on February 6, 2012 at his supervision and at his direction. (PX 1, p. 5). Dr. Johnson further testified that the medical note compiled by Julie Ann Young was reviewed by him and relied upon by him in coming to his conclusions and suggestions in this matter. (Id. p. 6). Dr. Johnson testified that his diagnosis, based upon the review of this examination note, EMG findings and exam findings and her history, was bilateral carpal tunnel syndrome, left worse than right. (Id. p. 11). Dr. Johnson testified that he recommended carpal tunnel release on the left. (Id).

Dr. Johnson testified that the Petitioner's history indicated her work activities exacerbated her symptoms and that these worsening symptoms were the reason he recommended a carpal tunnel release surgery. (Id. pp. 13-14).

Petitioner testifies that no outside of work activities have exacerbated her carpal tunnel syndrome. She testified that her outside work activities consist mostly of spending time with her mother and camping.

Respondent's called Kevin J. Vite to testify on behalf of Respondent in this cause. Mr. Vite testified that he is the Outside Warehouse Manager and that he was the supervisor of Petitioner when she was employed as a shipping clerk. Mr. Vite testified that he is not the direct supervisor of the Petitioner since she was transferred back to forklift driver on April 15, 2011 and that Keith Lyle was the direct supervisor of the Petitioner. Mr. Vite testified that his contact with the Petitioner would be when she worked the day shift while employed as a forklift driver because they would be working in the same facility. Mr. Vite confirmed that a forklift driver, when driving a load, would be forced to drive backwards and would steer with their left hand. Mr. Vite substantiated an exhibit which shows the amount of scans that would have been performed by Petitioner during her work as a forklift driver from May 1, 2011 through December 6, 2011. Mr. Vite was not aware of the exact date of when she was transferred back to the forklift driver position.

Mr. Vite testified concerning Resp. Exhibit 4. He said it was company records showing the number and time of scans which the Petitioner performed on the products which she would unload from the trailers. He concluded that the exhibit showed that on each day, the Petitioner had considerable time between scans, which he concluded was time when she would not be operating her truck.

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Respondent also submitted the evidence deposition of John Fernandez, M.D. which contained opinions formulated during his independent medical examination he conducted of the Petitioner on May 17, 2012. In his medical exam note from May 17, 2012, Dr. Fernandez stated that "it should also be noted, however, that in April of 2011 she was transferred back to forklift operations and this is when her symptoms significantly worsened and became aggravated reporting them in May and June of 2011." (See PX 3, p. 2). Dr. Fernandez's conclusions in his May 17, 2012 exam note was bilateral wrist carpal tunnel syndrome, left greater than right and then further stated that "if indeed her work history is correct that she engaged in forklift operation requiring frequent gripping and grasping with both hands and if she engaged in that over the previous six years and then developed symptoms while performing those job activities, then I would state there is causal relationship or at least a minimal aggravation effect to her underlying condition making it work related." (Id. p. 5). In a subsequent report by Dr. Fernandez dated July 15, 2012, after having communications and receiving documents from Respondent's counsel, Dr. Fernandez reversed his causal connection opinion by stating that he could not causally relate the underlying diagnosis of carpal tunnel syndrome to her work exposure as a shipping clerk and that he could not relate it to her job activities as a forklift operator between May 6, 2011 and December 6, 2011. (PX 3 - 7/15/2012 note of Dr. Fernandez).

Dr. Fernandez testified that he changed his opinion on causal connection from the first report to his second report as a result of a letter that was sent to him by the attorney for Respondent. The first page of the letter dated June 29, 2012 was attached as Fernandez Exhibit 3 to his evidence deposition and stated in pertinent part that "it appears that the claimant did not perform the forklift job as described in her history to you. Specifically, she worked as a forklift driver for less than one year (from 5/16/11 to 12/06/11) and before that she was a shipping clerk (1/05/05 to 5/15/11). (RX 1 - Fernandez Exhibit 3). Dr. Fernandez testified that this changed his opinion from one in which he thought the forklift operation was causal factor to one in which he thought the forklift operation was not a casual factor. (Id. p. 6). Specifically, Dr. Fernandez testified that he was informed that the exposure to forklift driving was between 5/16/11 to 12/06/11 which was not within the time frames of what he would consider an aggravating or causal effect to the condition of carpal tunnel syndrome. (Id. p. 7).

Dr. Fernandez further explained in his testimony on causal connection that if her exposure to forklift operation was less than 6-12 weeks before symptoms became aggravated, meaning her symptoms became significantly worse, then there is no aggravation effect and that his change of opinion on causal connection was based upon a belief that she was exposed to forklift operations for a period of less than 6-12 weeks before her symptoms became significantly worse. (Id. pp. 12-13). Dr. Fernandez stated that in his opinion you need a minimum of 6 weeks and preferably something closer to 12 weeks exposure to the specific activity (forklift driving) to be considered an aggravating effect. (Id. p. 13). Dr. Fernandez further opined that forklift operation, as opposed to a shipping clerk's duties, could cause or aggravate carpal tunnel syndrome based upon the amount of exposure. (Id. pp. 18-19). Dr. Fernandez stated that it is the fact that the physical act of gripping the wheel as well as the levers that operate the transmission forward, reverse, fast, slow, up, down, is the activity that causes the aggravation of the carpal tunnel syndrome. (Id. p. 19). He further testified that it is not the fact that you are driving this forklift, it is the peculiar nature of forklift operation and the constant frequency that makes it a risk factor for carpal tunnel syndrome. (Id. p. 20). Dr. Fernandez further explained that "when I say 6-12 weeks, I'm talking about an actual aggravation of the disease and the natural progression of the disease that makes it work-related." (Id. p. 15).

Dr. Fernandez testified that as part of his opinion, he did not review the medical record of September 7, 2011 from the Carle Clinic/Carle Physician Group. (Id. p. 8). Dr. Fernandez testified that he very specifically reviewed only those records from 1/13/12 through 2/6/12. (Id.). Dr. Fernandez further testified that he believed it was in 2011 when Petitioner first sought out treatment for carpal tunnel but did not know exactly when in 2011. (Id. pp. 9-10). Dr. Fernandez testified that Petitioner definitely has carpal tunnel syndrome and believes that she needs surgery on both wrists. (Id. p. 10).

CONCLUSIONS OF LAW

F. Is the Petitioner's present condition of ill-being causally related to the injury?

It is undisputed that the Petitioner had evidence of carpal tunnel syndrome in early 2011, well before she returned to full time fork lift driving. The issue is whether her fork lift trucking aggravated her condition, bringing about the need for surgery. It is important to note that surgery is being prescribed because her symptoms have worsened, according to Dr. Johnson. (PX 1 at 14) So, the Arbitrator must decide whether her truck driving, which she testified she began on April 15, 2011, was a cause in the worsening of her symptoms.

The Petitioner testified that she drove her fork lift into each trailer. She then scanned the products to be moved using a scanner. She then used her controls to move the pallets. She would then drive backwards out of the truck. She used her left hand to steer, and her right hand to scan and operated the controls. As stated above, she said that during her twelve hour shifts, she operated her loaded truck nine and one-half hours. Both the Petitioner and the Respondent's witness testified that the truck was driven in reverse for safety reasons, meaning the Petitioner was holding the wheel with her left hand while looking over her shoulder. Obviously, she would have been gripping the wheel and turning it while she was driving.

Dr. Johnson's opinions on causal connection deserve very little weight. He did not explain at all the mechanism of injury. On the other hand, Dr. Fernandez testified as to his familiarity with fork lift operation and how it might cause or aggravate carpal tunnel syndrome.

During his examination of the Petitioner, Dr. Fernandez heard from her how she operated her vehicle. He concluded that her activities seemed fairly frequent or constant. (PX 3) He said that the physical act of gripping the steering wheel while the wrist was extended or flexed could aggravate or worsen the condition. He further testified that holding and moving the levers that operate the fork lift controls would have the same effect. Most important to the Arbitrator, Dr. Fernandez was familiar with the general duties of a fork lift operator. He said that most fork lift operators perform their activities on a relatively constant and at a minimum frequent basis. (RX 1at 19,20)

Dr. Fernandez also said that for the work to have aggravated the Petitioner's condition, meaning making it worse, she would had to have done it from a minimum of six to twelve weeks. (Id, at 12) The Petitioner's

testimony that she began full time fork driving on April 15 is un rebutted. She also testified that by late June 2011, her carpal tunnel symptoms had worsened. Her testimony is corroborated by the history she gave Dr. Johnson's P.A. on February 2, 2012, telling her the symptoms got worse in June. (PX 2) Her normal work shift was seven twelve hour days every two weeks. The time would thus average forty-two hours per week. April 15 to the end of June is approximately ten and a half weeks. While she did miss some time for holidays, vacations and the like, the time she worked certainly fell within the six to twelve hour time frame established by Dr. Fernandez.

Respondent's Exhibit 4 is a record of scans made on pallets, identifying the items being removed from the trailers. Respondent argues that the exhibit proves that there were considerable periods during each work day when the Petitioner was not operating her truck. He points to gaps in time between the scans. For example, on May 1, 2011, there were no scans between 9:19 and 11:38 AM. Respondent argues that the gap represents downtime and, as such, the Petitioner's work was not repetitive.

On rebuttal, the Petitioner acknowledged that she took normal work breaks and lunch on each shift, but maintained that she drove her fork truck carrying products for nine and one-half hours per shift. The Respondent's witness, Mr. Vite, was not able to tell from the exhibit whether the Petitioner was driving her truck between scans. He did acknowledge that certain trips took longer than others.

The Respondent's argument misses the point. As the Appellate Court has explained, 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. Edward Hines Precision Components v. Industrial Commission, 356 Ill. App. 3d 186 (2005) The term, the Court said, was simply employed by the Court in their Peoria Belwood decision to identify a date of accident when an injury resulted from work activities as opposed to a single event.

In Hines, the Respondent argued that the Petitioner's exposure to forceful gripping while driving a truck was intermittent. The Court said that the issue was not how repetitive the activity was, but whether the activity caused or aggravated the condition. In finding for the Petitioner, the Court relied on the treating doctor's opinions, finding he had sufficient knowledge of the job to render those opinions.

Here the Petitioner performed a work activity that Dr. Fernandez said could aggravate her condition. She testified that her symptoms got worse after she returned to full time truck driving. Her testimony is corroborated by her histories to her treating P.A.'s in September 2011 and February 2012. While she does have other risk factors; i.e. moderate obesity and gender, she has proven by a preponderance of the evidence that her work as a fork lift driver was a causative factor in her condition of ill being.

This Arbitrator finds that the Petitioner's present condition of ill-being is casually related to Petitioner's work activities as a forklift driver while employed by the Respondent. This Arbitrator specifically finds that the aggravation of Petitioner's bilateral carpal tunnel syndrome, to the extent that it required surgical release, is causally related to her work activities as a forklift driver and therefore the aggravation and/or exacerbation of the bilateral carpal tunnel syndrome is compensable under the Act.

J. Were the medical services that were provided to Petitioner reasonable and necessary?

Based upon the findings under F, this Arbitrator finds that the treatment Petitioner received on September 7, 2011 and on February 6, 2012 was reasonable and necessary medical care and therefore this Arbitrator finds that payment for these medical expenses are to be awarded to Petitioner and paid by Respondent pursuant to Section 8(a) and 8.2 of the Act.

14IWCC0505

K. Is Petitioner entitled to any prospective medical care?

Based upon the findings under Section F, this Arbitrator finds that prospective medical in the form of a carpal tunnel release surgery to both of her wrists is reasonable and necessary medical care and orders Respondent to pay for that medical care pursuant to Section 8(a) of the Act. This Arbitrator further finds that any pre-surgical and post-surgical medical care required to treat Petitioner's carpal tunnel syndrome is also ordered to be paid by Respondent pursuant to this decision.

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jesus Chavez,
Petitioner,

vs.

NO: 10 WC 40679
10 WC 40680

R & R Properties,
Respondent.

14IWCC0506

DECISION AND OPINION ON REVIEW

Timely Petition for Review, under §19(b), having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, permanent partial disability, medical expenses, wage rate, notice, penalties and attorneys' fees, and motion to bar and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 11, 2013 is hereby affirmed and adopted.

The Commission notes that case number 10 WC 40680, was voluntarily dismissed on January 15, 2013. The Commission further notes that the Arbitrator's Order contains the following boilerplate language: "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." As the Commission has determined that Petitioner has not met his burden of proof to establish the essential elements of his claim, the Commission declines the remand the case to the Arbitrator for further proceedings and removes the above referenced paragraph in the Arbitrator's April 11, 2013.

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.

14IWCC0506

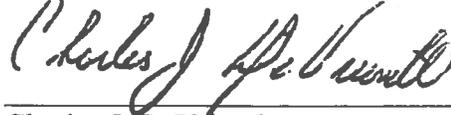
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **JUN 26 2014**

o-06/18/14
drd/wj
68



Daniel R. Donohoo



Charles J. DeVriendt



Ruth W. White

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

CHAVEZ, JESUS

Employee/Petitioner

Case# **10WC040679**

10WC040680

R&R PROPERTIES

Employer/Respondent

14IWCC0506

On 4/11/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

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STATE OF ILLINOIS)
)SS.
COUNTY OF DuPage)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jesus Chavez
Employee/Petitioner

Case # 10 WC 40679

v.

14IWCC0506

Consolidated cases: 10 WC 40680

R&R Properties
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Wheaton**, on **December 14, 2012, January 4, 2013, and January 14, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

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FINDINGS

On the date of accident, 6/6/10 and 9/24/10, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was not* given to Respondent.

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

In the year preceding the injury, Petitioner earned \$3,715.00; the average weekly wage was \$232.19.

On the date of accident, Petitioner was 40 years of age, *married* with 0 dependent children.

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

Respondent shall be given a credit of \$8,240.00 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 total amount of medical bills paid up to \$10,000.00 under Section 8(j) of the Act.

ORDER

Respondent shall be given a credit of \$8,240.00 for TTD, \$-0- for TPD, and \$-0- for maintenance benefits, for a total credit of \$8,240.00.

Respondent shall be given credit for \$10,000.00 for medical benefits paid under Section 8(a) of the Act.

Denial of benefits

No benefits are awarded, based on the fact that petitioner failed to prove he sustained accidental injuries arising out of and in the course of his employment on 6/6/10 and 9/24/10.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of \$-0-/week for -0- weeks, commencing N/A through N/A, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of \$8,240.00 for temporary total disability benefits that have been paid.

Medical benefits

Respondent shall pay reasonable and necessary medical services of \$-0-, as provided in Section 8(a) of the Act. Respondent is entitled to a credit of \$10,000.00 for medical benefits paid.

Permanent Partial Disability: Schedule injury

Respondent shall pay Petitioner permanent partial disability benefits of \$-0-/week for -0- weeks, because the injuries sustained caused the -0-% loss of the left leg, as provided in Section 8(e) of the Act.

Penalties

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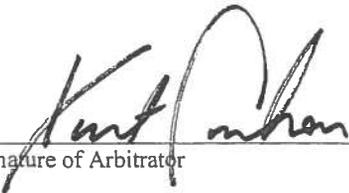
Respondent shall pay to Petitioner penalties of \$0-, as provided in Section 16 of the Act; \$0-, as provided in Section 19(k) of the Act; and \$0-, as provided in Section 19(l) of the Act.

Injured Workers' Benefit Fund

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

04-10-13
Date

ICArbDec19(b)

APR 11 2013

JESUS CHAVEZ V. R&R PROPERTIES
IWCC: 10 WC 40679; 10 WC 40680

STATEMENT OF FACTS

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Petitioner testified regarding two alleged dates of accident while working for Respondent. The trial testimony was heard on December 14, 2012, and January 4, 2013, and on both dates, Petitioner requested interpretation through a Spanish speaking translator. Petitioner testified that he began working for R&R Properties in April or May of 2010. Transcript of Arbitration, 11-12, herein after T.A. 11, 12. Petitioner testified that he met with Mr. and Mrs. Leone at their home before he was hired, and that after telling them about his left leg and right side pre-existing conditions, that they told him they did not have a problem with his condition. (T.A. 15). However, the owner of Respondent, Robert Leone, rebutted that allegation, testifying that Petitioner never told him that he had a prior injury or condition when Petitioner was hired. (T.A. 252). Mr. Leone also testified that when he met with Petitioner in June 2010 to hire him, Petitioner did not require a translator, and that he communicated with Petitioner on a near daily basis without the need for a translator. (T.A. 241). The Arbitrator notes instances during trial where Petitioner began answering questions before translation from English to Spanish was completed.

Petitioner reported that when he began working for the respondent, he was performing maintenance and cleaning of houses, as well as lawn maintenance. (T.A. 15). Petitioner testified that he was earning \$60.00 per day when he was cleaning houses and mowing, which was confirmed by Mr. Leone, and by the wage records entered into evidence by Respondent. (T.A. 15, 259). Petitioner further testified that beginning September 6, 2010, he began doing lawn work only for the Respondent, and that he was paid different prices depending on the lawns that

were mowed. (T.A. 16). He did not specify the amount that he was paid per lawn. Respondent's witness, Robert Leone, testified that when Petitioner began subcontracting, he was typically paid \$25 per lawn. (T.A. 259). It was up to the individual employee to determine how many days and which days he or she would work. (T.A. 271). However, Petitioner testified that the wage records produced by Respondent were inaccurate regarding his employment start date of June 4, 2010. (T.A. 18). Petitioner did admit that the document was correct in reflecting when he began performing lawn work only. (T.A. 18).

Regarding Petitioner's earnings, Deneen Leone testified to the number of days that Petitioner would work in each two week pay period. Respondent's Exhibit #8 confirms that Petitioner only worked 7 days during the 2-week period between June 12, 2010 and June 25, 2010. (R.X. 8). During the next 2-week period from June 26, 2010 through July 9, 2010, the petitioner only worked 4 days. (R.X. 8). Petitioner worked 11 days between July 10, 2010 and July 23, 2010. He worked 10 days during the 2-week period between July 24, 2010 and August 6, 2010. (R.X. 8). During the 2-week period between August 7, 2010 and August 20, 2010, Petitioner worked a total of 8 days. (R. X. 8). Petitioner worked 4.5 days during the two week period between August 21, 2010 and September 3, 2010. Deneen testified that beginning September 6, 2010, Petitioner began working in conjunction with his son as an independent contractor, and that the amounts reflected on the payroll records indicate the amounts that were split between Petitioner and his son. (T.A. 290). She testified that she personally recalled paying half of the lawns to Jesus and half to his son, Jesus Jr. (T.A. 290). Deneen's testimony that the amounts paid to Petitioner as a subcontractor were split with his son is supported by her additional testimony that it would be unusual for an individual employee to be earning \$625.00 for only two days of work. (T.A. 292). Deneen confirmed that according to her payroll records,

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the Petitioner's last date worked was September 28, 2010. (T.A. 294). Petitioner also testified that he worked between 60 to 72 hours per week while employed by R&R Properties. (T.A. 119). However, Payroll indicates that the petitioner on several occasions would work only 3 days per week. (T.A. 119, Rx. 8).

Regarding his alleged dates of injury, Petitioner testified that on June 6, 2010, he was working for the insured, when part of a piece from a haircutting chair fell onto his left leg, from the foot to knee area. (T.A. 34). In rebuttal to this allegation, Deneen Leone testified on behalf of Respondent that based on her payroll records, June 6, 2010 was a Sunday, and Petitioner did not even work or get paid for that date. (T.A. 280). She also confirmed that Petitioner never reported any alleged June 6, 2010 injury to her. (T.A. 280). Petitioner stated that he had pain after that and sought treatment at Cook County Hospital on June 8, 2010. (T.A. 34). Petitioner testified that the next day he treated at St. Joseph's Hospital on June 9, 2010. (T.A. 35). However, petitioner testified that he was able to return to work following this alleged incident. (T.A. 35).

On cross-examination, petitioner admitted that he initially testified on direct examination that he sustained an injury to his left leg on June 6, 2010, when a haircutting chair fell on his leg. (T.A. 96). Petitioner could not recall the town or the address where this alleged accident happened. (T.A. 97). Petitioner testified that it did happen while he was working for the respondent. (T.A. 97). He claimed to have reported the incident to Deneen Leone, co-owner of the respondent company. (T.A. 98). She testified that not only did Petitioner fail to report an alleged work injury to her on June 6, 2010, but that he continued working the entire rest of the week, and never reported an alleged June 6, 2010 injury to her at any later date either. (T.A. 281).

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Further, Petitioner denied receiving any medical treatment for this alleged injury on June 6, 2010. (T.A. 98). However, the emergency room records from Cook County Hospital reflect that the petitioner presented for treatment on June 8, 2010, just two days later. (R.X. 19). However, there is no mention of the alleged work injury from just two days prior in those treatment notes. (R.X. 19). Petitioner also admitted on cross-examination that despite claiming an alleged June 6, 2010, work injury to his left leg, he was able to continue working for approximately 4 months for the respondent. (T.A. 99).

Regarding the second alleged accident, Petitioner testified that on September 24, 2010, he was cutting grass at a home in Joliet. (T.A. 21). Petitioner testified that the grass was between 2 and 3 feet tall, and that as he was mowing, he fell in a hole. (T.A. 22). Petitioner testified that his left foot fell into the hole. (T.A. 23). Petitioner testified that when he fell, his left leg went into the hole, up to his knee. (T.A. 23). Petitioner testified that as he fell, he felt a pain all the way up to his neck. (T.A. 24). Petitioner admitted that prior to the alleged September 24, 2010, date of accident, he had previously been diagnosed with chronic regional pain syndrome of the left foot. (T.A. 24). Petitioner also testified that since the alleged September 24, 2010, date of accident, he had constant pain in his back as well. (T.A. 33).

When questioned on direct examination regarding notice of the alleged September 24, 2010, date of accident, petitioner testified that "it seems like the following day. I don't know if it was – if I called him that same day or the following. (T.A. 37, 38). Petitioner testified that he called Deneen and Robert Leone to report the alleged injury. (T.A. 38). He stated that he was cutting grass when he fell in a hole. (T.A. 38). Petitioner admitted that he treated on September 21, 2010, only 3 days prior to the alleged September 24, 2010, accident, and that he was complaining of left leg pain for 1 week on September 21, 2010. (T.A. 36).

Petitioner then testified that on September 25, 2010, he finished the house he had been working on, and that on September 26, 2010, "we went to do one in Aurora." (T.A. 39). However, when questioned again, petitioner testified that his wife and son actually performed the work subsequent to September 24, 2010. (T.A. 39). Petitioner testified that his wife and son worked on Sunday, September 26, 2010. However, this was inconsistent with the wage records which reflect that no work was done on September 26, 2010, but that work was performed on September 27, 2010, and September 28, 2010. (T.A. 39, Rx. 8). Additionally, Respondent presented the testimony of Robert Leone, owner of Respondent, who confirmed that he had never met Petitioner's wife, had never hired Petitioner's wife, and that he never authorized Petitioner's wife to work at any of the properties he was maintaining. (T.A. 251). Mr. Leone also testified that in order to have been paid for working September 25, 27, and 28, 2010, Petitioner would have had to personally produce photographs confirming that the work had been completed by him. (T.A. 272).

Petitioner testified that he disagrees with payroll records indicating that he worked September 25, 2010, September 27, 2010, and September 28, 2010. The petitioner instead testified that he showed up at the job sites, but that his wife and son did the actual work. (T.A. 101). Deneen Leone testified in rebuttal to that, stating that in order to have been paid for those days, Petitioner would have had to personally submit photographs confirming completion of the work. (T.A. 295). She further stated that she never had any knowledge of Petitioner's wife performing work for R&R Properties, nor did she ever authorize his wife to work. (T.A. 295). Deneen testified also that Petitioner's wife was never depicted in any of the pictures showing that the work on September 25, 27, and 28, 2010 had been completed. (T.A. 311). She also testified that Petitioner never appeared for work with anyone other than his son, and that she

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would have noticed if he did, because his wife would have had no reason to be with him on a workday. (T.A. 313).

Petitioner admitted that despite his alleged September 24, 2010, injury, he did not receive any medical treatment between September 24, 2010, and September 30, 2010. (T.A. 101). When the petitioner first sought treatment on October 1, 2010, following his alleged injury, he presented to the emergency room at UIC Medical Center in Chicago, despite the fact that he lives in Joliet, Illinois. (T.A. 102). Deneen testified that when Petitioner came to pick up his final check on October 1, 2010, the same day he first sought treatment, that he showed up limping with a bandage and handed her some paperwork. (T.A. 296). She also testified that the three days worked after the alleged September 24, 2010 date of accident, she would have personally seen Petitioner at least once before he was paid on October 1, 2010, and that at no time prior to October 1, 2010, did she notice him limping or wearing a bandage on his left leg. (T.A. 297). Further, Petitioner never requested medical attention when he appeared for work on September 25, 27, or 28, 2010. (T.A. 297).

Petitioner testified that he was in terrible pain after the alleged accident on September 24, 2010. (T.A. 42). However, he did not seek any medical treatment until appearing at the emergency room in UIC on October 1, 2010, one week later. (T.A. 42, Px. 3). When Petitioner presented to the emergency room at UIC on October 29, 2010, he was using crutches. (T.A. 46, P.X. 3). However, he could not recall who had issued the crutches or when they had been prescribed. (T.A. 47).

When questioned regarding payroll records that showed that certain individuals were not paid for certain days, Deneen Leone clarified by stating that on instances where one or two or three lawns were mowed, that the individuals would not have been paid the \$60.00 daily rate.

(T.A. 3, 16). She further clarified that on days where only a few lawns are mowed, it is possible that somebody may have done some work on a day and not have been paid for that day. Deneen also clarified that the dollar discrepancy in the payroll records regarding the employee named Bob Dolan could have been due to the fact that he was a tenant of hers and had rent deducted from his paychecks. (T.A. 3, 19). Petitioner also testified that he worked between 60 to 72 hours per week while employed by R&R Properties. (T.A. 119). However, Payroll indicates that the petitioner on several occasions would work only 3 days per week. (T.A. 119, Rx. 8).

On rebuttal, petitioner testified again, but disputed Mrs. Leone's testimony that he was working with his son and splitting the weekly dollar amounts. (T.A. 324,325).

As rebuttal, the petitioner also presented the testimony of his wife, Elba Chavez. Elba Chavez testified that on September 25, 2010, September 27, 2010, and September 28, 2010, she helped her son finish work. (T.A. 328). She stated that he used the machine to cut the grass and she gathered the grass. She testified that petitioner could not work and was taking photos of what was finished, to be submitted for payment. (T.A. 328). On cross-examination, Ms. Chavez first admitted that she did not have permission from anyone at R&R Properties to perform her husband's job. (T.A. 329). However, when asked again, she testified that she did notify the owners that she was performing the work instead of the petitioner, Jesus Chavez. (T.A. 329). She went on to state that her son told the owners that she finished the work because her husband was unable to. (T.A. 330). She also went on to testify that she was present when her son notified the owners. (T.A. 330).

In response, Robert Leone testified he was not notified that Petitioner's wife and son were mowing lawns. (T.A. 332-333). No one requested his permission to allow Mrs. Chavez to perform work on those three dates. (T.A. 333). He confirmed that he had no indication that she

had worked for R&R Properties at any time. (T.A. 333). He also confirmed that photos are taken before, during, and after the jobs are done to show the work being done, and that Mrs. Chavez was not pictured in any of the photographs. (T.A. 333). He confirmed that Mrs. Chavez was never his employee. (T.A. 334).

Similarly, Deneen Leone further testified that between September 25, 2010, and September 28, 2010, that neither Jesus or Jesus, Jr. notified her that Mrs. Chavez would be performing work instead of the petitioner. (T.A. 336). She also stated that nobody requested her permission to allow Mrs. Chavez to perform petitioner's job. (T.A. 336). Similarly, she confirmed that if the job photographs depicted Mrs. Chavez, it would have raised a question to her because Mrs. Chavez was not trained to perform the work. (T.A. 336).

Petitioner testified that at the time of trial in 2012, his pain was "almost 10." (T.A. 62). He also described his back pain as "like I want to cry." (T.A. 62). Petitioner testified that he does not do anything around the house, and that he does not sleep for up to 2 days at a time. (T.A. 62). He also admitted that when he testified back in 2002, he also rated his left foot pain as an 8 out of 10. (T.A. 68).

Testimony and Evidence Regarding Prior Injury to Left Foot

On cross-examination, petitioner admitted that he had a prior injury to his left foot in 1996, while working for Elite Carpentry. (T.A. 64). Petitioner admitted that he went to trial for his 1996 injury in October of 2002. (T.A. 65). Petitioner acknowledged on cross-examination and the trial transcript submitted by respondent confirms that when petitioner testified in October 2002, he described swelling, burning, and coldness in his left foot. (T.A. 65, Rx. 1). Petitioner admitted that by the time he had testified in 2002, those symptoms had been occurring for approximately 6 years. (T.A. 65). Petitioner acknowledged an injury in 1996 when striking his

left foot with a hammer. (T.A. 66). He initially denied another injury prior to the September 24, 2010, date of accident while using a shovel, but later agreed that if his transcript confirmed a second injury, he would not have reason to disagree. (T.A. 66). Petitioner admitted that he had back pain prior to September 24, 2010, but characterized it as typical pain following work. (T.A. 66, 67). Petitioner denied any prior treatment to his back before September 24, 2010, which was noted to be inconsistent with the prior treating records from Rush Medical Center. (T.A. 67).

Petitioner admitted on cross-examination that after his trial in 2002, he continued treating at Rush Pain Center. (T.A. 69, Rx. 11). Petitioner testified that he could not recall whether his prior Arbitrator's award was appealed, but respondent's exhibit #2 confirms that the Illinois Workers' Compensation Commission increased his award from 50% loss of use of the left leg to 30% loss to the person as a whole. (R.X. 2). Petitioner admitted that following his 2002 trial, his medical benefits remained open, and that he continued treating at the expense of his former employer. (T.A. 73).

On cross-examination, the petitioner also acknowledged that when he moved out of state to Pennsylvania between 1997 and 1998, he was doing landscaping work and cutting grass, despite the fact that he testified in 2002 to having 8 out of 10 pain. (T.A. 74). Petitioner also admitted that he was able to clean houses and install sod in 1997 and 1998, despite his 8 out of 10 left leg pain. (T.A. 74). Petitioner admitted on cross-examination that he continued treating at Rush Pain Center between 2000 and 2007. (T.A. 75, R.X. 11). He admitted that during that time frame, he was still having pain in his left foot. (T.A. 75). Petitioner testified that he had a spinal stimulator implanted to address his left leg pain, prior to the alleged September 24, 2010, date of accident. (T.A. 76). However, he could not recall how long the spinal stimulator was

implanted, or when it was removed. (T.A. 76). However, he did acknowledge that it was not removed because his left leg pain had improved. (T.A. 76). Rather, the stimulator was removed due to an infection that had developed. (T.A. 76). He also admitted that no doctor at Rush ever told him that he did not need any more treatment regarding his complex regional pain syndrome. (T.A. 77). Further, he admitted that no doctor told him that his condition would be cured after a certain number of years. (T.A. 77).

Petitioner acknowledged that in 2007, he closed out the open medical benefit portion of his award from his prior injury for the amount of \$295,000.00. (T.A. 78, 80). Petitioner also admitted that the \$295,000.00 settlement was for future medical treatment that was expected to be required. (T.A. 80, 82). Petitioner admitted that after he settled his claim 2007, he subsequently moved to California. (T.A. 82).

When questioned regarding petitioner's medication history on cross-examination, petitioner testified that he was taking pain pills from 1996 until 2007. (T.A. 114). From 2007 through 2009 he took no medication. (T.A. 114). However, the petitioner then testified that between 2007 and 2009 he occasionally took pain medication, but then claimed he did not understand the question. (T.A. 114, 115). The petitioner further attempted to testify that between 2007 and 2009 he stopped taking morphine, a Fentanyl patch, and the Doran patch, however he testified that he was taking Norco and Vicodin between 2007 and 2009. (T.A. 115). However, petitioner testified that beginning in 2009, he began taking prescription medication again. (T.A. 115). The medical records reflect that after the petitioner first sought treatment for his alleged September 24, 2010, work injury on October 1, 2010, he treated at the emergency room at total of 8 times just during the month of October 2010.

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Petitioner stated that when he began taking medication again in 2009, including Norco, that it was due to an increase in his knee pain. (T.A. 128). Despite the fact that the petitioner presented to the emergency rooms on numerous occasions, the petitioner testified that he waited 7 days to seek treatment following his alleged September 24, 2010, date of accident, because he was waiting for the respondent to send him to a doctor or clinic. (T.A. 128).

On October 27, 2010, the petitioner was treated at Stroger Hospital for chronic pain, and possible cellulitis to the right flank, and right flank pain. This date of service was approximately 1 month subsequent to the alleged September 24, 2010, date of injury, but no mention of a history of a work injury is indicated in these records. (Rx. 19, 517-522).

Respondent subpoenaed the medical records of Rush Pain Center on March 21, 2011, to assess the petitioner's prior history of complex regional syndrome. However, records were not received from this facility until September 7, 2011, after numerous attempts to obtain records on a timely basis. (Rx. 16). Records received from Rush Pain Center dated back to June 1, 2000. On that date of service, the petitioner was complaining of left heel pain radiating into his knee and lower back. (Rx. 11). On that visit, the petitioner rated his pain level as a 6-8/10 and described them as shooting. These symptoms are similar to the post alleged September 24, 2010, date of injury complaints. Petitioner continued treating at Rush Pain Center during 2000 and 2001. On his February 28, 2001, visit, he rated his pain level as an 8/10. According to the records, the petitioner underwent a functional capacity evaluation in February 2001, and was released to moderate duty. He attempted to return to work in March 2001, but gave a history that he was not provided enough breaks and quit his job shortly after returning. (Rx. 11). The petitioner underwent several bier blocks in 2001 due to continued left leg pain. (Rx. 11).

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When petitioner returned to Rush Pain Center on April 19, 2002, he had begun working for Titan Steel and noted worsening of his left leg pain. (Rx.11). Petitioner also complained of lumbar radiculopathy on his May 31, 2002, visit. (Rx. 11). In June 2002, the petitioner was resuming working full time, but was requiring maintenance intravenous regional sympathetic blocks to manage his pain complaints. (Rx. 11). Petitioner had IV regional sympathetic blocks on July 5, 2002, and July 12, 2002. (Rx. 11). On July 26, 2002, Dr. Buvanendran issued an update, noting that the petitioner was reporting a 50% to 60% improvement with his IV regional blocks, but that he overall continued to rate his pain as a 7-8/10. (Rx. 11). Petitioner's work functional capacity evaluation was referenced, which limited the petitioner to lifting more than 25 pounds, standing more than 3 hours, and climbing a ladder. Petitioner's restrictions also included no lifting of heavy objects and no walking long distances. (Rx. 11). (July 12, 2002, note form Dr. Buvanendran). Dr. Buvanendran noted this to be considered "a permanent injury in the left foot." (Rx. 11). There is no evidence that the petitioner notified the insured of these permanent restrictions from his prior functional capacity evaluation at the time of his employment in June 2010. At the time of trial, petitioner could not recall who prescribed his knee brace and ankle brace. The records from Rush Pain Clinic reflected this was prescribed by Dr. Buvanendran in his May 31, 2002, visit, which predated the alleged September 24, 2010, date of accident by almost 8 years. (Rx. 11).

In a March 1, 2002, visit with Dr. Buvanendran at the Rush Pain Center, the records indicate that petitioner was treating for complex regional pain syndrome of the lower extremity and that "the patient's condition is a lifelong, permanent condition that is of the waxing and waning variety. The condition is characterized by chronic pain in his left lower extremity, which does require medical therapy at all times. The patient's condition is characterized by acute

exacerbations that are unprovoked and can occur at any time. The patient's condition sometimes requires interventions, such as intravenous regional blocks. (Rx. 11) (March 1, 2002, office note).

Petitioner testified on direct examination that no physician had restricted him from performing landscaping work. However, per Dr. Buvanendran's November 30, 2001, office note which summarized the functional capacity evaluation, the petitioner had permanent restrictions which included frequent lifting of 20 pounds, limited walking on even surfaces, no straight ladder climbing, standing no more than 3 to 4 hours per day and occasional walking. (Rx. 11) (November 30, 2001, office note).

On November 1, 2002, Dr. Buvanendran evaluated the petitioner for his continued left lower extremity pain. The doctor recommended a trial spinal cord stimulation followed by permanent implantation if petitioner achieved a greater than 50% to 60% improvement in his symptoms. (Rx. 11). The stimulator was again recommended by Dr. Buvanendran on November 15, 2002. (Rx. 11).

The stimulator was again discussed on Dr. Buvanendran's March 14, 2003, examination. (Rx. 11).

On May 8, 2003, the petitioner returned to Dr. Buvanendran. He continued to rate his left leg pain as an 8-9/10 and stated that the medication he was being prescribed was not helping. Petitioner had still not yet undergone the spinal cord stimulator placement. (Rx. 11).

On May 15, 2003, petitioner was one day status post the trial spinal cord stimulator, and was reporting a 70% improvement in his pain. He downgraded it from a 9-10/10 to a 2/10. (Rx. 11).

A report was issued by Dr. Buvanendran on March 18, 2003. The doctor stated that "I feel since this was a work related injury that his medications should be covered by workmans' compensation. I feel that there is no reason that Mr. Chavez should go through any trouble regarding receiving his prescription medications through workmans' compensation. (Rx. 11).

Petitioner had another functional capacity evaluation done in July 2003, which resulted in a medium duty work release, with a 30 pound maximum lifting restriction. (Rx. 11).

On December 26, 2003, an updated note was issued noting that the petitioner's spinal cord stimulator was removed due to an infection. (Rx. 11).

The records from Rush University Medical Center indicated that petitioner underwent 41 intravenous regional sympathetic blocks in the left lower extremity between January 8, 2004, and December 15, 2006.

On June 22, 2006, the petitioner underwent a 5 day fluoroscopic epidural catheter placement to treat his left lower extremity chronic regional pain syndrome.

Petitioner's second spinal cord stimulator was removed on December 28, 2006, due to an infection. He had another epidural infusion performed on February 1, 2007, and April 27, 2007. (Rx.11).

Respondent offered into evidence its exhibit 3, which is a copy of the lump sum settlement contract from the petitioner's prior claim involving his left foot and leg. Petitioner received a prior award of 30% loss to the person as a whole as a result of alleged injuries to his left foot and leg in October 1996. The trial award was settled in a lump sum of \$157,500.00 which was approved in March 2006, in addition to open medical benefits. Petitioner continued to utilize the open medical benefits which were clearly contemplated to provide for lifetime medical care associated with petitioner's left foot and complex regional pain syndrome injury, as

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evidenced by the contract language. (Rx. 3). The settlement language indicated that “petitioner retains the right, for the remainder of petitioner’s life, to seek medical care and submit the cost for treatment as reasonably required to cure or relieve the effects of the accidental injury to respondent for payment and respondent remains liable for reasonable and necessary treatment as provided in Section 8(a) of the Act. However, there was a limitation that petitioner could only receive up to 14 IV regional sympathetic blocks in a calendar year. (Rx. 5).

In July 2007, the petitioner elected to settle out the open medical portion of his prior settlement award that was approved on March 23, 2006, for an additional lump sum of \$295,000.00.

An updated letter from Dr. Lubenow was issued on May 27, 2009, 1 year prior to the alleged date of accident. According to the letter, the petitioner had been declared disabled back in May 2008, and was treating with a physician in California for ongoing care. (Rx. 11). A history of petitioner’s two prior spinal cord stimulators was discussed, as well as the subsequent need for hardware removal due to an allergic reaction to the hardware. It was also determined that the petitioner was allergic to the components for an intraspinal drug pump as well. Therefore, it was determined that no additional interventional treatment was possible for petitioner. (Rx. 11).

Petitioner presented to Stroger Hospital on August 4, 2009, complaining of pain “originating in his left foot traveling up his to let his left hip and then right flank.” (R. X. 19, p. 40). He sought treatment again at Stroger Hospital on April 12, 2010, complaining of “right flank pain and left foot pain.” R. X. 19, p. 87). He described his left foot pain as being in the medical aspect, burning, and sensitive. (R.X. 19, p. 87).

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The very next day, Petitioner returned to the emergency room at Stroger again April 13, 2010, complaining of pain in his right flank and left leg. (R. X. 19, p. 91). On exam, Petitioner described mild edema of the left leg with erythema of the left foot. (R.X. 19, p. 92). The chart notes from that date state that Petitioner was "admitted with unretractable pain" of the left lower extremity and right lower quadrant, chronic in nature. (R.X. 19, p. 95). The April 13, 2010 records further state that, "During interview patient is annoyed and suspicious, says he was kicked out of pain clinic recently. Fears pain service conspiring against him." (R. X. 19, p. 96). The examining doctor also noted during the April 13, 2010 hospital visit that Petitioner "...has poorly controlled diabetes. Some portion of his symptomology could be secondary to diabetic neuropathy." (R.X. 19, p. 100). He claimed he had an appointment for the pain clinic in 1 week. (Rx. 19, 835). Petitioner rated his left leg pain as a 9/10. Of note, this pain rating predates the alleged date of accident by approximately 5 months. The pain consult record also indicates underlying psych issues including personality disorder and depression. (Rx. 19, 840).

On April 26, 2010, the petitioner again presented to the emergency room at Stroger Hospital. He complained of right sided flank pain and left foot pain lasting 2 days. (Rx. 19, 770). He rated his pain as a 7/10. (Rx. 19, 779).

Petitioner returned to the ER at Stroger on April 28, 2010. He complained of increased pain in his right flank and left leg. He was also treated for hyperglycemia as well on that date. (R.X. 19, p. 114). Specifically, Petitioner gave a history of "severe pain over the medial malleolus of the left foot. Onset of pain after falling on a roadside curb 2 days ago." (R.X. 19, p. 115).

On May 11, 2010, the petitioner again returned to the emergency department. He was complaining of right flank pain lasting 2 to 3 weeks, chills, and pain in the left leg. He also

describes swelling of the left ankle. He was discharged home and advised to follow up with the pain clinic. (Rx. 19, 706-707). The emergency department explained to the petitioner that the pain clinic should be the primary provider for pain control, and that the emergency department could not write prescriptions for narcotics. (Rx. 19, 715).

When Petitioner returned to the ER at Stroger on June 8, 2010, it was noted that, "patient is a chronic pain patient followed by pain clinic and is not allowed narcotics." (R.X. 19, p. 120). Interestingly, there is no mention of an alleged work injury that would have occurred just two days prior, according to petitioner's testimony.

On July 2, 2010, the petitioner presented to Stroger Hospital complaining of left leg pain and swelling. He reported that the pain had been continuing for 2 days, and denied any injury. He rated his pain as a 9/10. He also described right flank pain. The symptoms and pain ratings predate the alleged September 24, 2010, date of accident by approximately 3 months. (Rx. 19, 634).

On September 21, 2010, the petitioner was treated at Stroger Hospital. His complaints included flank pain, left leg pain, and hyperglycemia. He gave a history of having right flank pain for the last 3 days and left leg pain for 1 week. Notably, this date of service is 3 days prior to the petitioner's alleged work injury. (Rx. 19, 587). When petitioner presented to the emergency room on August 30, 2010, less than 1 month prior to the alleged accident date, his complaints included right flank pain and left ankle pain and swelling. (Rx. 19, 608).

Treatment Following Alleged 9/24/10 Date of Accident

Records reflect that between October 1, 2010, and December 7, 2010, the petitioner presented for multiple emergency room visits at various facilities including UIC Emergency

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Room, Cook County Hospital, Rush Hospital, and Provena St. Joseph Hospital. (T.A. 107). Medical records document that the petitioner's diagnosis included questionable drug seeking behavior and drug dependence. (R.X. 18, 19). On numerous occasions predating the alleged September 24, 2010 date of accident, the emergency room visits from Rush, Stroger, and Provena Hospitals include treatment for chronic left leg pain, right flank pain, and uncontrolled diabetes.

In fact, Petitioner presented to the ER at Provena on September 21, 2010, just 3 days before the alleged date of injury. (R.X. 18, p. 1061). He was complaining of chronic left foot pain, and he was noted to appear to be in distress when he moves or touches his left foot, even before the alleged date of accident three days later. (R.X. 18, p. 1061). Also notably, Petitioner "requested to keep his foot off the ground and was issued crutches. (R.X. 18, p. 1061).

Petitioner returned to Stroger Hospital on October 6, 2010, just 10 days after the alleged September 24, 2010. However, the records identify his chief complaints as presenting to the ER "after running out of insulin for 2-3 days." (R.X. 19, p. 125).

On October 7, 2010, the petitioner was treated at the emergency department at Stroger Hospital. His chief complaints included hyperglycemia and secondary complaints were abdominal pain and nausea. Petitioner gave a history of abdominal pain with nausea and stating that he was out of his diabetes medication for the past day. Interestingly, he also "verbalizes left leg pain, but denies any recent trauma." (Rx. 19, 553). This date of service is less than 10 days after the petitioner's alleged date of accident, yet he fails to mention any history of an alleged work injury in these treating records.

On October 27, 2010, the petitioner was treated at Stroger Hospital for chronic pain, and possible cellulitis to the right flank, and right flank pain. This date of service was approximately

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1 month subsequent to the alleged September 24, 2010, date of injury, but no mention of a history of a work injury is indicated in these records. (Rx. 19, 517-522).

Petitioner again presented to the emergency room at Provena on November 18, 2010, complaining of right groin pain, that had developed several hours prior. (R.X. 18, p. 1003). He reported that he was walking when he began having severe right flank pain, and fell to the ground. (R.X. 18, p. 1003). No mention of the alleged work injury to the left leg less two months prior. (R.X. 18, p. 1003). Of note, some slight redness in the in the flank was documented, but Petitioner was observed to be scratching the site. (R.X. 18, p. 1031).

Petitioner returned to Cook County Hospital on November 17, 2010, less than 1 month following the alleged accident. Interestingly, his complaints included right flank pain, sharp, and burning in nature. He also noted frustration and bitterness about being expelled from the Rush Hospital Pain Clinic and regarding bills he had been receiving. Petitioner also reported that he was planning to go to California and get treatment there. Records from that date do not mention the alleged work injury less than 1 month prior while allegedly falling into a hole with his left leg on September 24, 2010. (Rx. 19, 128-129).

On November 30, 2010, the petitioner again returned to the Cook County Hospital emergency room. He reported right flank pain that began while climbing the stairs at his home. He also described a similar episode 2 months prior while walking on the street, stating that it was so severe that he fell to the ground and was taken to the emergency room in Joliet, Illinois. Petitioner described burning pain over his right chest, right flank area. Petitioner described chronic weakness in his left leg and foot, but again failed to mention a description of the alleged work injury approximately 2 months previously while working for the insured on September 24, 2010. (Rx. 19, 130). It was also noted that he had highly elevated blood sugar on

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that date. (Rx. 19, 132). Petitioner's diagnoses at the time of the November 30, 2010, admission included chronic right flank pain, diabetes mellitus, and deep vein thrombosis. No discussion of the alleged left leg injury on September 24, 2010, is indicated. (Rx. 19, 136-137).

On December 29, 2010, the petitioner returned to Cook County Hospital. He gave a history that he had been at St. Joseph's Hospital 1 week prior for treatment of cellulitis in his left leg and was given antibiotics and Norco. Petitioner also showed them pictures of his left leg and abdomen. (Rx. 19, 152). The records also state that the petitioner was "very frustrated over his care from all of the providers. States no one has taken care of him. Everyone is dumping him." (Rx. 19, 152).

Petitioner also treated on December 31, 2010 at Provena for unrelated chest pain. (R.X. 18, p. 744). He was also treated on numerous occasions between December 2010 and February 2011 for cellulitis and infections. (R.X. 18, p. 757).

On January 2, 2011, Petitioner presented to Provena St. Joseph Medical Center complaining of chronic pain in his lower back and left leg. (R.X. 18, 731). The records from that date indicate that Petitioner "has been here every few days for the same, requesting narcotic prescriptions." (R.X. 18, p. 731). Additionally, Petitioner was counseled regarding his potential for drug dependence. (R.X. 18, p. 731).

The petitioner testified that the January 17, 2011, treatment records from Provena St. Joseph Medical Center were incorrect, and stating that the incident described occurred at work. (T.A. 127). Rather, the petitioner testified that the alleged incident that was referred to in these records occurred at home. (T.A. 127).

Petitioner presented to the Provena St. Joseph ER on February 3, 2011, via ambulance. (R.X. 18, p. 699). He complained of chronic left leg pain, sensitivity, and numbing pain in his

leg, but “reportedly has no history of trauma which may have caused the pain.” (R.X. 18, p. 699). Further, the medical records from Provena on February 3, 2012, state that “when patient feels he is not observed he appears calm, but when approached by staff starts grimacing and grabbing his leg.” (R.X. 19, p. 699).

Petitioner returned to Stroger Hospital on February 25, 2011. He was complaining of complex regional pain syndrome in his left leg and right abdominal wall. He was coming in to discuss the possible scheduling of a diagnostic Lidocaine and fusion. Petitioner’s procedure was tentatively scheduled for March 18, 2011. (Rx. 19, 157-158).

On March 9, 2011, Petitioner presented to Provena with sharp, aching, radiating pain in the left leg that flared up that day, with no recent trauma. (R.X. 18, p. 420). On that date, Petitioner requested to be admitted to the hospital for pain control. (R.X. 18, p. 421). Petitioner was told that there was no medical reason to admit him to the hospital, and he stated that he would probably return to the hospital again in a few hours. (R.X. 18, p. 421).

Petitioner treated the very next day at Cook County Hospital on March 10, 2011, this time for a rash and elevated blood sugar. (T.A. 113, R.X. 19). He was complaining of a rash on his bilateral flanks for the last two weeks, allegedly due to wearing nylon socks. He also complained of pain over the right side of his trunk, and was also treated for elevated blood sugars. None of these conditions appear related to petitioner’s alleged complex regional pain syndrome in the left leg. (Rx. 19, 160).

Petitioner was treated on numerous occasions in 2011 at Provena St. Joseph Medical Center for high blood sugar, and other diabetes related symptoms. (R.X. 18). He also repeatedly gave a history at Provena of multiple falls with no history of alleged associated work injury. (R.X. 18, p. 220).

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On March 18, 2011, the petitioner presented for a pain procedure, but due to his fluctuating blood sugars, the procedure was cancelled and he was advised to follow up with his primary care physician for better blood control. (Rx. 19, 321).

On March 30, 2011, the petitioner returned to Stroger Hospital. It was noted that he continued to complain of sharp pain in his right flank traveling into his right buttock. No mention of his left leg symptoms was noted. It was also indicated that the petitioner attempted to have a Lidocaine infusion performed but it could not be done due to increased blood glucose levels. (Rx. 19, 163). This is unrelated to the petitioner's alleged complex regional pain syndrome in the left leg and his alleged September 24, 2010, injury. On that date, petitioner also complained of inability to move his right arm, but denied any pain. (Rx. 19, 164). Petitioner was again encouraged to continue following up with the pain clinic for his symptoms. (Rx. 19, 164).

On April 12, 2011, the petitioner again returned to the emergency room at Stroger Hospital. He complained of right flank pain and left foot pain. He was administered Toradol and Morphine.

At an April 13, 2011 visit to Provena, Petitioner gave a history that his left leg pain and weakness had come on gradually, and he denied having similar symptoms in the past. (R.X. 18, p. 220). There was no history of injury given. (R.X. 18, p. 220). In fact, when Petitioner was admitted to Provena for several days beginning April 13, 2011, his primary diagnoses were diabetic ketoacidosis, vomiting, and gastritis. (R.X. 18, p. 326).

Petitioner was also examined by Dr. George Holmes at the request of the respondent for an independent medical examination on November 28, 2011. Respondent entered into evidence its exhibit number 14, which was a letter from Dr. Holmes dated April 17, 2012, advising that

the deposition that had been scheduled for April 16, 2012, was cancelled due to a surgery, and not at the request of respondent's attorney. (Rx. 14).

At Dr. Holmes' deposition on May 8, 2012, the petitioner's attorney attempted to bar the doctor from testifying based on the doctor's failure to provide a 1099 Form prior to the deposition. However, it was stipulated that the deposition of Dr. Holmes was being taken by agreement of the parties on the May 8, 2012, date. Further, Dr. Holmes is a board certified orthopedic physician in the State of Illinois. He attended Yale Undergraduate School and Yale Medical School, and performed 2 years of general surgery at Columbia in New York City. (Rx. 5, 7). Dr. Holmes also completed 2 years of orthopedic surgery at Harvard, and subsequently completed a foot and ankle fellowship at the University of California. (Rx. 5, 7). Dr. Holmes is the chief of foot and ankle specialty and an assistant professor at Rush University Medical Center. (Rx. 5, 9). Dr. Holmes testified that approximately 10% of his practice is devoted to performing independent medical evaluations. (Rx. 5, 13).

Regarding his fee for performing an independent medical evaluation, Dr. Holmes testified that there is a standard charge for the actual examination, and that charges for records review and reports depend on the volume of records that are submitted for review. (Rx. 5, 14). Dr. Holmes testified that he completed two reports following his independent medical examination, the first being dated on the exam date of November 28, 2011, and the second dated February 16, 2012. (Rx. 5, 15). Dr. Holmes testified that when the petitioner presented for the examination on November 28, 2011, petitioner gave a history of some color and temperature changes in the left leg. However, Dr. Holmes testified that he was not able to confirm the subjective complaints during his own examination of the petitioner. (Rx. 5, 18). Dr. Holmes also noted a history of diabetes. (Rx. 5, 19). During his deposition, Dr. Holmes was questioned

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regarding the chronology that was referenced in a letter from respondent's counsel regarding the examination. However, Dr. Holmes testified that he didn't rely on the chronology as a basis for formulating his opinions. (Rx. 5, 21).

Dr. Holmes testified that when his first opinion report was prepared on November 28, 2011, he had not yet received authorization to review the voluminous medical records that were submitted. (Rx. 5, 21-22). Dr. Holmes described the volume of records a very large several inches in depth, up to 10 inches of records. (Rx. 5, 22). Dr. Holmes admitted that after his initial examination, but before reviewing the records, he felt that petitioner appeared to have a diagnosis of complex regional pain syndrome in the left leg. (Rx. 5, 23). Dr. Holmes explained that his opinion report mentions that it was "based on a brief review of records." (Rx. 5, 24). He explained that the statement indicated that pending the review of records, there could be a modification of his opinion. (Rx. 5, 24). Dr. Holmes testified that in his initial report, he opined that the medical treatment appeared to be reasonably related to the alleged September 24, 2010, date of accident, but noted that it was "based upon the knowledge that I had available at that time." (Rx. 5, 24). This did not include review of the extensive medical records tendered to Dr. Holmes prior to the November 28, 2011, examination.

Dr. Holmes also testified that petitioner did not describe a June 6, 2010, alleged date of accident to him during the examination. (Rx. 5, 25). Dr. Holmes did not feel any additional orthopedic treatment was needed in his first report, and felt that the petitioner had reached maximum medical improvement. (Rx. 5, 25). Dr. Holmes testified that after his first report, he subsequently received authorization for the records review which included records dating back to 1997. (Rx. 5, 26-27). Dr. Holmes testified that the prior records were related to the current

alleged condition, and that they were relevant to his opinions. (Rx. 5, 27). After the records review, Dr. Holmes issued a second report dated February 16, 2002. (Rx. 5, 26).

After performing the complete records review, Dr. Holmes' opinion was that the petitioner's alleged current condition of ill-being and pain that he described on the November 28, 2011, examination date was not causally related to the alleged June 6, 2010, or June 24, 2010, dates of injury. (Rx. 5, 29). Dr. Holmes testified that basis for the change in opinions between the two reports was that there were far more data point going over his continued left pain issues, lower extremity issues that indicated that this was an ongoing process throughout the period of time prior to the two dates of alleged injuries. (Rx. 5, 30). Dr. Holmes also testified that the petitioner's complaints were "clearly and accurately documented to represent ongoing pre-existing conditions." (Rx. 5, 31). Dr. Holmes also testified that in the large volume of records he reviewed, there was nothing to suggest that the petitioner's pre-existing complex regional pain syndrome complaints in the left leg had resolved prior to the alleged September 24, 2011, date of accident. (Rx. 5, 32). Further, Dr. Holmes testified that there was nothing in the voluminous records that he reviewed that suggested petitioner's current alleged left leg pain or alleged lower back pain were new complaints. (Rx. 5, 32). Dr. Holmes also testified that the lack of evidence such as discoloration or temperature change in the lower extremity compared to the opposite extremity also lead him to question the diagnosis of RSD. (Rx. 5, 35-36). Dr. Holmes further stated that the records demonstrate that the petitioner had a significant history of emergency room visits and pain medications and issues of noncompliance both before and after the alleged June 6, 2010, and September 24, 2010, dates of accident. (Rx. 5, 36). In his second report, after reviewing the voluminous records, Dr. Holmes opined that the petitioner's current condition was not causally related to the alleged June 6, 2010, or

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September 24, 2010 dates of accident. (Rx. 5, 36-37). Dr. Holmes further testified that there was no documentation of an alleged June 6, 2010, date of accident despite the fact that the petitioner was seen only 3 days after the alleged incident. (Rx. 5, 38). From an orthopedic standpoint, Dr. Holmes did not feel that the petitioner required any treatment as a result of either alleged disputed work injury on June 6, 2010, or September 24, 2010. (Rx. 5, 39). Dr. Holmes felt that any restrictions would not be related to the alleged accident dates. (Rx. 5, 39-40). Dr. Holmes testified that his first report was prepared without approval for review of the medical records, and that they were only based on a brief review of partial records. (Rx. 5, 41). He went on to state that the first report was based on limited data, and that it would be common sense to modify his opinion based on additional data becoming available. (Rx. 5, 41).

Dr. Holmes testified that although he specializes in orthopaedics, that he also treats patients with RSD, and that at times, he has referred RSD patients to treat orthopedically as well. (Rx. 5, 63-64). He described the intertwining of orthopedic and RSD conditions as at times involving cross-referrals between the two types of specialists. (Rx. 5, 64). Dr. Holmes further testified that the distinction between complex regional pain syndrome and RSD for the purposes of the petitioner's case specifically did not have any significant distinction. (Rx. 4, 65).

Dr. Holmes testified that it was clear from his reports that at the time of his first report was issued on November 28, 2011, that there were additional medical records that would be reviewed upon approval of the request review, which was done based on the volume and extent of the records. (Rx. 5, 84). Dr. Holmes also testified that there was an implication in his first report that once the records review was authorized and the records were reviewed, that there would be a subsequent report. (Rx. 5, 84). Dr. Holmes specifically testified that "it is my opinion that given the longevity and the severity of his history, that there is no aggravation of his

underlying condition based upon the injury.” (Rx. 5, 101). To further explain, Dr. Holmes gave an analogy, comparing an automobile that had numerous problems requiring repairs during the course of several years. The car is then involved in a motor vehicle accident and following the accident requires numerous repairs again. Dr. Holmes compared petitioner’s case to the fact that the car was a lemon before the accident, so there is no way to say that the car accident made it a lemon subsequently. (Rx. 5, 101, 102). Dr. Holmes noted that the petitioner was treating as recently as 3 days prior to the alleged date of accident, and that his problem list included diabetes, RSD pain and “intractable pain of the lower extremity.” (Rx. 5, 104). With regard to the different factors and symptoms of complex regional pain syndrome, Dr. Holmes testified that in conjunction with swelling, allodynia, or color change, he did not notice that these things had been aggravated subsequent to an alleged September 24, 2010, date of accident. (Rx. 5, 107). Dr. Holmes also testified that based on his review of the extensive medical records, even with medication for his complex regional pain syndrome, that the petitioner’s left foot pain was not under control prior to the alleged September 24, 2010, date of accident. (Rx. 5, 118). In fact, Dr. Holmes noted specific dates of service in 2010 predating the alleged injury wherein petitioner complained of chronic left foot pain. (Rx. 5, 117). With regard to his expertise in the area of RSD, Dr. Holmes testified that although he specializes in orthopedics, on a weekly basis, there is at least one patient he evaluates that has RSD. (Rx. 5, 133).

Testimony from Claims Representative

Dan Seidl, the claims representative, was called to testify by the petitioner’s attorney via subpoena. Mr. Seidl testified that he had been a workers’ compensation specialist for Pekin Insurance for the past 3 years. (T.A. 137). Mr. Seidl testified that he would utilize an independent medical examiner to make a determination with regard to whether a pre-existing

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condition was aggravated by an alleged injury. (T.A. 140, 141). Mr. Seidl testified that as of correspondence dated May 31, 2011, which contained partial medical records, he had reason to believe that there may have been pre-existing treatment records that needed to be obtained for purposes of an independent medical examination. (T.A. 190). Mr. Seidl also testified that the records received from petitioner's attorney on May 31, 2011, included records from Stroger Hospital only dating back to June 8, 2008. (T.A. 191). Additional records pre-dating June 2010 were not included in the records received from petitioner's attorney. Mr. Seidl testified that records predating June 8, 2010, would have been relevant as far as information Mr. Seidl would have liked reviewed by an independent medical examiner. (T.A. 191). Mr. Seidl testified that as part of his protocol for investigating a claim, he contacts the insured for further investigation. (T.A. 192). He testified that in this case, he would have contacted the insured in early December 2010. (T.A. 192). Mr. Seidl further testified that he obtained information from the insured that impacted his investigation, which included that the insured had become aware that the petitioner had the same injury previously with another employer. (T.A. 193). Mr. Seidl testified that this impacted his claims handling because it made him want to gather additional information and determine whether he could find prior history or anything else that could be out there. (T.A. 193).

Mr. Seidl went on to testify that it would have been unusual to make a determination regarding a denial that early on in the claim because "you want to investigate and find out whether or not there is causation. It is unusual to make a denial right away." (T.A. 193). Mr. Seidl testified that he may have waited until May 2011 to send a denial letter because he did not have complete medical records pre-dating the alleged date of injury. (T.A. 194).

With regard to wages, Mr. Seidl testified that his file materials showed an average weekly wage of \$500.00, and Mr. Seidl went on to testify that it was typical to estimate average weekly wage when information is not obtained, for purposes of setting reserves. (T.A. 195). Regarding the independent medical examination with Dr. Holmes, Mr. Seidl testified that it was initially scheduled in July 2011, but had to be postponed due to the fact that subpoenaed records had still not yet been received from some of the providers. (T.A. 196). Regarding the basis for denial and Mr. Seidl's reliance in formulating an opinion regarding causation, Mr. Seidl testified that in reviewing the medical records from Rush, he did not have an indication that the petitioner was diagnosed with an aggravation of a pre-existing condition that was causally related to the alleged September 24, 2010, date of accident. (T.A. 200). Similarly, Mr. Seidl testified that in reviewing medical records that were received from Cook County Hospital, that he did not recall seeing an opinion stating that the petitioner was diagnosed with an aggravation of a pre-existing complex regional pain syndrome condition. (T.A. 201).

Mr. Seidl testified that in assessing compensability, he reviewed records from Petitioner's numerous emergency room visits to Cook County Hospital, Rush University Medical Center, UIC Medical Center, and Provena St. Joseph Medical Center between October 1, 2010 and April 2011, and that he did not note any opinions from any of those hospitals, diagnosing an aggravation of preexisting complex regional pain syndrome. (T.A. 199, 201, 204-205). The lack of diagnosis of an aggravation of a preexisting condition suggested to Mr. Seidl, that the claim was not compensable, in addition to the fact that the accident itself was in dispute. (T.A. 206). Mr. Seidl specifically testified that we first contacted the insured to investigate the claim, that they advised him that the accident itself was in dispute. (T.A. 230). He further stated that there were a lot of red flags raised about the legitimacy of the claim considering that it was not

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witnessed, not immediately reported, and that the petitioner continued working after the alleged date of injury. (T.A. 230).

Mr. Seidl acknowledged that he received Dr. Holmes' initial IME report on December 13, 2011, but that he knew it was not a final opinion because the report itself clearly stated that the doctor had not reviewed all of the relevant records. (T.A. 207-208). Based on the preliminary report, Mr. Seidl testified that he contacted Dr. Holmes office in writing on December 28, 2011, requesting that the doctor complete a review of the records and issue an addendum opinion after having reviewed them. (T.A. 208). Mr. Seidl testified that he "couldn't see making an incomplete IME the basis of making any payments." (T.A. 211). The correspondence to Dr. Holmes identified that there were approximately 16 inches of relevant records that still needed to be reviewed at the time the initial report was prepared. (T.A. 210). Dan Seidl eventually received the addendum from Dr. Holmes on February 20, 2012. He testified that upon receiving the second report, "it appeared to me that he [Dr. Holmes] had actually read the records and that I was inclined to put my faith in what that second report - - the addendum report had said." (T.A. 211).

Mr. Seidl testified that he paid TTD benefits from January 19, 2011 through May 15, 2011 based on order from Arbitrator Kinnaman to issue benefits while the deposition of Dr. Holmes was pending. (T.A. 214). Mr. Seidl also acknowledged that after the hearing before Arbitrator Kinnaman in January 2011, he was aware that she recommended that some medical benefits be paid, but he was unclear what medical benefits she was recommended by paid. (T.A. 215). The issue of medical benefits was clarified later when Arbitrator Black ordered that medical treatment and prescriptions of Dr. Tubic be paid up to \$10,000 until the case went to trial. (T.A. 216). Mr. Seidl testified that normally when bills are processed, it is done by a

payment group in the home office and there is no way to screen or limit bill payments to certain providers. (T.A. 217). Therefore, Mr. Seidl testified that it took longer than normal to process any medical payments because he would have to personally review each bill on an individual basis. (T.A. 217). Mr. Seidl further testified that in good faith after the hearing before Arbitrator Black in September 2012, that he did not deny any medical bills. (T.A. 218-219). He also testified that when a utilization review is done retroactively, he generally waits until the treatment is complete or nearly complete. (T.A. 220).

Respondent also presented the testimony of Robert Leone, owner of Respondent, R&R Properties. (T.A. 233). The company performs preservation of foreclosed properties, including clean up, maintenance, and repairs. (T.A. 233). Mr. Leone testified that as owner, he is responsible for hiring and firing of employees. (T.A. 233). Mr. Leone testified that Petitioner began working for him in the summer 2010. (T.A. 234). When he hired Petitioner, Mr. Leone was not aware whether Petitioner had previously worked as a landscaper. (T.A. 235). Mr. Leone also testified that when he hired Petitioner, he was not aware that Petitioner had a prior injury, or any physical restrictions. (T.A. 237).

Regarding the alleged June 6, 2010 accident, which would have been only two days after Petitioner began working for the insured, according to payroll records, Mr. Leone testified that no alleged injury was reported to him on that date. (T.A. 237). He further testified that according to payroll records, June 6, 2010 was a Sunday, and that the Petitioner did not even work on that date. (T.A. 237). Petitioner never reported a June 6, 2010 injury to Mr. Leone at any later date either, and he continued working for Respondent for several months after that date. (T.A. 238). Mr. Leone testified that he never had problems communicating with Petitioner in English, and that he spoke with him almost daily, sometimes twice per workday. (T.A. 241).

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Regarding Petitioner's work ethic, Mr. Leone testified that when Petitioner was first hired, he seemed more interested and ambitious, but that as time went on, Petitioner demonstrated a lack of interest and lack of continuity with his work. (T.A. 243). Petitioner's Exhibit #41, which was a receipt of the lawns that Petitioner completed between September 6-9, 2010, demonstrated the lack of consistency in Petitioner's work, showing that one date he completed 10 lawns, and the next day only 3. (T.A. 273, P.X. 41).

In response to Petitioner's alleged September 24, 2010 date of accident, Mr. Leone testified that he was not notified by Petitioner of an alleged work injury on that date. (T.A. 244). Mr. Leone testified that Petitioner worked for another two or three days after the alleged September 24, 2010 accident date, and that as far as he is aware, Petitioner did not seek any medical treatment on the alleged date of accident. (T.A. 244). Mr. Leone eventually became aware that Petitioner was claiming an alleged work injury on September 24, 2010, when Petitioner came in at the end of the work week for his check. (T.A. 245). Mr. Leone testified that he eventually terminated Petitioner at the end of the busy season in September 2010, because there was no continuity in his work. (T.A. 245). Mr. Leone testified that it would take Petitioner 3-5 days to complete the work that other employees were doing in 1-2 days. (T.A. 246). Mr. Leone testified that his employees know that the lawn maintenance work is seasonal, and that he only keeps on the employees that show a willingness to work. (T.A. 247). He further specified that he was not happy with the erratic amount of work Petitioner was completing, that there were times where he could not get a hold of Petitioner for two or three days, and that it was the end of the season. (T.A. 270).

Mr. Leone testified that Petitioner did not give notice of the alleged accident until the last day Petitioner came in for his paycheck, which was approximately October 1, 2010. (T.A. 248).

This is the same date that Petitioner first sought treatment for his alleged September 24, 2010 date of accident. After the alleged incident was reported to him, Mr. Leone went the next day on October 2, 2010, to investigate the area of the alleged accident. (T.A. 249). Mr. Leone testified that the only thing he noticed was a 5-6" diameter hole, which was round, and about 5-6" deep. (T.A. 249). Mr. Leone further testified that the property where the alleged accident occurred had been maintained by his company prior to the alleged September 24, 2010 date of accident, and that no other employees has previously reported a hole in the yard. (T.A. 250).

Respondent also presented the testimony of Deneen Leone, office manager of the Respondent. Her job duties for Respondent include payroll, scheduling, and routing of jobs. (T.A. 276). She was also responsible for processing the pictures needed as proof of job completion. (T.A. 276). Ms. Leone had regular contact with the employees regarding routes and job list distribution. (T.A. 276). She testified that she would compile a list of the types of jobs that need to be done, and create a list of addresses that it would make sense to group onto one route. (T.A. 276).

Deneen Leone also identified Respondent's Exhibit #8, which were payroll records. She testified that she kept a daily log of the number of days worked by the employees and a total of the amount they were paid at the end of each pay period. (T.A. 278). Ms. Leone testified that her payroll records first document Petitioner as an employee beginning June 4, 2010. (T.A. 279-280). This rebutted Petitioner's testimony that he began working for Respondent in April 2010. In fact, Deneen testified that she had access to payroll records dating back to April 2010, but that Petitioner was not a current employee at that time. (T.A. 279).

A Utilization Review report was generated on December 5, 2012, by Rising Medical Solutions. In that review, 34 different emergency room visits were assessed during the dates of

service between October 1, 2010, and August 28, 2011. Subsequent to the review, it was determined that three emergency department visits were deemed reasonable. (Rx. 17). The three visits deemed reasonable and necessary included the emergency room visit at University of Illinois Hospital on October 1, 2010, on October 4, 2010, and October 5, 2010, and the emergency room visit at Stroger Hospital on October 6, 2010, and October 7, 2010.

Conclusions of Law

C. Did an accident occur that arose out of and in the course of petitioner's employment by respondent?

The Arbitrator concludes that petitioner failed to establish that he suffered an accident that arose out of and in the course of his employment with the respondent on either June 6, 2010 or September 24, 2010. In support of this finding, the Arbitrator notes that the petitioner alleged two unwitnessed accidents while working for respondent and that his testimony regarding both alleged dates of accident is not credible. Petitioner admittedly had an extensive prior history of complex regional pain syndrome symptoms in the left leg, and had previously undergone more than a decade of treatment for the same condition to the same body part. Respondent also presented evidence confirming that the petitioner had a prior workers' compensation settlement to his left leg, for which he was awarded \$157,000 in PPD in addition to open medical benefits based on contemplated lifetime medical treatment to the left leg, which were later closed out for an additional sum of \$295,000.

The Illinois Workers' Compensation Commission has previously held that petitioner failed to establish that he sustained an accident arising out of and in the course of his employment, and considered the fact that the petitioner testified to an unwitnessed accident, and that he testified that despite a history of two prior back surgeries, when he returned to work, he felt 100% and was able to perform all his job duties. In that case, the Commission ultimately

determined that the petitioner's testimony was not credible. *John Jackson v. Clegg-Perkins Electrical, Inc.*, 04 ILWC 25042 (2010).

The arbitrator finds that the present case warrants the same finding, that petitioner failed to prove an accidental injury arising out of and in the course of his employment on either June 6, 2010 or September 24, 2010. Although the petitioner admitted that he had prior left leg problems and CRPS, the arbitrator does not find it convincing or credible that the petitioner's claims that his left leg pain was well controlled prior to the alleged September 24, 2010 date of accident. The numerous emergency room visits in the months and years preceding the alleged accident date credibly contradict Petitioner's allegation that his CRPS condition was stable prior to the alleged September 24, 2010 work injury.

The Arbitrator does not find credible the petitioner's testimony regarding the alleged onset of his June 6, 2010 date of injury. This finding is supported by petitioner's own decision halfway through trial to voluntarily dismiss his Application No. 10 wc 40679. At the hearing on December 14, 2012, Petitioner testified that he sustained injuries to his left leg and foot on June 6, 2010, while working for Respondent. However, at the second date of trial on January 4, 2013, Petitioner decided to voluntarily dismiss his Application for the alleged June 6, 2013, date of injury, and objected to cross examination regarding the alleged injury that he had previously testified had occurred at work.

Petitioner testified that on June 6, 2010, he was working for the insured, when part of a piece from a haircutting chair fell onto his left leg, from the foot to knee area. (T.A. 34). In rebuttal to this allegation, Deneen Leone testified on behalf of Respondent that based on her payroll records, June 6, 2010 was a Sunday, and Petitioner did not even work or get paid for that date. (T.A. 280). She also confirmed that Petitioner never reported any alleged June 6, 2010

injury to her. (T.A. 280). Petitioner stated that he had pain after that and sought treatment at Cook County Hospital on June 8, 2010. (T.A. 34). Petitioner testified that the next day he treated at St. Joseph's Hospital on June 9, 2010. (T.A. 35). However, petitioner testified that he was able to return to work following this alleged incident. (T.A. 35). Respondent's expert, Dr. Holmes, also testified that petitioner did not describe a June 6, 2010, alleged date of accident to him during the examination. (Rx. 5, 25).

On cross-examination, petitioner admitted that he initially testified on direct examination that he sustained an injury to his left leg on June 6, 2010, when a haircutting chair fell on his leg. (T.A. 96). Petitioner could not recall the town or the address where this alleged accident happened. (T.A. 97). Petitioner testified that it did happen while he was working for the respondent. (T.A. 97). He claimed to have reported the incident to Deneen Leone, co-owner of the respondent company. (T.A. 98). She testified that not only did Petitioner fail to report an alleged work injury to her on June 6, 2010, but that he continued working the entire rest of the week, and never reported an alleged June 6, 2010 injury to her at any later date either. (T.A. 281).

In finding that Petitioner failed to prove an alleged work injury on June 6, 2010, the Arbitrator also notes the lack of supporting medical evidence. The Arbitrator notes that Petitioner frequented the emergency room more than 3 dozen times between 2010 and 2012 for alleged left leg pain, yet he failed to seek any medical attention on the alleged June 6, 2010 date of accident. Further, the emergency room records from Cook County Hospital reflect that the petitioner presented for treatment on June 8, 2010, just two days after the alleged incident. (R.X. 19). However, there is no mention of the alleged work injury from just two days prior in those treatment notes. (R.X. 19). Petitioner also admitted on cross-examination that despite claiming

an alleged June 6, 2010, work injury to his left leg, he was able to continue working for approximately 4 months for the respondent. (T.A. 99).

The Arbitrator also finds that Petitioner's testimony regarding the alleged September 24, 2010 date of accident is not credible. Again, despite the frequency of his emergency room visits, the Arbitrator notes that after the alleged injury, Petitioner did not seek medical treatment for over one week, until October 1, 2010. The Arbitrator notes that on the first date of treatment, Petitioner presented to an Emergency Room in Chicago, despite the fact that the alleged accident occurred in Joliet, and he resides in Joliet, Illinois as well.

The credible testimony of Robert and Deneen Leone also supports the Arbitrator's finding that Petitioner was not credible and that he did not prove that he sustained an accidental injury on September 24, 2010. Mr. Leone testified that Petitioner was not a reliable and dependable enough employee to be kept on during the winter off-season, and that the landscaping employees such as Petitioner were aware that the seasonal work would be ending in late September and early October. (T.A. 247). Mr. Leone testified that prior to Petitioner claiming an alleged September 24, 2010 date of accident, he had decided not to keep Petitioner on as a winter employee because he was not comfortable with Petitioner's work. (T.A. 247). Mr. Leone testified that towards the end of grass-cutting season, Petitioner demonstrated a lack of interest and lack of continuity in his job. (T.A. 243).

Mr. Leone also testified that Petitioner was able to finish out the season and work 2 or 3 more days after the alleged September 24, 2010 date of accident, and that no accident was reported to him on that date. (T.A. 245).

Petitioner admitted that despite his alleged September 24, 2010, injury, he did not receive any medical treatment between September 24, 2010, and September 30, 2010. (T.A. 101).

When the petitioner first sought treatment on October 1, 2010, following his alleged injury, he presented to the emergency room at UIC Medical Center in Chicago, despite the fact that he lives in Joliet, Illinois. (T.A. 102). Deneen testified that when Petitioner came to pick up his final check on October 1, 2010, the same day he first sought treatment, that he showed up limping with a bandage and handed her some paperwork. (T.A. 296). She also testified that the three days worked after the alleged September 24, 2010 date of accident, she would have personally seen Petitioner at least once before he was paid on October 1, 2010, and that at no time prior to October 1, 2010, did she notice him limping or wearing a bandage on his left leg. (T.A. 297). Further, Petitioner never requested medical attention when he appeared for work on September 25, 27, or 28, 2010. (T.A. 297).

The Arbitrator notes that Petitioner testified that he was in terrible pain after the alleged accident on September 24, 2010. (T.A. 42). However, he did not seek any medical treatment until appearing at the emergency room in UIC on October 1, 2010, one week later. (T.A. 42, Px. 3). When Petitioner presented to the emergency room at UIC on October 29, 2010, he was using crutches. (T.A. 46, P.X. 3). However, he could not recall who had issued the crutches or when they had been prescribed. (T.A. 47).

Dr. Holmes' testimony also supports the finding that Petitioner failed to establish that he sustained a work injury on September 24, 2010. Dr. Holmes testified that the petitioner's complaints were "clearly and accurately documented to represent ongoing pre-existing conditions." (Rx. 5, 31). Dr. Holmes also testified that in the large volume of records he reviewed, there was nothing to suggest that the petitioner's pre-existing complex regional pain syndrome complaints in the left leg had resolved prior to the alleged September 24, 2011, date of accident. (Rx. 5, 32). Further, Dr. Holmes testified that there was nothing in the voluminous

records that he reviewed that suggested petitioner's current alleged left leg pain or alleged lower back pain were new complaints. (Rx. 5, 32). Dr. Holmes specifically testified that "it is my opinion that given the longevity and the severity of his history, that there is no aggravation of his underlying condition based upon the injury." (Rx. 5, 101).

For the above reasons, the Arbitrator finds that petitioner failed to prove that he sustained an accidental injury arising out of and in the course of his employment with the respondent on June 6, 2010 or September 24, 2010.

F. Was timely notice of the accident given to Respondent?

The Arbitrator finds that timely notice of the alleged June 6, 2010 and September 24, 2010, was not given as required under the Act.

Section 6(c) of the Act states that: "Notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident... Notice of the accident shall give the approximate date and place of the accident, if known, and may be given orally or in writing. 820 ILCS 305.

Petitioner testified on direct examination that he sustained an injury to his left leg on June 6, 2010, when a haircutting chair fell on his leg. (T.A. 96). Petitioner could not recall the town or the address where this alleged accident happened. (T.A. 97). Petitioner testified that it did happen while he was working for the respondent. (T.A. 97). He claimed to have reported the incident to Deneen Leone, co-owner of the respondent company. (T.A. 98). She testified that not only did Petitioner fail to report an alleged work injury to her on June 6, 2010, but that he continued working the entire rest of the week, and never reported an alleged June 6, 2010 injury to her at any later date either. (T.A. 281). Robert Leone also confirmed that no alleged June 6, 2010 work injury was reported to him either. (T.A. 237).

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Deneen Leone further testified that based on her payroll records, June 6, 2010 was a Sunday, and Petitioner did not even work or get paid for that date. (T.A. 280). She also confirmed that Petitioner never reported any alleged June 6, 2010 injury to her. (T.A. 280). In fact, Petitioner decided on the second date of trial to voluntarily dismiss his allegation of a June 6, 2010 accident date.

Regarding the alleged September 24, 2010, date of accident, both Robert and Deneen Leone testified that they eventually became aware that Petitioner was claiming a work injury when he came to collect his final paycheck on October 1, 2010, at which time he handing ER papers to Ms. Leone.

Based on the above, the Arbitrator finds that timely notice of the alleged June 6, 2010 was not given as required under the Act.

F. Is the petitioner's current condition of ill-being causally related to the injury?

The Arbitrator concludes that petitioner's alleged present condition of ill-being with regard to his left leg is not causally related to the petitioner's alleged June 6, 2010 or September 24, 2010 dates of accident. In support of this finding, the Arbitrator bases his decision on the above finding that petitioner failed to establish that he sustained injuries arising out of and in the course of his employment with the respondent on June 6, 2010 or September 24, 2010.

The Arbitrator further relies on the credible medical opinions of Dr. George Holmes, who testified that Petitioner did not sustain an accident, or an aggravation of his preexisting complex regional pain syndrome diagnosis. After performing the complete records review, Dr. Holmes' opinion was that the petitioner's alleged current condition of ill-being and pain that he described on the November 28, 2011, examination date was not causally related to the alleged June 6, 2010, or June 24, 2010, dates of injury. (Rx. 5, 29). From an orthopedic standpoint, Dr. Holmes

did not feel that the petitioner required any treatment as a result of either alleged disputed work injury on June 6, 2010, or September 24, 2010. (Rx. 5, 39). Dr. Holmes felt that any restrictions would not be related to the alleged accident dates. (Rx. 5, 39-40).

Dr. Holmes specifically testified that "it is my opinion that given the longevity and the severity of his history, that there is no aggravation of his underlying condition based upon the injury." (Rx. 5, 101). To further explain, Dr. Holmes gave an analogy, comparing an automobile that had numerous problems requiring repairs during the course of several years. The car is then involved in a motor vehicle accident and following the accident requires numerous repairs again. Dr. Holmes compared petitioner's case to the fact that the car was a lemon before the accident, so there is no way to say that the car accident made it a lemon subsequently. (Rx. 5, 101, 102). Dr. Holmes noted that the petitioner was treating as recently as 3 days prior to the alleged date of accident, and that his problem list included diabetes, RSD pain and "intractable pain of the lower extremity." (Rx. 5, 104).

Dr. Holmes also testified that based on his review of the extensive medical records, even with medication for his complex regional pain syndrome, that the petitioner's left foot pain was not under control prior to the alleged September 24, 2010, date of accident. (Rx. 5, 118). In fact, Dr. Holmes noted specific dates of service in 2010 predating the alleged injury wherein petitioner complained of chronic left foot pain. (Rx. 5, 117).

Based on the above, the arbitrator finds that the petitioner failed to prove that his alleged current condition of ill-being was causally related to the alleged June 6, 2010 or September 24, 2010, dates of accident. In support of this finding, the arbitrator relies on the fact that petitioner failed to establish accidental injuries arising out of and in the course of his employment and also

the fact that Dr. George Holmes credibly testified that the petitioner's alleged symptoms and need for surgery were not causally related to his employment with the respondent.

The arbitrator observed the petitioner at various times before, during and after the hearing dates. Outside of the hearing room, petitioner was observed talking comfortably and exhibiting no pain behavior like grunting, grimacing or shifting his weight from side to side as he constantly did, as if on cue, in the hearing room. Instead, petitioner was standing without the use of his crutches or slightly leaning against a wall, sometimes placing most of his weight on his injured foot for extended periods of time. At one point, he was seen standing for nearly thirty minutes, talking casually.

G. What were the Petitioner's earnings?

The Arbitrator finds that in the year preceding the alleged injuries, Petitioner earned \$3715.00, with an average weekly wage of \$232.19. In support of this finding, the Arbitrator relies on Respondent's Exhibit #8, the payroll records, and the credible testimony of Deneen and Robert Leone. The Arbitrator does not find credible the Petitioner's allegations regarding his earnings.

Respondent's witness, Robert Leone, testified that when Petitioner began subcontracting, he was typically paid \$25 per lawn. (T.A. 259). It was up to the individual employee to determine how many days and which days he or she would work. (T.A. 271). Petitioner did admit that the payroll records document was correct in reflecting when he began performing lawn work only. (T.A. 18).

Regarding Petitioner's earnings, Deneen Leone testified to the number of days that Petitioner would work in each two week pay period. Respondent's Exhibit #8 confirms that Petitioner only worked 7 days during the 2-week period between June 12, 2010 and June 25,

2010. (R.X. 8). During the next 2-week period from June 26, 2010 through July 9, 2010, the petitioner only worked 4 days. (R.X. 8). Petitioner worked 11 days between July 10, 2010 and July 23, 2010. He worked 10 days during the 2-week period between July 24, 2010 and August 6, 2010. (R.X. 8). During the 2-week period between August 7, 2010 and August 20, 2010, Petitioner worked a total of 8 days. (R. X. 8). Petitioner worked 4.5 days during the two week period between August 21, 2010 and September 3, 2010. Deneen testified that beginning September 6, 2010, Petitioner began working in conjunction with his son as an independent contractor, and that the amounts reflected on the payroll records indicate the amounts that were split between Petitioner and his son. (T.A. 290). She testified that she personally recalled paying half of the lawns to Jesus and half to his son, Jesus Jr. (T.A. 290). Deneen's testimony that the amounts paid to Petitioner as a subcontractor were split with his son is supported by her additional testimony that it would be unusual for an individual employee to be earning \$625.00 for only two days of work. (T.A. 292). Deneen confirmed that according to her payroll records, the Petitioner's last date worked was September 28, 2010. (T.A. 294). Petitioner also testified that he worked between 60 to 72 hours per week while employed by R&R Properties. (T.A. 119). However, Payroll indicates that the petitioner on several occasions would work only 3 days per week. (T.A. 119, Rx. 8).

When questioned regarding payroll records that showed that certain individuals were not paid for certain days, Deneen Leone clarified by stating that on instances where one or two or three lawns were mowed, that the individuals would not have been paid the \$60.00 daily rate for only doing several lawns. (T.A. 3, 16). She further clarified that on days where only a few lawns are mowed, it is possible that somebody may have done some work on a day and not have been paid for that day. Deneen also clarified that the dollar discrepancy in the payroll records

regarding the employee named Bob Dolan could have been due to the fact that he was a tenant of hers and had rent deducted from his paychecks. (T.A. 3, 19). Petitioner also testified that he worked between 60 to 72 hours per week while employed by R&R Properties. (T.A. 119). However, Payroll indicates that the petitioner on several occasions would work only 3 days per week. (T.A. 119, Rx. 8).

On rebuttal, petitioner testified again, but disputed Mrs. Leone's testimony that he was working with his son and splitting the amounts that were paid weekly. (T.A. 324,325).

Based on the above, the Arbitrator finds that in the year preceding the alleged injuries, Petitioner earned \$3,715.00, with an average weekly wage of \$232.19.

J. Were the medical services that were provided to the petitioner reasonable and necessary? Has respondent paid all appropriate charges for all reasonable and necessary medical services?

Based on the arbitrator's findings in Sections C and F above, the arbitrator finds that the medical services provided were not medically causally related to the June 6, 2010 and September 24, 2010 dates accident. Based on the foregoing findings and conclusions regarding accident and causal connection, the issue concerning petitioner's claim for medical benefits is moot. Because the petitioner failed to prove that a compensable accident occurred on either June 6, 2010 or September 24, 2010, he was not and is not entitled to receive any medical benefits.

After performing the complete records review, Dr. Holmes' opinion was that the petitioner's alleged current condition of ill-being and pain that he described on the November 28, 2011, examination date was not causally related to the alleged June 6, 2010, or June 24, 2010, dates of injury. (Rx. 5, 29). From an orthopedic standpoint, Dr. Holmes did not feel that the petitioner required any treatment as a result of either alleged disputed work injury on June 6, 2010, or September 24, 2010. (Rx. 5, 39). Dr. Holmes specifically testified

that "it is my opinion that given the longevity and the severity of his history, that there is no aggravation of his underlying condition based upon the injury." (Rx. 5, 101).

Mr. Seidl testified that although liability for medical treatment was fully disputed, he did pay a portion of the medical charges in good faith when Arbitrator Black ordered that medical treatment and prescriptions of Dr. Tubic be paid up to \$10,000 until the case went to trial. (T.A. 216). Mr. Seidl further testified that in good faith after the hearing before Arbitrator Black in September 2012, that he did not deny any medical bills. (T.A. 218-219). However, at no time, did Respondent concede liability for the disputed charges. In addition, the utilization review report entered into evidence supports denial of liability for the alleged outstanding medical bills as well.

Based on the above, the arbitrator finds that the medical services provided to the petitioner were not reasonable and necessary as the result of the alleged June 6, 2010 or September 24, 2010, dates of accident and, furthermore, that in denying liability for medical services, respondent has paid all appropriate charges for reasonable and necessary medical services. The arbitrator further finds that the remaining outstanding medical bills are not reasonable and necessary as a result of the alleged June 6, 2010 and September 24, 2010, disputed accidents and that Respondent is entitled to a credit for any and all medical bills paid in good faith only based on the interlocutory recommendation of Arbitrator Black, which was made while the case was pending formal reassignment from Arbitrator Kinnaman.

K. What temporary benefits are in dispute?

For the reasons set forth in Section C, the Arbitrator concludes that the petitioner is not entitled to any compensation for temporary total disability benefits. Based on the foregoing findings and conclusions, the issue concerning petitioner's claim for temporary total disability

benefits is moot. The petitioner failed to prove a compensable accident occurred on June 6, 2010 or September 24, 2010, and therefore, he is not entitled to receive any temporary total disability benefits with regard to this alleged date of injury.

Further, the Arbitrator finds that the Respondent is entitled to a credit for the \$8,240.00 in temporary total disability benefits that were paid in good faith while the deposition of Dr. Holmes was pending.

L. What is the nature and extent of the injury?

Based on the foregoing findings and conclusions, including the fact that the arbitrator finds that the petitioner failed to prove accidental injuries arising out of and in the course of his employment with the respondent on June 6, 2010 or September 24, 2010, the issue regarding petitioner's claim for permanent partial disability benefits is moot. Because the petitioner failed to prove a compensable accident occurred on June 6, 2010 or September 24, 2010, he was not and is not entitled to receive any permanent partial disability benefits.

M. Should Penalties or fees be imposed upon the respondent?

The Arbitrator finds that penalties or fees should not be imposed upon Respondent, based on the finding that Respondent's conduct in relying on the credible medical opinions of Dr. George Holmes, and in relying on information from the insured that there is a basis to dispute that a compensable accident occurred on June 6, 2010 or September 24, 2010, to contest payment of medical expenses and temporary total disability benefits, is reasonable under all the circumstances.

Further, the Arbitrator notes that according to the Act, "When an employer denies payment of or refuses to authorize payment of first aid, medical, surgical, or hospital services under Section 8(a) of this Act, if that denial or refusal to authorize complies with a utilization

review program registered under this Section and complies with all other requirements of this Section, then there shall be a rebuttable presumption that the employer shall not be responsible for payment of additional compensation pursuant to Section 19(k) of this Act.” 820 ILCS 305/8.7(a). In this case, Respondent also submitted into evidence the utilization peer review report, which further supported the opinions of Dr. Holmes.

The awarding of penalties under section 19(k) and attorney fees under section 16 is discretionary, and limited to instances where this is clearly an "unreasonable or vexatious delay" in payment. *McMahan v. Industrial Comm'n*, 183 Ill.2d 499, 515, 234 Ill.Dec. 205, 702 N.E.2d 545, 553 (1998). In this case, Respondent entered into evidence, medical and temporary disability payment logs, reflecting that TTD and medical benefits were issued in good faith temporarily while the opinions and testimony of Dr. Holmes were being sought. Additionally, the utilization review report creates a presumption that denial of medical benefits in reliance on the same was reasonable. This presumption was not rebutted by Petitioner, any of the emergency room doctors, or Dr. Tubic.

Based on the above, the Arbitrator finds that the actions of Respondent in disputing entitlement to medical and temporary total disability and medical benefits were not reasonable and vexatious, and that the Respondent reasonably relied on the medical opinions of Dr. George Holmes, the utilization review report, investigation of the claims which called the alleged accidents into question, and investigation of petitioner's prior injury and award to the same body part. Therefore, the Arbitrator finds that penalties and fees should not be imposed on Respondent.

N. Is Respondent due any credit?

14IWCC0500

The Arbitrator finds that the petitioner failed to prove that he sustained accidental injuries arising out of and in the course of his employment with the respondent on June 6, 2010 or September 24, 2010. Accordingly, Respondent is entitled to a credit for the amounts of medical and TTD benefits paid in good faith during the time trial preparations were pending, totaling \$18,240.00.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Brian Kovaka,
Petitioner,

vs.

NO: 11 WC 26100

14IWCC0507

Nexeo Solutions,
Respondent.

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 temporary total disability, permanent partial disability, causal connection, and 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 17, 2013 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.

14IWCC0507

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.

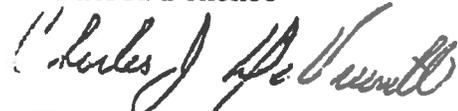
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$17, 900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 26 2014

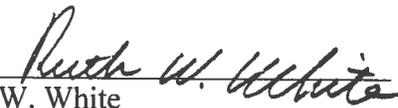
o-06/19/14
drd/wj
68



Daniel R. Donohoo



Charles J. DeVriendt



Ruth W. White

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

KOVAKA, BRIAN

Employee/Petitioner

Case# **11WC026100**

14IWCC0507

NEXEO SOLUTIONS

Employer/Respondent

On 7/17/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

3218 LAW OFFICES OF PETER C KOPOULOS
22 S WASHINGTON AVE
PARK RIDGE, IL 60068

1872 SPIEGEL & CAHILL PC
BRIDGET A ZEIER
15 SPINNING WHEEL RD SUITE 107
HINSDALE, IL 60521

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

BRIAN KOVAKA
Employee/Petitioner

Case # 11 WC 26100

v.

Consolidated cases: _____

NEXEO SOLUTIONS
Employer/Respondent

14IWCC0507

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 MOLLY MASON, Arbitrator of the Commission, in the city of **CHICAGO**, on **5/24/13** and **6/21/13**. 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 _____

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FINDINGS

On the date of accident, **05/23/11**, 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 **\$63,767.08**; the average weekly wage was **\$1,226.29**. On the date of accident, Petitioner was **36** years of age, *married* with **2** 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 **\$32,234.04** for TTD, \$ for TPD, \$ for maintenance, and \$ for other benefits, for a total credit of **\$32,234.04**. Arb Exh 1. Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act. At the hearing, Respondent claimed a non-specific credit under Section 8(j), with Petitioner disputing that claim. Arb Exh 1. Respondent submitted a medical payment print-out (RX 11) into evidence, with no objection from Petitioner, but did not establish that any of the payments listed on the print-out were made by a Section 8(j) group carrier. See Hill Freight Lines, Inc. v. Industrial Commission, 36 Ill.2d 419 (1968).

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **\$817.53/week** from February 24, 2012 through April 26, 2013, a period of **61 1/7** weeks, as provided in Section 8(b) of the Act. The Arbitrator declines to award temporary total disability benefits from April 27, 2013 through the continued hearing of June 21, 2013, for the reasons set forth in the attached conclusions of law.

See pages 20-22 of the attached conclusions of law for the Arbitrator's medical award.

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 MOLLY MASON

7/17/13
Date

JUL 17 2013

Arbitrator's Findings of Fact

The parties agree that Petitioner sustained an accident while working as a tractor-trailer driver for Respondent on May 23, 2011. Arb Exh 1. Petitioner testified that, as of this accident, he had worked for Respondent for more than four years. His job involved picking up and delivering chemicals.

Causation is the primary issue in dispute, with Respondent arguing that the accident did not bring about a change in what it characterizes as a back condition of long standing.

Petitioner acknowledged having lower back problems prior to the May 23, 2011 accident. In January of 2001, he injured his back while working for Roadway. He underwent a lumbar spine MRI in 2001 and a fusion at L5-S1 in January of 2002. Dr. Gupta performed this fusion. Petitioner testified that the back treatment he underwent in 2001 and 2002 involved solely L5-S1. He further testified that, if any records from that time period reflect problems at L4-L5, those records are wrong. Petitioner indicated that, following the fusion, he continued seeing Dr. Gupta until September of 2003. He next saw Dr. Gupta on April 2, 2009, after he injured his back at home putting a box in his attic. Petitioner testified that Dr. Gupta recommended epidural steroid injections and that he underwent two such injections within two weeks of April 2, 2009. The injections helped. Petitioner testified he returned to Dr. Gupta on May 14, 2009, at which point he felt "perfect." Dr. Gupta released him to full duty. Petitioner testified he sought treatment at APAC Group in September of 2009 due to groin numbness. He then underwent a third epidural steroid injection. He returned to APAC in October of 2009, following this injection, at which point he felt "perfectly fine."

Petitioner denied losing time in 2009 secondary to back problems. He also denied undergoing any additional back-related care between his October 2009 visit to APAC and his May 23, 2011 work accident. He had no difficulty performing full duty during that interval.

Petitioner's testimony on these points is, in some respects, at odds with treatment records offered into evidence by Respondent. Those records date back to 2001.

On February 8, 2001, Petitioner saw Dr. Gupta, a spine surgeon affiliated with the University of Chicago, with the doctor recording a one-month history of back, leg and testicular pain. Petitioner attributed his symptoms to pulling up on a trailer hitch. On examination, Dr. Gupta noted decreased sensation in the right foot in the first web space. He reviewed a sacral MRI film which Petitioner had brought to his office. He interpreted this MRI as showing degenerative disease at L5-S1 and a "central and right-sided disc bulge at L5-S1," visible on the axial images. He obtained lumbar spine X-rays, which he interpreted as showing "slight degenerative disc disease at L5-S1 with minimal retrolisthesis." He imposed work restrictions

and recommended a lumbar spine MRI "to better image [the] L5-S1 disc herniation as well as the thoracolumbar junction." RX 4 at 54-56.

Respondent offered into evidence certified copies of Commission records showing that, on February 9, 2001, Petitioner filed a claim numbered 01 WC 8045 alleging a work accident of January 6, 2001. RX 10.

Petitioner next saw Dr. Gupta on February 22, 2001, having undergone the recommended MRI in the interim. The doctor interpreted the MRI as showing a Schmorl's node at T11-12, some thoracolumbar degenerative disc disease and no herniations. He noted that Petitioner reported improvement following three weeks of therapy. He recommended additional therapy and continued the previous work restrictions. RX 4 at 52-53.

On March 22, 2001, Petitioner returned to Dr. Gupta and reported "much improvement" secondary to physical therapy. Petitioner denied lower extremity and testicular pain. He complained only of mild lower back soreness. Dr. Gupta noted no abnormalities on examination. He recommended that Petitioner proceed with work hardening and return to him in three weeks. RX 4 at 51.

Petitioner returned to Dr. Gupta on April 19, 2001, with the doctor noting "complete resolution of symptoms." The doctor released Petitioner to full duty but recommended use of an "air ride" seat while driving. He also recommended that Petitioner continue exercising. RX 4 at 50.

On June 14, 2001, Petitioner returned to Dr. Gupta and complained of 90% back pain and 10% right leg pain, rated 5/10. Petitioner reported pain with spinal extension. Dr. Gupta described Petitioner as having a "re-exacerbation of his previous injury." He imposed various restrictions, including no lifting over ten pounds, and instructed Petitioner to resume therapy. He indicated Petitioner might eventually require a lumbar fusion. .RX 4 at 49.

At the next visit, on July 12, 2001, Petitioner again complained of back and right leg pain. Dr. Gupta indicated he "explained to [Petitioner] that his symptoms of back pain are due to his degenerative disc disease at the L4-5 segment." He recommended a repeat lumbar spine MRI and continued the previous work restrictions. RX 4 at 47-48.

Following the repeat MRI, Petitioner went back to Dr. Gupta on August 30, 2001. The doctor indicated that Petitioner denied any lower extremity symptoms. On examination, the doctor noted localized tenderness at L5-S1. The doctor interpreted the repeat MRI as showing degenerative disc disease with a bulge at L5-S1. He did not have the previous MRI for comparison purposes but indicated he felt the bulge was "slightly more pronounced." He noted no significant nerve root compromise. He recommended a lumbar discogram. He indicated he felt Petitioner's symptoms were "clearly coming from the L5-S1 disc." RX 4 at 44-45.

On November 1, 2001, Petitioner returned to Dr. Gupta, having undergone the recommended discogram in the interim. Petitioner reported increased symptoms following the discogram. Dr. Gupta interpreted the discogram as "pain concordant at the L5-S1 segment where there is dye and evidence of annular injury." He recommended that Petitioner consider undergoing an IDET procedure rather than a fusion. He indicated that Petitioner was "very concerned about the long term effects of fusion on the adjacent levels and especially adjacent segment degeneration." He referred Petitioner to Dr. Wetzel for an IDET consultation. RX 4 at 42-43.

Petitioner returned to Dr. Gupta on December 13, 2001. The doctor's note of that date contains no reference to Dr. Wetzel or an IDET consultation. The doctor noted that Petitioner complained of 100% back pain, rated 6/10. The doctor recommended a lumbar fusion. RX 4 at 41.

At the next visit, on January 3, 2002, Dr. Gupta specifically recommended that Petitioner undergo an L5-S1 interbody fusion with posterior instrumentation. He viewed Petitioner as having a 90 to 95% chance of healing, a 5% chance that he would not heal and would require revision surgery and a 5% chance of a stable pseudoarthrosis. RX 4 at 39-40.

On January 16, 2002, Dr. Gupta performed a posterior lumbar interbody fusion at L5-S1. RX 7.

Petitioner reported improvement postoperatively. Lumbar spine X-rays taken on March 7, 2002 showed excellent positioning of the instrumentation. RX 4 at 36.

On April 18, 2002, Dr. Gupta described Petitioner as "continu[ing] to heal well." Dr. Gupta obtained new X-rays, which again demonstrated "excellent position" of the instrumentation and cages. He released Petitioner to light duty, initially part-time, with no bending and no lifting over 20 pounds. RX 4, p. 34-35.

Petitioner returned to Dr. Gupta on May 2, 2002 and reported a severe exacerbation of pain secondary to resuming light duty consisting of cleaning lockers. Petitioner indicated he had been taking narcotic medications as well as anti-inflammatories. Dr. Gupta obtained lumbar spine X-rays. He noted no instrumentation failure. He instructed Petitioner to stay off work for a week and then resume light duty with no bending, lifting, twisting or reaching. He instructed Petitioner to return to him in six weeks for additional X-rays. RX 4, pp. 33, 76.

On June 27, 2002, Petitioner returned to Dr. Gupta and reported improvement. On lumbar spine examination, the doctor noted that Petitioner localized his pain to the lumbosacral region. Repeat X-rays showed "minimal lucency at the lumbosacral junction with some resorption of the fusion mass." Dr. Gupta expressed concern about Petitioner's continued healing. He recommended that Petitioner use a bone stimulator and return to him. Repeat X-rays performed on September 26, 2002 showed some lucency of the bone graft along with some consolidation. RX 4, p. 74. On January 23, 2003, one year after the fusion, Petitioner

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complained to Dr. Gupta of back pain with a maximum intensity of 4-5/10, "worse with standing and walking." He denied leg pain. Repeat X-rays showed a "solid arthrodesis at L5-S1" and "no evidence of screw lucency." Dr. Gupta recommended a CT scan to "assess the fusion." He assessed Petitioner as having "some residual symptoms which may improve with therapy." Following therapy and work hardening, Dr. Gupta released Petitioner to full duty as of April 14, 2003. He noted that Petitioner was continuing to experience "minimal back pain" at that point but felt ready to return to work. He directed Petitioner to return to him in six weeks. RX 4, p. 26. At the next visit, on May 22, 2003, Petitioner reported having returned to local driving. On examination, Dr. Gupta noted that Petitioner localized his pain to the lumbosacral region. He indicated he was pleased with Petitioner's progress. He directed Petitioner to return to him in two months, at which point he planned to obtain new X-rays. RX 4, p. 25. It does not appear that Petitioner followed that directive.

The next treatment note in RX 4 is dated September 18, 2003. That note reflects that Petitioner was driving long distances but experiencing some increased lower back pain. Dr. Gupta noted no abnormalities on examination. He indicated he was "very pleased with [Ppetitioner's] progress." He also indicated he expected Petitioner to "have pain from time to time." He instructed Petitioner to continue exercising and return to him in six months for repeat X-rays. RX 4, p. 24. There is no indication that Petitioner returned to Dr. Gupta six months thereafter.

Records in RX 10 reflect that former Arbitrator Hennessy approved settlement contracts in 01 WC 8045 on December 23, 2003, with the settlement representing 25% loss of use of the person under Section 8(d)2 of the Act.

On March 18, 2009, Petitioner underwent a lumbar spine CT scan at Palos Community Hospital. The radiologist who interpreted this scan noted no abnormalities at L1-L2, L2-L3 and L3-L4. He noted a "mild to moderate diffuse disc bulge" and what appeared to be a "small to moderate focal disc herniation, indenting the ventral aspect of the thecal sac," at L4-L5. He also noted that L5 and S1 had been "fused with pedicle screws and interbody graft." He indicated he could not further evaluate the interspace at this level "due to extensive metallic beam hardening artifact." He described an MRI as "the study of choice for this purpose." RX 9, p. 26. On April 2, 2009, Petitioner returned to Dr. Gupta and complained of a recent onset of back and leg pain "after lifting a box." On examination, Dr. Gupta noted a normal gait, good strength with heel and toe walking and negative straight leg raising. He reviewed the CT scan and described the L4-L5 herniation as "very small." He prescribed Arthrotec, took Petitioner off work and referred Petitioner to a pain management specialist for epidural injections. RX 4, p. 23. On April 3, 2009, Dr. Salman of APAC Group examined Petitioner and reviewed the CT scan. Dr. Salman described Petitioner's past medical history as significant for an L5-S1 fusion in 2002 and what appeared to be narcotic abuse following the fusion. He noted that Petitioner reported doing well following the fusion until March 6, 2009, when he "triggered his low back pain." He also noted that Petitioner reported taking Vicodin, which had been prescribed by an Emergency Room physician on March 18, 2009, but stated he wanted to discontinue this medication. Dr. Salman recommended an epidural steroid injection at L4-L5 along with

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Naprelan and a Lidoderm patch. RX 9, pp. 22-23. Dr. Salman administered the injection on April 7, 2009. RX 9, p. 18. On April 20, 2009, Dr. Salman noted that Petitioner reported 50% pain relief following the injection. He prescribed a bilateral transforminal epidural steroid injection at L4-L5 along with Vicodin ES. He noted that Petitioner reported having run out of Hydrocodone-Tylenol 10/500 mg. Dr. Salman administered the transforminal injection on April 21, 2009. He instructed Petitioner to follow up with him in two weeks. RX 9, p. 14. On April 23, 2009, Dr. Gupta noted that Petitioner reported some relief following the injections and denied any leg pain. The doctor instructed Petitioner to remain off work and engage in low impact aerobic activity. RX 4, p. 22. On May 14, 2009, Dr. Gupta noted that Petitioner reported "almost complete resolution of his symptoms." The doctor released Petitioner to full duty, prescribed Vicodin and Arthrotec and instructed Petitioner to return in three months "if he has any concerns." RX 4, p. 21. The next treatment note in evidence is dated September 14, 2009. Petitioner returned to Dr. Salman on that date and complained of numbness in his right anterolateral thigh and right groin. Dr. Salman noted no abnormalities on examination. He diagnosed "low back pain, predominantly right lumbar radiculitis, post-laminectomy pain syndrome and an L4-L5 disc herniation with central neural foraminal stenosis." He prescribed a right transforminal epidural steroid injection at L4-L5 along with Vicodin ES. RX 9, p. 14. He administered the injection on September 18, 2009 and prescribed physical therapy. RX 9, pp. 12-13. He next saw Petitioner on October 2, 2009, at which time he noted that Petitioner reported 80% improvement of his right-sided back and leg symptoms following the injection. He also noted that Petitioner requested a Vicodin ES refill and a release to full duty. Dr. Salman noted no abnormalities on examination. He gave Petitioner a prescription for Vicodin ES and a release to full duty. He instructed Petitioner to return in three months or sooner if needed. RX 9, p. 11.

There is no indication that Petitioner returned to Dr. Salman three months after October 2, 2009. There is an indication that a different physician, Dr. Leonard, prescribed Hydrocodone (as well as Amoxicillin) for Petitioner on October 24, 2009. Dr. Leonard's records are not in evidence. Petitioner testified that Dr. Leonard is his dentist and that the doctor prescribed Hydrocodone and Amoxicillin on October 24, 2009 because he was having his jaw rebuilt.

Petitioner testified he started his work shift at about 4:00 AM on May 23, 2011. At about 3:30 PM, he returned to the yard, after making deliveries, and began helping a co-worker unload sixty to eighty 55-gallon drums. Petitioner testified the drums were supposedly empty. Petitioner testified he experienced pain in his lower back and down his legs when he bent to lift a drum that was not completely empty. Petitioner returned to his truck and slipped, cutting his hand in the process. He called his supervisor. Tony Kuk, Respondent's plant manager, came out to the yard and talked with him.

Petitioner testified he sought treatment at WorkRight Occupational Health within about an hour of his accident. He testified that the doctors at WorkRight stitched his right hand laceration and gave him medication.

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No treatment records dated May 23, 2011 are in evidence. An itemized bill from WorkRight reflects that Petitioner saw Dr. Ramsey at WorkRight on May 23, 2011 for treatment of an open hand wound and a lumbosacral strain. PX 3. In his report of February 15, 2012, Respondent's Section 12 examiner, Dr. Bauer, indicated he reviewed WorkRight records dated May 23 and 24, 2011. Dr. Bauer noted that Dr. Ramsey of WorkRight diagnosed a lumbar strain on May 23, 2011, prescribed Vicodin and other medications, and took Petitioner off work. Dr. Bauer also noted that Dr. Ramsey continued to keep Petitioner off work on May 24, 2011. RX 1.

A document in RX 8 reflects that Petitioner sought treatment at the Emergency Room at Palos Community Hospital on May 25, 2011. This document describes the reason for the visit as follows: "back/leg pain numbness in feet." No other records concerning this visit are in evidence. The Arbitrator notes, however, that Dr. Bauer referred to these records in his report of February 15, 2012. Dr. Bauer noted that Petitioner underwent a lumbar spine CT scan at the Emergency Room, with that scan showing a moderate broad-based disc bulge at L4-L5 and the previous fusion at L5-S1. RX 1, p. 3.

On May 27, 2011, Petitioner returned to Dr. Gupta, with the doctor noting the following interval history:

"Brian Kovaka returns today. In the interim since his last visit it has been ten years since his single level posterior lumbar interbody fusion. He noted that he has had a recent exacerbation of his back pain after he was lifting a fifty-gallon drum and unloading it from his truck. He notes 50% back pain and 50% leg pain. The back pain is sharp and aching with a maximum intensity of 8/10. He notes pain in both buttocks, posterior thigh, calf and ankle region."

On examination, Dr. Gupta noted a normal gait, good strength with heel and toe walking, pain on bending forward, intact sensation and negative supine straight leg raising.

The doctor obtained lumbar spine X-rays which demonstrated a "solid arthrodesis at L5-S1 with some element of transition syndrome at L4-L5."

The doctor expressed concern that Petitioner might have "stenosis right above adjacent to his fusion." He also indicated Petitioner "may have probably developed a little further disc bulge from the forward bending episode." He took Petitioner off work and recommended a series of epidural steroid injections. RX 5, 8.

Petitioner also went to WorkRight Occupational Health on May 27, 2011. Petitioner rated his hand pain at 0/10 and his back pain at 8/10. He indicated he had seen Dr. Gupta, who was recommending injections.

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On examination, Dr. Ramsey noted a normal gait, a restricted range of lumbar spine motion, difficulty performing heel and toe walking and tolerance of straight leg raising to about 65 degrees bilaterally.

Dr. Ramsey described the hand laceration as healing well. He cleaned the hand wound and instructed Petitioner to "finish his antibiotics." He recommended physical therapy and instructed Petitioner to remain off work. He stated: "will contact insurance to arrange epidural injections." He instructed Petitioner to return to WorkRight on June 1, 2011. RX 8.

An "employer discharge summary" reflects that Petitioner returned to WorkRight on June 15, 2011, with Dr. Ramsey prescribing Vicodin and Soma. The visit is not otherwise described.

Petitioner returned to WorkRight on June 22, 2011 and again saw Dr. Ramsey. The doctor noted that Petitioner rated his back pain at 7/10. The doctor also noted that the "insurance denied injections" and that Petitioner planned to explore other options with his back surgeon.

On examination, Dr. Ramsey noted a normal gait, a restricted range of lumbar spine motion, tolerance of straight leg raising to about 65 degrees bilaterally and discomfort with all movements. He indicated Petitioner "could attend physical therapy as recommended to him earlier." He allowed Petitioner to "continue to work in same capacity." That capacity is not described. He instructed Petitioner to return on June 29, 2011. RX 8.

Petitioner returned to Dr. Gupta on June 24, 2011 and complained of pain in his back and left leg "in the buttock, lateral thigh, calf with severe numbness and tingling throughout his ankle and foot." Petitioner indicated he was taking Vicodin and having difficulty walking.

On examination, Dr. Gupta noted an antalgic gait, severe difficulty performing heel and toe walking, positive straight leg raising on the left, 4/5 weakness in the left foot and intact sensation in the right leg.

Dr. Gupta indicated he reviewed a lumbar spine CT scan demonstrating a "disc herniation which is central at the L4-L5 level which is above [Petitioner's] old fusion at L5-S1." [As noted previously, the May 25, 2011 CT scan report is not in evidence.]

Dr. Gupta expressed concern about Petitioner's worsening condition and progressive neurologic symptoms. He again recommended a series of epidural steroid injections. He did not believe that additional therapy would be useful. He viewed Petitioner's leg symptoms as stemming from "nerve irritation and inflammation due to the disc herniation at the L4-L5 level which is above [the] old fusion at L5-S1." He opined that "this is all due to his work-related activity when he lifted a 55-gallon barrel at work." RX 5.

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On July 8, 2011, Petitioner filed an Application for Adjustment of Claim alleging a lifting-related injury of May 23, 2011. The Application is silent as to any previous claims. Arb Exh 2.

Petitioner next saw Dr. Gupta on August 5, 2011. Petitioner complained of 10/10 back pain and left leg pain and numbness. The doctor noted that Petitioner had undergone "extensive physical therapy since his last visit." [Only one therapy note is in evidence. RX 8. Petitioner testified he underwent two months of therapy at WorkRight. He further testified he derived no benefit from this therapy.]

On examination, Dr. Gupta noted a normal gait, good strength with heel and toe walking, negative straight leg raising and 4/5 weakness in the foot. He again recommended epidural injections at L4-L5. He instructed Petitioner to remain off work. RX 5.

On August 19, 2011, Petitioner returned to Dr. Salman at APAC Group. The doctor noted he had last seen Petitioner on October 2, 2009 "for treatment of lumbar radiculitis." The doctor noted Petitioner "had been doing well with his pain up until 5/23/11," at which point he lifted a 50-pound drum, felt a "pop" and "began experiencing return of pain in the low back with radiation of pain down the bilateral lower extremities, as well as paresthesias." He indicated Petitioner's left leg symptoms were worse than his right. He also noted Petitioner had been taking up to 12 Norco tablets per day to control his pain but "apparently stopped using the medication about 5 weeks ago." Petitioner reported he was now taking Arthrotec per Dr. Gupta. Petitioner also reported he was attending therapy twice weekly. Petitioner described the therapy as improving his flexibility "but not his pain." Petitioner indicated he had been off work since the May 23, 2011 accident, per Dr. Gupta's orders.

Dr. Salman reviewed the lumbar spine CT scan taken on May 25, 2011. He interpreted this scan as showing "surgical changes with pedicle screws at the L5 and S1 vertebra" and "apparent bulging of the disc at L4-5." Dr. Salman described the bulging as "poorly seen due to metallic artifacts arising from the pedicle screws." He described the overall appearance as "not significantly changed compared to a prior study" performed on March 18, 2009.

On examination, Dr. Salman noted painful extension, mildly positive bilateral seated straight leg raising, 5/5 strength in both legs and diminished sensation to light touch along the posterior aspect of the left calf. He indicated he was unable to elicit the bilateral patellar and Achilles DTRs.

Dr. Salman instructed Petitioner to continue the Arthrotec. He scheduled Petitioner for bilateral L4-L5 transforaminal epidural steroid injections. RX 9, pp. 9-10.

Dr. Salman administered bilateral L4-L5 transforaminal epidural steroid injections on August 23, 2011. RX 9, pp. 7-8.

Petitioner returned to Dr. Gupta on September 23, 2011. Petitioner reported that the epidural worsened his symptoms. After re-examining Petitioner, the doctor recommended that

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Petitioner attempt one additional injection before giving consideration to revision surgery. RX 5.

Dr. Salman administered additional bilateral L4-L5 transforaminal epidural steroid injections on October 11, 2011. In his note of that date, the doctor described Petitioner as having a "history of chronic low back pain radiating to the bilateral lower extremities, predominantly anteriorly in the thighs." RX 9, pp. 5-6.

Petitioner returned to Dr. Gupta on October 28, 2011 and reported worsening back and leg pain after the last epidural. Petitioner indicated he was having a great deal of difficulty walking. On examination, Dr. Gupta noted a normal gait, good strength with heel and toe walking, negative straight leg raising and intact sensation.

Dr. Gupta described Petitioner's symptoms as "far worse." He recommended surgical decompression of the disc herniation and stenosis at L4-L5 and extension of the fusion up to the L4-L5 level. He discussed the risks and possible benefits of surgery with Petitioner, noting that "in general, revision lumbar decompression by laminectomy should alleviate leg pain in approximately 75% of patients." He recommended that Petitioner undergo a CT myelogram before making a final decision concerning the surgery. RX 5.

At Respondent's request, Petitioner saw Dr. Bauer, a neurosurgeon, for a Section 12 examination on February 15, 2012. In his report of the same date, Dr. Bauer indicated he reviewed treatment records dating back to 2001 along with a lumbar spine CT scan of May 25, 2011 and lumbar spine X-rays of May 27, 2011.

Dr. Bauer noted that Petitioner complained of low back pain radiating to his buttocks and the backs of his thighs as well as "intermittent numbness in the outside of his left foot." Dr. Bauer also noted that Petitioner indicated he last saw Dr. Gupta in October and was awaiting further testing and possibly surgery.

On examination, Dr. Bauer noted that Petitioner walked without a limp and was able to walk on his heels and toes. Dr. Bauer noted tenderness in the lower back bilaterally, no spasm, a limited range of motion, intact strength, symmetric deep tendon reflexes, a "subjective mild hypesthesia to pin in the lateral aspect of the left foot compared to the right," and tightness but no radicular pain with straight leg raising in the lying position.

Dr. Bauer interpreted the May 25, 2011 CT scan as showing a solid interbody fusion at L5-S1, a mild degree of stenosis at L4-L5 and no suggestion of instability. He interpreted the May 27, 2011 X-rays as showing an interbody fusion with instrumentation at L5-S1.

Dr. Bauer found Petitioner's low back pain to be "consistent with spinal stenosis at L4-L5." He saw no evidence of a significant disc herniation at that level. He indicated that a CT myelogram would be a "better test" than the CT scan to evaluate for possible nerve root

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compression and/or stenosis. He indicated that further recommendations with respect to surgery could follow the CT myelogram. He characterized a CT myelogram as "reasonable."

Dr. Bauer opined that Petitioner's stenosis was not brought on by the injury. Instead, it was related to "degenerative changes adjacent to a prior fusion." He indicated that, if the stenosis was significant, it would be reasonable for Petitioner to undergo decompression and fusion. He found that Petitioner had not yet reached maximum medical improvement and was "not capable of returning to work at this time." He anticipated that Petitioner would be able to resume working six to nine months after surgery. RX 1.

Petitioner returned to Dr. Gupta on March 2, 2012, with the doctor noting that the CT myelogram had not yet been approved. After re-examining Petitioner, the doctor again recommended the CT myelogram. RX 5.

Petitioner underwent the CT myelogram on March 8, 2012. The myelogram showed preservation of the vertebral body heights and intervertebral disc spaces with the exception of the fused L5-S1 level. The physician who performed the myelogram noted an "apparent contrast hold-up" at L5-S1 "despite positioning and table tilt." RX 3, pp. C8-C9. The post-myelogram CT scan revealed "well-seated" surgical hardware and evidence of fusion across the L5-S1 disc space. The interpreting radiologist noted no evidence of disc herniation, thecal sac effacement or neuroforaminal narrowing at any level other than L4-L5. At that level, he noted a "broad-based disc bulge with an area of more focal central outpouching which results in mild indentation of the ventral thecal sac and trace indentation of the lateral recesses." He saw no evidence of displacement or contact with the transiting nerve roots. RX 3, pp. C6-C7; RX 6.

Petitioner returned to Dr. Gupta on March 9, 2012. The doctor noted that Petitioner reported being "unable to walk due to his severe buttock and thigh pain." On re-examination, the doctor described Petitioner as exhibiting a "normal gait with good strength with heel and toe walking."

Dr. Gupta "explained to [Petitioner] that he has spinal stenosis at L4-L5 above his prior fusion." He recommended a revision laminectomy at L4-L5 and extension of the fusion. RX 4, pp. 9-10.

A bill in evidence reflects that Petitioner underwent Emergency Room care at Palos Community Hospital on March 12, 2012. PX 3. Petitioner did not offer any records concerning this care.

On May 14, 2012, Dr. Gupta operated on Petitioner's lumbar spine. His operative report (PX 4) reflects that he performed a "revision L4-L5 laminectomy and discectomy" and a posterior spinal fusion from L4 to the sacrum using segmental instrumentation. He documented a disc herniation in the left lateral recess at L4-L5 as well as "foraminal narrowing on the left-hand side" at the same level "due to the disc herniation and resultant scarring and narrowing of the foramen." PX 4.

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At the first post-operative visit, on May 25, 2012, Dr. Gupta noted that Petitioner reported improvement but was still complaining of back, buttock and leg pain. Repeat lumbar spine X-rays showed excellent positioning of the instrumentation "and abundant bone graft." The doctor instructed Petitioner to avoid bending, lifting and twisting and to return to him in six weeks. RX 4, p. 8.

When Petitioner next saw Dr. Gupta, on June 22, 2012, he reported having made a visit to an Emergency Room after taking "an excessive amount of Vicodin." Petitioner reported being given Narcan in the Emergency Room. [No records concerning this Emergency Room visit are in evidence.] Petitioner denied leg pain but complained of some residual left foot symptoms.

Dr. Gupta obtained repeat X-rays, which showed good positioning of the instrumentation. He instructed Petitioner to return to him in six weeks. He indicated Petitioner appeared to be "doing very well." He commented: "at this point, I feel that we should not hopefully need any narcotic medications." RX 4, p.7.

At the next visit, on August 3, 2012, Petitioner complained of aching back pain, rated 4/10, and bilateral leg pain. He also complained of some numbness around his incision.

Repeat lumbar spine X-rays showed excellent positioning of the instrumentation "with evidence of resorption of the bone with fusion mass." Dr. Gupta expressed concern as to whether the fusion was healing. He recommended that Petitioner begin using a bone stimulator, discontinue his brace and not increase his activities. He instructed Petitioner to return in three months. RX 4, p. 5.

On October 26, 2012, Petitioner returned to Dr. Gupta and indicated he was off work and was continuing to use the bone stimulator. He complained of aching back pain and occasionally sharp bilateral leg pain. Repeat X-rays showed good positioning of the instrumentation "with continued incorporation of the fusion mass."

Dr. Gupta commented that he "would like to see a more exuberant fusion mass." He expressed concern that Petitioner was experiencing a delayed union. He recommended that Petitioner continue using the bone stimulator and exercise caution with bending, lifting and twisting. He instructed Petitioner to remain off work. RX 4, p. 4.

Dr. Gupta gave a deposition on behalf of Petitioner on November 29, 2012. PX 1. Dr. Gupta testified he is a fellowship-trained, board certified orthopedic surgeon. He focuses primarily on spinal problems. PX 1 at 5.

Dr. Gupta testified he independently recalls Petitioner. Petitioner has been his patient since 2001. Following the work accident of May 23, 2011, he saw Petitioner on May 27, 2011. Petitioner indicated he had experienced an onset of back and leg pain on May 23, 2011 after

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lifting a 50-gallon drum. Petitioner complained of intense, 8/10 pain, 50% back and 50% leg. Dr. Gupta testified Petitioner's symptoms were significant in terms of their intensity and location. The leg complaints were possibly indicative of radiculopathy and nerve compression. PX 1 at 7. He noted no neurologic deficits on examination. He was concerned Petitioner might have sustained an injury at the L4-L5 level, above the previous fusion. Specifically, he was concerned that the lifting incident might have caused a disc herniation. Petitioner's stenosis probably predated the injury but the injury "led to the aggravation and presentation of his symptoms." PX 1 at 8. Prior to May 23, 2011, Petitioner had been doing well for a "long, long time." PX 1 at 10.

Dr. Gupta testified he operated on Petitioner's lumbar spine on May 14, 2012. During the surgery, he opened the spinal canal at L4-L5, "removed a portion of disc that was herniated" and extended the rods and instrumentation "up one more level to incorporate the L4-L5 level." The herniation at L4-L5 "was definitely compressing the foramen." PX 1 at 11-12.

Dr. Gupta testified he always hopes to avoid surgery. Before he operated on Petitioner on May 14, 2012, he recommended epidural injections. Petitioner had two such injections, on August 23 and October 11, 2011, at the L4-L5 level. A pain management specialist at APAC performed these injections. The injections did not provide lasting relief, which is why he went on to perform surgery. PX 1 at 13-14.

Dr. Gupta testified that, as of October 16, 2012, the fusion had not yet fully healed. He recommended a bone stimulator and continued to keep Petitioner off work. PX 1 at 16. He plans to see Petitioner again.

Dr. Gupta testified that the lumbar spine MRI performed in 2001 showed "a central disc herniation at L5-S1 which had a slightly right-sided component." PX 1 at 18. On January 16, 2012, he performed a posterior lumbar interbody fusion at L5-S1. Petitioner "recovered fully" following this surgery and resumed full duty. As of April 18, 2002, Petitioner denied leg pain and complained of only minimal soreness. PX 1 at 19. As happens with some patients, Petitioner "fell off the face of the earth until he had problems again" in 2009. On April 2, 2009, Petitioner complained of back pain secondary to lifting a box. A CT scan performed at that time showed a central disc herniation at L4-L5. PX 1 at 20. In his notes, he described this herniation as "very small." He recommended anti-inflammatories and epidural steroid injections. PX 1 at 21. After undergoing two injections, Petitioner reported complete resolution of his symptoms and was released to return to full duty. PX 1 at 21-22.

Dr. Gupta testified he did not see Petitioner between May of 2009 and May 27, 2011. Petitioner "was doing well" during this interval. PX 1 at 22.

Dr. Gupta opined, to a reasonable degree of medical certainty, that the 2011 lifting injury "aggravated the L4-L5 disc herniation that [Petitioner] had" in 2009. PX 1 at 23. Dr. Gupta based this opinion on two factors: the progression of symptoms and the radiographic findings. PX 1 at 23. Petitioner's symptoms were acute on May 27, 2011. Petitioner thought

the drum he lifted that day was empty but it was not. That contributed to Petitioner's injury. PX 1 at 25.

Dr. Gupta opined that Petitioner is still recovering from surgery and has not reached maximum medical improvement. The "fusion mass is not solid yet." PX 1 at 25. He does not have a crystal ball to tell him how Petitioner's situation will work out. Petitioner's job is such that he could have other injuries in the future. PX 1 at 26. It is "very likely" that Petitioner will require continued care. PX 1 at 28. Petitioner's job involves driving a semi, hitching trailers and some cargo handling. PX 1 at 28. Petitioner is not currently able to perform this job. Releasing Petitioner to work "would jeopardize" the healing of the fusion. PX 1 at 29. Petitioner has been unable to work since May 27, 2011. PX 1 at 29.

Dr. Gupta testified that his charges are fair, reasonable and customary for the services rendered. He further opined that the charges relate to the work accident of May 2011. PX 1 at 30.

Under cross-examination, Dr. Gupta testified he has not seen Petitioner since October 26, 2012. PX 1 at 31. The opinions he has rendered are based, to some degree, on the history Petitioner provided. If the history is not correct, his opinions could change. PX 1 at 31.

Dr. Gupta acknowledged he does not know how much a 50-gallon drum weighs. PX 1 at 32. He would "imagine" that such a drum is a "pretty heavy object" but he has never weighed a drum. PX 1 at 33. The radiologist who compared the 2009 and 2011 scans did not note any significant change. PX 1 at 34-35. Dr. Salman also saw no significant change. PX 1 at 35.

Dr. Gupta acknowledged that a disc adjacent to a fusion can be affected due to stress over time regardless of trauma. It is possible for "adjacent level syndrome" to occur over a ten-year period, even if no intervening trauma took place. PX 1 at 36.

Dr. Gupta acknowledged telling Petitioner in January of 2002 that there was a 5% likelihood he would not heal and would require revision surgery. At that time, he did not anticipate that Petitioner would have a work accident. PX 1 at 37. On September 18, 2003, he told Petitioner he expected Petitioner to experience pain from time to time. PX 1 at 37. As of that date, Petitioner was experiencing increased pain that was not linked to any specific event. PX 1 at 38. As of April 2, 2009, Petitioner was experiencing leg pain as well as back pain. He recommended epidural injections to treat radiculopathy. He does not know whether Petitioner continued seeing Dr. Salman for pain management between May of 2009 and May of 2011. PX 1 at 39-40. Disc herniations can resolve on their own but this does not always occur. The inflammation sometimes gets better over time. PX 1 at 40-41. He does not know whether Petitioner continued smoking in 2011 and 2012. He asked Petitioner to stop smoking because he was concerned about the healing of the fusion. To his knowledge, Petitioner did in fact stop smoking. PX 1 at 42. Petitioner had the possibility of needing additional care after the 2002 fusion, even though he reached maximum medical improvement. Once an annular tear occurs, the spine is more susceptible to trauma. PX 1 at 42. The 2009 injury weakened Petitioner's

condition. PX 1 at 43. Petitioner would not currently be able to perform even sedentary duty because he is experiencing some sitting intolerance. Petitioner might be able to perform sedentary duty in the future. PX 1 at 43. He does not know how much he changed for a fusion in 2012. PX 1 at 43.

On redirect, Dr. Gupta testified that Petitioner's account of the May 23, 2011 accident was consistent with his examination and findings as the cause of his condition of ill-being. PX 1 at 44. Transitional syndrome is not the sole cause of Petitioner's condition. The lifting injury of May 23, 2011 is another cause. PX 3 at 44-45. The L5-S1 spine segment he operated on in 2002 healed. The fact that it healed diminished the chance of recurrence. Px 1 at 45-46.

Under re-cross, Dr. Gupta testified a "revision" procedure involves revisiting something that was previously operated on. PX 1 at 46. When he indicated in his October 28, 2011 note that he planned to perform a "revision" surgery, he meant he planned to revisit some of the previously operated portion of Petitioner's spine. PX 1 at 46-47.

Dr. Bauer gave a deposition on behalf of Respondent on December 5, 2012. RX 2. Dr. Bauer testified he completed a residency in neurosurgery in 1979 and obtained board certification in neurosurgery in 1981. He has been in practice at Lutheran General Hospital since 1981. He currently has academic appointments at the University of Illinois and Rush University. RX 2 at 5-6.

Dr. Bauer testified he is not sure who sent Petitioner to him. He did not treat Petitioner. He examined Petitioner and authored a report. RX 2 at 6-7. In connection with his examination, he reviewed records from WorkRight, Palos Community Hospital, Dr. Gupta and Dr. Salman. RX 2 at 7. He also reviewed a CT scan dated May 25, 2011 and lumbar spine X-rays taken on May 27, 2011. He subsequently reviewed a CT myelogram performed after his examination. RX 2 at 8.

Dr. Bauer testified that Petitioner told him he originally injured his back in 2001, while pulling up on a trailer hitch. Dr. Gupta performed a fusion at L5-S1 on January 16, 2002. Petitioner continued seeing Dr. Gupta thereafter, with the doctor initially releasing him to light duty and later releasing him to full duty as of April 14, 2003. Petitioner indicated he returned to Dr. Gupta on April 2, 2009. Petitioner complained of back and bilateral leg pain at that visit. He attributed this pain to lifting a box of Christmas lights at home. RX 2 at 9. A CT scan taken at that time showed a central herniated disc at L4-L5. RX 2 at 9. Petitioner indicated he underwent two epidural injections thereafter and resumed full duty as of May 14, 2009. RX 2 at 10.

Dr. Bauer testified that Petitioner told him he experienced a sharp onset of back pain on May 23, 2011, after lifting an empty drum. Petitioner indicated he slipped and cut the palm of his hand following this lifting incident. Petitioner indicated he was initially diagnosed with a hand laceration and a back strain. Petitioner told him he sought Emergency Room care on May 25, 2011 due to back pain and left foot numbness. RX 2 at 10. At the Emergency Room, he

underwent a lumbar spine CT scan, which showed a moderate broad-based disc bulge at L4-L5 and the previous fusion. RX 2 at 10-11. Thereafter, Dr. Gupta diagnosed a "transition syndrome" at L4-L5.

Dr. Bauer testified that the term "transition" refers to a level of the spine adjacent to a previous fusion. Transition syndrome is "generally more of a chronic problem." It usually relates to degeneration of the disc below or above a previous fusion. RX 2 at 11.

Dr. Bauer testified Petitioner was "neurologically intact" as of his examination "except for some subjective mild hypesthesia to pin or slight numbness to pin in the side of his left foot compared to the right." Straight leg raising was negative but Petitioner complained of some hamstring tightness with that maneuver. Negative straight leg raising "generally suggests there is no nerve root compression." RX 2 at 14.

Dr. Bauer testified he interpreted the May 25, 2011 CT scan as showing a solid instrumented fusion at L5-S1 and "very mild stenosis at L4-L5." He described the L4-L5 disc space as "reasonably preserved." RX 2 at 15. Petitioner's negative straight leg raising was consistent with the CT scan, which showed no nerve root compression. RX 2 at 15.

Dr. Bauer testified that Petitioner's symptoms were "suggestive of spinal stenosis." Since stenosis was "not identified on [the] CT scan," he agreed with Dr. Gupta that a CT myelogram was needed. A CT myelogram is a "better test" for detecting stenosis. RX 2 at 16. The CT myelogram did not explain Petitioner's symptoms because it did not show stenosis causing nerve root compression. Based on the CT myelogram, he would not have recommended surgery. Surgery was neither reasonable nor necessary. RX 2 at 17. Based on the CT myelogram, he would have diagnosed "minimal disc degeneration at L4-L5 with subjective complaints of back pain." RX 2 at 17.

With respect to causation, Dr. Bauer testified that, while Petitioner attributed the onset of his symptoms to the incident of May 23, 2011, he does not see "any pathology that occurred as a result of that accident." RX 2 at 18. He would not describe the minimal degeneration at L4-L5 as "adjacent level or transition syndrome or anything like that." RX 2 at 18. The fact that Petitioner went on to have surgery does not affect any of the opinions he has rendered.

Dr. Bauer testified that the treatment following fusion extension surgery generally consists of wearing a back brace for two to three months followed by a physical therapy rehabilitation program. Most people who undergo such surgery are able to resume working six months after the surgery and reach maximum medical improvement a year after the surgery. RX 2 at 19. In Petitioner's case, the need for restrictions, if any, is unrelated to the work accident. RX 2 at 19-20.

Dr. Bauer testified that none of the diagnostic tests performed after the May 23, 2011 work accident differed from the 2009 CT scan. RX 2 at 20.

Under cross-examination, Dr. Bauer testified he addressed his report to MES Solutions, a company that sets up examinations. RX 2 at 20-21. He received records, imaging studies and, likely, a cover letter prior to the examination. He did not have the cover letter available at the deposition. RX 2 at 24-25. He took notes during the examination and while he was reviewing the treatment records. [He handed these notes to Petitioner's counsel during the deposition but the notes are not in evidence.] He identified Deposition Exhibit 3 [not offered into evidence] as a subpoena his office received from Petitioner's counsel and records his office produced pursuant to the subpoena, along with a compliance form dated October 23, 2012. The records included his report and a pain diagram that Petitioner completed. The records did not include any cover letter, enclosures such as treatment records or notes. RX 2 at 27. While he diagnosed probable lumbar stenosis due to adjacent level of degeneration, or transition syndrome, when he examined Petitioner, the CT myelogram showed no stenosis and only minimal disc degeneration. This is why he no longer believes Petitioner has transition syndrome. The CT scan of May 23, 2011 showed mild stenosis but it was a limited study performed without contrast. RX 2 at 29. The May 23, 2011 work accident "resulted in the onset of [Petitioner's] symptoms." Petitioner denied having these symptoms before the accident. RX 2 at 29-30.

Dr. Bauer testified he discussed Petitioner's case with Respondent's counsel for about five minutes prior to the deposition. During that discussion, he learned the results of the CT myelogram. He also learned that Petitioner underwent surgery extending the prior fusion. RX 2 at 30-31.

Dr. Bauer testified he performs one or two Section 12 examinations per week. RX 2 at 31. He has performed medical-legal consulting for twenty years. RX 2 at 31-32. He probably gives one to two depositions per month. RX 2 at 32. He reviews records in connection with examinations on his own time, outside of the office. RX 2 at 32. He devotes less than 5% of his practice to medical-legal consulting. RX 2 at 32-33. About 85 to 90% of the consulting he performs is for defendants. RX 2 at 33. He charges \$600 per hour to review records and \$1,800 for the first hour of deposition time. RX 2 at 36.

On redirect, Dr. Bauer acknowledged he did not produce his notes in response to the subpoena he received from Petitioner's counsel. He does not know whether his notes would be considered medical records. RX 2 at 38. He testified that a CT myelogram is "much more accurate" than a CT scan. If both tests are done, he would go by the results of the CT myelogram. RX 2 at 38. The symptoms Petitioner complained of after the May 23, 2011 accident are subjective and similar to those he complained of in 2009. RX 2 at 38-39. The onset of symptoms in 2011 corresponded with the medical records and diagnostic reports. RX 2 at 39.

On January 25, 2013, Petitioner returned to Dr. Gupta and complained of some increasing back stiffness since mid-December. Petitioner indicated he was continuing to use the bone stimulator. Dr. Gupta obtained repeat lumbar spine X-rays. He indicated there was "still not an abundant fusion mass." He instructed Petitioner to be careful with bending, lifting

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and twisting, continue using the bone stimulator and return in three months for additional X-rays. RX 4, p. 2.

At the hearing held on May 24, 2013, Petitioner testified his symptoms have improved since the fusion. He last saw Dr. Gupta in April and was scheduled to return to the doctor in August. Respondent stopped paying him temporary total disability benefits in February of 2012. His wife's group carrier paid some of his medical bills. He did not lose any time from work in 2009. Dr. Gupta released him to full duty on May 14, 2009, at which point he felt "perfect." He felt "perfectly fine" when he went to APAC in October of 2009. Thereafter, he did not undergo any additional back care until after his May 23, 2011 work accident. He had no difficulty performing full duty between 2009 and the May 23, 2011 work accident.

Under cross-examination, Petitioner testified he injured his back in January of 2001, while working for Roadway. He is not sure what his 2001 MRI revealed. Dr. Gupta released him to full duty in April of 2001. He returned to Dr. Gupta on June 14, 2001 because his symptoms increased. At that time, Dr. Gupta was hesitant about performing a fusion. Dr. Gupta recommended an IDET procedure rather than a fusion but workers' compensation would not pay for an IDET procedure. A nurse case manager accompanied him to an IDET consultation. On January 3, 2002, Dr. Gupta recommended a fusion. Petitioner could not recall exactly what Dr. Gupta told him at that time about the risk of revision surgery but he knows the doctor mentioned revision surgery as a possibility. In September of 2003, he returned to Dr. Gupta due to pain. The doctor told him he could expect to experience pain from time to time. The doctor recommended weight loss. Petitioner testified he lost 112 pounds thereafter. When he signed the contracts that were approved on December 23, 2003, he knew there was some risk of revision surgery. The settlement had the effect of closing his 8(a) rights for the 2001 accident. Petitioner testified he could not recall exactly what he reported to Dr. Gupta on May 14, 2009 in terms of the degree of his symptom resolution. On that date, Dr. Gupta prescribed Vicodin in the event Petitioner needed to take it after returning to work. Petitioner testified he was not able to take Vicodin at work due to DOT regulations. Dr. Gupta recommended annual return visits. Petitioner could not recall his exact diagnosis as of September 14, 2009. He was experiencing some groin numbness. Dr. Gupta gave him a prescription which he did not fill. He did not recall telling Dr. Gupta he was out of Vicodin on October 2, 2009. He was working full duty at that time but nevertheless procured a full duty release. Dr. Gupta reviewed CT results with him on June 24, 2011. The CT showed a herniation at L4-L5. The previous CT scan also showed a herniation at L4-L5. Petitioner acknowledged smoking cigarettes in the past. Between 2009 and 2011, he smoked about half the time. During that time, he was prohibited from smoking at work and he worked about 60 hours per week. He most recently quit smoking in January of 2013 but reverted one weekend. Dr. Gupta told him that smoking increased the risk of a failed fusion. Since undergoing the fusion, he has smoked a "tiny bit." The fusion is now 99% healed. He used the bone stimulator that Dr. Gupta prescribed.

The case was continued to June 21, 2013, at Respondent's request, because, as of the initial hearing, Respondent had not received a response to a subpoena it issued to Walgreen's. Walgreen's certified twenty-nine pages of records on June 14, 2013. RX 12.

At the continued hearing, Petitioner testified he is still off work. No doctor has released him to work. He has not incurred any additional medical bills. He testified at length concerning the entries on the prescription records produced by Walgreen's. The non-Hydrocodone medications relate to general health conditions, not his back. The Hydrocodone prescribed on October 24, 2009 was prescribed by his dentist in connection with jaw surgery. Petitioner testified that Walgreen's is the only pharmacy he uses.

Under cross-examination, Petitioner testified he is not currently earnings any wages. He has not applied for any jobs. In 2009, he uploaded his resume on Monster.com. He volunteers with youth programs in his neighborhood. He has not coached since his work injury. He believes he last coached in early 2011. He became president of an Alsip organization in 2012. He did not receive pay for serving as president. He is no longer a professional fisherman. When asked what activities he engaged in the previous day, he testified his children went to school at 8:15 AM, after which he went to a health club and worked out. He then stopped at Walgreen's to get a list of his medications in preparation for the hearing. He then went home and stayed home.

In addition to the exhibits previously discussed, Petitioner offered into evidence an "off work" slip issued by Dr. Gupta on April 26, 2013. The slip indicates that Petitioner "may not return to work" and that this "restriction" is valid for three months. PX 2. Petitioner also offered into evidence a group of medical bills from WorkRight, Dr. Gupta, Weiss Memorial Hospital, APAC Center (Dr. Salman), University of Chicago Physicians and Palos Community Hospital. PX 3.

In addition to the exhibits previously discussed, Respondent offered into evidence a list of payments it made to various medical providers (RX 11), records it received from Walgreen's pursuant to subpoena (RX 12) and records from Walgreen's produced by Petitioner (RX 13), with RX 13 admitted over Petitioner's objection.

(CONT'D)

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Brian Kovaka v. Nexeo Solutions
11 WC 26100

Arbitrator's Credibility Assessment

As noted previously, there are some discrepancies between Petitioner's testimony and his treatment records.

Petitioner testified he felt "perfect" when Dr. Gupta released him to full duty on May 14, 2009. The doctor's note of that date reflects that Petitioner reported "almost complete resolution of his symptoms" and complained of localized lumbosacral pain on examination. The note also reflects that Dr. Gupta prescribed Vicodin and Arthrotec and instructed Petitioner to return in three months. RX 4, p. 21. The doctor's next note is dated two years later, May 27, 2011. RX 4, pp. 19-20.

Petitioner testified he felt "perfectly fine" when he saw Dr. Salman on October 2, 2009. The doctor's note of that date reflects that Petitioner reported 80% improvement following an injection of September 18, 2009. It also reflects that Petitioner reported being able to drive a truck for six hours daily but with "frequent breaks to stand up." It further reflects that Petitioner reported using Vicodin ES and was "out" of this medication, with the doctor prescribing more. The doctor instructed Petitioner to return in three months "or sooner if needed." RX 9, p. 11. The doctor's next note is dated almost two years later, August 19, 2011. RX 9, pp. 9-10.

There is also a discrepancy between the extent of the Walgreen's records produced by Petitioner and the Walgreen's records produced in response to Respondent's subpoena.

The Arbitrator has considered the foregoing in evaluating Petitioner's believability. While it appears Petitioner was not "perfect," symptom-wise, when he last saw Drs. Gupta and Salman in 2009, it also appears he was fairly functional by October 2, 2009. It is also clear he elected to forego the recommended return appointments. To the Arbitrator, this implies he was able to manage on his own. As for the prescription records, there is no question that Petitioner brought fewer such records to the hearing than Walgreen's produced pursuant to subpoena. At the continued hearing, however, Petitioner testified at length concerning the entries on the subpoenaed records. Only a few of the listed medications, including Hydrocodone, are potentially related to back pain. The Arbitrator finds credible Petitioner's testimony that the Hydrocodone he obtained pursuant to an October 24, 2009 prescription was prescribed by his dentist in connection with jaw surgery.

The Arbitrator finds Petitioner credible overall.

Did Petitioner establish a causal connection between his undisputed work accident of May 23, 2011 and his lumbar spine condition of ill-being?

The Arbitrator finds that the undisputed lifting-related work accident of May 23, 2011 aggravated Petitioner's lumbar spine condition of ill-being and brought about the need for further surgery. In so finding, the Arbitrator relies, in part, on Petitioner's detailed description of the mechanism of injury, the gap in treatment between October of 2009 and the accident, with Petitioner performing full duty during that gap, and the consistent histories set forth in the post-accident treatment records. While a lumbar spine CT scan performed on March 18, 2009 showed a herniation at L4-L5 (RX 9, p. 26), Dr. Gupta described that herniation as "very small" in his note of April 2, 2009 and recommended only conservative care. RX 4, p. 23. There is no indication that Dr. Gupta discussed, let alone recommended, extending the previous L5-S1 fusion when he treated Petitioner in 2009.

The Arbitrator views Dr. Gupta's July 12, 2001 mention of L4-L5 disc pathology (RX 4, p. 47) as an error in transcription since the doctor attributed Petitioner's symptoms to the L5-S1 disc in a subsequent note (RX 4, p. 44).

In finding in Petitioner's favor on the issue of causation, the Arbitrator elects to assign greater weight to the opinions of Dr. Gupta than to those of Dr. Bauer. The Arbitrator notes that Dr. Gupta has treated Petitioner for more than a decade while Dr. Bauer saw Petitioner on one occasion. The Arbitrator also notes that Dr. Bauer conceded Petitioner 1) reported an immediate onset of disabling symptoms after the May 23, 2011 accident; and 2) exhibited symptoms consistent with stenosis on examination. While Dr. Bauer expressed awareness of the May 14, 2012 surgery at his deposition, he did not address Dr. Gupta's intra-operative finding of "scarring and narrowing of the foramen" at L4-L5 due to the disc herniation at that level. Instead, he described the L4-L5 pathology as "minimal disc degeneration." RX 2 at 17.

Is Petitioner entitled to medical expenses?

Petitioner seeks an award of the following medical expenses:

WorkRight Occupational 5/23/11, office visit	\$ 245.00 (balance)
Weiss Memorial Hospital 5/27/11, lumbar spine X-rays	\$ 131.58 (balance)
Palos Community Hospital Emergency Room, 3/12/12	\$ 150.00 (balance)
APAC (Dr. Salman) 8/19/11 – 10/13/11	\$ 3,820.00 (balance)

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Dr. Gupta	
10/26/12	\$ 10.00 (deductible)
1/25/13	\$ 30.00
4/26/13	\$ 30.00
Weiss Memorial Hospital	
1/25/13, lumbar spine X-rays	\$ 118.42 (balance)
4/26/13, lumbar spine X-rays	\$ 137.81 (balance)
University of Chicago Physicians	
1/25/13	\$ 20.00 (balance)
4/26/13, lumbar spine X-rays	\$ 58.00 (balance)

PX 3.

At the outset, the Arbitrator declines to award the balance associated with the Emergency Room visit of March 12, 2012. Petitioner failed to offer any Emergency Room records to support the claimed balance of \$150.00. The Arbitrator also declines to award any of the balances associated with the care rendered in 2013 other than the balance associated with Dr. Gupta's office visit of January 25, 2013. RX 4, p. 2. Petitioner did not offer any 2013 treatment records into evidence to support his claim for these balances.

With respect to Dr. Gupta, the Arbitrator awards the \$184.00 charge for the visit of October 26, 2012 and the \$184.00 charge for the visit of January 25, 2013 (PX 3), subject to the fee schedule. Those bills reflect Blue Cross adjustments but there is no evidence that Blue Cross is an 8(j) carrier.

The Arbitrator turns to the remaining claimed balances. The Arbitrator notes that neither party submitted a fee schedule analysis. The Arbitrator has compared the bills in PX 3 with the payment print-out submitted by Respondent. RX 11. That print-out reflects a \$705.73 payment to WorkRight Occupational for services rendered on May 23, 2011. The WorkRight bill submitted by Petitioner, which reflects a balance of \$245.00 remaining after the \$705.73 payment, appears to reflect improper balance billing. The Arbitrator declines to award the claimed \$245.00. The Arbitrator awards the Weiss Memorial Hospital bill of \$518.05 for lumbar spine X-rays performed on May 27, 2011, subject to the fee schedule. The bill reflects a Blue Cross adjustment but Respondent did not establish that Blue Cross is an 8(j) group carrier. See Hill Freight Lines, Inc. v. Industrial Commission, 36 Ill.2d 419 (1968). Petitioner testified it was his wife's group carrier that paid some of his bills.

The payment print-out (RX 11) reflects payments of \$806.36 and \$469.00 to Advanced Pain (APAC) for services rendered on August 23, 2011. There is no way for the Arbitrator to tell whether these payments represent the amount owed per the fee schedule. The payment print-out reflects a payment of \$0 to Advanced Pain for services rendered on October 11, 2011.

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Based on the very limited and somewhat confusing information offered by the parties, the Arbitrator awards the \$3,820.00 APAC balance, subject to the fee schedule and with Respondent receiving credit for the payments reflected on RX 11.

Is Petitioner entitled to temporary total disability benefits?

Petitioner testified Respondent discontinued the payment of temporary total disability benefits as of February 24, 2012. He stipulated that Respondent paid \$32,234.04 in benefits. He claims benefits running from February 24, 2012 through the continued hearing of June 21, 2013. Arb Exh 1.

The Arbitrator has found that Petitioner established causation as well as the need for the surgery performed on May 14, 2012. The last treatment note in evidence is Dr. Gupta's note of January 25, 2013. In that note, Dr. Gupta indicated there was still no abundant fusion mass. He instructed Petitioner to be careful with bending, lifting and twisting, continue using the bone stimulator and return in three months "at the one year point" for repeat X-rays. The note is otherwise silent as to work capacity. The only more recent note is the doctor's "off work" slip of April 26, 2013. PX 2. This slip is unaccompanied by any treatment records. The Arbitrator thus has no medical evidence showing why Dr. Gupta is continuing to keep Petitioner off work. Respondent's Section 12 examiner, Dr. Bauer, testified that most patients who undergo fusion extension surgery reach maximum medical improvement within about a year.

On this record, the Arbitrator awards temporary total disability benefits from February 24, 2012 through April 26, 2013, a period of 61 1/7 weeks.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Daivan Redmond,
Petitioner,

vs.

NO: 08 WC 12560

Hartgrove Hospital,
Respondent.

14IWCC0508

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 22, 2013 is hereby affirmed and adopted.

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.

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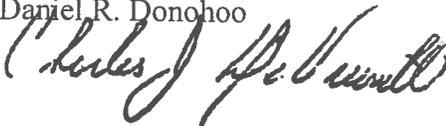
Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 26 2014

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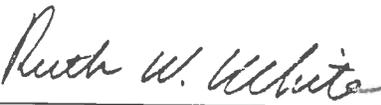


Daniel R. Donohoo



Charles J. DeVriendt

Charles J. DeVriendt



Ruth W. White

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

REDMOND, DAIVAN

Employee/Petitioner

Case# **08WC012560**

HARTGROVE HOSPITAL

Employer/Respondent

14IWCC0508

On 5/22/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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:

0800 BRISKMAN & BRISKMAN
BARRY E BLUMENFELD
3424 W 26TH ST SUITE 202
CHICAGO, IL 60623

2623 McANDREWS & NORGLER LLC
JAMES E MURRAY
53 W JACKSON BLVD SUITE 315
CHICAGO, IL 60604

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Daivin Redmond

Employee/Petitioner

v.

Hartgrove Hospital

Employer/Respondent

Case # 08 WC 12560

Consolidated cases: N/A

14IWCC0508

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 **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Chicago**, on **May 18, 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 _____

14IWCC0508

FINDINGS

On **February 20, 2005**, 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 not* causally related to the accident as explained *infra*.

In the year preceding the injury, Petitioner earned **\$28,600.00**; the average weekly wage was **\$550.00**.

On the date of accident, Petitioner was **44** years of age, *single* with **no** dependent children.

Petitioner *has* received all reasonable and necessary medical services as explained *infra*.

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

Respondent shall be given a credit of **\$2,017.34** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$2,017.34**.

Respondent is entitled to a credit of **\$307.48** under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of \$336.67/week for 2 and 5/7th weeks, commencing February 20, 2008 through March 10, 2008, as provided in Section 8(b) of the Act.

As stipulated by the parties, Respondent shall be given a credit of \$2,017.34 for temporary total disability benefits that have been paid. *See* AX1.

Other Benefits

As explained in the Arbitration Decision Addendum, the Arbitrator finds that Petitioner failed to establish causal connection between his injury at work and his claimed current condition of ill being, Respondent's liability for any outstanding bills, or his entitlement to permanent partial disability benefits. Thus, these benefits are denied.

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

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



Signature of Arbitrator

May 22, 2013
Date

MAY 22 2013

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*

Daivin Redmond
Employee/Petitioner

Case # 08 WC 12560

v.

Consolidated cases: N/A

Hartgrove Hospital
Employer/Respondent

FINDINGS OF FACT

14IWCC0508

Petitioner testified that he was a mental health counselor employed by Respondent on the date of accident. He provided patient care for mental health patients and sometimes had to restrain patients.

On February 20, 2008, Petitioner testified that he was handling a patient that was irate and acting out. A charge nurse decided to restrain and medicate the patient. Petitioner was assisting in this task and bent down to put a restraint strap on the patient's leg. Petitioner testified that the patient kicked him on the left side of the head then causing him to hit the right side of his head on a wall. Petitioner testified that he blacked out and, after he woke up, he was in excruciating pain experiencing a headache, stiffness in the neck and ringing in the left ear.

The medical records reflect that Petitioner went to Provident Hospital on February 21, 2008. Petitioner's Exhibit ("PX") 2. Petitioner underwent a CT scan of the head and neck at 7:29 p.m. for complaints of "head/neck pain no infusion." *Id.* The brain CT scan was normal. *Id.* The neck CT scan showed mild degenerative changes in the cervical spine and no fractures or dislocations. *Id.* Petitioner was discharged. *Id.*

Petitioner also went to the Clearing Clinic on February 21, 2008. PX1. Petitioner reported that a patient kicked him in the head and that he had pain at a level of 8/10. *Id.* Petitioner reported that his thinking was a little slower than before and he contributed that to his injury. *Id.* On examination, Petitioner's vision was 20/25 on the right and 20/25 on the left. *Id.* Petitioner appeared neurologically intact, evaluation of the head and neck were negative for acute signs of trauma or injury, Petitioner had no signs of erythema, edema, or ecchymosis, his pupils were equal and reactive to light and accommodation, his extraocular eye movements were intact, and he had grossly intact cranial nerves II through XII. *Id.* Dr. Gorovits noted that Petitioner's emergency room CT scan from the night before was negative. *Id.* He diagnosed Petitioner as status post head contusion and with a cervical strain. *Id.* Dr. Gorovits issued work restrictions including seated activities only, no kneeling/squatting, and no contact with psychiatric patients. *Id.*

On February 25, 2008, Petitioner returned to the Clearing Clinic and reported pain at a level of 7/10. *Id.* He complained of short term memory loss, but Dr. Gorovits noted "[a]t the same time patient is able to remember that he is having short term memory loss." *Id.* Petitioner also complained of difficulty concentrating and trouble remembering things such as key placement, but Dr. Gorovits noted "[a]t the same time patient was able to drive to the clinic in a faraway neighborhood by himself without any help from outside source." *Id.* Dr. Gorovits examined Petitioner and found no change in his condition from Petitioner's last visit. *Id.* He maintained his diagnoses and Petitioner's work restrictions, and ordered an MRI to rule out an acute event. *Id.*

An undated progress note from Provident Hospital also reflects that Petitioner complained of short term memory loss. PX2.

On February 29, 2008, Petitioner went to Stroger Hospital with continued complaints of headache after head and neck trauma on February 20, 2008. PX2. Petitioner was diagnosed with a concussion, his negative CT scans were noted, Tylenol 3 was prescribed, and a follow-up visit was scheduled for March 5, 2008. *Id.* On that date, Petitioner reported continued headaches, short term memory loss, and stress pain to the left side of the neck. *Id.*

On April 8, 2008, Petitioner saw a clinic audiologist for an evaluation. PX3. He reported decreased hearing sensitivity, otalgia, and tinnitus status post head trauma as well as a history of ear infections and hemophilia. *Id.* Petitioner's audiology report revealed normal hearing level bilaterally, normal hearing sensitivity, excellent speech discrimination bilaterally, and was otherwise normal. *Id.* Based on Petitioner's audiology test results, the audiologist noted that Petitioner would have no problems with hearing on the right and that he may have difficulty discerning some speech sounds when presented below normal conversational speech levels on the left. *Id.*

On October 10, 2008, Petitioner returned to Stroger Hospital for follow up and, on November 20, 2008, Petitioner underwent a brain MRI for "persistent attention and concentration deficits." PX2; PX3. The results were normal. PX3. Petitioner testified that he did not seek any further medical attention with the exception of going to the Beltone Hearing Care Center, which he "looked up" on his own. On cross examination Petitioner testified that Beltone gave him two hearing aid units that he used for a while, but then returned to Beltone because he could not afford them.

Petitioner testified that he returned to work in March of 2010 and believes that he was released to perform his regular job. Prior to returning to work, he testified that he experienced dizziness, loss of hearing and ringing in his left ear, and as time went on he noticed hearing loss in right ear also. Petitioner testified that he reported these symptoms to Stroger Hospital staff.

Petitioner was terminated from Respondent's employment. He currently works for Allstate as an insurance agent and he also works part-time at Loretto Hospital as a mental health specialist. On cross examination, Petitioner testified that his work at Allstate involves travel and that he drives his own car. He further testified that his hours at Loretto vary, but he tries to work 40 hours per week if he can.

Regarding his current condition, Petitioner testified that cold air and temperature changes cause sharp pain down his neck radiating into the left shoulder which he testified that he was experiencing during his trial. Petitioner also testified that he does not hear really well and that he experiences ringing in both ears, more prominently on the left. Petitioner further testified that he takes muscle relaxers and Tylenol with codeine; he could not recall the prescribing doctor's name. He testified that he has difficulty sleeping at night, left shoulder pain when he raises his left shoulder/arm, and headaches which he never had before his injury at work occurring one to two times per week brought on by sudden movements.

ISSUES AND CONCLUSIONS

The Arbitrator hereby incorporates by reference the Findings of Fact delineated above and the Arbitrator's and parties' exhibits are made a part of the Commission's file. After reviewing the evidence and due deliberation, the Arbitrator finds on the issues presented at trial as follows:

In support of the Arbitrator's decision relating to the admissibility of Petitioner's proposed exhibits 4a and 4b, the Arbitrator finds the following:

Respondent objected to the admissibility of Petitioner's Exhibits 4a and 4b based on lack of foundation and hearsay. The Arbitrator reserved ruling on the objections and received argument from both parties on the dispute. In light of the parties' arguments and after reviewing the proposed exhibits, the Arbitrator finds that insufficient foundation was laid for the documents which were not obtained pursuant to Section 16 of the Act, and that the documents are hearsay. Thus, the Arbitrator sustains Respondent's objections to PX4a and PX4b.

In support of the Arbitrator's decision relating to Issue (F), whether the Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:

The Arbitrator finds that Petitioner's claimed current condition of ill being is not related to the injury sustained on February 20, 2008. In so finding, the Arbitrator finds that Petitioner's testimony is not credible and notes significant inconsistencies between his testimony at trial and the medical records. While Petitioner's recitation of the accident itself is consistent with the medical records, his testimony about symptomatology experienced at the time of the accident and thereafter is inflated and inconsistent with the medical records. For example, the medical records do not reflect that Petitioner had any loss of consciousness after the injury at work and his objective diagnostic test results within 24 hours of the injury and long thereafter were normal. Moreover, while Petitioner testified at trial that he had ongoing left shoulder and neck pain in addition to headaches brought on by any sudden movements, there is no support in the medical records for the proposition that he sustained any injury to the left shoulder, neck or head requiring medical treatment. The only reference to the neck is a diagnosis of a cervical sprain for which no medical treatment was ordered. The medical records contain no reference to any left shoulder injury or medical treatment whatsoever. No medical treatment was ordered for Petitioner's reportedly severe and sudden-onset headaches stemming from his work accident.

Additionally, less than one week after his work accident Dr. Gorovits highlighted inconsistencies between Petitioner's reported symptomatology and his then-current condition. On February 25, 2008, Petitioner complained of short term memory loss, but Dr. Gorovits noted "[a]t the same time patient is able to remember that he is having short term memory loss." PX2 (*emphasis added*). Petitioner also complained of difficulty concentrating and trouble remembering things such as key placement, but Dr. Gorovits noted "[a]t the same time patient was able to drive to the clinic in a faraway neighborhood by himself without any help from outside source." *Id* (*emphasis added*). Dr. Gorovits' notations are significant when viewed in light of the plethora of normal diagnostic test findings.

Furthermore, no physician rendered any opinion that Petitioner's reported symptomatology about hearing loss, ringing in the ears, memory loss, headaches, or difficulty concentrating were in any way attributable to Petitioner's work accident. Petitioner's head contusion and cervical strain were minimal and no medical treatment was rendered other than diagnostic testing and a short term prescription for pain medication.

Lastly, there is a large gap in time between Petitioner's last medical treatment after his work accident and his

most recent “treatment.” Petitioner’s visit to Beltone in 2013—a company that the Arbitrator deduces sells hearing aid devices—does not constitute medical treatment. No credible testimonial or medical evidence was proffered that Petitioner was seen by a physician at Beltone or anywhere else after November 20, 2008 or that any physician found any of Petitioner’s reported symptomatology to be causally related to his injury at work on February 20, 2008.

Based on all of the foregoing, the Arbitrator finds that Petitioner’s claimed current condition of ill being is not causally related to the injury sustained at work on February 20, 2008.

In support of the Arbitrator’s decision relating to Issue (J), whether the medical services that were provided to Petitioner were reasonable and necessary, and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following:

As explained above, the Arbitrator finds that Petitioner failed to establish any causal connection between his claimed current condition of ill being and his accident at work on February 20, 2008. The only outstanding bills provided at trial are contained in PX4a and PX4b, which were not admitted into evidence. Based on the foregoing, Petitioner’s claim for payment of these outstanding bills is denied.

In support of the Arbitrator’s decision relating to Issue (K), Petitioner’s entitlement to temporary total disability benefits, the Arbitrator finds the following:

The parties stipulated that Petitioner is entitled to temporary total disability benefits beginning on February 20, 2008 through March 10, 2008. Thus, the Arbitrator awards such benefits.

In support of the Arbitrator’s decision relating to Issue (L), the nature and extent of Petitioner’s injury, the Arbitrator finds the following:

Based on the record as a whole, and as explained in detail above, the Arbitrator finds that Petitioner failed to establish causal connection between his claimed current condition of ill being and his injury at work on February 20, 2008. Petitioner sustained a head contusion and neck sprain which completely resolved with use of some pain medication and light duty work restrictions over less than three weeks. Petitioner failed to establish through any credible evidence that he sustained any permanent disability as a result of his injury at work. Thus, the Arbitrator denies Petitioner’s claim for permanent partial disability benefits.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input checked="" type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

NICOLE KIMMONS,

Petitioner,

14IWCC0509

vs.

NO: 09 WC 18168

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by both the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issue of the propriety of certain language in the decision and being advised of the facts and law, changes the decision as written below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

This claim went to arbitration. Thereafter, the parties came to an agreement and submitted a joint proposed decision. The Arbitrator adopted the decision proposed by the parties. However, the Arbitrator added the following paragraph prior to the order: "After the arbitration hearing, the parties submitted an agreed decision. After reviewing all the evidence presented and the parties' agreed decision pursuant to section 23 of the Act, the Arbitrator hereby approves and enters it." That paragraph was not in the joint proposed decision submitted by the parties. The parties are concerned that the above quoted language effectively makes the Arbitrator's decision a settlement contract and may result in waiver of certain rights such as those under sections 8(a) and 19(h) of the Act. While the Commission does not necessarily agree with that assessment, the Commission understands the concern and will accommodate the wishes of the parties. Therefore, the Commission deletes the words "pursuant to section 23 of the Act" from the Decision of the Arbitrator and otherwise affirms and adopts it.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 30, 2013 is hereby affirmed and adopted as changed above.

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.

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

DATED: JUN 27 2014


Ruth W. White


Daniel R. Donohoo


Charles J. DeVriendt

RWW/dw
O-waived
46

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KIMMONS, NICOLE

Employee/Petitioner

Case# **09WC018168**

CHICAGO TRANSIT AUTHORITY

Employer/Respondent

14IWCC0509

On 12/30/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0320 LANNON LANNON & BARR LTD
PATRICIA LANNON KUS
180 N LASALLE ST SUITE 3050
CHICAGO, IL 60601

0515 CHICAGO TRANSIT AUTHORITY
ELIZABETH MEYER
567 W LAKE ST 6TH FL
CHICAGO, IL 60661

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
AGREED ARBITRATION DECISION
NATURE AND EXTENT ONLY**

Nicole Kimmons
Employee/Petitioner

Case # 09 WC 18168

v.

Consolidated cases: _____

Chicago Transit Authority
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Svetlana Kelmanson**, Arbitrator of the Commission, in the city of **Chicago**, on **12/19/13**. By stipulation, the parties agree:

On the date of accident, **3/14/09**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned **\$57,574.40**, and the average weekly wage was **\$1,107.20**.

At the time of injury, Petitioner was **38** years of age, *single* with **1** dependent child.

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

Respondent shall be given a credit of **\$55,676.00** for TTD, **\$12,862.34** for TPD, **\$108,445.78** for maintenance, and **\$0** for other benefits, for a total credit of **\$176,984.12**.

14IWCC0509

After the arbitration hearing, the parties submitted an agreed decision. After reviewing all of the evidence presented and the parties' agreed decision pursuant to section 23 of the Act, the Arbitrator hereby approves and enters it.

ORDER

Respondent shall pay Petitioner compensation that has accrued from **3/15/09** through **12/19/13**, and shall pay the remainder of the award, if any, in weekly payments.

Permanent Partial Disability: Wage differential

Respondent shall pay Petitioner permanent partial disability benefits, commencing **6/12/13**, of **\$566.07/week** for the duration of the disability, because the injuries sustained caused a loss of earnings, as provided in Section 8(d)1 of the Act.

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

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



Signature of Arbitrator

12/27/2013
Date

DEC 30 2013

STATE OF ILLINOIS)
)
COUNTY OF Cook)

14IWCC0509

**ILLINOIS WORKERS' COMPENSATION COMMISSION
AGREED ARBITRATION DECISION**

Nicole Kimmons
Employee/Petitioner

Case # 09 WC 18168

v.

Chicago Transit Authority
Employer/Respondent

AGREED STATEMENT OF FACTS AND CONCLUSIONS OF LAW

The Petitioner, Nicole Kimmons, was employed as a bus driver for the Chicago Transit Authority on March 14, 2009. On that date, the Petitioner was assaulted by a passenger. The passenger physically touched the Petitioner and made inappropriate sexual comments to her.

On March 16, 2009, the Petitioner was sent to Mercy Works for treatment. She advised the doctor that a passenger came on the bus, told her that he had just gotten out of jail and touched her hair and pulled her towards him. The police eventually arrived and arrested the offender but he continued to make threats against her (Px.#1). The doctors at Mercy Works diagnosed post traumatic stress disorder and referred her to a psychologist.

The Petitioner began treating with Dr. Daniel Kelley at Integrative Behavioral Medicine from March 16, 2009 through April 18, 2009. Dr. Kelley diagnosed acute stress and placed the Petitioner on medication. The doctor noted that the Petitioner was having nightmares, tremors, sleep disturbances, agitation and social avoidance. He kept the Petitioner off work (Px.#2).

The Petitioner then began treating with Dr. Holly Houston, another psychologist at Anxiety and Stress Center. The Petitioner treated for several months with Dr. Houston from April 16, 2009 through August 24, 2010. Dr. Houston also diagnosed post traumatic stress. The doctor stated that she did not feel the Petitioner would be able to return to her job as a bus driver since she could not be guaranteed her safety and would not be adequately able to defend herself while operating the bus. Dr. Houston eventually released the Petitioner from her care with a permanent restriction that she would be unable to return to bus driving (Px.#3).

The CTA was unable to accommodate the Petitioner's restrictions and she was eventually laid off by the Respondent. The Petitioner then began conducting a job search to find employment which did not consist of bus driving. The CTA paid maintenance benefits during this period of time. The Petitioner desired to go to cosmetology school, and the Respondent paid for this training. The Petitioner eventually became licensed.

The Petitioner was subsequently hired by Canella School of Hair Design as an instructor. She began her employment on June 12, 2013. The Petitioner identified a copy of her payroll records showing that she was earning \$13.00 an hour as an instructor (Px.#4). The earnings were substantially lower than what she had earned as a bus driver for CTA.

The Petitioner testified that she wanted to elect a wage differential pursuant to §8(d)1 of the Act.

The parties stipulated that the current earnings of a bus operator for the Chicago Transit Authority is \$30.77 per hour or \$1,230.80 per week based on a 40 hour week.

According to Petitioner's Exhibit #4, the Petitioner earned \$9,324.25 from the date of her employment on June 12, 2013 through the date of her last paycheck on November 29,

2013, a period of 24-3/7 weeks. Therefore, the Petitioner's average weekly wage during this period of time was \$381.69.

The Petitioner has elected to receive a wage differential pursuant to §8(d)1 of the Act. She is entitled to receive two-thirds of the difference between \$1,230.80, the current earnings of a bus driver, and \$381.69, her current average weekly wage as an instructor. Therefore, the wage differential is \$566.07. The Petitioner will continue to receive the differential for the duration of her disability.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

14IWCC0510

Alfonso Sepeda,
Petitioner,

vs.

NO: 12WC41328

Keystone Calumet,
Respondent.

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 nature and extent and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 8, 2014 is hereby affirmed and adopted.

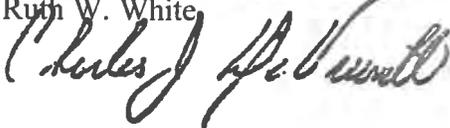
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

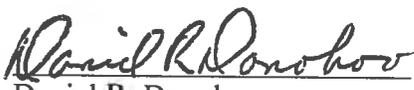
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

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

DATED: JUN 27 2014
o6/18/14
RWW/rm
046


Ruth W. White


Charles J. DeVriendt


Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SEPEDA, ALFONSO

Employee/Petitioner

Case# **12WC041328**

14IWCC0510

KEYSTONE CALUMET

Employer/Respondent

On 1/8/2014, 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 0.08% 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:

0307 ELFENBAUM EVERS & AMARILIO
KAROLINA M ZIELINSKA
940 W ADAMS ST SUITE 300
CHICAGO, IL 60607

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD
JOHN MACIOROWSKI
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

14IWCC0510

Alfonso Sepeda

Employee/Petitioner

v.

Keystone Calumet

Employer/Respondent

Case # **12** WC **41328**

Consolidated cases: **N/A**

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Chicago**, on **October 22, 2013**. By stipulation, the parties agree:

On the date of accident, **July 30, 2012**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned **\$90,454.00**, and the average weekly wage was **\$1,739.50**.

At the time of injury, Petitioner was **34** years of age, *married* with **3** dependent children.

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

Respondent shall be given a credit of **\$20,874.06** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$20,874.06**.

14IWCC0510

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of \$712.55/week for a further period of 16.7 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused 10% loss of use of the left foot.

Respondent shall pay Petitioner compensation that has accrued from July 30, 2012 through October 22, 2013, and shall pay the remainder of the award, if any, in weekly payments.

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

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



Signature of Arbitrator

January 7, 2014

Date

JAN 8 - 2014

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*
NATURE AND EXTENT ONLY

Alfonso Sepeda

Employee/Petitioner

v.

Keystone Calumet

Employer/Respondent

Case # 12 WC 41328

Consolidated cases: N/A

FINDINGS OF FACT

Petitioner testified that he worked for Respondent as an assistant roller in its steel mill for approximately 3 ½ years, and was so employed on July 30, 2012 when he was injured at work. Petitioner testified that he had no prior workers' compensation claims related to his left foot, he never lost time from work for any prior left foot injury, and he never experienced pain in his left foot before this injury.

On the date of injury, Petitioner testified that he was hooking up a bearing weighing over 300 lbs. and dropped it on his left foot. Petitioner was wearing steel-toe boots at the time. He testified that he felt immediate pain "very much." Petitioner reported the injury and an ambulance took him to the hospital for treatment during which time they tried to remove his boot, but were unable to do so in the ambulance.

Medical Treatment

The medical records reflect that Petitioner went to the emergency room at St. James hospital on July 30, 2012. PX1. He reported that he was at work when a big metal object/barrel weighing 300-500 lbs. fell onto his left foot through his steel boot. *Id.* Petitioner reported pain at his first great toe and inability to get his shoe off. *Id.* Petitioner testified that hospital staff had to cut the whole boot off around a steel toe portion of his boot, and the medical records confirm difficulty cutting through the boot. *Id.* He underwent various left foot x-rays, which showed an apparent mildly comminuted but fairly linear oblique mildly displaced fracture through the distal phalanx of the first digit and nondisplaced fractures of the distal phalanges of the first and second toes. *Id.* Petitioner's left foot wound was irrigated and dressed and he was instructed to follow up with Dr. Coats. *Id.* Petitioner testified that he went home the same day with pain at a level of 10/10 and that he received aspirin, which did not help his pain.

Petitioner saw Robert Coats, M.D. ("Dr. Coats") later that day with a postoperative shoe and large bandage over the left great toe, which was removed. PX2-PX3. Petitioner had a comminuted open fracture of the left great toe distal phalanx with obvious nail bed laceration and exposed bone, lacerations on both feet on the medial and lateral aspects of the toe going toward the nail bed, and quite a bit of pain in the left second toe as well. *Id.* Dr. Coats reviewed Petitioner's left foot x-rays noting that they showed a comminuted fracture of the left great toe distal phalanx as well as fracture of the left second toe distal phalanx. *Id.* He diagnosed Petitioner with a left great toe open fracture with lacerations and nail bed involvement, and a left second toe distal phalanx fracture. *Id.* Petitioner testified that he underwent surgery. Dr. Coats performed a digital block to the left great toe, irrigated and debrided foreign material, and repaired lacerations of both the medial and lateral aspects of the toe and re-approximated the nail bed. *Id.*

On August 6, 2012, Dr. Coats noted that Petitioner had a bulky bandage on the foot, which was removed, a spacer that remained underneath the nail bed, no signs or symptoms of infection, but quite a bit of necrosis at the tip of the toe and him swelling and tenderness to palpation. PX2. Petitioner underwent a second series of x-rays on August 2012 which showed a comminuted fracture of the distal phalanx of the first toe, mild splaying of the osseous fragments appearing better aligned than previously seen (as compared to the July 30, 2012 x-rays), and an additional comminuted fracture of the distal phalanx of the second toe which was noted in anatomic alignment. *Id.* Dr. Coats indicated that Petitioner's x-rays showed some improved alignment within the bony structures of the toe distal phalanx. *Id.* He redressed Petitioner's wounds allowing him to start getting his foot wet, restricted weight-bearing on the extremity, recommended ice and elevation as much as possible, and scheduled a follow-up visit in one week. *Id.* Petitioner testified that his foot was still painful at this time.

On August 13, 2012, Dr. Coats noted that Petitioner had an obviously necrotic tip of the toe without any evidence of infection, a nail bed healing quite nicely, and otherwise things looking "pretty good." *Id.* He scheduled a follow-up visit in two weeks. *Id.*

On August 28, 2012, Petitioner returned as instructed for follow-up and underwent a third series of x-rays which showed similar findings as previously described (in the August 8, 2012 x-rays) of comminuted fractures of the distal tuft of the first and second digits with slightly more anatomic alignment within the first digit as compared to the prior exam. *Id.* Dr. Coats noted that the necrosis that Petitioner developed at the tip of his toe was hard and black and, while there was no evidence of infection, Petitioner was getting a little bit of drainage from the transitional zone between the toe and necrotic tissue. *Id.* Dr. Coats noted that Petitioner's x-rays showed that his bone had not quite healed but that overall alignment was acceptable. *Id.* He instructed Petitioner to soak the toe in warm water and peroxide twice a day and redress it. *Id.* Petitioner testified that he did have odor and foot pain at a level of 7/10 at this time.

On September 11, 2012, Dr. Coats noted the continuation of necrosis at the toe and indicated that he would be reevaluated on a weekly basis until either the necrotic tip came off or to decide whether debridement was necessary to accelerate healing. *Id.*

On September 18, 2012, Petitioner reported some drainage and mild odor at home which he was able to control with soaps and dressings. *Id.* Dr. Coats noted that most of the absorbable sutures had fallen out and the eschar seemed to be getting smaller and more remote from the pulp of the toe. *Id.*

On October 2, 2012, Dr. Coats noted that Petitioner had a large eschar at the very distal tip of the total which had "completely declared itself now[.]" *Id.* Petitioner testified that he underwent a second procedure for the necrosis. Dr. Coats' records reflect that he debrided the eschar material from the toe revealing fairly healthy pink granulation tissue. *Id.*

On October 16, 2012, Dr. Coats continued to note the history of Petitioner's injury including a difficult extraction from the boot in the emergency room, multiple lacerations involving the skin and nail bed of the left great toe, and a tuft fracture which was repaired followed by the debridement procedure for the necrotic tissue. *Id.* On examination, Petitioner had a very healthy appearing pink granulation tip of the left great toe, a nail growing quite nicely at the base, and Petitioner reported the ability to wear a regular shoe recently. *Id.* He estimated Petitioner would be able to return to work in approximately 2 to 4 weeks depending on his healing. *Id.*

Petitioner returned on October 23, 2012 at which time he treated the great toe with a silver nitrate swab to facilitate quicker epithelization. *Id.*

On November 9, 2012 Dr. Coats noted that the tip of Petitioner's great toe had epithelized quite nicely. *Id.* He had just a small area of open granulation tissue, and Petitioner reported that he was much better in a regular shoe with really no drainage. *Id.* Dr. Coats ordered some physical therapy to assist with weight bearing. *Id.*

By November 30, 2012, Petitioner underwent to therapy sessions and reported wearing regular shoes and an improving gait, but pretty poor function with the left foot and a fair amount of tenderness to palpation with compression of the left great toenail. *Id.* Dr. Coats released Petitioner back to light duty work and ordered continued physical therapy for four weeks. *Id.*

Petitioner testified that he performed light duty work beginning on December 2, 2012 and did so for about two weeks because, then, Respondent was closed for holidays. He testified that while he was on light duty he performed mostly seated work with periodic standing only about one hour per day while learning to run different steel machines.

A December 27, 2012 physical therapy note reflects that Petitioner reported no pain at rest or with activities, and feeling that he was able to return to work without pain or difficulties. RX1. Petitioner also reported that he was able to tolerate all outdoor activities without difficulty. *Id.* On cross examination, Petitioner testified that he was able to tolerate the physical therapy activities, but denied that he reported his abilities or lack of pain as reflected in the note.

Petitioner last saw Dr. Coats on January 2, 2013 reporting pain at a level of 0/10. PX2; RX2-RX3. On cross-examination, Petitioner testified that he did not recall reporting to Dr. Coats that he had no pain at this time. On examination, Dr. Coats noted that Petitioner's wound was well healed, the swelling of his toe tremendously decreased, and he was able to walk well with the steel-toe boot. *Id.* He released Petitioner back to unrestricted work and scheduled a follow-up visit in one month. *Id.* Petitioner canceled his office visit with Dr. Coats on February 4, 2013. *Id.* Petitioner testified that he has not returned to Dr. Coats or anyone else for treatment of the left foot.

Dr. Vinci

Petitioner submitted to an examination with Dr. Vinci at Respondent's request on April 17, 2013. RX4 (Dep. Exh. 2). Petitioner testified that this examination took 20 minutes during which Dr. Vinci measured his toe and had him walk away and toward him 10 steps. Petitioner did not recall anything else about the examination at trial.

Dr. Vinci took a history from Petitioner, performed a physical examination, reviewed various medical records, and rendered opinions as well as an AMA impairment rating. *Id.* Ultimately, Dr. Vinci diagnosed Petitioner with a soft tissue injury to the left hallux also involving a crush injury to the underlying bone with laceration of the nail bed. *Id.* He noted that the injury was well-healed and placed Petitioner at maximum medical improvement. *Id.*

Dr. Vinci also testified via evidence deposition about the process of reaching his conclusions and AMA impairment rating. RX4. After extensive questioning regarding the use of the modifier charts in the AMA Guides Dr. Vinci also testified that Petitioner had post-traumatic arthrosis (i.e., arthritis) which he considered

when he assigned a grade 2 modifier based on Petitioner's x-rays from the time he was maximum medical improvement to determine his overall impairment rating. RX4 at 31-36, 43-47. He acknowledged, however, that an impairment rating is not the same as disability. RX4 at 21. Dr. Vinci explained that the disability for a pianist that suffers a traumatic finger amputation is going to be much more significant than the same type of finger amputation in the dominant hand of a lawyer, for example. RX4 at 29-30. He then acknowledged that he did not have a copy of Petitioner's job description or an independent recollection of Petitioner's job duties. RX4 at 30.

Ron Acosta

Respondent presented Ron Acosta ("Mr. Acosta") who testified that he is currently a supervisor in Petitioner's chain of command, although no longer Petitioner's direct supervisor which he was on the date of injury.

Mr. Acosta testified that he knows Petitioner and worked the same shift as Petitioner. He testified that he has observed Petitioner at work and has not noticed anything unusual about him or any change in his gait. Mr. Acosta estimated that he observes Petitioner approximately eight hours per day and that Petitioner is on his feet approximately 75% of day. Mr. Acosta added that, since Petitioner's return to work, part of Petitioner's job requires him to step over various large pieces of equipment measuring approximately 2 ½-3 feet high requiring him to take large steps to traverse over and around them. He testified that Petitioner has never complained to him about his left foot since his return to work, although breaks are directly addressed with an employee's immediate supervisor unless that supervisor contacts Mr. Acosta regarding an ongoing need for an accommodation due to a medical condition.

Mr. Acosta also testified that he sometimes directly instructs Petitioner to perform tasks at work and that he is usually observing Petitioner at work. He usually works approximately 15 yards from Petitioner and that although he asked Petitioner how his foot was when he first returned to work, he has not asked him about his foot over the last 2-3 months.

Additional Information

Petitioner testified that he returned to work full duty and continues to do so. He also testified that he volunteered for and worked overtime. Regarding his current condition, Petitioner testified that he cannot engage in sports with his kids (i.e., basketball, baseball, soccer, running) or walk for long periods of time (e.g., through an amusement park or shopping mall) without taking breaks. He testified that he used to play with his kids all the time, but that long walks hurt his foot and he experiences pain.

Petitioner also testified that his feet are always soaked at work due to the water used and necessary to cool down the rolls that run the steel. He works 12 hours per day and testified that standing in water makes his pain worse and a sensation that his toenail is going to pop off. He testified that he takes about four breaks per day at work. He also testified that his job includes a lot of walking in heavy steel-toe and water-saturated boots, which causes him left foot pain. He estimated that the facility is as big as, or bigger than, a football field. Finally, Petitioner testified that his foot and toes hurt at night and that the pain lasts 4-5 hours. He does not take medication because he does not like to do so.

CONCLUSIONS OF LAW

The Arbitrator hereby incorporates by reference the Findings of Fact delineated above and the Arbitrator's and parties' exhibits are made a part of the Commission's file.

Section 8.1b of the Illinois Workers' Compensation Act ("Act") addresses the factors that must be considered in determining the extent of permanent partial disability for accidents occurring on or after September 1, 2011. 820 ILCS 305/8.1b (LEXIS 2011). Specifically, Section 8.1b states that 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. *Id.*

Considering these factors in light of the evidence submitted at trial, the Arbitrator notes the following:

First, one 8.1b subsection (a) report¹ was submitted into evidence; that of Dr. Vinci at Respondent's request. Dr. Vinci utilized the AMA Guides Sixth Edition and specifically delineated his evaluation process in determining Petitioner's impairment rating at a level of 2% lower extremity impairment. Taking into consideration Dr. Vinci's report and deposition testimony regarding how he reached the AMA impairment rating, and noting that his impairment rating is uncontroverted by that of any other physician, the Arbitrator assigns it significant weight.

Second, the evidence established that Petitioner was an assistant roller performing duties at Respondent's steel mill. The Arbitrator finds Petitioner's testimony regarding his duties at work on the date of accident and upon his release to light duty and full duty work to be more credible than that of Mr. Acosta, who is no longer Petitioner's direct supervisor. Thus, the Arbitrator assigns significant weight to Petitioner's testimony about his occupation.

¹ Dr. Vinci's report was received at trial without objection to its admissibility.

Third, the parties stipulated that Petitioner was 34 years old on the date of accident. This evidence is uncontroverted and, thus, the Arbitrator assigns it significant weight.

Fourth, no evidence was introduced regarding Petitioner's future earning capacity. Thus, no weight is assigned to this factor as there is no evidence of any impact whatsoever on Petitioner's future earning capacity as a result of his injury.

Finally, the treating medical records reflect that Petitioner underwent surgery for a comminuted fracture of the left great toe distal phalanx and a later debridement procedure to address necrosis that developed on the left great toe. Thereafter, Petitioner's left foot condition gradually improved through approximately five months of medical treatment until his full duty release to work by Dr. Coats on January 2, 2013. While Petitioner testified that his condition has remained essentially the same and that he continued to complain of pain or symptoms in his second left toe to Dr. Coats and physical therapists, the medical records do not corroborate Petitioner's testimony. To the contrary, Dr. Coats' records taken in conjunction with the physical therapy records provided reveal that Petitioner sustained a comminuted fracture of the distal phalanx of the second toe which was noted in anatomic alignment by August 6, 2012, about which Petitioner did not complain after August 28, 2012.

Notwithstanding, Petitioner credibly testified that when he was released to light duty work in December he only worked a couple of weeks in a sedentary position because the company was then closed for the holidays. Petitioner also credibly testified that when he returned to work without restrictions he took about four breaks per day, although he was not medically restricted from performing any duties at work, and he continued to suffer pain in his foot due to extensive walking around the large steel mill as well as pain and sensitivity due to constant exposure to water in his boots throughout the work day. He also testified that he could no longer engage in recreational activities with his children whereas he did so before his injury at work. In view of all of the foregoing, the Arbitrator finds that there is credible evidence of some ongoing disability as reflected in the treating medical records and Dr. Vinci's report of Petitioner's continuing symptomatology that Petitioner credibly testified causes him ongoing difficulty at work and at home, and the Arbitrator assigns it significant weight.

Based on the record as a whole and in consideration of the factors enumerated in Section 8.1b—which does not simply require a calculation, but rather a measured evaluation of all five factors of which no single factor is conclusive on the issue of permanency—the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 10% loss of use of the left foot pursuant to Section 8(e).

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

14IWCC0511

Gilbert Cataldo,
Petitioner,

vs.

NO: 13WC15633

Cook County Budget Department,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) and 8(a) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary disability, medical , notices, penalties 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 9, 2013, is hereby affirmed and adopted.

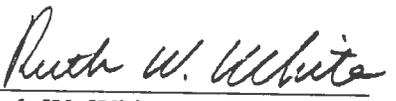
IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written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

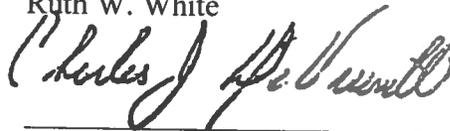
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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.

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

DATED: JUN 27 2014
o6/18/14
RWW/rm
046


Ruth W. White


Charles J. DeVriendt


Daniel R. Donohoo

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

CATALDO, GILBERT

Employee/Petitioner

Case# 13WC015633

14IWCC0511

COOK COUNTY

Employer/Respondent

On 12/9/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

2814 SUTTER & ORI LLC
DINA NINFO
155 N MICHIGAN AVE SUITE 400
CHICAGO, IL 60601

0132 COOK COUNTY STATE'S ATTORNEY
KEVIN G WALLACH
500 RICHARD J DALEY CTR
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
 COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION
 19(b)/8(a)

Gilbert Cataldo,
 Employee/Petitioner

Case # 13 WC 15633

v.

Consolidated cases: none

Cook County,
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **Chicago**, on **9/17/13**. 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 _____

14IWCC0511

FINDINGS

On the date of accident, **3/8/13**, 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 **\$53,726.40**; the average weekly wage was **\$1,033.20**.

On the date of accident, Petitioner was **46** years of age, *single* with **no** 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 **\$0.00** for other benefits, for a total credit of **\$0.00**.

The parties agreed that Respondent would be entitled to a credit for any amounts paid pursuant to §8(j) of the Act. (See Arb.Ex.1).

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$688.80 per week for 24-5/7 weeks, commencing 3/29/13 through 9/17/13, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 3/9/13 through 9/17/13, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay reasonable and necessary medical services of \$8,980.00, as provided in Sections 8(a) and 8.2 of the Act. (See Arb.Ex.#2).

Respondent shall authorize and pay reasonable and necessary medical expenses associated with prospective medical treatment in the form of back surgery prescribed by Dr. DeWald, as provided in §§ 8(a) and 8.2 of the Act.

Respondent shall pay to Petitioner penalties of **\$0.00**, as provided in Section 16 of the Act; **\$0.00**, as provided in Section 19(k) of the Act; and **\$5,190.00**, as provided in Section 19(l) 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

12/6/13
Date

ICArbDec19(b)

DEC 9 - 2013

14IWCC0511

STATEMENT OF FACTS:

The Arbitrator notes that at the close of proofs both parties were given the opportunity to submit proposed findings pursuant to Section 7030.80(a) of the Rules Governing Practice Before the Commission. However, only Petitioner submitted proposed findings thereafter.

Petitioner testified that he has been employed by Respondent as an accountant in the Budget Department of Stroger Hospital since 2008. He further testified that he has been employed with Respondent as an accountant at various other locations since 1992. Petitioner testified that on March 8, 2013 he parked his vehicle on the top or fifth level of the parking garage attached to his place of employment. Petitioner testified that while the first two floors of the parking structure are open for visitor parking, floors three, four and five are reserved for employee parking only, where employees were directed to park. Additionally, Petitioner testified that he pays \$35.00 a week to park in these employee only parking levels. Petitioner testified that he parks in that garage every morning as he did on the day in question.

Petitioner noted that the fifth floor of the parking structure is open to the elements. He testified that at about 8:30 am on the date in question he was walking from his vehicle to the elevator, which was about 200 feet from his car, in order to begin his work day when he slipped and fell on ice. He indicated that the elevator he was walking towards was the only means available to him to access the building in which he worked from the employee only garage. He noted that when he fell he hit his right hip and head. Following the incident he noticed pain in his lower back down the right side of his hip, leg and thigh area. He also noted that he had hit his head pretty good on the ground.

Petitioner testified that following the incident a woman, who turned out to be a physician at the hospital, approached him and asked him if he was alright. He indicated that she also told him to stay down and asked him where he worked. Petitioner noted that he then gave the woman the phone number of Sheila Swain, the administrative assistant to the budget director and one of the few people in the office at that hour. Petitioner testified that he saw the woman make the phone call. The woman also called for an ambulance. Petitioner indicated that a police officer from the Stroger Police Department came by, as well as another woman and a parking attendant. Petitioner noted that as he lay on the ground he was hit by salt from a female worker spreading salt with a spreader. Petitioner testified that the physician sat with him until an on-duty administrator named Ms. Caldwell arrived. He indicated that he eventually got off the ground and sat on the bumper of a nearby van. He noted that when the ambulance arrived they brought out a seating device and took him to Rush University Medical Center.

Upon admission to Rush University Medical Center, Petitioner testified that he continued to experience pain in his head, the entire right side of his body and his back. (PX2). After x-rays were taken, Petitioner was discharged that same day with pain medications, a cane to help him walk and instructions to follow up with his physician. (PX2).

Petitioner testified that his direct supervisor is Edith Murgas Kerbis. Petitioner further testified that he contacted Ms. Kerbis on the day of the accident in question upon his discharge from the hospital at approximately 2:00 p.m. Petitioner informed her that he would not be returning to the office that day. Petitioner testified that he told Ms. Kerbis that he had slipped and fell on ice in the parking lot and was experiencing a lot of pain. Petitioner testified that Ms Kerbis told him she was aware of the accident and that she had witnessed him being placed in the ambulance on her way into work. Petitioner testified that the day of the accident in question, March 8, 2013, was a Friday. Due to the worsening pain he was experiencing over the weekend, Petitioner testified that he called off of work that following Monday. Petitioner testified that he called

into the office and spoke to Ms. Kerbis to inform her he would not be coming into work due to the pain he was experiencing as a result of the fall he suffered on Friday. Petitioner testified that he returned to work the following day, Tuesday March 12, 2013. Petitioner testified that upon his return to work he continued to experience worsening pain. Petitioner further testified that the pain in his lower back continued to radiate into his groin and inner thigh with increasing severity. Petitioner testified that he had difficulty at work with prolonged sitting, standing and getting up out of his chair once he was seated.

Due to his worsening pain, Petitioner followed up with his primary care physician as instructed. Petitioner's primary care physician is Dr. Nancy Bryan who is also located at Rush University Medical Center. Petitioner first presented to Dr. Bryan on March 22, 2013. (PX2). Petitioner testified that at the time he first presented to Dr. Bryan his pain continued to increase and was becoming more intense. On that day, Dr. Bryan prescribed pain medications and a CT scan of his spine. The prescribed spine CT scan took place on March 23, 2013 at Rush University Medical Center. (PX2). Petitioner testified that, upon reviewing the result of the CT scan, Dr. Bryan instructed him to follow up with his spine surgeon.

Petitioner testified that his spine surgeon was Dr. DeWald of Midwest Orthopedics at Rush. Petitioner testified that he had treated with Dr. DeWald in relation to a prior lumbar spine injury that took place in 2005. As a result of this injury, Petitioner underwent a lumbar decompression and fusion at L4-L5 in 2007. Petitioner testified that he last sought treatment from Dr. DeWald in relation to this injury in 2008. Petitioner testified that following this surgery he was released back to work without restriction. Petitioner testified that following this prior surgery he was able to work and carry on with everyday activities just as he was able to do before the injury. Petitioner testified that he was able to golf, work out and had no problem being active in his everyday life. Petitioner further testified that between 2008 and the incident in question on March 8, 2013 he did not receive any additional medical treatment in relation to his back.

Petitioner first sought medical treatment from Dr. DeWald shortly thereafter on March 29, 2013. (PX3). At the time he presented to Dr. DeWald, Petitioner was still experiencing the same intense pain in his lower back that continued to radiate into his hip, thigh and groin area. (PX3). At that time, Dr. DeWald prescribed a lumbar MRI and medication. (PX3). Dr. DeWald also restricted Petitioner off of work. (PX3). The prescribed MRI was administered that same day, March 29, 2013, at Midwest Open MRI. (PX3, PX5).

Petitioner testified that the following Monday, April 1, 2013, he reported to his office to inform his supervisor that he had been restricted off of work as a result of the March 8, 2013 accident. Petitioner testified that when he reported to work both his direct supervisor, Ms. Kerbis, and the director of the budget department were present. After informing them that he had been restricted from work he was instructed to report to Cook County Health and Hospital System, commonly referred to as Employee Health. Petitioner testified that he immediately went downstairs and reported to Employee Health as instructed. (PX6). Petitioner testified that he gave them a copy of his diagnostics, the medical form filled out by Dr. DeWald and a copy of the Stroger Hospital Police Report. Petitioner testified that he obtained a copy of the Stroger Hospital police report from the police department on that same day as they are also located in the hospital building.

Petitioner testified that he received a telephone call from Dr. DeWald's office on April 9, 2013 to inform him of the results of the lumbar MRI. (PX3). The lumbar MRI revealed mild loss of normal lordotic curvature, a L3-4 mild to moderate circumferential bulge causing partial obliteration of both foramina fat with bilateral foraminal components indenting the thecal sac transversing both L4 nerve roots and a L4-5 reduced disc height with a 3-4mm bulge with bilateral foraminal components causing partial obliteration of both foramina fat. (PX3). Thereafter, Dr. DeWald referred Petitioner to Dr. Cheng for an injection. (PX3). Dr. Cheng is a pain management specialist also located at Midwest Orthopedics at Rush. Petitioner first presented to Dr. Cheng on

April 18, 2013. (PX3). At that time, Dr. Cheng administered a L3 transforaminal epidural steroid injection. (PX3). Petitioner testified that while he did receive some pain relief from this injection, the relief only lasted a couple of days. Petitioner returned to Dr. Cheng on May 2, 2013 and received another L3 transforaminal epidural steroid injection. (PX3). At this appointment, Dr. Cheng also continued to restrict Petitioner off of work. (PX3). Petitioner testified again that while he received some pain relief from this injection it was only temporary. Petitioner testified that his symptoms continued to progress and the pain and numbness in his thigh was getting worse. Petitioner next returned to Dr. Cheng on May 9, 2013. (PX3). At that time Dr. Cheng felt that an additional injection was not recommended as the first two injections only provided Petitioner with temporary relief. (PX3). Accordingly, Dr. Cheng prescribed a seven (7) day course of prednisone and instructed Petitioner to follow up with Dr. DeWald for further treatment. (PX3). Dr. Cheng also continued to restrict Petitioner from work. (PX3).

Petitioner followed up with Dr. DeWald on May 23, 2013. (PX3). After the examination, Dr. DeWald prescribed a right hip and pelvis MRI. (PX3). Dr. DeWald also referred Petitioner back to Dr. Cheng for a right hip steroid injection which was administered on that same day, May 23, 2013. Dr. DeWald continued to prescribe pain medication and restrict Petitioner from work. (PX3). The prescribed right hip and pelvic MRI was administered on May 28, 2013, and showed mild degenerative changes. (PX3). Petitioner returned to Dr. Cheng on June 6, 2013. (PX3). Petitioner testified that he received very little, if any, relief from the right hip injection. Dr. Cheng instructed Petitioner to follow up with a hip specialists, Dr. Gitelis, also a part of Midwest Orthopedics at Rush. (PX3). Petitioner presented to Dr. Gitelis on June 17, 2013. (PX3). Dr. Gitelis administered a trochanteric bursal injection and prescribed a bone scan. (PX3). This prescribed bone scan was administered on June 25, 2013 and came back with normal results. (PX3).

Petitioner next returned to Dr. DeWald on June 27, 2013. (PX3). At that time Dr. DeWald referred Petitioner to a different pain management specialist for an additional L3 nerve root injection. (PX3). Dr. DeWald continued to prescribe medication and to restrict Petitioner from work. (PX3). This additional injection was administered on July 8, 2013 at Advocate Lutheran General Hospital. (PX4). Petitioner testified that he received a significant amount of pain relief from this injection that, while temporary, lasted much longer than the preceding injections. Petitioner testified that the pain relief from this injection lasted approximately two (2) weeks. However, Petitioner testified that his pain returned, including the radiating pain and numbness in his groin and thigh area.

Petitioner last presented to Dr. DeWald on July 19, 2013. (PX3). As Petitioner's symptoms were not resolving with any of the prescribed conservative care measures, Dr. DeWald prescribed surgery to extend Petitioner's prior fusion to L3. (PX3). Petitioner testified that this surgery has been scheduled for October 7, 2013. Petitioner testified that this was the first available appointment as Dr. DeWald was out of town for the entire month of September. Pending surgery, Dr. DeWald has continued to prescribe medication and restrict Petitioner from work. (PX3).

Petitioner testified that since first reporting on April 1, 2013, he has regularly reported back to Employee Health as instructed. Petitioner testified that he reported to Employee Health approximately every three weeks, and brought the updated medical reports from Dr. DeWald. (PX6). Petitioner testified that he last reported to Employee Health on August 7, 2013 as he was instructed he did not have to return until after his surgery was completed. Petitioner testified that on May 28, 2013, Dr. Salehi, a physician at Employee Health instructed him to fill out an Employee Incident Report, which was admitted at PX7. Petitioner testified that Dr. Salehi handed him that report, which Petitioner completed, and gave back to Dr. Salehi. Petitioner testified that May 28, 2013 was the first time anyone ever told him that he needed to fill out an Employee Incident Report. Petitioner further testified that he believed that the Stroger Hospital Police Department Incident Report, that he gave to Employee Health, when he first reported, was sufficient.

Petitioner testified that at the time of trial he continues to experience significant pain in his lower back that continues to radiate into his groin and thigh. He indicated that he is restricted to minimal movement and that his symptoms are aggravated by extended sitting, standing or walking. Petitioner further testified that he has trouble with bowel movements and that he is only able to sleep two (2) to three (3) hours a night as he regularly wakes up due to the pain.

On cross examination, Petitioner testified that the accident he suffered in 2005 was work related. Petitioner testified that he believed he filled out an incident report related to that accident. However, Petitioner testified that he did not remember exactly what the step by step procedure was, as it was eight (8) years earlier. Petitioner was shown and identified the Application of Adjustment of Claim that was filed on May 13, 2013, by his former attorney Jason B. Rosenthal. (RX1). Petitioner was next shown and identified the New Patient Questionnaire from Midwest Orthopedics at Rush. (RX2). Petitioner agreed that he had written "pot" under the social history portion of the questionnaire inquiring about recreational drugs. The Arbitrator notes, however, that there was absolutely no evidence submitted, in the form of witness observation or toxicology reports, that would indicate that Petitioner was under the influence or somehow impaired at the time of the incident.

Claims adjuster Jason Henschel testified at the request of Respondent. Mr. Henschel testified that he was assigned to Petitioner's claim in early August of 2013 after taking it over from another adjuster. Mr. Henschel testified that at the time he took over the claim, the only paperwork in the file was the Application for Adjustment of Claim and the Stroger Hospital Police Incident Report. When showed the Employee Incident Report that was given to Petitioner by Dr. Salehi (RX3), Mr. Henschel testified that he had never seen that report before. Mr. Henschel testified that when he is assigned a claim, the file typically includes a supervisor incident report, witness statements and a signed medical release form. Mr. Henschel testified that none of that paperwork was contained in Petitioner's file when he took over the claim in August of 2013. Mr. Henschel testified that the Cook County Department of Risk Management did not learn of Petitioner's claim until June of 2013 even though the Application for Adjustment of Claim was filed by Petitioner's former attorney of record on May 13, 2013.

Mr. Henschel testified that when he was first assigned to Petitioner's claim he reviewed both the Application for Adjustment of Claim and the Stroger Hospital Police Incident Report. Mr. Henschel testified that after reviewing these documents he reached out to Petitioner's attorney of record and requested a signed medical release and medical records. Mr. Henschel testified that while he did not receive the signed medical release, he was given all of Petitioner's medical records by Petitioner's counsel via e-mail, as requested. Mr. Henschel testified that upon reviewing these medical records, he sent a written correspondence to Petitioner's counsel on September 4, 2013 denying Petitioner's claim. (RX4). Mr. Henschel testified that one of the reasons he denied Petitioner's claim was because of the reference in the record to Petitioner's recreational use of marijuana. Mr. Henschel further testified that since the employee incident report was dated May 28, 2013, he denied the claim because the report was late in that it was dated more than forty-five (45) days after the accident in question.

On cross examination, Mr. Henschel testified that he did not know if Petitioner had reported the March 8, 2013 accident to his supervisor. Additionally, Mr. Henschel testified that he never spoke with Petitioner's direct supervisor, Ms. Kerbis, and was unsure whether he had spoken to the director of the budget department, although he claimed he did speak to "some people" in the department. In addition, Mr. Henschel testified that while the Cook County Department of Risk Management followed an internal policy regarding paperwork that was supposed to be contained within a claim file, he conceded that the paperwork along these lines was not required by the Illinois Workers' Compensation Act in order for a claim to be compensable. Mr. Henschel testified that the paperwork typically contained an accident report that is given to the injured worker by their supervisor, in order to be filled out and sent to Risk Management. Mr. Henschel agreed that since he never

spoke to Petitioner's supervisor, he did not know if Petitioner was ever given the appropriate paperwork. However, Mr. Henschel felt that Petitioner could have requested the forms, and that given his prior work related accident in 2005 he was presumably aware of the process.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

A workers' compensation claimant has the burden of proving by a preponderance of the evidence that his injury arose out of and in the course of his employment. 820 ILCS 305/2 (West 2010); Baggett v. Industrial Comm'n, 201 Ill. 2d 187, 194, 775 N.E.2d 908, 266 Ill. Dec. 836 (2002). An injury "arises out of" one's employment if it originates from a risk connected with, or incidental to, the employment and involves a causal connection between the employment and the accidental injury. Baggett, 201 Ill. 2d at 194. An injury occurs "in the course of" employment when it occurs during employment and at a place where the claimant may reasonably perform employment duties, and while a claimant fulfills those duties or engages in some incidental employment duties. Baggett, 201 Ill. 2d at 194. Both elements must be present in order to justify compensation. Illinois Bell Telephone Co. v. Industrial Comm'n, 131 Ill. 2d 478, 483, 546 N.E.2d 603, 605, 137 Ill. Dec. 658 (1989).

When an employee slips and falls, or is otherwise injured, at a point off of the employer's premises while traveling to or from work, her injuries are ordinarily not compensable under the Act. Vill v. Industrial Comm'n, 351 Ill. App. 3d 798, 803, 814 N.E.2d 917, 921, 286 Ill. Dec. 691 (2004). However, Illinois courts have recognized two exceptions to this "general premises rule." Mores-Harvey v. Industrial Comm'n, 345 Ill. App. 3d 1034, 1038, 804 N.E.2d 1086, 1090, 281 Ill. Dec. 791 (2004). First, "recovery has been permitted for off-premises injuries when 'the employee's presence at the place where the accident occurred was required in the performance of his duties and the employee is exposed to a risk common to the general public to a greater degree than other persons.'" Id. (quoting Illinois Bell, 131 Ill. 2d at 484, 546 N.E.2d at 605). Second, there is a "parking lot exception" where courts have allowed recovery when the employee is injured in a parking lot provided by and under the control of the employer. Vill, 351 Ill. App. 3d at 803, 814 N.E.2d at 922. This exception applies in circumstances where the employee's injury is caused by some hazardous condition in the parking lot. Id. Whether a parking lot is used primarily by employees or by the general public, the proper inquiry is whether the employer maintains and provides the lot for its employees' use. If this is the case, then the lot constitutes part of the employer's premises. The presence of a hazardous condition on the employer's premises that causes a claimant's injury supports the finding of a compensable claim. See Archer Daniels Midland Co., 91 Ill. 2d at 216 ("where the claimant's injury was sustained as a result of the condition of the employer's premises, this court has consistently approved the award of compensation").

In the present case, in evaluating the "in the course of" element of the claimant's claim, we need not analyze whether the claimant's claim falls under the first exception to the "general premises rule" because the uncontroverted evidence establishes that the claimant's claim falls within the "parking lot exception" to the rule.

The rationale for awarding workers' compensation benefits when an employee is injured because of the conditions of an employer-provided parking lot is that the "employer-provided parking lot is considered part of the employer's premises." Mores-Harvey, 345 Ill. App. 3d at 1038, 804 N.E.2d at 1090. In applying the parking lot exception, Illinois courts have held that so long as the employer has provided a parking lot for use by its employees, the fact that the employer does not own the lot is immaterial. C. Iber & Sons, Inc. v. Industrial Comm'n, 81 Ill. 2d 130, 135, 407 N.E.2d 39, 42, 40 Ill. Dec. 808 (1980). In addition, once the parking lot is considered part of the employer's premises, any injury on the parking lot is compensable if it would be compensable on the employer's main premises. Mores-Harvey, 345 Ill. App. 3d at 1038, 804 N.E.2d at 1090-91.

In Illinois, the courts have generally found parking lot slip and fall cases compensable when hazardous conditions are present. See *Archer Daniels Midland Co. v. Industrial Comm'n*, 91 Ill. 2d 210, 217, 437 N.E.2d 609, 62 Ill. Dec. 921 (1982) (injury arose out of and in the course of employment where employee slipped on ice while walking from employer's parking lot through gate to plant grounds because injury resulted from a risk incidental to employment); *Hiram Walker & Sons v. Industrial Comm'n*, 41 Ill. 2d 429, 431, 244 N.E.2d 179(1968) (injury arose out of and in the course of employment where the claimant injured his hand after he slipped and fell in snowy and icy company parking lot after he had parked his car in the lot because "his presence in the lot was due entirely to his employment"); *De Hoyos v. Industrial Comm'n*, 26 Ill. 2d 110, 114, 185 N.E.2d 885 (1962) ("an employee who falls on a parking lot provided by his employer while proceeding to work, we believe, is subjected to hazards to which the general public is not exposed").

In the recent case of *Suter v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 130049WC (filed 11/14/13), the appellate court found injuries due to slipping and falling on ice in an employer-provided parking lot shortly after arriving at work to be compensable. More to the point, the court noted that "[u]nder the supreme court's holding in *De Hoyos*, these uncontroverted facts establish the claimant's right to benefits under the Act as a matter of law." *Suter*, P40; citing *De Hoyos*, 26 Ill.2d at 114, 185 N.E.2d at 887. In making this ruling, the court also referenced *Mores-Harvey*, supra, noting that the relevant inquiry is "whether the employer maintains and provides the lot for its employees' use" and that "[t]he presence of a hazardous condition on the employer's premises that causes a claimant's injury supports the finding of a compensable claim." *Suter*, 2013 IL App (4th) 130049WC (P30). Interestingly enough, the *Suter* court cited as persuasive a case involving the same Respondent as the case at bar. See *County of Cook v. Industrial Commission*, 165 Ill.App.3d 1005, 520 N.E.2d 896, 117 Ill.Dec. 545 (1988). That case involved an attack on a county employee in a parking lot adjacent to the building where the county leased office space. The *Suter* court noted that the court in *County of Cook* had found that "[t]he fact that the employer leases space and the area where the injury occurs is used by other tenants or the public does not necessarily mean it is not the 'employer's premises'", and as a result the Commission was entitled to find that the injury occurred on the "employer's premises" for purposes of determining whether the injury was sustained in the course of the employment. *County of Cook*, 520 N.E.2d 899.

Similarly, the Petitioner in this case was exposed to a hazardous condition – namely, the presence of a patch of ice on an exposed portion of a multi-level parking lot – and the incident occurred on the "employer's premises," as that term has come to be defined. Along these lines, the evidence shows that the top three floors of the parking lot in question were reserved for employee parking only, for which Petitioner paid \$35.00 per week. The incident occurred on the top level of the parking structure which was exposed to the elements and Petitioner was walking from his car some 200 feet to the elevators that represented the sole means of entering his workplace from the parking lot. Since Petitioner's options were appreciably limited as to where he could park and how he would enter and leave his workplace, and since these limitations were effectively imposed upon him by his employer, it can be said that Petitioner was exposed to a risk of injury to a greater extent than members of the general public by virtue of his employment. In addition, given the appearance of a Stroger Hospital police officer shortly after the incident, and the presence of another worker spreading salt in the area, one would be hard pressed to deny Respondent's interest in the safety of its employees in general and the need to properly maintain the parking lot in question in order to advance such an objective. Thus, the evidence strongly suggests that the incident occurred on the "employer's premises," not unlike the County employee in the aforementioned *Suter* case.

What the Respondent seems to have a problem with, at least based on the testimony of its one and only witness, claims adjustor Jason Hensechel, is that Petitioner apparently failed to follow internal protocol and fill out an accident report immediately following the incident – this despite the fact that at the time he reported the incident

he was not given such a form to fill out by his supervisor and despite the fact that he had already provided a copy of the police incident report, detailing the event, to employee health. In addition, Mr. Hensechel cited as a basis for denial of the claim a reference in a medical intake form to Petitioner's admitted use of marijuana on a recreational basis. However, as already mentioned, there is absolutely no evidence to suggest that Petitioner was under the influence of cannabis at the time of the incident, much less that it was the proximate cause of his injuries.

Therefore, based on the above, and the record taken as a whole, including Petitioner's credible testimony as to the circumstances surrounding the incident, the Arbitrator finds that Petitioner proved by a preponderance of the evidence that he sustained accidental injuries arising out of and in the course of his employment on March 8, 2013.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner testified that following the incident a physician who had stopped to assist him called Sheila Swain, the administrative assistant to the director of the budget department in which he worked, and informed her of the mishap. Petitioner also testified that upon being discharged from the hospital on the day of the accident he immediately called his direct supervisor, Edith Kerbis, at approximately 2:00 p.m. Petitioner further testified that Ms. Kerbis had told him during that telephone call that she had seen him being taken away by ambulance. Petitioner also noted that he called work the Monday after the accident and reported that he would not be in due to the pain he continued to experience following the incident. Petitioner testified that he spoke to Ms. Kerbis again by telephone that day and explained to her that he could not come to work due to the pain he was in from the accident on Friday. Petitioner testified that the next day, March 12, 2013, he reported to work. Petitioner testified that he again spoke to Ms. Kerbis on that day and was also working for a number of days thereafter in noticeable plain and discomfort as a result of the accident in question. Furthermore, Petitioner testified that after he was taken off work by Dr. DeWald he reported to work on April 1, 2013 and informed his supervisor, Ms. Kerbis, that he had been restricted from work. Petitioner testified that on that day he spoke to both Ms. Kerbis and the director of the budget department in person and informed them that he had been restricted from working as a result of the March 8, 2013 work incident. Petitioner testified that after reporting this off work restriction, he was instructed to immediately report to employee health. As instructed, Petitioner reported to employee health on April 1, 2013 who confirmed his off work restriction. All of this occurred within the 45 day reporting period.

Therefore, based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner provided proper and adequate notice of his work related injury pursuant to the Act. Even if this not the case, Respondent submitted no evidence to show that it was someone prejudiced by any defect in said notice.

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

Petitioner credibly testified that on March 8, 2013 he injured his low back and right hip when he slipped on a patch of ice while walking from his car in the employee parking lot to the elevator that would take him to his place of work. Petitioner was transported from the scene of the accident by ambulance to the Emergency room at Rush University Medical Center. His treatment records thereafter evidence a consistent history of accident and ongoing complaints relative to his back and hip. In addition, there is evidence to suggest that Petitioner suffered any type of intervening accident since the incident on March 8, 2013.

The record shows that Petitioner had previously suffered a lumber injury in 2005 resulting in a surgical fusion in 2007. However, Petitioner testified that subsequent to his release from treatment following this prior injury, he had been working full duty without incident. Petitioner further testified that after being released from treatment five (5) years earlier, in 2008, he had not sought additional medical treatment for his back and that he was able to carry on an active lifestyle up through the date of accident, including working out and golfing on a regular basis.

Therefore, based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to accident and notice (issues "C" and "E", supra), the Arbitrator finds that Petitioner's current condition of ill-being with respect to his back is causally related to the accident on March 8, 2013.

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

The parties submitted into evidence an agreed stipulation setting forth the amount of medical expenses that would be due and owing pursuant to the fee schedule in the event this matter was found to be compensable, with Respondent maintaining any objection it may have in regard to liability and/or reasonableness and necessity. (Arb.Ex.#2).

The Arbitrator finds that Petitioner has proven by a preponderance of the evidence that the medical services provided to him were both reasonable and necessary. Along these lines, the record shows that Petitioner has received consistent and regular medical care since the day of the accident in question on March 8, 2013. Furthermore, the evidence shows that Petitioner has undergone a reasonable course of conservative treatment to date in an attempt to resolve his worsening pain and symptoms, albeit without completely alleviating his complaints.

Therefore, based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to accident, notice and causation (issues "C", "E" and "F", supra), the Arbitrator finds that Petitioner is entitled to reasonable and necessary medical expenses pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act in the amount of \$8,980.53. (Arb.Ex.#2).

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

Petitioner testified that he continues to suffer from lower back pain extending down the right side of his right hip and down his thigh. Petitioner has undergone conservative treatment, including multiple injections, with only temporary relief of his pain. In a report dated July 19, 2013, Dr. DeWald opined that under the circumstances he believed "... opening [Petitioner] up with an XLIF type procedure with an extension of his posterior instrumentation would provide more permanent relief of his pain." (PX3, p.106). Respondent offered no medical opinion to refute Dr. DeWald's recommendation in this regard.

Therefore, based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to accident, notice and causation (issues "C", "E" and "F", supra), the Arbitrator finds that Petitioner is entitled to prospective medical treatment in the form of surgery, as recommended by Dr. DeWald, and that Respondent shall pay the reasonable and necessary medical expenses associated therewith pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act.

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

In a noted dated March 29, 2013, Dr. DeWald indicated that Petitioner was under his care for a spinal condition and that Petitioner should be excused "... for this week of work due to increased back pain and scheduled appointment. He may return to work on 04/01/2013." (PX3).

In a "CCHHS Employee Health Services Disposition Form" dated April 1, 2013, and signed by a Dr. Ahmed, it was noted that Petitioner was eligible for sick leave from "3-26-13 to 4-1-13" and could return to work without restrictions on "4-2-13." (PX6).

In a prescription slip dated May 2, 2013, Dr. Cheng noted that Petitioner was under his care for severe back pain (lumbosacral radiculitis) and that he was to be excused from work until May 6, 2013. (PX3).

In a letter to Dr. DeWald dated May 9, 2013, Dr. Cheng indicated that he was "... providing [Petitioner] with a letter to excuse him from work." (PX3). In a CCHHS "Request for Medical Data" form dated May 9, 2013, Dr. Cheng noted that Petitioner's diagnosis was "R[ight] L3 radiculopathy" and that his dates of disability extended from April 18, 2013 to May 23, 2013. (PX6). On this form, Dr. Cheng also noted that Petitioner's prognosis was "fair" and that he estimated Petitioner could return to work in 2-4 weeks. (PX6).

In a "CCHHS Employee Health Services Disposition Form" dated May 9, 2013, it was noted that Petitioner was eligible for sick leave from "4-18-13 to 5-23-13" and was to return to employee health on May 24, 2013 with a doctor's statement. (PX6).

In a note dated May 23, 2013, Dr. Cheng indicated that he was "... going to fill out some work papers for him because there is not much that he could do at this point regarding ambulation and let alone work." (PX3).

In a CCHHS "Request for Medical Data" form dated May 28, 2013, Dr. DeWald noted that Petitioner's diagnosis was "[r]adiculopathy" and that his dates of disability extended from May 23, 2013 to June 27, 2013. (PX6).

In a noted dated June 27, 2013, Dr. DeWald indicated that he referred Petitioner to another anesthesia pain specialist, prescribed Norco and "... provided the patient with some recommendation for his work place." (PX3). The Arbitrator can find no such recommendations in the record.

In a CCHHS "Request for Medical Data" form dated June 28, 2013, Dr. DeWald noted that Petitioner's diagnosis was "lumbago, radiculopathy" and that his dates of disability extended from June 27, 2013 to August 1, 2013. (PX6). Dr. DeWald also noted that he was unable to determine when Petitioner could return to work until have the injection and labs were complete. (PX6).

In an office note dated July 19, 2013, Dr. DeWald recorded that the injection from Dr. Strimling had "helped him greatly" and that he had "much less pain." (PX3). However, Dr. DeWald noted that the pain was "slowly returning" and that if it "does return to his previous level, consider surgery" in the form of an XLIF type procedure. (PX3). Dr. DeWald also indicated that "[w]e will see Mr. Cataldo back based on what he determines regarding how he wishes to proceed with surgery or not." (PX3).

In a CCHHS "Request for Medical Data" form dated July 19, 2013, Dr. DeWald noted that Petitioner's diagnosis was "lumbago, radiculopathy" and that his dates of disability extended from June 27, 2013 to

September 1, 2013. (PX6). Dr. DeWald also noted treatment included a plan for surgical intervention and that he was unable to determine a return to work date at that time. (PX6).

In a CCHHS "Request for Medical Data" form dated August 7, 2013, Dr. DeWald noted that Petitioner's diagnosis was "lumbago, radiculopathy" and that his dates of disability extended from May 23, 2013 to October 1, 2013. (PX6). Dr. DeWald also noted that surgery was scheduled for October 2013 and that he was unable to determine a return to work date at that time. (PX6).

There is no indication that Petitioner has been released to return to work by any physician at this time.

Based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to accident, notice and causation (issues "C", "E" and "F", supra), the Arbitrator finds that Petitioner was temporarily totally disabled from March 29, 2013 through the date of this hearing on September 17, 2013, for a period of 24-5/7 weeks.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner is requesting additional compensation pursuant to §19(k) and §19(l) as well as attorneys' fees pursuant to §16 of the Act.

Based on a review of the record, and the evidence taken as a whole, including the testimony of both Petitioner and claims adjustor Jason Hensechel, the Arbitrator finds that Respondent's delay and/or refusal to pay benefits with respect to this claim was unreasonable under the circumstances, and that additional compensation pursuant to §19(l) is in order. However, the Arbitrator finds that Respondent's conduct in the defense of this claim was not vexatious so as to warrant the imposition of additional compensation pursuant to §19(k) or attorney's fees pursuant to §16 of the Act. The Arbitrator notes that Respondent's apparent reliance on internal protocol, specifically with respect to Petitioner's failure to immediately file an accident report, over the requirements of the Workers' Compensation Act, is not something that should be encouraged or even taken lightly. But there does appear to have been more than a modicum of confusion here caused in no small measure by Petitioner's failure to file the necessary paperwork that may have possibly averted the bureaucratic intransigence that followed. That being the case, the Arbitrator is reluctant to find that Respondent's conduct was necessarily vexatious under the circumstances.

Therefore, the Arbitrator finds that Petitioner is entitled to additional compensation pursuant to §19(l) of the Act in the amount of \$5,190.00 (\$30 per day for 173 days). However, the Arbitrator finds that Respondent's conduct in the defense of this claim was not vexatious so as to warrant the imposition of additional compensation pursuant to §19(k) and/or attorneys fees pursuant to §16 of the Act. Accordingly, Petitioner's request for same is hereby denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Victorina Alegria,

Petitioner,

vs.

NO: 11WC42206

Innova,

Respondent.

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, temporary disability, medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 4, 2013, 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.

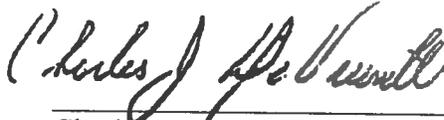
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$70,000.00. 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: JUN 27 2014
o6/19/14
RWW/rm
046



Ruth W. White



Charles J. DeVriendt



Daniel R. Donohoo

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

14IWCC0512

ALEGRIA, VICTORINO

Employee/Petitioner

Case# **11WC042206**

INNOVA

Employer/Respondent

On 12/4/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

2553 LAW OFFICE OF JAMES P McHARGUE
MATTHEW C JONES
123 W MADISON ST SUITE 1000
CHICAGO, IL 60602

2965 KEEFE CAMPBELL BIERY & ASSOC LLC
TIMOTHY J O'GORMAN
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0512

Case # 11 WC 42206

Victorino Alegria
Employee/Petitioner

v.

Innova
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Milton Black**, Arbitrator of the Commission, in the city of **Chicago**, on **September 24, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **October 12, 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 **\$22,880.00**; the average weekly wage was **\$440.00**.

On the date of accident, Petitioner was **45** years of age, *married* with **0** dependent children.

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

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$0**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **\$293.34** /week for **86 1/7th** weeks, commencing **October 25, 2011** through **February 1, 2012**, and commencing **May 10, 2012** through **September 24, 2013** as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from **October 25, 2011** through **September 24, 2013**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of **\$4,551.96**, to **Pinnacle Pain Care**, **\$8,592.46** to **Accredited Ambulatory Care**, **\$1,409.50** to **Metro Milwaukee Anesthesia**, **\$872.25** to **Chicago Pain and Orthopedics Institute**, **\$5,436.00** to **Dr. Sokolowski**, **\$4,050.00** to **Oak Brook Imaging**, **\$2,155.00** to **Archer Open MRI**, **\$17,234.45** to **La Clinica** and **\$55.00** to **Specialized Radiology**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for the L4-L5, L5-S1 lumbar decompression surgery as recommended by Dr. Sokolowski.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

Milton Black

Signature of Arbitrator

December 3, 2013

Date

DEC 4 - 2013

FACTS

On October 12, 2011, Petitioner was employed by Respondent. Petitioner testified that he would manually dump boxes of various food products into machines for mixing. Petitioner testified that then he would then package the mixture in boxes. Petitioner testified that then he had worked in this manner for around two years. Petitioner testified that on October 12, 2011, he was lifting boxes weighing 50 to 55 pounds when he experienced low back pain extending into his left upper thigh. Petitioner testified that approximately two hours later, he reported the injury to his supervisor, Enelidio Ortez, who then reported it to Raul Cancino, his supervisor. Petitioner testified that he had to work in his normal capacity until October 25, 2011. Petitioner testified that during this period, Mr. Cancino asked him how he felt two or three times. Petitioner testified that on October 25, 2011, he was unable to work through the pain, so Mr. Cancino instructed Petitioner to seek medical attention.

On October 25, 2011, Petitioner initiated chiropractic treatment with Dr. Jao at La Clinica. Petitioner was taken off work and was prescribed physical therapy. Petitioner was referred to Pinnacle Pain Care Specialists.

On November 3, 2011, Petitioner initiated treatment at Pinnacle Pain Care. An MRI was performed on November 9, 2011. Those findings included disk bulge and lateral lateral recess stenosis. On December 7, 2011, Dr. Jain performed bilateral spinal facet joint injections. Petitioner continued ongoing physical therapy

On February 1, 2012, Dr. Jao released Petitioner to return to work. Petitioner testified that when he returned to work, he continued to experience the same symptoms. At first, Respondent had Petitioner perform less physical tasks, such as cleaning. Petitioner eventually returned to regular work duties, which caused an increase in pain. Petitioner continued to have regular visits with his physicians.

Petitioner was referred to Dr. Sokolowski, an orthopedic surgeon. On May 7, 2012, he was examined by Dr. Sokolowski, who felt that surgery was a possibility. Petitioner has remained off of work from May 10, 2012 through the present date. Dr. Sokolowski testified at an evidence deposition. He opined that the injuries are

causally related and that Petitioner should undergo lumbar decompression spinal surgery.

Respondent requested that Petitioner present Concentra Medical Centers. Petitioner presented to Concentra on May 9, 2012.

On August 22, 2012 Petitioner presented to Dr. Zelby, a neurosurgeon, at Respondent's request. Dr. Zelby testified at an evidence deposition. Dr. Zelby opined that Petitioner was not a candidate for surgery, and he was skeptical of Petitioner's pain complaints.

Respondent called two lay witnesses at trial. Mr. Enelidio Ortez, a production lead worker, testified that Petitioner told him that Petitioner's pain came from lifting weights and that Petitioner was not 'taking insurance'. Mr. Ortez identified an accident report that he completed on November 2, 2013. The accident report makes no mention of lifting weights or lack of health insurance. Mr. Jim Vouris, a procurement manager, testified that he noticed Petitioner had been "bulking up."

Petitioner testified on rebuttal. He contradicted the testimony of Mr. Ortez and Mr. Vouris. Petitioner testified that he had not engaged in any weight lifting.

ACCIDENT

Petitioner's testimony was credible and was consistent with the sequence of events. His credibility withstood cross examination.

Enelidio Ortez was not a credible witness either on direct examination or cross examination. The accident report that he prepared was not consistent with his testimony.

Jim Vouris' testimony that he noticed Petitioner had been "bulking up" is given no weight. His testimony was advocacy for Respondent.

Based upon the foregoing, the Arbitrator finds that on October 12, 2011 Petitioner sustained an accident that arose out of and in the course of his employment.

CAUSATION

Petitioner testified credibly that his symptoms began with the work episode of October 12, 2011. The medical records are corroborative and consistent. Dr. Sokolowski's corroborative medical opinion testimony is persuasive. Dr. Zelby's medical opinion testimony is not persuasive.

Based upon the foregoing, the Arbitrator finds that Petitioner's current condition of ill being is causally related to the accident of October 12, 2011.

PAST MEDICAL

14IWCC0512

Petitioner's medical treatment has followed a consistent course of prescribed care in accordance with the credible medical opinions of his chosen treating physicians.

Based upon the foregoing, the Arbitrator finds that the claimed medical expenses shall be paid by Respondent.

PROSPECTIVE MEDICAL

Dr. Sokolowski testified credibly and convincingly that Petitioner would benefit from lumbar decompression surgery. Nothing else has helped.

Based upon the foregoing, the Arbitrator finds that the prescribed surgery should be authorized.

TEMPORARY TOTAL DISABILITY

Petitioner is unable to return to full duty work. He has attempted, without success, to perform unrestricted duties. The medical records and opinions therein corroborate that he is unable to return to full duty unrestricted work.

Based upon the foregoing, the Arbitrator finds that the claimed temporary total disability benefits should be paid by Respondent.

STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Marisa Alcantar Rosales,

Petitioner,

vs.

NO: 12WC13091

Affinia Group/Brake Parts Inc.,

Respondent.

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, temporary disability, medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 19, 2013, 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.

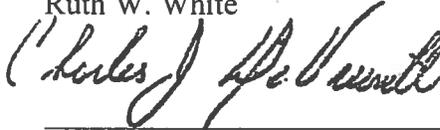
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$14,600.00. 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: JUN 27 2014
06/19/14
RWW/rm
046



Ruth W. White



Charles J. DeVriendt



Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ALCANTAR ROSALES, MARISA

Employee/Petitioner

Case# 12WC013091

14IWCC0513

AFFINIA GROUP/BRAKE PARTS INC

Employer/Respondent

On 4/19/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

1609 BOTTO GILBERT GEHRIS LANCASTER PC
FRANCISCO J BOTTO
2030 N SEMINARY AVE
WOODSTOCK, IL 60098-2626

0481 MACIOROWSKI SACKMANN & ULRICH
ROBERT E MACIOROWSKI
10 S RIVERSIDE PLZ SUITE 2290
CHICAGO, IL 60606

STATE OF ILLINOIS)
)
COUNTY OF McHenry)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Marisa Alcantar Rosales
Employee/Petitioner

Case # 12 WC 13091

14IWCC0513

v.

Affinia Group Inc. / Brake Parts, Inc.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party.

The matter was heard by the Honorable

Edward Lee, arbitrator of the Industrial Commission, in the city of

Woodstock, on 2/7/2013 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 the 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 the petitioner's employment by the respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to the respondent?
- F. Is the petitioner's current condition of ill-being causally related to the injury?
- G. What were the petitioner's earnings?
- H. What was the petitioner's age at the time of the accident?
- I. What was the 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 prospect medical care?
- L. What temporary benefits are in dispute?
 TPD Maintenance TTD
- M. Should penalties or fees be imposed upon Respondent?
- N. Is Respondent due any credit?
- O. Other _____

FINDINGS

- On 10/24/2011, the respondent Affinia Group Inc. / Brake Parts, Inc. was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship did exist between the petitioner and respondent.
- On this date, the petitioner did sustain injuries that arose out of and in the course of employment.
- Timely notice of this accident was given to the respondent.
- Petitioner's current condition of ill-being is causally related to the accident.
- In the year preceding the injury, the petitioner earned \$ 25708.80; the average weekly wage was \$ 494.40
- On the date of accident, the petitioner was 30 years of age, married with 0 dependent children
- Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services.
- Respondent shall be given a credit of, \$ 0.00 for TTD, \$0.00 for TPD, \$0.00, \$ 0.00 for maintenance, and \$ 0.00 for other benefits, for a total credits of \$0.00
- Respondent is entitled to a credit of \$ 0.00 under Section 8(j) of the Act.

ORDER

- The respondent shall pay the petitioner Temporary Total Disability benefits of \$ 329.60 /week for 44 1/7 weeks, from 4/04/2012 through 2/07/2013, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner, the disabling condition is temporary and has not yet reached a permanent condition.
- The respondent shall pay all reasonable and necessary medical services, as provided in Section 8(a) of the Act.
- The respondent shall pay \$ 0.00 in penalties, as provided in Section 19(k) of the Act.
- The respondent shall pay \$ 0.00 in penalties, as provided in Section 19(l) of the Act.
- The respondent shall pay \$ 0.00 in attorneys' fees, as provided in Section 16 of the Act.
- The respondent shall approve all prospective medical care as prescribed by Dr. Havenhill for Petitioner's EPL tendinitis, TFCC Tear, and Ulnar Impaction Syndrome.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of Temporary Total Disability, medical benefits, or compensation for a permanent disability, if any.

RULES REGARDING APPEALS Unless a party 1) files a *Petition for Review* within 30 days after receipt of this decision, and 2) certifies that he or she has paid the court reporter \$ _____ for the *final* cost of the arbitration transcript and attaches a copy of the check to the Petition; and 3) 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

4/16/13
Date

ARBITRATION DECISION
ATTACHMENT

Maria Alcantar-Roasales v. Affinia
12 WC 13090

14IWCC0513

FINDINGS OF FACT

On October 24, 2011 Marisa Alcantar-Rosales (“Petitioner”) was working as a rotor picker for Affinia Brake Parts (“Respondent”). On that date, she was trying to pick up a thirty-five pound rotor when she felt a shooting pain in her hand. (Px. 5, pg. 6). Petitioner testified that she notified her supervisor, Horacio, who directed her to see the nurse. Petitioner testified that she was unable to see the nurse immediately because the accident occurred at 11:00p.m. and the nurse worked a different shift. She saw the nurse the next day and received care but the pain continued. Petitioner sought treatment for this injury on November 1, 2011 at Centegra Northern Illinois Medical Center Occupational Health (“Centegra”). (Px. 5, pg. 6). At the November 1, 2011 visit to Centegra Petitioner related to the E.R. doctor that she had sudden, continuous, and severe pain after picking up the rotor at work. (Px. 5, pg. 6). The doctor gave her a restriction of lifting no more than ten pounds at work and issued her instructions to use hot/cold treatments to her hand and wear a wrist brace. (Px. 5, pg. 7).

The patient returned to Centegra four more times during the month of November 2011, stating each time that her wrist pain had not improved. (Px. 5). On November 21, 2011 the doctor recommended that she begin occupational therapy for her wrist injury. (Px. 5, pg. 20). Petitioner did begin occupational therapy on December 1, 2011. (Px. 5, pg. 27). On December 15, 2011 Petitioner returned to Centegra and stated that she thought the therapy was mildly helping, but that her progress was slow. (Px. 5, pg. 16). The Doctor agreed and recommended

she be evaluated by an orthopedic doctor. (Px. 5, pg. 16). Throughout this time Petitioner was given work restrictions of lifting no more than ten pounds. (Px. 5)

On January 11, 2012 Petitioner saw Dr. Havenhill of McHenry County Orthopedics. Petitioner related to Dr. Havenhill that she was picking up a thirty-five pound rotor on October 24, 2011 when she felt a shooting pain in her hand. (Px. 6, pg. 7). Dr. Havenhill testified at his deposition that after physical examination of the patient, it was clear that there was something more than a simple wrist strain, but that he was unable at that time to specifically delineate what the problem was. (Px. 6, pg. 9). He recommended that Petitioner have more therapy that focused on stretching and strengthening. (Px. 6, pg. 10). He also recommended removing the wrist splint as it had been on for too long. (Px. 6, pg. 10). Finally, Dr. Havenhill imposed work restrictions of no lifting or gripping more than two pounds, and to do clerical work only. (Px. 6, pg. 10). At the next visit with Dr. Havenhill on February 13, 2012, the doctor diagnosed Petitioner with a right wrist TFCC strain versus a tear and recommended that Petitioner undergo an MR arthrogram to determine what the next steps for treatment should be. (Px. 6, pg. 11). On March 7, 2012 Petitioner underwent the recommended MR arthrogram which showed a tear of the triangular fibrocartilage (TFCC). (Px. 4, pg. 7). Dr. Havenhill reviewed these results with Petitioner on March 12, 2012 and recommended that she receive a cortisone injection and continue physical therapy. (Px. 6, pg. 12). Petitioner did receive a cortisone injection on March 19, 2012 by Dr. Havenhill. (Px. 3).

After the cortisone injection Petitioner returned to McHenry County Orthopedics on March 29, 2012 and stated that she was experiencing a lot more pain in the wrist. (Px. 3, pg. 7). Dr. Havenhill examined Petitioner for the same complaints on April 4, 2012. (Px. 3, pg. 6). Dr.

Havenhill took X-rays that day and diagnosed the patient with right wrist ulnar impaction syndrome with a TFCC tear as well as right wrist EPL tendinitis. (Px. 3, pg. 6). Dr. Havenhill recommended surgical treatment involving a wrist scope to either debride or repair the TFCC as needed and an ulnar shortening osteotomy and release of her EPL tendon. (Px. 3, pg. 6). Dr. Havenhill testified that he believed that the work injury on October 24, 2011 was the cause of the TFCC tear and EPL tendonitis and the cause of the ulnar impaction syndrome becoming symptomatic. (Px. 6, pg. 16). On April 23, 2012 Petitioner visited Dr. Holtkamp of Crystal Lake Orthopedics for a second opinion. (Px. 2, pg. 3-5). Dr. Holtkamp agreed with Dr. Havenhill's assessment of ulnar abutment/impaction syndrome, TFCC tear, and EPL tendinitis. (Px. 2, pg. 5). She also agreed with Dr. Havenhill's surgery recommendation. (Px. 2, pg. 5).

Finally, Petitioner was seen by Dr. Vender at the request of Respondent for an Independent Medical Examination on June 4, 2012. (Rx. 1). Dr. Vender agreed that Petitioner suffered from a TFCC tear and ulnar impaction syndrome but disagreed as to the causation. He also agreed that Petitioner suffered from EPL tendinitis. (Rx. 1).

Petitioner testified that she had no further treatment after the independent medical examination because further benefits were denied by Respondent and she discovered in June or July that she was pregnant and could not risk hurting her child with a possible surgery or further diagnostic testing.

Additionally, Petitioner testified that she has been a permanent United States resident since 1994. However, at the time she was hired by respondent, her green card had expired. She notified Respondent about this situation, including a supervisor named Ahmad Smith. She testified that she would show Mr. Smith documentation approximately once a month showing

that her green card was being renewed. Respondent continued to allow Petitioner to work for them for over one year despite not having a current green card. Petitioner testified that in June of 2012, Respondent dismissed Petitioner claiming the reason was Petitioner being unable to present evidence that she had resolved her immigration issues. Petitioner testified that approximately two weeks after receiving the termination letter from Respondent, she received her green card in the mail.

After Petitioner's injury on October 24, 2011 she was given work restrictions by Centegra of no lifting more than 10 pounds. (Px. 5). After seeing Dr. Havenhill on January 11, 2012, Dr. Havenhill imposed work restrictions of no lifting or gripping more than two pounds, and to do clerical work only. (Px. 6, pg. 10). These restrictions remained in place until Petitioner was placed off work on April 4, 2012. (Px. 3, pg. 6). At the time Petitioner's employment was terminated she was still under the restriction of no work. (Px. 3).

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to (C) and (F) , whether an accident occurred that arose out of and in the course of Petitioner's employment and whether Petitioner's present condition of ill-being is causally related to the employment, the Arbitrator finds the following facts:

Petitioner testified that she was working as a rotor picker for Respondent Affinia Brake Parts on October 24, 2011 when she picked up a thirty-five pound rotor and immediately felt pain in her hand. After this date, Petitioner suffered from a type of continuous pain in the hand that had not existed before the injury. Respondent does not dispute whether this accident occurred but does dispute what injuries resulted from it. The issues in this case are whether the accident caused petitioner to tear her TFCC, whether it caused her ulnar impaction syndrome to

become symptomatic, and whether it caused the EPL tendinitis. The Arbitrator finds that the work accident was a cause of Petitioner's EPL tendinitis, her TFCC tear, and the cause of her ulnar impaction syndrome becoming symptomatic and requiring treatment.

It is a well-versed rule of law that in order to demonstrate an accidental injury, the claimant must either trace the injury to a specific accident identifiable as to time and place, or to the specific moment of collapse of one's physical structure. *Luckenbill v. Industrial Comm'n*, 155 Ill.App.3d 106 (1987). Whether a causal connection exists is a question of fact, and a claimant need only prove that some act or phase of his employment was a causative factor in his ensuing injury. *Land and Lakes Co. v. Industrial Comm'n*, 834 N.E.2d 583 (2005). An accidental injury need not be the sole or principal cause, so long as it was a causative factor in the resulting condition of ill-being. *Id.* at 592. Furthermore, proof of prior good health and a change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. *Id.* at 593.

In *Luckenbill*, the claimant met the burden of proving an accidental injury by showing that activity at work resulted in a herniated disc. The claimant's testimony was neither contradicted nor impeached, and the medical records tended to support the mechanism of injury. As such, the court found that there was no reasonable alternative explanation for his injuries. *Id.* at 111. It is the responsibility of the Commission, then, to determine whether a causal relationship exists between the injury and the alleged work accident. *Heston v. Industrial Comm'n*, 164 Ill.App.3d 178 (1987). It is thus within the Commission's province to weigh and judge witness credibility, resolve conflicts in medical testimony and choose among conflicting inferences therefrom. *Bennett Auto Rebuilders v. Industrial Comm'n*, 714 N.E.2d 1064 (1999).

In the instant case, it is clear from the testimony of the Petitioner, as well as from Petitioner's Exhibits 1 through 7, that Petitioner suffered a work-related injury to her right wrist when she picked up a rotor in the course of her employment. Petitioner was seen by three separate orthopedic doctors who all gave substantially similar diagnoses for the conditions that Petitioner suffered from. They all stated that Petitioner had a TFCC tear, ulnar impaction syndrome, and EPL tendinitis. Ulnar impaction syndrome is a condition that develops over time and results from the Patient having an ulnar positive variance, or in layman's terms, having a longer ulna bone than radius bone in the arm. (Px. 6, pg. 17). Ulnar impaction syndrome can make a TFCC tear more likely but many people live with an ulnar positive variance without any symptoms at all and would need some sort of specific incident, such as what happened to Petitioner, to become symptomatic. (Px. 1, pg. 4). Petitioner's treating physician, Dr. Havenhill, believes that the work injury on October 24, 2011 was the cause of the TFCC tear and caused Petitioner's ulnar positive variance to become symptomatic because the work incident was the origin of Petitioner's symptoms. (Px. 1, pg. 4). Dr. Havenhill thought it was more likely that Petitioner would never have developed symptoms from her ulnar positive variance if it was not for this specific work injury. (Px. 1). The Arbitrator may attach more weight to the treating physician's opinions and evidence. *Holiday Inns of America v. Industrial Commission*, 250 N.E.2d 643 (Ill., 1969).

Respondent argues that this injury is limited to EPL tendinitis and that the TFCC tear was the result of a pre-existing ulnar positive variance. (Rx. 1). Respondent emphasizes that Petitioner mentioned that she had some wrist pain prior to the incident at her initial visit to Centegra. However, Petitioner testified that the wrist pain she had prior to October 24, 2011 was

less severe and in a different area of the wrist than the severe pain that started on October 24, 2011 and remained continuous after that date. Furthermore, it is uncontroverted that Petitioner had never received treatment for her right wrist prior to the accident of October 24, 2011. She sought treatment in light of the onset of symptoms after her work injury. The Arbitrator finds that this is evidence that the work accident caused the EPL tendinitis, the TFCC tear, and further caused the ulnar impaction syndrome to become symptomatic, as attested to by Dr. Havenhill, hence aggravating a preexisting condition.

Based upon the foregoing, the Arbitrator finds that the Petitioner suffered an accident that arose out of and in the course of her employment with Respondent and that her condition of ill-being is causally related to the accident of October 24, 2011.

In support of the Arbitrator's decision relating to (J) and (K), whether the medical services provided to Petitioner were reasonable and necessary, whether respondent has paid all appropriate charges for all reasonable and necessary medical care, and whether Respondent is liable for Petitioner's prospective medical care, the Arbitrator finds the following facts:

Section 8(a) of the Workers' Compensation Act provides for compensation for all necessary medical, surgical and hospital services "thereafter incurred" that are reasonably required to cure or relieve the effects of an accidental injury sustained by an employee and arising out of and in the course of her employment. 820 ILCS 305/8(a). The employer's liability is continuous so long as the medical services are required to relieve the injured worker from the effects of the injury. *Elmhurst Memorial Hospital v. Industrial Comm'n*, 323 Ill.App.3d 758 (2001). The medical expenses incurred, however, must be reasonable and causally related to the accident. *Id.* at 764. The question of whether medical

treatment is causally related to the accident is a question of fact to be determined by the Commission, and will not be reversed on review unless contrary to the manifest weight of the evidence. *Id.* at 765. The test, therefore, is whether there is sufficient evidence in the record to support the Commission's decision. *Benson v. Industrial Comm'n*, 91 Ill.2d 445 (1982).

Specific procedures or treatments that have been prescribed by a medical provider are "incurred" within the meaning of the statute, even if they have not yet been paid for. *Homebrite Ace Hardware v. Industrial Comm'n*, 814 N.E.2d 126 (2004). In *Bennett Auto Rebuilders v. Industrial Comm'n*, 714 N.E.2d 1064 (1999), the Court upheld the Commission's order directing the employer to provide written authorization for a prescribed procedure and noted that it was within the Commission's province to weigh and judge witness credibility, resolve conflicts in medical testimony and choose among conflicting inferences therefrom.

In the case at bar, Petitioner's treating physician, Dr. Havenhill, has testified that all treatment that has been rendered up to the last visit date of April 23, 2012 was reasonable and necessary. (Px. 6, pg. 25). Dr. Havenhill testified that he believed the work accident of October 24, 2011 was the cause of Petitioner's TFCC tear and EPL tendinitis. (Px. 1, pg. 16). Dr. Havenhill also stated that the work accident was what caused Petitioner's ulnar positive variance to become symptomatic, and that it was likely that Petitioner never would have become symptomatic without that incident. (Px. 1, pg. 4). In addition, Dr. Havenhill has recommended and prescribed surgical intervention to remedy Petitioner's conditions. Dr. Havenhill recommends an arthroscopic debridement or TFCC repair as needed, an ulnar

shortening osteotomy, and release of Petitioner's EPL tendon. (Px. 1, pg. 2). Respondent's IME physician, Dr. Vender agreed with Dr. Havenhill's diagnosis although he disagreed with his views on causation. (Rx. 1). However, Dr. Vender's treatment recommendations differed slightly from Dr. Havenhill. Dr. Vender preferred to do a distal ulnar shortening as opposed to Dr. Havenhill's recommendation of an ulnar shortening osteotomy. (Rx. 1). Both Doctors testified that either procedure is within the standard of care, and Dr. Havenhill testified that the reason for choosing one over the other is each doctor's own preferences and opinions as to the probability of success. (Rx. 2, pg. 25; Px. 6, Pg. 20).

The Arbitrator finds that Petitioner's treating physician is in the best position to evaluate Petitioner's complaints, render a diagnosis and recommend the proper course of medical treatment. Accordingly, the Arbitrator finds that the treatment that has been rendered thus far to Petitioner as well as the treatment recommended by Dr. Havenhill is reasonable, necessary and causally related to the accident of October 24, 2011. This finding is based upon the testimony of the Petitioner, as well as the medical records contained in Petitioner's Exhibits 1 through 7. The Respondent is therefore ordered to pay for all treatment rendered to Petitioner for her ulnar impaction syndrome, TFCC tear, and EPL tendinitis up to the date of hearing. The Respondent is also ordered to authorize treatment as recommended by Dr. Havenhill, including authorization of the recommended surgical procedures and all related services thereafter associated with the treatment of Petitioner's ulnar impaction syndrome, TFCC tear, and EPL tendinitis.

In support of the Arbitrator's decision relating to (L), what amount of compensation is due for temporary total disability, the Arbitrator finds the following facts:

Petitioner testified that she was placed on light duty from the date of her initial consult at Centegra, November 11, 2012, to April 4, 2012 when she was placed off work by her treating physician Dr. Havenhill. Petitioner testified at hearing that she tendered work slips to her employer immediately after they were issued. She further testified that she was off work from April 4, 2011 until the date of hearing on February 7, 2012. Temporary total disability benefits are awarded for the period from when an employee is injured until she has recovered as much as the character of the injury will permit. *Land and Lakes Co. v. Industrial Comm'n*, 834 N.E.2d 583 (2005). The test is whether the condition has stabilized, and the factors to consider in deciding as much include (1) a release to return to work, (2) the medical testimony regarding the injury and (3) the extent of the injury. *Id.*

When a court determines the duration of TTD, the only questions that need to be asked and answered are whether the claimant has yet reached maximum medical improvement and, if so, when. *Freeman v. Industrial Comm'n*, 318 Ill.App.3d 170 (2001). Once an injured claimant has reached maximum medical improvement, the condition is no longer temporary and entitlement to TTD benefits ceases even though the claimant may thereafter be entitled to receive permanent total or partial disability benefits. *Id.*

In this instance, Petitioner testified to and presented credible evidence demonstrating that her treating physician ordered she refrain from working as of April 4, 2012. Petitioner was terminated in June of 2012 because Respondent stated that she was unable to prove resolution of her immigration issues. However, the only issue when determining if TTD benefits are due to a claimant is whether the employee remains temporarily totally disabled due to a work injury and

whether the employee is capable of returning to the workforce. The Illinois Supreme Court states, "A thorough examination of the Act reveals that it contains no provision for the denial, suspension, or termination of TTD benefits as a result of an employee's discharge by his employer. Nor does the Act condition TTD benefits on whether there has been "cause" for the employee's dismissal." *Interstate Scaffolding, Inc. v. Comm'n*, 923 N.E.2d 266, 274 (Ill., 2010).

The Arbitrator finds that even if the reason for Petitioner's termination was for cause, TTD benefits are due if she is still temporarily totally disabled as determined by medical professionals. *See Lopez v. AGI Media*, 11 I.W.C.C. 0576 (June 16, 2011) (TTD benefits awarded after termination due to Petitioner's failure to prove legal immigration status). The Arbitrator finds that Petitioner is still temporarily totally disabled, her condition has not stabilized, and she is unable to return to the workforce based on Dr. Havenhill's last examination of her on April 23, 2012. (Px. 6, pg. 19).

Having considered the totality of the credible evidence adduced at hearing, as well as the Petitioner's Exhibits 1 through 7, the Arbitrator finds that the Petitioner is entitled to have and receive from the Respondent temporary total disability benefits of \$329.60 per week for a period of 44 1/7 weeks, from April 4, 2012 through February 7, 2013.

Conclusion

For the foregoing reasons the Arbitrator finds that Petitioner suffered injuries on October 24, 2011 that arose out of and in the course of her employment with Respondent. The Arbitrator further finds that the Petitioner's current condition of ill being is causally related to the October 24, 2011 accident including the Petitioner's TFCC tear, ulnar impaction syndrome, and EPL

tendinitis. Respondent is therefore ordered to pay all outstanding TTD and approve further medical treatment as outlined in this decision.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Adolph Ford,
Petitioner,
vs.

14IWCC0514

NO: 13 WC 16052

Illinois Bell Telephone Company,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 18, 2013 is hereby affirmed and adopted.

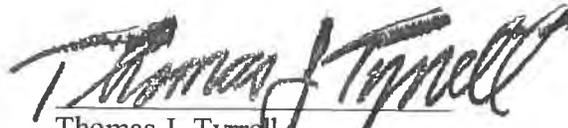
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

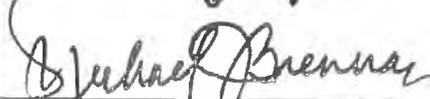
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$12,400.00. 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: JUN 27 2014
KWL/vf
O-6/24/14
14


Kevin W. Lamborn


Thomas J. Tyrrell


Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0514

FORD, ADOLPH

Employee/Petitioner

Case# 13WC016052

ILLINOIS BELL TELEPHONE COMPANY

Employer/Respondent

On 11/18/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0062 TEPLITZ & BELL
JOEL BELL
221 N LASALLE ST SUITE 1900
CHICAGO, IL 60601

0766 HENNESSY & ROACH PC
WILLIAM F O'BRIEN
140 S DEARBORN 7TH FL
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0514

Case # 13 WC 16052

Consolidated cases: _____

Adolph Ford
Employee/Petitioner

v.

Illinois Bell Telephone Company
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **11/1/2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

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FINDINGS

On the date of accident, **3/29/2013**, 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 *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 **\$31,356.00**; the average weekly wage was **\$603.00**.

On the date of accident, Petitioner was **49** years of age, *single* with **0** dependent children.

The parties deferred the issue of incurred medical expenses to a subsequent hearing.

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 Petitioner temporary total disability benefits of \$402.00/week for 30 5/7 weeks, commencing April 1, 2013 through November 1, 2013, as provided in Section 8(b) 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

11/18/13
Date

NOV 18 2013

14IWCC0514

Adolph Ford v. Illinois Bell Telephone Company
13 WC 16052

Arbitrator's Findings of Fact

Petitioner testified he began working for Respondent on November 16, 2012. He denied having any physical problems at that time. He previously worked in customer service for Comcast, answering telephones and using a computer.

Petitioner testified he underwent a lengthy course of training after being hired by Respondent. He was still a trainee as of his claimed work accident of March 29, 2013 but he worked alone, calling in for assistance to Respondent's "help desk" as necessary. His job title was "premises technician." He traveled to various customers' homes, installing "U Verse" systems. At the beginning of each assignment, he would contact the customer to determine whether the customer already had phone and/or Internet service. He would then go to the customer's residence to adjust the signal as necessary. Adjusting the signal usually involved connecting wires inside a junction box. Some junction boxes were at the top of poles outside the residences. He had to set up and climb an extension ladder in order to gain access to these junction boxes. He routinely transported two ladders to his assignments. The ladders were secured to the exterior of his company truck.

Petitioner testified that one of the two ladders he used was an extension ladder that weighed between 80 and 100 pounds. This ladder was 12 feet long when not extended. If he needed to gain access to a junction box situated at the top of a pole, he would remove this ladder from the top of his truck, set it up against the pole, use his right hand to hold it against the pole and then use his left hand to pull a rope to extend the ladder. Each pull of the rope extended the ladder by about two rungs. After he extended the ladder to the necessary height, which ranged between 18 and 20 feet, he would use a safety strap to secure the base of the ladder to the pole, get his equipment, climb the ladder and use another safety strap around his waist to secure himself to the pole. He tried to position the ladder as close to the junction box as possible but he had to be able to lean back in order to connect the wires inside the box. He worked with his arms overhead while connecting the wires. Once he finished the work inside the box, he had to perform all of these tasks in reverse while descending and shortening the ladder. In order to restore the ladder to its original length, he used his dominant right hand to maintain a grip on the ladder and his left hand to pull the rope. He testified that a single pull "would not do it." He had to inch the ladder down so as to avoid injuring his right hand.

Petitioner testified he felt fine when he started his workday on March 29, 2013, a Friday. He recalled performing three or four jobs that day. His last job involved providing U-Verse service to a customer who already had phone service. He had to use the extension ladder in order to gain access to a cross-box that was on a pole in the alley behind the customer's home. He also had to make connections inside the customer's house. He worked at this location for about three hours because there was a problem with getting a signal at the phone pole. This problem prompted him to retrace his steps because he knew the customer

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had a good phone signal. He climbed up and down the extension ladder several times while trying to solve the problem. Eventually, he called into the "help desk" to get instructions. He was never able to solve the problem. At the end of the day, he restored the customer's phone service, took the extension ladder down, put the ladder back on top of his truck and drove back to the garage. In order to put the ladder back on top of the truck, he had to lean the ladder against the van, use both arms to push the ladder up and then secure the ladder.

Petitioner testified his left shoulder was bothering him by the end of the workday on March 29, 2013. As he drove his own car home from Respondent's garage his left shoulder pain worsened. He did not immediately seek care because he assumed his pain would improve with rest over the weekend. His pain actually worsened with rest. He thought about going to an Emergency Room on Sunday, March 31st, but did not do so because he had no health insurance since he was still in training. Before his shift started on Monday, April 1, 2013, he called his manager, Andrew Bradley. He told Bradley his shoulder was hurting and he would in to work. He saw his primary care physician, Jacqueline Payne, D.O., at Advocate Medical Group later that day. He testified he told Dr. Payne his shoulder started hurting on Friday and he needed to see a doctor for work.

Dr. Payne's note of April 1, 2013 sets forth the following history:

"Pt here for eval on lt shoulder pain since Fri – started at the end of the day on Fri – no definitive injury at work. Pain has gotten progressively worse. Did not take anything for pain. No prior."

On left shoulder examination, Dr. Payne noted equivocal drop arm and Jobe's testing and tenderness posterior to the acromioclavicular joint. She obtained left shoulder X-rays, which showed mild degenerative osteoarthritis in the left AC joint. She prescribed anti-inflammatory medication and indicated Petitioner might need an MRI. She instructed Petitioner to avoid using his left upper extremity and released him to light duty with no lifting over 10 pounds. PX 1.

Petitioner testified he told his manager about Dr. Payne's light duty restrictions. The manager told him he needed a full release in order to be able to resume working.

Petitioner returned to Dr. Payne on May 1, 2013. Petitioner testified he waited until May 1st to return to the doctor because it was at that point that his health coverage had "kicked in." Dr. Payne's note of May 1, 2013 reflects that Petitioner's left shoulder pain and dysfunction were worsening, that Petitioner was "having trouble with workman's comp" and that Petitioner had retained a lawyer. On left shoulder re-examination, the doctor noted abduction and flexion to 90 degrees and positive "drop arm" and Jobe's testing. She found Petitioner's symptoms "highly suspect for rotator cuff tear." She prescribed a Prednisone burst and instructed Petitioner to undergo an MRI and an orthopedic evaluation. PX 1.

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On May 16, 2013, Petitioner filed an Application for Adjustment of Claim alleging a left arm/shoulder injury of March 29, 2013. The Application reflects that Petitioner provided Respondent with both oral and written notice of his accident. Arb Exh 2.

Petitioner testified he saw Dr. Aribindi, an orthopedic surgeon, at Dr. Payne's referral. Dr. Aribindi's initial note of May 29, 2013, sets forth the following history:

"Mr. Ford presents with complaints of left shoulder pain noted since March 29, 2013. He had noted pain in the left shoulder after a long day of work climbing poles. He works for A T & T. He noted soreness about the left shoulder while driving home that night. Over the next few days he had noted worsening of the left shoulder pain. He then saw his primary care physician and X-rays of the left shoulder were obtained. No significant findings were noted. He states that since then the pain about the left shoulder has been worsening."

Dr. Aribindi described Petitioner as right hand dominant. He noted that Petitioner denied any past medical history.

On cervical spine examination, Dr. Aribindi noted a good active range of motion, no tenderness and a negative Spurling's sign. On left shoulder examination, he noted some tenderness over the anterior and anterolateral aspects of the shoulder, pain with forward elevation, which was limited to about 100 degrees of active motion, pain with abduction, a positive impingement sign, pain with O'Brien's testing and no significant weakness.

Dr. Aribindi diagnosed left shoulder pain with tendinitis, impingement symptoms and possible internal derangement. He injected the left shoulder subacromial space with Celestone and Marcaine. He prescribed physical therapy and gave Petitioner home exercises. He released Petitioner to light duty with no lifting or carrying weights overhead. He instructed Petitioner to continue taking Ibuprofen and Prednisone. PX 1, 2.

Petitioner underwent an initial physical therapy evaluation at Dr. Aribindi's office, Southland Orthopaedics, on June 3, 2013. The evaluating therapist noted that Petitioner works as a lineman for A T & T and experienced left shoulder pain while driving home from work in March 2013, with that pain worsening over the ensuing weekend. Subsequent therapy notes reflect that Petitioner reported no improvement in his pain. PX 2.

Petitioner returned to Dr. Aribindi on June 26, 2013 and reported no relief secondary to the injection. He reported having difficulty carrying a gallon of milk.

Dr. Aribindi noted that Petitioner gave a history of injuring his left shoulder at work in late March. He also noted that Petitioner's job involved carrying and climbing ladders.

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On left shoulder re-examination, Dr. Aribindi noted new findings of crepitus and popping. He found Petitioner's examination "suggestive of internal derangement." He recommended an MR arthrogram. He released Petitioner to light duty with no lifting or carrying weights with the left arm and no overhead work. He instructed Petitioner to continue taking the medication and return to him after the arthrogram. PX 1, 2.

Petitioner underwent the recommended left shoulder MR arthrogram on July 2, 2013. The radiologist interpreted the study as showing a full-thickness tear of the mid to posterior fibers of the supraspinatus, with 1 centimeter retraction, tendinosis and partial thickness undersurface tears within the anterior fibers of the infraspinatus and subscapularis tendinosis with possible partial thickness tear, an intra and extra-articular biceps tendon split tear, a SLAP tear extending from about 3:00 to 11:00 position and blunting of the labrum, suggesting a degenerative-type tear, and moderate acromioclavicular joint osteoarthritis. PX 1, 2.

On July 10, 2013, Dr. Aribindi discussed various treatment options with Petitioner, with Petitioner opting to undergo a left shoulder arthroscopy. Dr. Aribindi took Petitioner off work. PX 2.

On July 26, 2013, Dr. Aribindi performed a left shoulder arthroscopy with biceps tenotomy, debridement of labral tear, acromioplasty and rotator cuff reconstruction. He placed Petitioner's left arm in a shoulder brace/sling at the end of the surgery. PX 2.

On August 9, 2013, Petitioner's first post-operative visit, Dr. Aribindi noted that Petitioner described his left shoulder pain as improving. He also noted that Petitioner was able to perform gentle pendulum-type exercises. He instructed Petitioner to continue wearing the brace and sling. He prescribed physical therapy and released Petitioner to work with no driving and no lifting or carrying weights with the left arm. PX 1.

Petitioner returned to Dr. Aribindi on October 4, 2013 and described his left shoulder pain as much improved. On re-examination, the doctor noted a good passive range of motion and active forward elevation to about 110 or 120 degrees. He instructed Petitioner to continue therapy and his home exercise program. He directed Petitioner to return to him in four weeks. PX 2.

Dr. Aribindi gave a deposition on behalf of Petitioner on October 25, 2013. Dr. Aribindi testified he is a board certified orthopedic surgeon. PX 3 at 5-6. He has been in private practice for fifteen years. PX 3 at 6. He first saw Petitioner on May 29, 2013. On that date, Petitioner complained of left shoulder pain since March 29, 2013. Petitioner indicated his pain began after a long day of work climbing poles. He continued noticing left shoulder pain on his drive home from work. The pain increased over the ensuing weekend. Petitioner denied right shoulder and neck pain. PX 3 at 7-8. On examination, he had pain with raising his left arm overhead in forward elevation. He could only raise his arm to about 100 degrees, with 180 being normal. He also had pain with abduction and a positive impingement sign. PX 3 at 9.

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Dr. Aribindi testified he initially diagnosed left shoulder pain with tendinitis and impingement syndrome with possible internal derangement. He suspected a problem with the labrum and/or biceps tendon. PX 3 at 10. He administered a steroid injection to the subacromial space. He prescribed home exercises and therapy. He also imposed restrictions of no lifting or carrying weights overhead. PX 3 at 11. When Petitioner returned, on June 26, 2013, he again reported left shoulder pain. Petitioner also described his job in greater detail, indicating he had to carry and climb ladders. PX 3 at 11. Petitioner reported no significant relief following the injection. PX 3 at 12. On re-examination, Dr. Aribindi noted positive impingement and O'Brien's testing. PX 3 at 12-13. He ordered an MR arthrogram, which "gives you all of the information about the rotator cuff and is about 70% accurate for labral tears." PX 3 at 15. He restricted Petitioner from using his left arm to carry or lift weights. He also restricted Petitioner from overhead work. PX 3 at 15.

Dr. Aribindi testified that Petitioner's left shoulder MR arthrogram showed a full-thickness rotator cuff tear with about a centimeter of retraction, tendinosis and partial-thickness tearing of the infraspinatus and tendinosis of the subscapularis. Because the arthrogram showed "relative preservation of the muscle bulk," Dr. Aribindi could determine that Petitioner's injury was relatively new. PX 3 at 16. The arthrogram also showed a biceps tendon split with tears and a labral tear. PX 3 at 17. Based on the results, he recommended a left shoulder arthroscopy with rotator cuff repair and either a biceps tenotomy or tenodesis. PX 3 at 17. With a tenotomy, you release the ligament. A tenodesis involves releasing the tendon and reattaching it somewhere else. The good thing about a tenodesis is that it avoids the cosmetic Popeye-like defect that results from a tenotomy. The bad thing is that it is painful and involves a longer healing period. PX 3 at 18.

Dr. Aribindi testified that he operated on Petitioner's left shoulder on July 29, 2013. During the surgery, he performed an arthroscopy, a biceps tenotomy, debridement of the labral tear, a synovectomy, an acromioplasty, or raising of the acromion, and a rotator cuff reconstruction. PX 3 at 19. During the surgery, he noted a full-thickness rotator cuff tear. PX 3 at 20. Postoperatively, he placed Petitioner's left arm in a sling and allowed only passive range of motion with no active lifting or carrying. PX 3 at 21.

Dr. Aribindi described Petitioner's post-operative course as uneventful. By September 2013, Petitioner could actively elevate his arm forward to about 110 or 120 degrees. PX 3 at 23. Dr. Aribindi anticipated seeing Petitioner again shortly after the deposition. PX 3 at 23. Petitioner is continuing to attend therapy at a facility in the doctor's building. PX 3 at 22-24.

Dr. Aribindi testified he cannot say that Petitioner's left shoulder problem stemmed solely from the fact Petitioner worked for Respondent. Rather, he attributes the problem to the specific work activities Petitioner performed for Respondent. Petitioner told him he began experiencing pain after a day of climbing and performing activities overhead. He has no reason to doubt this. He has seen "plenty of patients whose jobs involve climbing ladders or poles who end up getting shoulder pain." PX 3 at 29-30. Petitioner specifically denied having any left

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shoulder pain before March 29, 2013. PX 3 at 31. If the work Petitioner performed that day did not directly cause his left shoulder problem, it certainly aggravated it and brought about the need for surgery. PX 3 at 31.

Dr. Aribindi testified he has not released Petitioner to full duty. Petitioner is still in the midst of treatment. PX 3 at 32.

Under cross-examination, Dr. Aribindi testified that Dr. Payne, a primary care physician at Advocate Medical Group, referred Petitioner to him. PX 3 at 33. He has no records indicating he saw Petitioner before May 29, 2013. PX 3 at 34. He did not review Dr. Payne's records. PX 3 at 34-35. He did not ask Petitioner how many hours he worked on March 29, 2013 or during the week ending March 29, 2013. PX 3 at 35-36. Petitioner told him his job involved climbing ladders and poles. Petitioner did not provide more specifics. PX 3 at 36. Nor did Petitioner indicate how much overhead work he performed on or before March 29, 2013. PX 3 at 37. Petitioner did not explain how he goes about climbing a pole. PX 3 at 37. Petitioner's rotator cuff tear was "not horrible." The tear looked like it was of recent vintage. A rotator cuff tear does not heal on its own. That is why Petitioner needed surgery. PX 3 at 40. Dr. Aribindi testified he predominantly based his causation opinion on Petitioner's denial of pre-accident left shoulder problems. He also relies on his own surgical experience and the MR arthrogram, which shows that the injury was recent. Absent other information showing that Petitioner did in fact have left shoulder pain and/or underwent left shoulder care before the accident, he stands by his causation opinion. As far as he knows, Petitioner took medication (anti-inflammatories and Prednisone) between his last visit to Dr. Payne on May 1, 2013 and May 29, 2013 but did not see any other doctors. PX 3 at 42-44.

Petitioner testified he is next scheduled to see Dr. Aribindi on November 11, 2013. He denied reinjuring his left shoulder after March 29, 2013. He contacted Respondent about resuming restricted duty. Until October 2013, he received a letter each month directing him to show up at Respondent, which he does. He is not currently taking any medication. Physical therapy is helping him but he is still having great difficulty sleeping. If he rolls over, he wakes up. He can do simple tasks such as washing dishes. He can raise his left arm but not overhead. He does exercises at home.

Under cross-examination, Petitioner testified the only source of his left shoulder pain was the work he performed for Respondent on March 29, 2013. He discussed his occupation with Drs. Payne and Aribindi. He told Dr. Aribindi he climbs ladders. He cannot recall exactly what he told Dr. Aribindi about the ladder lifting he performs but he told the doctor about the work activities he performed on March 29, 2013. In rural areas, he has to actually climb poles. In urban areas, he gains access to the poles via ladders. He did not tell Dr. Aribindi how many assignments he performs each day. When he called his manager on April 1, 2013, he told the manager he hurt his shoulder while working. His manager asked if there was a specific incident that day and he said no.

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On redirect, Petitioner testified he told Dr. Aribindi he experienced left shoulder pain after a long day of work. He told the doctor he had to climb and carry ladders.

Under re-cross, Petitioner testified that Dr. Payne imposed light duty on April 1, 2013. On May 1, 2013, Dr. Payne recommended an MRI, which he could not get.

On further redirect, Petitioner testified that Dr. Payne did not release him to return to work on May 1, 2013.

Andrew Bradley testified on behalf of Respondent. Bradley testified he has worked for Respondent for thirteen years. During the last two years, he has been employed as a U-Verse manager. He is familiar with Petitioner's job but he has never performed this job. He is Petitioner's direct manager. He and Petitioner talk daily. On Monday, April 1, 2013, he received a call from Petitioner. During this call, Petitioner complained of shoulder discomfort and indicated he was unable to work that day secondary to the discomfort. Petitioner did not mention an accident. Nor did Petitioner link his discomfort to his work duties. It is possible that Petitioner also called him during the weekend preceding Monday, April 1st. Since Petitioner was a new technician, he told Petitioner what sources were available to him. Petitioner described the "period of his injury." He hoped that rest would help.

Under cross-examination, Bradley testified he does not believe Petitioner told him what the general cause of his discomfort was. Petitioner told him his shoulder irritation started Friday evening or at the end of his shift that day.

Respondent did not offer any documents into evidence.

Arbitrator's Credibility Assessment

Petitioner was a calm and articulate individual. His testimony as to his duties was detailed and convincing. The Arbitrator found him highly credible.

Petitioner's direct manager, Andrew Bradley, hedged at times. He seemed reluctant to commit himself to an answer, particularly when being asked about notice.

Arbitrator's Conclusions of Law

Did Petitioner sustain an accident on March 29, 2013 arising out of and in the course of his employment? Did Petitioner provide timely notice? Did Petitioner establish a causal connection between his claimed accident and his current left shoulder condition of ill-being?

The Arbitrator finds that Petitioner sustained a compensable work accident on Friday, March 29, 2013. The Arbitrator attributes this accident to the various tasks Petitioner performed that day, particularly during his last assignment.

In so finding, the Arbitrator relies on Petitioner's highly detailed account of his duties and the problem he encountered while attempting to establish a signal for a customer on the afternoon of March 29, 2013. Petitioner testified he was at and outside this customer's residence for about three hours. During this period, he had to use his left arm to forcefully pull a rope to extend and shorten a large ladder. He also had to use both arms to set up the ladder, affix the safety straps, climb the ladder, affix a safety belt, work overhead, push the ladder up to the top of his truck and affix the ladder to the truck. By the time he started driving his own car home from Respondent's garage, he was noticing pain in his left shoulder.

The Illinois Supreme Court has noted that the word "accident," as used in the Act, is not a technical legal term. E. Baggot Co. v. Industrial Commission, 290 Ill. 530 (1919). Rather, it is a "comprehensive term almost without boundaries in meaning as related to some untoward event," Ervin v. Industrial Commission, 364 Ill. 56, 60 (1936).

In General Electric Co. v. Industrial Commission, 89 Ill.2d 432, 434 (1982), the Illinois Supreme Court held that, "when workers' physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment." The Arbitrator finds that the physical structure of Petitioner's left shoulder "gave way" while he was working on March 29, 2013 and that this giving way constituted an accident. Petitioner credibly testified he was required to pull with his left arm and perform various overhead tasks in the course of his customary duties and that he had to perform those duties in a particularly intense way while retracing his steps in an effort to solve a technical problem on the afternoon of March 29, 2013.

The case of Simburger v. Industrial Commission, 140 Ill.App.3d 371 (5th Dist. 1986) also supports Petitioner's claim. The claimant in Simburger was a supply man and scoop operator who worked in a mine. He alleged that he experienced the onset of back pain on October 6, 1981, while repeatedly carrying heavy bolting items into a section of the mine. Like Petitioner, he did not link the onset of his symptoms to a particular event. The Court reversed the Commission's denial of benefits, noting: "the stark fact remains that the events of October 5, 1981 precipitated a breakdown in the physical structure," 140 Ill.App.3d at 376.

The Arbitrator further finds that Petitioner provided Respondent with timely notice of his accident. Petitioner credibly testified he called his manager on Monday, April 1, 2013 and told him he was experiencing left shoulder pain stemming from the work activities he performed the preceding Friday. Petitioner's manager, Andrew Bradley, did not take issue with Petitioner's account of his job duties or the events of March 29, 2013. Bradley acknowledged that Petitioner reported left shoulder pain to him via telephone on April 1st. Bradley also indicated it was possible he and Petitioner spoke during the weekend preceding April 1st. Bradley confirmed that Petitioner linked the onset of his pain to the end of his workday on March 29, 2013. While Bradley denied that Petitioner told him his pain stemmed from his duties, his hesitancy on this point was evident. When responding to notice-related questions, his tendency was to say "I don't believe so" rather than "no." The Arbitrator finds Petitioner more credible than Bradley as to the exchange that occurred on April 1, 2013.

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The Arbitrator further finds that Petitioner established a causal connection between the accident of March 29, 2013 and his current left shoulder condition of ill-being. Petitioner denied having any left shoulder problems prior to starting work on March 29, 2013. The Arbitrator has no reason to question this denial. On April 1, 2013, Dr. Payne noted that Petitioner denied any prior left shoulder problems. On May 29, 2013, Dr. Aribindi described Petitioner's past medical history as negative. PX 1. At his deposition, Dr. Aribindi, who had the benefit of seeing Petitioner's left shoulder pathology firsthand, described the tears as acute rather than chronic. PX 3 at 40. Dr. Aribindi also found the work activities that Petitioner described, i.e., carrying and climbing ladders and working overhead, to be a plausible mechanism of injury. Dr. Aribindi acknowledged he was not familiar with every single aspect of Petitioner's job but the Arbitrator finds he had sufficient information and experience on which to base a causation opinion.

Is Petitioner entitled to temporary total disability benefits?

Petitioner claims he was temporarily totally disabled from April 1, 2013 through the hearing of November 1, 2013. Respondent agrees Petitioner was temporarily totally disabled during this period but claims it is not liable for benefits, based on its various defenses. The parties agree Respondent paid no benefits prior to the hearing. Arb Exh 1.

The Arbitrator has previously found in Petitioner's favor on the issues of accident, causal connection and notice. Based on these findings, along with the treatment records and testimony of Petitioner and Dr. Aribindi, the Arbitrator finds that Petitioner was temporarily totally disabled from April 1, 2013 through the hearing of November 1, 2013, a period of 30 5/7 weeks. On April 1, 2013, Dr. Payne instructed Petitioner to avoid using his left arm. She released him to light duty with no lifting over 10 pounds. Petitioner testified he informed Respondent of this restriction and was told he could not return to work until he had been released to full duty. Respondent's witness, Andrew Bradley, did not contradict this testimony. Dr. Payne did not specifically address Petitioner's work status in her next note, dated May 1, 2013, but instructed Petitioner to see an orthopedic surgeon and undergo an MRI. Petitioner credibly testified that Dr. Payne did not release him to work on May 1, 2013. Dr. Payne clearly did not view Petitioner as having reached maximum medical improvement on that date. Interstate Scaffolding v. IWCC, 236 Ill.2d 132 (2010). Dr. Aribindi imposed restrictions on May 29 and June 26, 2013 and has not released Petitioner to full duty since the surgery of July 26, 2013. As of the hearing, Petitioner was still undergoing therapy per Dr. Aribindi. PX 3 at 23. On October 25, 2013, only six days before the hearing, Dr. Aribindi testified that Petitioner remained off work at his direction. PX 3 at 32.

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Alette Christl-Johnson,
Petitioner,

vs.

NO: 06 WC 26425

14IWCC0515

Central Du Page Hospital,
Respondent.

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 temporary total disability, causal connection, medical expenses, and 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 12, 2013 is hereby affirmed and adopted.

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.

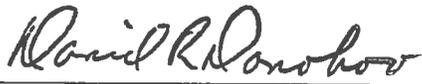
14IWCC0515

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.

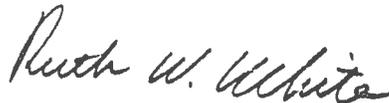
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 27 2014

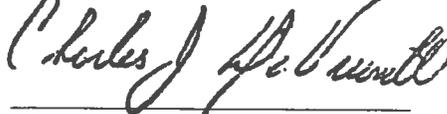
o-06/19/14
drd/wj
68



Daniel R. Donohoo



Ruth W. White



Charles J. DeVriendt

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

CHRISTL-JOHNSON, ALETTE

Employee/Petitioner

Case# 06WC026425

CENTRAL DuPAGE HOSPITAL

Employer/Respondent

14IWCC0515

On 8/12/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

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

0075 POWER & CRONIN LTD
BRIAN RUDD
900 COMMERCE DR SUITE 300
OAKBROOK, IL 60523

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
pmo CORRECTED ARBITRATION DECISION
8-5-13 19(b)/8(a)

Alette Chrisl-Johnson,
Employee/Petitioner

Case # 06 WC 26425

v.

Consolidated cases: none

Central DuPage Hospital,
Employer/Respondent

14IWCC0515

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 **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **Chicago**, on **3/7/13**. 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 Vocational Rehabilitation

FINDINGS

On the date of accident, **4/24/05**, 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 **\$43,373.58**; the average weekly wage was **\$818.42**.

On the date of accident, Petitioner was **24** years of age, *single* with **no** 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 **\$54,527.34** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$54,527.34**. (See Arb.Ex.#1).

Respondent is entitled to a credit of **\$0.00** under Section 8(j) of the Act. (See Arb.Ex.#1).

ORDER

PMO 8-5-13

Respondent shall pay Petitioner ~~temporary total disability~~ ^{maintenance} temporary total disability benefits of \$545.61 per week for 200-5/7 weeks, on 12/29/06 and from 1/8/07 through 2/8/07, and from 1/30/08 through 11/1/11, as provided in Section 8(a) of the Act.

PMO 8-5-13

Respondent shall pay Petitioner ~~temporary total disability~~ maintenance benefits of \$545.61 per week for 70-2/7 weeks, commencing 11/2/11 through 3/7/13, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 4/25/05 through 3/7/13, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of \$54,527.34 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services of \$285,437.75 (PX24), as provided in Sections 8(a) and 8.2 of the Act. Respondent shall also authorize and pay for ongoing vocational rehabilitation services.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of 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.

Peter W. Juley

Signature of Arbitrator

PMO 8-5-13

6/10/13 8/5/13
Date

ICArbDec19(b)

AUG 12 2013

STATEMENT OF FACTS:

On April 24, 2005 the petitioner was a single 24-year-old respiratory therapist who had been working for the respondent, Central DuPage Hospital, since 2002. As a respiratory therapist the petitioner spent 95% of her day on her feet, attending to patients and responding to emergencies. Prior to April 24, 2005 the petitioner had no pain, soreness or other ongoing condition affecting her right leg/knee/foot. On that date it is stipulated that the petitioner was answering an emergency call in the neonatal intensive care unit. While locking down the wheels to an oxygen machine, she lifted her right leg and struck her right knee against an oxygen blender attached to the machine. The impact was strong enough to tear her scrubs and leave a mark on her skin, but it did not cause bleeding. The petitioner testified that when she struck her knee she felt a sharp, severe pain that immediately traveled down to her right foot. The petitioner described the pain as so intense it took her breath away. She continued to work her shift after making a written report of the accident. (Rx 16)

The next day the petitioner already had tingling down to the toes of her right foot. Employee Health arranged an appointment for April 28, 2005 at Central DuPage Business Health. (Px 2) The Business Health clinic noted that the petitioner sustained a work injury and that she was already experiencing a tingling sensation into the toes of her right foot. Consistent with the petitioner's testimony, she had greater pain when keeping her right leg bent. The clinic noted no swelling or ecchymosis. They provided a knee sleeve and prescribed Ibuprofen. Petitioner was placed on light duty and told to return to the clinic the next week.

Petitioner testified that she continued to work her full duties, but tried to self-limit her bending, squatting and kneeling. Over the next week the pain in her right knee increased. Business Health placed her in a knee brace and provided more medication. Petitioner was referred to Orthopaedic Associates of DuPage (OAD).

Petitioner was seen by Dr. Senall at OAD on May 16, 2005. (Px 2) She was referred to physical therapy and told to return if she was no better. On May 19, 2005 the petitioner returned to Business Health with increasing pain in her right leg. On this date the petitioner was first prescribed a narcotic, Vicodin, for her pain. She has remained on prescribed narcotic medication to the present time. A May 27, 2005 MRI of petitioner's right knee was negative. On June 27, 2005 Business Health referred the petitioner back to OAD for another orthopaedic evaluation by Dr. LaBelle. (Px 2) Dr. LaBelle diagnosed the petitioner as suffering from right pre-existing patellar chondromalacia aggravated by the work injury. He advised the petitioner to avoid squatting for one month, then to return to work full duty. Alternatively, Dr. LaBelle stated that the petitioner might need a permanent restriction for no squatting. Lastly, Dr. LaBelle opined that if the pain persisted she could try cortisone injections.

Petitioner testified that the pain in her right knee and leg intensified. Therefore, she returned to Business Health where she received two cortisone injections, on July 29, and September 29, 2005. At the time of her last injection, petitioner was advised to wait six months and see if she could live with the pain. Petitioner testified that she could not live with the pain and sought treatment from a chiropractor at Bloomington Chiropractic. (Px 3) Petitioner received passive treatment and stimulation to her right leg from the chiropractor. The benefits were transitory. When petitioner tried to return to Business Health, she was advised that her claim had been closed and no further treatment would be authorized.

On March 16, 2006 the petitioner was sent to Dr. Eugene Lopez pursuant to §12. (Rx 10) Dr. Lopez opined that petitioner continued to suffer from the effects of her work injury. He advised an FCE and cautioned that the petitioner would need permanent activity restrictions including weight and work hour restrictions. Further, the petitioner needed to avoid deep crouching and climbing. A second MRI was ordered. Petitioner did not recall undergoing this MRI.

On July 6, 2006 Bloomington Chiropractic referred the petitioner to Hinsdale Orthopaedic Associates ("Hinsdale Orthopaedics") (Px 4) Petitioner was first treated on July 21, 2006 by Dr. Chassin of Hinsdale Orthopaedics. He noted mild effusion and tenderness at the petitioner's IT band at the knee. It was Dr. Chassin's opinion that the petitioner suffered from IT band syndrome, or from an undisclosed internal derangement in her right knee. Dr. Chassin opined that the petitioner was not at MMI. Petitioner was advised to restart physical therapy, and, if that failed, would possibly require arthroscopy. He also opined that the petitioner's current condition of ill-being was causally related to the work injury of April 24, 2005. He also continued the petitioner on narcotic pain medication.

Once physical therapy was commenced, petitioner immediately began to experience severe pain into her right ankle. On December 29, 2006 she awoke with a red, swollen ankle causing tingling into her right toes. Petitioner was seen at the Central DuPage Convenient Care facility. Petitioner was diagnosed with cellulitis and started on antibiotics. She was taken off of work through February 8, 2007. The antibiotics were of no benefit. When petitioner was seen at the Convenient Care facility on January 8, 2007 she was told to seek further treatment from Dr. Chassin.

Petitioner returned to Dr. Chassin on January 11, 2007. His notations showed that the petitioner's right ankle problems started at the time she began her physical therapy for her right leg. She was placed in a cam walker and an MRI was performed on her right ankle on January 15, 2007. On January 19, 2007 Dr. Chassin referred the petitioner to Dr. Vargo of Hinsdale Orthopaedics for further evaluation of her right ankle/foot. Dr. Vargo reviewed the petitioner's history and opined that the physical therapy required for petitioner's right leg/knee condition exacerbated an anterolateral impingement of her right ankle. Petitioner was kept in the boot and continued on narcotic medication.

On February 9, 2007 the petitioner was released for light duty work. Petitioner did return to light duty work at that time. Petitioner continued to work in the boot and continued under the care of Dr. Vargo for her right foot/ankle, and Dr. Chassin for her right leg/knee. On June 29, 2007 Dr. Chassin requested another MRI which showed minimal chondromalacia of the right knee which he felt did not explain the petitioner's continuing complaints of pain. On July 29, 2007 Dr. Chassin prescribed diagnostic arthroscopy while noting that he was cautious about the procedure possibly making her complaints worse. On July 25, 2007 Dr. Vargo also recommended an arthroscopy of petitioner's right ankle.

Petitioner was sent to Dr. George Holmes for a §12 examination of her right foot. Respondent chose to not include Dr. Holmes' report as an exhibit. Petitioner testified that while at this exam, her right foot turned blue. She directed Dr. Holmes' attention to that condition and he photographed the foot with its color change. No further treatment was authorized to the petitioner's right foot/ankle. Petitioner continued to work as best she could with her limitations. She continued to take narcotic medication for pain.

On January 30, 2008 the petitioner underwent an arthroscopy of her right knee by Dr. Chassin. After surgery petitioner was awakened by incredible pain in her right knee and leg. She was immediately seen by Dr. Chassin in his office and various medications were unsuccessfully tried to alleviate the pain. By the time of petitioner's first post-operative visit on February 11, 2008 Dr. Chassin was concerned that the petitioner was suffering from RSD/CRPS. She was kept off of work and immediately referred to a pain clinic.

On April 17, 2008 the petitioner was sent for a third §12 exam, this time with Dr. Steven Mash of M&M Orthopaedics. (Rx 11) Petitioner testified that Dr. Mash performed a minimal examination. His report ruled out RSD. However, Dr. Mash found that the petitioner sustained a work related injury. He opined that the treatment to date was appropriate and that the petitioner was not malingering. He advised an FCE and that the petitioner should return to work within its restrictions.

An FCE was performed at ATI on June 9, 2008. (Px 5) While the FCE noted that the petitioner could work at a medium to heavy job consistent with her job description, the petitioner testified that she underwent the test while taking the narcotic pain medication that she had been prescribed and had previously used while working for the respondent after her injury. Petitioner further testified that completing the FCE caused her severe pain which left her in tears.

Petitioner tried to return to work with the respondent pursuant to the FCE. The petitioner contacted Employee Health which required medical approval in order for her to return to work. On July 18, 2008 the petitioner received written restrictions and continued medication authorization from Dr. Chassin. That note specifically stated that the petitioner could return to work while using narcotics for pain. Petitioner took the note to Deb Beckman of Employee Health. Ms. Beckman stated that the petitioner could not return to work while taking narcotics and refused to allow the petitioner to return to work as per the FCE. Petitioner asked Ms. Beckman to write the respondent's conditions to return to work on the note and sign it. Px 26 is a copy of the note with Ms. Beckman's signature and statement that the petitioner was "unable to rtw until off narcotics". Dr. Chassin referred the petitioner to a pain clinic for further treatment.

On July 15, 2008 the petitioner began treating with respondent's own pain clinic headed by Dr. Mark Hanna. (Px 1) At that first visit she informed Dr. Hanna that she experienced a blue hue to her right foot, and that the right foot felt cooler. Dr. Hanna noted the restriction that the petitioner would not be allowed to return to work unless she was off of narcotics. His plan was to try to wean the petitioner off of narcotic medication, offer behavioral pain control and to institute lumbar sympathetic blocks to determine whether she, in fact, suffered from RSD/CRPS and to treat same.

On August 21, 2008 the petitioner was sent back to Dr. Mash for another §12 exam. (Rx 12) At that exam, Dr. Mash did not have the results of the first sympathetic block. However, he opined that the petitioner is not malingering, but that her subjective complaints were not supported by the objective findings (allodynia). He opined that it was reasonable to allow the petitioner to continue to treat with Dr. Hanna. On August 8, 2008 Dr. Mash authored an addendum which reviewed the results of the first sympathetic block from which he opined that the petitioner does not suffer from CRPS. However, Dr. Mash asserted that he still believed that any effort at sympathetic blocks from a diagnostic perspective was appropriate and that any other effort at pain management would also be appropriate.

Dr. Hanna performed approximately six sympathetic blocks between petitioner's first visit on July 15, 2008 and October 1, 2008, all of which offered temporary relief. Petitioner was working two four hour shifts per month which kept her current with the respondent's continuing employment policy. During these limited hours she worked sedentary duty and did not take narcotic medications. During his examinations Dr. Hanna noted abnormal hair growth, brittleness of nails, edema, changing skin color and pain out of proportion to her physical findings (Px 1, DOS 9/17/08). Based upon these findings and the results of the sympathetic blocks, Dr. Hanna diagnosed the petitioner as suffering from CRPS/RSD. On September 23, 2008 he referred the petitioner to Dr. Timothy Lubenow for a second opinion. In his office note of October 1, 2008 Dr. Hanna noted that the petitioner's original injury of April 24, 2005 was the cause of her current symptoms of CRPS. Petitioner last saw Dr. Hanna on October 27, 2008 at which time he noted hypersensitivity, edema and mental cloudiness due to the medication. He advised the petitioner to remain off of work and again referred her to Dr. Lubenow for a second opinion.

The respondent sent the petitioner for another §12 exam with Dr. Kenneth Candido on November 2, 2008. (Rx 14) Dr. Candido opined that the petitioner did not have CRPS. However, he believed that her myofascial knee complaints were related to the work accident. He opined that the petitioner was motivated to discontinue

opioids and that the petitioner showed signs of withdrawal when trying to wean from the narcotics and that she required a supervised detox program. She also required psychological support for prolonged abstinence.

At trial the parties stipulated that during a pre-trial, it was agreed the parties would select a qualified teaching pain clinic institution for further treatment. In return, the respondent would continue to pay TTD benefits. The parties mutually agreed upon Dr. Troy Buck, head of the Loyola University Medical Center Pain Clinic. (Px 6)

Petitioner began treating with Dr. Buck on November 14, 2008 at which time she reported constant pain from her right knee to the foot, which felt like it would explode. She reported occasions of the foot turning blue and temperature differences between the left and right side, as well as allodynia. Petitioner reported requiring narcotic medication to alleviate the pain. Dr. Buck did not initially note temperature differentiation or color changes. He did note hyperalgesia (increased sensitivity to pain) to the petitioner's right knee. His diagnosis was neuropathic pain in petitioner's right lower extremity and possible CRPS. Dr. Buck started the petitioner on desensitizing physical therapy and advised her to continue treating with her chiropractor. He provided Lidoderm patches for pain. Petitioner returned to Dr. Buck on December 12, 2008. At that time Dr. Buck noted both color changes and temperature changes. The diagnosis was likely CRPS. On January 2, 2009 the petitioner was seen at the Loyola Pain Clinic where, again, the records document that the petitioner's right lower extremity and foot showed a slightly reddish/purple color compared to the left. Further, a six degree difference in temperature was noted between the two extremities. Again the diagnosis was CRPS. An EMG was prescribed and narcotic pain medication was continued.

On January 5, 2009 Dr. Buck noted that the respondent would not allow the petitioner to use narcotic medication at work. Dr. Buck advised that the petitioner would "most likely need to find a facility to work at that would be amenable to her continuing her medication". (Px 6, DOS: 1/5/09) The record shows that vocational assistance was not offered at that time. On January 12, 2009 the EMG was performed. The results were negative. Dr. Buck continued narcotic medication for pain control.

On February 2, and again on February 27, 2009, Dr. Buck noted both mild pitting edema of the right shin and temperature differences between petitioner's lower extremities. Allodynia was always noted. Petitioner testified that she continued to work the two four hour shifts per month to keep her current with the respondent's requirements. Dr. Buck continued to refer the petitioner for desensitizing physical therapy and advised her to continue with her chiropractor. (Px 7a-h) He also continued her Norco prescription to control pain.

On May 26, 2009 the respondent sent the petitioner back to Dr. Candido for a second evaluation pursuant to §12. (Rx 15) Dr. Candido opined that the petitioner did not have any of the published criteria of CRPS. He noted no temperature or color changes. The Arbitrator notes that Dr. Buck did find allodynia, mild pitting edema and temperature differences with some increased erythema/redness over her right knee less than two weeks before Dr. Candido's exam. (Px 6, DOS 5/13/09) Dr. Candido advised returning the petitioner back to work at an accelerated rate, increasing her hours over time. He opined that petitioner should be encouraged to use NSAIDS rather than opioids and that she would need professional guidance to wean from opioids which would take a month's time. Dr. Candido did not opine that the petitioner was malingering; rather he diagnosed her with myofascial pain syndrome. He felt that after a month she would be released at MMI with a limitation of lifting and carrying less than 25 pounds.

On August 21, 2009 Dr. Buck noted that he was trying to wean the petitioner off of narcotic pain control and had advanced her to work hardening. Again, on October 2, 2009 Dr. Buck noted temperature differentiation and again referred her to work hardening. The records from Loyola Medical Center show, and the petitioner testified that she was unable to tolerate the work hardening. At that time, Dr. Buck stated that the petitioner had

reached MMI and stated that she should continue her home exercise program and wean herself off of Norco, even though he continued to prescribe the narcotic for pain control. She remained under the care of her chiropractor per Dr. Buck.

Petitioner testified that at this time she was cut-off of TTD and continuing medical benefits. She was not allowed to return to work with the respondent at full duty because she was still being prescribed narcotic medication. Therefore, her chiropractor referred the petitioner to Dr. Gregory Kuhlman of Integrated Health. (Px 8a&b) Dr. Kuhlman initially saw the petitioner on December 8, 2009 and ordered a lumbar MRI.

Subsequent to Dr. Kuhlman's initial examination, the parties again agreed at pre-trial to send the petitioner to RIC's multidisciplinary pain control program. On January 11, 2010 petitioner had an initial evaluation at RIC with Dr. Lynn Rader. (Px 10) The record noted that the petitioner would see vocational specialists, psychologists and physical and occupational therapists. The documented purpose of the four week program was to wean the petitioner off of narcotics as tolerated. Dr. Rader specifically noted that the petitioner was taking narcotics to improve function and decrease pain which, she opined, was appropriate. Dr. Rader asked for a clarification on the respondent's employee medication policy. The record notes that if the policy was that an employee cannot be on any opioids, then weaning off them would be the goal of the program and would be better met once the petitioner learned other tools to manage her pain at the end of the four week program.

Petitioner testified, and the records reflect, that Dr. Rader continued to prescribe the opioid Norco throughout the petitioner's stay in the program. The only restriction was to try to limit its use to night time. The RIC records note that the petitioner engaged in the program. However, the records note that petitioner had difficulty making it through the day without using Norco. (Px 10, DOS 2/16/10 Psych Report) It was noted that the petitioner's use of bio-feedback helped with her tension, but not the pain. Petitioner testified that her increased activity during the day caused increased pain and decreased function, which necessitated Norco. Petitioner self-reported the need to take Norco during the day. On February 18, 2010 the petitioner was called into the office by Dr. Rader who told her that she would not be allowed to continue the program if petitioner insisted on using the prescribed Norco during the day hours. Petitioner testified that she advised Dr. Rader that she was trying, but that the necessity for Norco was for increased pain which she experienced while being active during the day. Petitioner stated that she wanted to continue in the program to learn pain coping mechanisms and that she was informed at the start that the program would take four full weeks. Petitioner was discharged from the program despite her attempt to have the psychologist intervene. Dr. Rader provided a subsequent addendum stating that the petitioner was not compliant with the program and that petitioner was at MMI. Dr. Rader concluded that the petitioner could work an eight hour day without the need for any narcotic pain medication, that the petitioner was not dependent upon the narcotic pain medication nor were they medically necessary. Since the termination of the RIC program, petitioner has been without TTD or medical benefits from the respondent.

Petitioner testified that after she left the RIC program, she contacted her prior supervisor with the respondent, Penny Hoshell, to discuss returning to work. Ms. Hoshell advised that she would contact petitioner when she returned from vacation. Subsequently, petitioner found out that Ms. Hoshell had been terminated upon her return from vacation. Petitioner eventually contacted Patti DeJulio, manager of the Respirator Care Department, and was instructed to attend a general staff meeting on August 19, 2010. Petitioner noted she was informed that they were eliminating the part time position she was in and that the reason for the meeting was to have employees sign a new job contract. Petitioner indicated that she signed the contract and that she then spoke to Ms. DeJulio and Stephanie Doll in Human Resources. At that meeting petitioner reiterated her intention to accept the job offer. Petitioner testified that on August 29, 2010 she received a call on her cell phone from Stacy Heller in HR informing her that she was being let go.

Thereafter, Petitioner continued to treat with Dr. Kuhlman. (Px. 8a&b) Dr. Kuhlman worked with an anesthesiologist, Dr. Lavine to continue to provide the petitioner with narcotic pain medication. Petitioner received two bilateral knee manipulations under anesthesia with Supartz injections to break adhesions. Nether procedure provided any benefit. Petitioner continued to receive chiropractic manipulations to keep her mobile. She was diagnosed with CRPS. Petitioner remained under the care of Drs. Kuhlman and Lavine until her eventual referral to Dr. Holly Carobine, an anesthesiologist/pain specialist, at Comprehensive Pain Clinic. (Px 9) Petitioner was examined by Dr. Carobine on August 18, 2010. She was diagnosed with CRPS and referred, again, to Dr. Timothy Lubenow of Rush Pain Center for consideration of a spinal cord stimulator. Dr. Kuhlman concurred with the referral.

On September 9, 2010 Dr. Lubenow first examined the petitioner and noted cyanotic changes below her right knee to the foot. He measured temperature differences and confirmed the presence of allodynia. Dr. Lubenow opined that the petitioner suffered from CRPS due to the original work injury of April 24, 2005. (Px 11a-h) Dr. Lubenow advised a five day in hospital infusion of epidural to break the pain cycle. He kept petitioner off of work. Prior to that procedure the petitioner was seen by Dr. Merriman, a Rush Pain Center psychologist. Petitioner was cleared for further treatment by Dr. Merriman.

Petitioner underwent the in hospital infusion at Rush University Medical Center on November 2, 2010 through November 6, 2010. On December 4, 2010 she reported only transitory relief from the infusion. Dr. Lubenow advised a trial spinal cord stimulator.

On January 3, 2011 Dr. Lubenow inserted a trial placement of a spinal cord stimulator. By January 6, 2010 the stimulator provided periods of 100% relief with only the addition of 1-2 Norco's per day. On January 10, 2011 petitioner reported pain as low as 3/10. Dr. Lubenow noted that petitioner's pain relief was over 70%. She was not taking any Norco for pain control. Based upon this result, a permanent spinal cord stimulator placement was performed on February 28, 2011.

Post-operatively, the petitioner continued to treat with Dr. Lubenow. The records note that her eventual pain level returned to a level of 7/10. However, the records also reflect that the stimulator allowed the petitioner to continue to be more active (DOS: 3/24/11; walking further distances) when before she required the use of Norco to ease her pain. On July 18, 2011 the petitioner underwent a revision of the spinal cord stimulator placement due to the fact that it was hitting her ribs.

Dr. Lubenow referred the petitioner for a second FCE which was conducted on October 11, 2011. (Px 15) Petitioner testified that she undertook the test without the benefit of taking Norco, in order to assess her ability to return to work under the condition of not taking any narcotic medication. The FCE was determined to be valid. It demonstrated that the petitioner could only work at a light physical demand level – lifting up to 28 pounds with frequent lifting of only 13 pounds. Bending, stooping, crouching, squatting, stair climbing and balance were recommended on only an occasional basis. Based on the therapist's estimation, as well as the job description submitted by the respondent, it would appear that petitioner does not meet the requirements to work as a Respiratory Therapist.

On November 1, 2011 Dr. Lubenow released the petitioner to return to work within the restrictions of the FCE as well as a limitation of standing no more than 60 minutes at a time.

Petitioner eventually chose Steven Blumenthal of Blumenthal and Assoc. to provide vocational counseling. Mr. Blumenthal met with the petitioner on December 23, 2011 and compiled a Plan of Vocational Rehabilitation. (Px 22) Petitioner submitted into evidence the narrative report of Steven Blumenthal. (Px 21) That report

states that the petitioner's lifting restriction, along with the standing limitation, would make it difficult for her to return to work as a respiratory therapist, a position that requires her to be on her feet the majority of her shift. Mr. Blumenthal opined that the petitioner should engage in job readiness training and receive job placement assistance to fully assess if she has the ability to return to work in her chosen profession as a registered respiratory therapist, or if alternative employment in medical settings more sedentary in nature was required. He further suggested that the petitioner request reasonable job accommodation from the respondent.

Petitioner testified at the suggestion of Mr. Blumenthal she wrote a letter to Respondent in March 2012. She noted that she received a voice mail response from Ms. Brown in human resources informing her that due to the nature of her separation she was not eligible for rehire. Petitioner testified that she continued to look elsewhere for work. Petitioner's alleged job search is documented in Px23. Petitioner noted at arbitration that she may have found a potential job as a respiratory therapist. She indicated that she had interviewed in California but that the job is actually in the Chicago area. She also noted that the job would not be the same as the one she had with Respondent. Instead, she stated that she would have to go to various hospitals in the area and train doctors on equipment. She noted that she would set her own schedule and would be able to sit down if she wanted to. Furthermore, she would not be working with patients. However, as of the date of arbitration, she had not been offered this position.

Petitioner offered the testimony of Avery Johnson, petitioner's husband. Mr. Johnson and the petitioner married during the course of petitioner's treatment. Mr. Johnson testified that he was familiar with the petitioner's condition prior to her work injury and that the petitioner had no complaints of chronic pain. She experienced no limitations in her abilities to move, exercise, kneel or squat. Since the incident Mr. Johnson testified that the petitioner is in constant pain. She is unable to sleep through the night. Mr. Johnson was present when Kim Luppino, respondent's Human Resource representative, called in response to the petitioner's demand for a written copy of the respondent's policy regarding the use of narcotics while on the job. Mr. Johnson testified that Ms. Luppino stated that the respondent's policy was that the petitioner could not work at all while using narcotic medication. There was no qualification that the petitioner could use narcotic pain medication while away from work. He was advised that the policy was not in writing and that he should pass the information on to the petitioner.

The petitioner submitted into evidence the deposition testimony of Dr. Gregory T. Kuhlman. (Px 18) Dr. Kuhlman is Board Certified in chiropractic care and pain management. (Px 18 at 4) Dr. Kuhlman testified that he reviewed the petitioner's prior treating records. (Px 18 at 72) He concurred with Dr. Buck's diagnosis of CRPS and that the condition is causally related to the accident of April 24, 2005. (Px 18 at 12 & 48) Dr. Kuhlman testified that he has had significant experience with weaning patients off of narcotics, including Norco and opined that the fact that the petitioner was able to go two day periods without Norco was not an indication that she would not need Norco for continuing pain throughout her life. (Px 18 at 65) Further, he opined that it was unreasonable for RIC to believe that the petitioner could quit Norco cold-turkey after being on it for the past 2-1/2 years. (Px 18 at 69) Dr. Kuhlman opined that the petitioner continued to need Norco and that it was appropriate for her to use that narcotic in further pursuit of her employment and that it was the respondent who chose not to accommodate this necessity. (Px 18 at 49)

Petitioner offered into evidence the deposition testimony of Dr. Timothy Lubenow. (Px 19) Dr. Lubenow is certified by the American Board of Anesthesiology in Anesthesiology, the American Board of Anesthesiology in Pain Management, the American Board of Pain Medicine and the World Institute of Pain. (Px 19 at 4-5) Petitioner first visited Dr. Lubenow on September 9, 2010. His findings included allodynia, temperature reduction of 2.5 degrees in the petitioner's right leg, discoloration, atrophy of the petitioner's right leg to the extent of 4 cm, abnormal hair growth on the back of the petitioner's knee and decreased range of motion of the

right leg. (Px 19 at 33) Dr. Lubenow explained that his finding of allodynia was an objective finding based upon his use of distraction upon the petitioner. He testified that allodynia can be corroborated this way by a physician trained in the diagnosis of CRPS. (Px 19 at 34) Further, the temperature discrepancy was mechanically confirmed and the abnormal hair growth personally noted. (Px 19 at 34-36) Based upon his extensive experience and the findings of his exam, Dr. Lubenow confirmed the petitioner's diagnosis of CRPS Type 1. Dr. Lubenow described CRPS Type 1 as the condition existing where there is no overt damage to the nervous system. Therefore, he did not find it inconsistent that the petitioner presented with both normal MRI and EMG. (Px 19 at 26)

Dr. Lubenow was critical of the RIC program and opined that the petitioner's use of narcotic pain medication was appropriate. (Px 19 at 22) He indicated that Norco allowed the petitioner to decrease her pain, thereby increasing her abilities to perform her activities of daily living and to even work on a limited schedule. Dr. Lubenow agreed with Dr. Rader that the petitioner was not addicted to Norco. However, he opined that the narcotic was physiologically necessary for the petitioner to manage her pain and increase her functioning. (Px 19 at 29) Dr. Lubenow pointed out that the petitioner was able to comply with the physical requirements of the RIC program while taking Norco. It was only when the Norco was stopped that the petitioner was unable to continue with the increased activity of the RIC program, including physical therapy. Dr. Lubenow testified that therapies alone, without the use of opioid pain medication, had already been tried by the petitioner in the past, and was ineffective in breaking the condition of CRPS. Therefore, the petitioner's success in the RIC program was doomed from the start because weaning of all opioids was the antithesis of what the petitioner needed to control her pain and increase her functioning. (Px 19 at 28-29) Dr. Lubenow indicated that the use of opioids, such as Norco, is important and appropriate to controlling the petitioner's pain and increasing her level of functioning. (Px 19 at 37)

At the time of Dr. Lubenow's deposition he had tried a five day epidural infusion of medication to break the cycle of CRPS which provided minimal improvement. Dr. Lubenow testified that this result was not unexpected given the long term nature of the petitioner's condition. (Px 19 at 40) Thereafter, he implanted a trial spinal cord stimulator, the results of which were pending at the time of the deposition. Dr. Lubenow testified that the use of opioids would likely be necessary even with a positive result from the spinal cord stimulator. (Px 19 at 48)

Respondent offered into evidence the deposition testimony of Dr. Lynn Rader. (Rx 1) Dr. Rader was board certified in physical medicine and rehabilitation in 2006. (Rx 1 at 38) She is one of the multi-disciplinary physicians associated with RIC during petitioner's in-clinic stay, from February 1, 2010 through February 18, 2010. Dr. Rader testified that she examined the petitioner prior to her entry into the RIC program on January 11, 2010 and diagnosed the petitioner with chronic right knee pain due to the work injury of April 2005. Dr. Rader opined that at the time of her initial examination, the petitioner was not currently suffering from CRPS. (Rx at 15) Dr. Rader testified that the program includes vocational specialists, psychologists and physical and occupational therapists during a four week intensive program. The normal process of the in-patient pain control protocol was to start the patient on a four week long, multi-disciplinary program to learn tools to help them return to work and improve the quality of their lives. (Rx 1 at 8) Only after the first week would the physicians and patient set goals based upon what they hoped to attain, which included optimizing use of medication. (Rx 1 at 11) Dr. Rader testified that, in the petitioner's case, a plan was implemented on the first exam to wean the petitioner off of all daytime narcotic use. No input from the petitioner was ever elicited as to the use and benefit of continued narcotic medication as per the normal process of the program. Dr. Rader requested a copy of the respondent's narcotic use policy, and was never given same. Further, Dr. Rader continued to prescribe narcotic medication to the petitioner during her stay at RIC. (Rx 1 at 21) Dr. Rader concluded that the petitioner was

not physically or psychologically addicted to narcotics. Further, she testified that the petitioner did not suffer from CRPS and that she was able to return to work without restrictions.

Dr. Rader testified that on February 18, 2010 she had a conversation with the petitioner regarding her using Norco during the day. Dr. Rader cautioned the petitioner about her continued use of Norco and that if she was not compliant, then the program would end. The petitioner left the program on February 18, 2010. After petitioner's discharge from the program, Dr. Rader wrote an addendum which found that the petitioner was at MMI and able to function during the daytime without the use of narcotics.

Respondent offered into evidence the deposition testimony of Cathy Lynn Peterson. (Rx 2) Ms. Peterson is the medical case manager assigned to the petitioner by the respondent. (Rx 2 at 36) She confirmed that the respondent had a policy of a "drug free campus" thereby prohibiting the petitioner from returning to work while taking narcotic medication. (Rx2 at 14 & 23) Nurse Peterson was aware that the petitioner was allowed to work two four hour shifts per month and that the petitioner was unable to tolerate more work unless controlling her pain with Norco. (Rx 2 at 14).

Respondent submitted into evidence the deposition testimony of Dr. Richard Noren. (Rx 3) Dr. Noren is in full time private practice of pain management. He is Board Certified in Anesthesiology and Pain Management. (Rx 3 at 5) Dr. Noren estimates that he has treated hundreds of patients with CRPS. In April 2012 Dr. Noren performed a record review of the petitioner's course of treatment. He has never examined the petitioner nor has he been asked to do so. (Rx 3 at 7) Based upon this review, Dr. Noren opined that the petitioner does not suffer from CRPS. Further, he opined that because she does not have CRPS, the petitioner should not have received a spinal cord stimulator. Finally, he opined that the petitioner had reached MMI at the time of her discharge from RIC based upon Dr. Rader's finding that the petitioner was no longer taking Norco and had achieved the a functioning level of medium to heavy duty. (Rx 3 at 24)

Petitioner offered a two page narrative of Dr. Lubenow dated January 23, 2013. (Rx 3 at 20) Dr. Lubenow disagreed with Dr. Noren's assessment. Dr. Lubenow opined that the petitioner suffers from CRPS and that the petitioner has responded favorably to the combination of the spinal cord stimulator and Hydrocodone (Norco). He has modified her restrictions to sedentary work with lifting no more than 15 pounds and the flexibility to sit and stand as tolerated. She should avoid repetitive bending at the waist to avoid the potential for spinal cord stimulator migration and avoid working in a cold environment. Dr. Lubenow reviewed the course of the petitioner's stay at the RIC program and opined that the stay at RIC had no impact upon the character of the petitioner's CRPS. Dr. Lubenow stated that the petitioner has responded favorably to the spinal cord stimulator.

Petitioner remains under the care of Dr. Lubenow to the present time. He continues to see the petitioner on a monthly basis, adjusting the spinal cord stimulator and prescribing medication for pain, including Norco. Petitioner testified that she continues to express pain scores of 6-7/10. However, since receiving the spinal cord stimulator used in conjunction with the Norco, she is able to function much better at the present time. Petitioner testified that the pain score is consistent in that she still reaches a level of 6-7/10, but that it takes much longer and she is much more functional before she reaches that level. When she reaches that level she takes the Norco, which she can now go days without taking. However, petitioner stated that she continues to have a constant pain inside her right knee and leg. It travels down to her right foot. The foot still changes color and has temperature changes. She has swelling. The pain limits her walking and standing. She has to sit with the leg extended. The pain continues to wake her up a number of times per night. The Norco is necessary when she reaches her pain level tolerance. To date she continues to seek suitable employment without the assistance of the respondent.

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

In the recent case of *Bryon Kawa v. Illinois Workers' Compensation Commission*, 2012 IL App (1st) 120469WC (filed June 3, 2013) the appellate court dealt with a somewhat similar question of causation in light of a patient's failure to complete a prescribed multi-disciplinary pain management program at, interestingly enough, the Rehabilitation Institute of Chicago (RIC). In *Kawa*, supra, the commission had overruled the arbitrator's determination that the claimant had engaged in an injurious practice by declining to participate in the aforementioned pain management program, but affirmed the arbitrator's finding of no causation on the basis that the claimant had reached MMI as a result of having "chose[n] not to avail himself of further treatment." The appellate court reversed the commission along these lines and found that a causal relationship existed based on a "chain of events" theory, given that the claimant had not suffered from the conditions in question, including any psychological disability, prior to the accident and in light of the fact that he had been in severe, uninterrupted pain and in need of ongoing narcotic medication since the date of the accident.

Similarly, Respondent in the current matter seeks to cut off benefits based on Petitioner's inability and/or unwillingness to complete the multi-disciplinary pain management program in question. Along these lines, Respondent questions Petitioner's credibility as to the nature of her complaints and the legitimacy of the CRPS diagnosis itself.

The evidence shows that on April 24, 2005 Petitioner sustained an undisputed accident wherein she struck her right knee against an oxygen blender. While the impact tore her scrubs, it did not cause an open wound. Petitioner testified that following the incident she experienced immediate pain in her right knee which she described as "excruciating" and which she claimed took her breath away. The initial treating records of Central DuPage Business Health appear to corroborate Petitioner's claim of immediate pain in her right knee along with tingling into the toes. It would also appear that even though it took nearly three years before the diagnosis of CRPS was made by Dr. Chassin in February of 2008, Petitioner continued to complain in the interim of deep aching pain behind her right knee with radiation and tingling into the toes of her right foot. These are essentially the same complaints she continues to have to this day. More importantly, there is no evidence that Petitioner had ever experienced similar complaints prior to the date of accident much less that she was ever previously diagnosed with CRPS (f/n/a RSD).

Furthermore, it appears that nearly all of the physicians who have treated or examined Petitioner on behalf of the Respondent have at one point or another related some portion of her pain complaints to the work injury. (See Central DuPage Business Health, Px 2, DOS: 4/28/05; Dr. LaBelle of Orthopaedic Associates of DuPage, Px 2, DOS: 7/11/05; Dr. Eugene Lopez, Rx 10, Resp. IME: 3/16/06; Dr. Chassin of Hinsdale Orthopaedics, Px 4, DOS: 7/21/06; Dr. Vargo of Hinsdale Orthopaedics, Px 4, DOS: 2/9/07; Dr. Mash, Rx 11, Resp. IME 4/17/08; Dr. Mark Hanna of Central DuPage Pain Clinic, Px 1, DOS: 10/1/08; Dr. Kenneth Candido, Rx 14, Resp. IME: 11/2/08; Dr. Troy Buck of Loyola Medical Center, Px 6, DOS: 1/2/09; Dr. Gregory Kuhlman of Integrated Health, Px 18 at 48; Dr. Timothy Lubenow of Rush Pain Clinic, Px 19 at 32).

The question is what to make of Petitioner's myriad complaints from a diagnostic standpoint. More to the point, the issue is whether Petitioner proved, by a preponderance of the credible evidence, that she suffers from CRPS and, if so, whether that condition is causally related to the accident on April 24, 2005.

The evidence shows that CRPS is a neurological pain condition that develops in response to some trauma. (Px 19 at 9) It is manifested by symptoms and physical examination findings such as swelling (edema), discoloration, complaints of hypersensitivity (allodynia), changes in hair growth, decreased range of motion,

atrophy and it results in a chronic condition which impairs a person's ability to use the injured extremity. (Px 19 at 9 & 26) CRPS Type 1 occurs when a patient exhibits these complaints without overt damage to the peripheral nerves. (Px 19 at 27)

The record shows that Petitioner has been diagnosed with CRPS/RSD by Drs. Chassin, Hanna, Buck and Lubenow as well as by chiropractor Dr. Kuhlman. In contrast, Drs. Mash, Candido, Rader and Noren do not believe that Petitioner suffers from the condition.

In support of Petitioner's claim along these lines, the record indicates that Dr. Chassin first advanced the diagnosis of RSD/CRPS in February 2008. Since that date Petitioner has treated with three physicians specifically trained in the diagnosis and treatment of CRPS. First, Dr. Mark Hanna, head of Respondent's own pain clinic, treated Petitioner between July 15, 2008 and October 27, 2008 and diagnosed CRPS. (Px 1) Second, Petitioner was treated upon agreement of the parties by Dr. Troy Buck of Loyola University Medical Center's Pain Clinic, between November 14, 2008 and October 20, 2009. (Px 6) Dr. Buck also diagnosed the Petitioner with CRPS Type 1 based upon his findings. Third, Petitioner sought treatment from Dr. Timothy Lubenow who confirmed the diagnosis of CRPS Type 1. (Px 11a-h) As part of his examination and review of the record, Dr. Lubenow noted allodynia, cyanotic (color) changes, increased hair growth, temperature changes and atrophy of the right lower extremity. (Px 19 at 25).

In support of its position, Respondent offered into evidence the narrative reports of Dr. Mash (Rx 11-13) and Dr. Candido (Rx 14 & 15) who opined that Petitioner does not suffer from CRPS due to a lack of specific symptoms. In addition, Respondent offered the testimony of RIC physician Dr. Rader and record reviewer Dr. Noren. In her evidence deposition, Dr. Rader testified that as of February 18, 2010 Petitioner was not physically or psychologically addicted to narcotics and that she did not suffer from CRPS. In addition, Dr. Radar believed that Petitioner had reached MMI and was able to return to work at that time without restrictions. Likewise, Dr. Noren was of the opinion that Petitioner did not suffer from CRPS and that she had reached MMI at the time of her discharge from RIC based upon Dr. Rader's finding that the patient was no longer taking Norco and had achieved a functioning level of medium to heavy duty work based on the initial FCE. (Rx3, p. 24).

However, it appears that Dr. Rader's understanding as to Petitioner's use of narcotic pain medication during the period of her participation in the program differs from the patient's actual usage and apparent need. Case in point, it appears that Petitioner in fact continued to take the pain medication at night, while away from the facility, and believed that she need only report the medication she was taking during the day while at the facility. This misunderstanding may have contributed to Dr. Rader's belief that Petitioner was far less dependent on narcotic pain medication than she actual was – which is odd given that the patient was sent to RIC in the first place because of her seeming dependence on the drug in question. Dr. Rader's belief that Petitioner was able to go days without taking her medication, and thus did not suffer from CRPS and had reached MMI, in turn informed the like-minded opinion of Dr. Noren. Given this basic misunderstanding on the part of both Dr. Rader and Dr. Noren, the Arbitrator finds the opinions of these physicians to be entitled to little if any weight.

Accordingly, based on the above, and the record taken as a whole, including Petitioner's credible testimony as to the nature of her ongoing complaints, the Arbitrator finds that Petitioner proved by a preponderance of the evidence that she suffers from Complex Regional Pain Syndrome Type 1 and that said condition is causally related to the undisputed accident on April 24, 2005. Specifically, the Arbitrator finds that a causal relationship exists based on a "chain of events" theory, as in the case of *Kawa*, supra, given that Petitioner was not suffering from CRPS prior to the accident and in light of the fact that she has been in severe pain and in need of ongoing prescriptive narcotic treatment since the date of the accident,. In support of this finding the Arbitrator finds the opinions of Drs. Chassin, Hanna, Buck, Lubenow and Kuhlman to be more persuasive than those offered by

Drs. Mash, Candido, Rader and Noren. In particular, the Arbitrator finds the testimony and opinions of Dr. Lubenow to be more convincing and worthy of reliance given his vast experience and extensive scholarly work in the field of CRPS.

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

Respondent concedes liability for bills incurred up through February 18, 2010, or the date Drs. Rader and Noren opined Petitioner had reached MMI after having quit or been discharged from the interdisciplinary program at RIC. The question is whether Petitioner is entitled to medical expenses incurred thereafter.

Based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to causation (issue "F", supra), the Arbitrator finds that Petitioner is entitled to reasonable and necessary medical expenses pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act in the amount of \$285,437.75. (PX24).

The Arbitrator further notes that the parties agreed at arbitration that in the event this matter was found to be compensable, Respondent would pay these medical expenses directly to the provider. The Arbitrator further finds that Respondent shall be entitled to a credit for any amounts paid on behalf of Petitioner on account of this injury, and Petitioner shall be held harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

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

The record shows that Petitioner was taken off work on December 29, 2006 due to her initial evaluation at Central DuPage Convenient Care for redness and swelling into her right ankle after commencing physical therapy. Thereafter, Petitioner was restricted from work from January 8, 2007 through February 08, 2007 as per the instructions of Dr. Vargo. (Px 4) Dr. Vargo related the onset of the pain, redness and swelling to the commencement of physical therapy prescribed by Dr. Chassin for petitioner's knee complaints. Petitioner was examined by Dr. Holmes at the respondent's request. Respondent did not submit Dr. Holmes' report. Petitioner testified that she directed Dr. Holmes' attention to the fact that her right foot turned blue at the exam. Dr. Holmes photographed same. Petitioner has continued to suffer from pain and color changes to her right foot ever since.

Thereafter, the respondent concedes that the petitioner did remain temporarily totally disabled from the date of her right knee arthroscopy on January 30, 2008 through the date that the petitioner left the RIC program, February 18, 2010. (See Arb.Ex.#1). Respondent has denied further TTD and/or maintenance based upon Dr. Rader's opinion that that the petitioner was at MMI at the time she left the program. As discussed above, the Arbitrator finds Dr. Rader's opinion in this regard unpersuasive. Petitioner continued to treat with Integrated Health, Dr. Carobene and eventually Dr. Lubenow and had not reached MMI.

Petitioner testified that she eventually contacted her former supervisor, Penny Hoshell, in January of 2010 and again in April or May of 2010. Petitioner noted that she was then told to contact Ms. Hoshell again after her vacation in May or June of 2010. Ms. Hoshell was subsequently terminated and the petitioner attempted to

meet with Employee Health to request a release to return to work. Petitioner noted that she was invited to attend a staff meeting on August 19, 2010 and to sign a new contract. Petitioner noted that she did so and later received a phone call from Stacy Heller in HR informing her that she had been fired.

Thereafter, Petitioner began treating with Dr. Lubenow on September 9, 2010. Petitioner received a permanent spinal cord stimulator on February 28, 2011. Dr. Lubenow eventually released Petitioner on November 1, 2011 with instructions to use her narcotic pain medication for breakthrough pain. Dr. Lubenow testified during the course of deposition that "... roughly two-and-a-half months to three months post permanent [spine stimulator] implant, they're at their maximum medical improvement, and then, at that juncture I would recommend a functional capacity evaluation to delineate their activity restrictions." (PX19, p.49).

Petitioner underwent another FCE on October 11, 2011. She indicated that she did not take her narcotic pain medication during the exam, given that Respondent had indicated in the past that she could not be on same while at work. The FCE was found to be valid and placed Petitioner at a light physical demand level. (PX15). This report also indicated that the job of respiratory therapist for Respondent was considered a medium physical demand level position according to the U.S. Department of Labor's Dictionary of Occupational Demands. (PX15). Petitioner noted that she continues to visit Dr. Lubenow for medication and to check her spine stimulator.

Since November 1, 2011 the petitioner has engaged in a mostly self-directed job search. Petitioner hired Steven Blumenthal of Blumenthal and Associates to compile a plan of vocational rehabilitation. (Px 21 & 22) That plan advised job training and a professionally directed job search. Respondent has refused to provide same. Petitioner submitted into evidence documents in support of her claimed job search at Px 23.

Petitioner testified that at the suggestion of Mr. Blumenthal she wrote a letter to Respondent in March 2012. She noted that she received a voice mail response from Ms. Brown in human resources informing her that due to the nature of her separation she was not eligible for rehire. Petitioner testified that she continued to look elsewhere for work. Petitioner's alleged job search is documented in Px23. Petitioner noted at arbitration that she may have found a potential job as a respiratory therapist. She indicated that she had interviewed in California but that the job is actually in the Chicago area. She also noted that the job would not be the same as the one she had with Respondent. Instead, she stated that she would have to go to various hospitals in the area and train doctors on equipment. She noted that she would set her own schedule and would be able to sit down if she wanted to. Furthermore, she would not be working with patients. However, as of the date of arbitration, she had not been offered this position.

Based on the above, and the record taken as a whole, including the Arbitrator's determination as to causation (issue "F", supra), the Arbitrator finds that Petitioner was temporarily totally disabled on December 29, 2006, from January 8, 2007 through February 8, 2007, and from January 30, 2008 through November 1, 2011, for a period of 200-5/7 weeks.

The Arbitrator also finds that Petitioner is entitled to maintenance benefits from November 2, 2011 through March 7, 2013, for a period of 70-2/7 weeks.

Finally, the Arbitrator finds that Petitioner reached MMI as of Dr. Lubenow's release with restrictions on November 1, 2011. Along these lines Dr. Lubenow had testified, during the course of his deposition, that "... roughly two-and-a-half months to three months post permanent [spine stimulator] implant, they're at their maximum medical improvement, and then, at that juncture I would recommend a functional capacity evaluation to delineate their activity restrictions." (PX19, p.49).

WITH RESPECT TO ISSUE (O), VOCATIONAL REHABILITATION, THE ARBITRATOR FINDS AS FOLLOWS:

Based upon the above, and the record taken as a whole, the Arbitrator finds that Petitioner is entitled to ongoing vocational rehabilitation services. The only evidence submitted into evidence was the report of Petitioner's vocational rehabilitation counselor, Steven Blumenthal, who opined that Ms. Chrisl-Johnson was a candidate for job training and professional assistance in her job search. Petitioner testified that she recently had a job interview for a position in the Chicago as a respirator therapy instructor at local hospitals. In the event this job prospect does not result in an offer of employment, the Arbitrator finds it reasonable to begin serious job search efforts through a vocational rehabilitation counselor.

In so finding, the Arbitrator rules that the issue of permanency is not quite ripe for adjudication. Accordingly, the Arbitrator declines the parties' request to consider a permanency award at this time.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Cory McClurken,
Petitioner,

vs.

NO: 11 WC 29464
11 WC 49174

State of Illinois,
Menard Correctional Center,
Respondent.

14IWCC0516

DECISION AND OPINION ON REVIEW

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

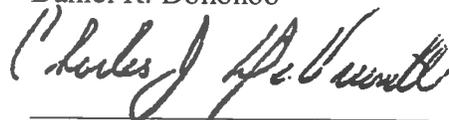
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 25, 2013, is hereby affirmed and adopted.

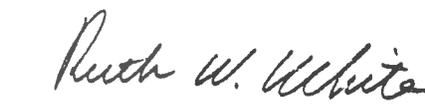
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: JUN 27 2014

o-06/24/14
drd/wj
68


Daniel R. Donohoo


Charles J. DeVriendt


Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

McCLURKEN, CORY

Employee/Petitioner

Case# 11WC029464

11WC049174

STATE OF ILLINOIS/MENARD C C

Employer/Respondent

14IWCC0516

On 9/25/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% 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
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

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

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

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

*CERTIFIED as a true and correct copy
pursuant to 820 ILCS 506/14*

SEP 25 2013



[Signature]
KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Cory McClurken
Employee/Petitioner

Case # 11 WC 029464

v.

State of Illinois/Menard C.C.
Employer/Respondent

Consolidated cases: 11 WC 49174

141 WCC0516

An *Application for Adjustment of Claim* was filed in each matter, and a *Notice of Hearing* was mailed to each party. The matters were heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **HERRIN**, on **07/11/13**. 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 _____

14IWCC0516

FINDINGS

On **01/18/11** and **07/1/11**, Respondent *was* operating under and subject to the provisions of the Act.

On these dates, an employee-employer relationship *did* exist between Petitioner and Respondent.

On these dates, Petitioner *did not* sustain accident that arose out of and in the course of employment.

Timely notice of the accident allegations *was* given to Respondent.

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

In the year preceding the injury, Petitioner earned **\$70,966.00**; the average weekly wage was **\$1,364.73**.

On each date of accident, Petitioner was **43** years of age, *married* with **1** dependent child.

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

Respondent *is not liable for* appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$ if any for TTD, **\$0** for TPD, **\$0** for maintenance, and \$ for other benefits, for a total credit of **\$0**.

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

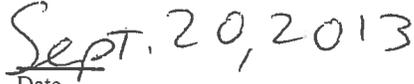
ORDER

For reasons set forth in the attached decision, benefits under the Act are denied.

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

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


Signature of Arbitrator


Date

SEP 25 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CORY MCCLURKEN,)

Petitioner,)

vs.)

STATE OF ILLINOIS/MENARD C.C.,)

Respondent.)

No. 11 WC 29464
11 WC 49174

14IWCC0516

ADDENDUM TO ARBITRATION DECISION

These matters were consolidated and tried jointly. The parties agreed that they wished a singular decision encompassing both claims, and given the overlapping issues the Arbitrator concurs with this approach.

STATEMENT OF FACTS

The petitioner is a Food Service Supervisor II who alleges accidental injuries to his right and left arms stemming from repetitive work activities, asserting effective dates of loss of January 18, 2011 and July 1, 2011.

The petitioner began working for the respondent in 1999. He initially worked as a corrections officer, and in 2000 became a Food Service Supervisor I. In 2001, he was promoted to Food Service Supervisor II, which is effectively the same job at a higher pay scale. Since he became a Food Service Supervisor he has worked at MSU, the minimum/medium security unit. He testified he works the 5 A.M. to 1 P.M. shift as well as occasional overtime, which he said is usually voluntary.

The petitioner testified the job duties of a Food Service Supervisor include various tasks including supervising inmate workers; cooking; opening cans; pushing carts of food and milk; stacking food reserves; paperwork, including the making and keeping of logbooks, as well as daily menus and checklists; and locking and unlocking doors and cabinets to retrieve and store items, tools and foodstuffs. He testified the workers help and he assists and supervises them. Mr. Lloyd Hanna, the IDOC Dietary Manager and the claimant's supervisor, testified as well. He testified that a Food Supervisor's duties are to supervise the inmate workers in the kitchen, that the kitchen area at the MSU is smaller than the kitchen facilities at the Maximum Security Unit at Menard, and that there are one to three Food Service Supervisors on duty at a time. He further noted the MSU facility was built much more recently than the Maximum Security Unit and did not require the use of the larger Folgers-Adams keys. Mr. Hanna testified that the majority

of the duties described by the petitioner, particularly the cooking, serving and cleaning duties, were done by the inmates.

The medical records submitted show that the petitioner complained of bilateral arm numbness with overhead work as early as 2006 to his chiropractor (handwritten notes are present adjacent to those notes, but are undated). See PX3. On April 25, 2008, he reported bilateral fourth and fifth finger numbness when resting his arms on any surface, and he was assessed with likely ulnar nerve compression at that time. PX3. In January 2009, he advised that his family doctor had referred him to a neurologist. Similar complaints were periodically made thereafter, and in December 2010 he was referred for an EMG for ulnar neuralgia. PX5. On January 18, 2011, the petitioner saw Dr. Goldring for nerve conduction studies. At that time the petitioner described symptoms of about one year's duration. The study proved within normal limits and Dr. Goldring noted possible epicondylitis as an alternate diagnosis. PX3.

The petitioner sought care on July 1, 2011, with Dr. Chien. He reported several years worth of symptoms in the elbows. Dr. Chien examined the petitioner, diagnosed bilateral cubital tunnel syndrome and recommended surgery, which was scheduled for July 21, 2011. PX4. On July 15, 2011, the petitioner returned to Dr. Chien and inquires if his condition was related to work. Dr. Chien discussed the matter with the claimant at length and advised that "the patient may better off seeking his private insurance." PX4. He was also given preoperative clearance that day for his right elbow. PX5.

The petitioner did not have surgery on July 21, 2011 and elected to retain counsel.

The petitioner was seen by Dr. Paletta on August 29, 2011. See PX7. Following examination, Dr. Paletta requested additional nerve conduction studies. These were performed by Dr. Phillips on August 29, 2011, and demonstrated mild demyelinative bilateral ulnar neuropathies. PX8. Dr. Paletta reviewed the results later that day and scheduled bilateral elbow surgery. PX7.

The petitioner had right ulnar nerve transposition performed on September 6, 2011. On October 4, 2011 he had ulnar nerve transposition on the left arm. PX7, PX9. The petitioner underwent postoperative rehabilitation following the surgeries. He was placed at MMI for the right elbow on October 21, 2011, and released to full duty work on November 14, 2011. He was placed at MMI for all issues on December 7, 2011. PX7.

Dr. Paletta testified in support of causal connection in deposition on April 12, 2013. PX12.

The respondent retained Dr. Anthony Sudekum to review the medical records and the petitioner's job duties pursuant to Section 12 of the Act. Dr. Sudekum opined that the petitioner's job duties would not play a causal role in the cubital tunnel diagnosis or treatment. He testified in support of that conclusion in deposition on July 5, 2012. RX3.

OPINION AND ORDER

14IWCC0516

The petitioner claims accidental injury to both arms due to repetitive work activities. When performance of the employee's work involves constant or repetitive activity that gradually causes deterioration of or injury to a body part, the case may be compensable, provided it can be medically established the origin of the injury was the repetitive stressful activity. However, it is required that a claimant prove that the injury is related to the employment and not the result of a normal degenerative process, as simply performing work over a period of years is not legally sufficient to prove that work is repetitive enough to cause an increased risk to the petitioner. See, e.g., *Peoria County Bellwood*, 115 Ill.2d 524 (1987); *Quaker Oats Co. v. Industrial Commission*, 414 Ill.2d 326 (1953). Simply performing work over a period of years is not legally sufficient to prove that work is repetitive enough to cause an increased risk to the petitioner. *Id.*

The petitioner asserts two potential manifestation dates, January 18 and July 1, 2011. The determination of an accident date for purposes of repetitive trauma is somewhat flexible but is not completely fluid; whatever parallels repetitive trauma may have to the concept of occupational disease exposure, repetitive trauma accident theory is not subject to the same standard as occupational disease. It is difficult to comprehend how January 18, 2011 is a meaningful manifestation date. While he did undergo an EMG that day, it was negative, and more importantly, he had been briefed about potential diagnoses years before that time. He thereafter saw Dr. Chien on July 1, 2011. No new diagnostic studies were performed at that time, and the assessment of ulnar neuritis paralleled his prior diagnosis. This then makes the selection of these dates questionable within the parameters of *Durand v. Industrial Commission*, 224 Ill.2d 53 (2007), as the January 18, 2011 date effectively suggests that the petitioner was aware of his physical condition six months prior to the July 1, 2011 date.

Reviewing the petitioner's job duties, the Arbitrator observes extensive evidence, both testimonial and documentary. The petitioner performs a multitude of activities during any given day, including paperwork, observation of inmates, meal preparation and sometimes meal distribution, and maintaining various logs. The petitioner acknowledged that his tasks vary during the course of the day. Moreover, the credible evidence supports the conclusion that the more physically rigorous duties involved are primarily supported or performed by the inmates under supervision of the petitioner, who may be assisted in that task by other Food Service Supervisors.

Based on the above findings and the credible record, the petitioner's duties in any given day may have an expected level of activity, or a usual pattern or schedule, but are numerous and varied in nature with alternating activities in between. Dr. Paletta further acknowledged the petitioner's underlying idiopathic physical structures predisposed him to the condition. The Arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence accidental injuries due to repetitive work activities that arose out of and in the course of his employment. Issues of notice, liability for medical services, temporary total disability and the nature and extent of the injury are moot given the above findings.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Glenn,
Petitioner,

14IWCC0517

vs.

NO: 10 WC 45540

State of Illinois/ Menard Correctional Center,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, prospective medical expenses, notice, causal connection, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof with the following correction.

On page 2, paragraph 1 the Arbitrator states:

While there may be nothing to prohibit an attorney from referring a client for medical treatment, such an arrangement raises issues of credibility as it creates the appearance of attorney-directed medical care. In such a scenario, the opinions of the physician to whom the client has been referred by his attorney, are more akin to those of a retained expert.

The Commission finds no basis for this statement by the Arbitrator and strikes it from the decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 4, 2013, with the above correction, is hereby affirmed and adopted.

14IWCC0517

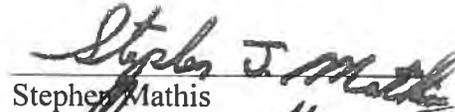
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: JUN 30 2014

DLG/gaf
O: 5/28/14
45



David L. Gore



Stephen Mathis



Mario Basurto

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

GLENN, MICHAEL

Employee/Petitioner

Case# 10WC045540

14IWCC0517

SOI/MENARD CORRECTIONAL CENTER

Employer/Respondent

On 11/4/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% 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
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

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

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

NOV 4 2013



[Signature]
**KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission**

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0517

Michael Glenn

Employee/Petitioner

v.

State of Illinois / Menard Correctional Center

Employer/Respondent

Case # 10 WC 45540

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 **Gerald Granada**, Arbitrator of the Commission, in the city of **Collinsville**, on **9/23/13**. 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

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On the date of accident, **11/15/10**, Respondent *was* operating under and subject to the provisions of the Act. On this date, an employee-employer relationship *did* exist between Petitioner and Respondent. On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment. Timely notice of this accident *was not* given to Respondent. Petitioner's current condition of ill-being *is not* causally related to the accident. In the year preceding the injury, Petitioner earned **\$66,250**; the average weekly wage was **\$1,274.04**. On the date of accident, Petitioner was **49** years of age, *married* with **2** dependent children. Respondent *has* paid all reasonable and necessary charges for all reasonable and necessary medical services. Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$0**. Respondent is entitled to a credit of **\$N/A** under Section 8(j) of the Act.

ORDER

Petitioner failed to meet his burden of proof regarding the issues of accident and causation. No benefits awarded.

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

10/23/13
Date

NOV - 4 2013

FINDINGS OF FACT

This is an 19(b) decision on a repetitive trauma claim. The issues in dispute are accident, notice, causation and future medical care.

The petitioner, a 53-year-old Utility Operator for Respondent, alleges accidental injuries to his right and left hand, right and left arms/elbows and stemming from repetitive work activities with an effective date of loss of November 15, 2010. The Petitioner began working for Respondent in 1980. Petitioner worked until 1994 as a Correctional Officer. In 1994, Petitioner became a Correctional Utility Operator for Respondent at the Medium Security Unit, and worked at that position through his retirement in December, 2011.

On November 15, 2010, Petitioner first sought medical treatment with Dr. David Brown on referral from his attorney, Tom Rich. (Px. 3) At that time, Petitioner complained of bilateral elbow pain and numbness. (Id.) Dr. Brown requested nerve conduction studies with Dr. Daniel Phillips. (Id.) Dr. Phillips performed nerve conduction studies on November 15, 2010, which showed median and ulnar neuropathies bilaterally. (Rx. 4). Petitioner was diagnosed as having bilateral carpal tunnel syndrome and cubital tunnel syndrome and surgery was scheduled. (Px. 3) Petitioner did not undergo surgery.

On November 16, 2010 Petitioner first reported to Respondent a repetitive trauma injury to his hands and elbows. (Rx. 5)

On November 23, 2010, Petitioner filed his Application for Adjustment of Claim.

Petitioner is six feet tall and weighs 430 pounds.

Petitioner testified that his job duties as a Utility Operator requires him to do various tasks including unlocking doors, working with wrenches, repairing boilers, loading salt softener and performing paperwork. Petitioner also testified that he works on a farm, where he operates machinery, works with his hands and uses vibratory tools...

Petitioner called Steve Wallace as a witness. Mr. Wallace was Petitioner's supervisor. He testified that he disagreed with the Petitioner's description of his job duties. Mr. Wallace explained that Petitioner worked on the midnight shift, and on said shift, Petitioner's duties were to check valves that require opening the valves once a shift. To open said valves, Mr. Wallace said did not take much force. Mr. Wallace testified that he was not aware of any repairs done by the midnight shift and testified that repairs are done on the day shift when plumbers are available to perform said duties. Also, Mr. Wallace testified that the bags of salt are loaded on the day shift usually when inmate workers are used. He stated that keys used on the doors were not Folgers-Adams key as the Maximum Security facility uses but were mostly padlock keys.

Respondent retained Dr. Anthony Sudekum to review the records of Petitioner and render an opinion. (Rx. 11,12) According to Dr. Sudekum, the job activities of a Utility Operator would not cause or aggravate carpal and/or cubital tunnel syndrome. (Rx. 12, pg. 29-30)

CONCLUSIONS OF LAW

1. Petitioner has failed to meet his burden of proof regarding the issue of accident. This conclusion is based on the question of credibility. Petitioner's claim of repetitive trauma is based primarily on his own description of his job duties, upon which his treating physicians also based their opinions. However, Petitioner called Mr. Wallace to testify that the Petitioner's description of his job activities was not accurate – essentially rebutting the Petitioner's testimony. According to Mr. Wallace's testimony, the Petitioner's job was not nearly as physically demanding as the Petitioner described. Additionally, the medical records indicate Petitioner was having symptoms in his hands beginning in 2008, but Petitioner did not seek treatment for his hands until after consulting his attorney, who then referred Petitioner to Dr. Brown almost two years later. While there may be nothing to prohibit an attorney from referring a client for medical treatment, such an arrangement raises issues of credibility as it creates the appearance of attorney-directed medical care. In such a scenario, the opinions of the physician to whom the client has been referred by his attorney, are more akin to those of a retained expert. In the present case, the Arbitrator finds that all of the facts above destroy the credibility behind Petitioner's claim, and because this claim lacks credibility, Arbitrator finds the Petitioner has failed to prove that he sustained an accident on November 15, 2010.
2. The Arbitrator finds that the Petitioner has failed to meet his burden of proof regarding the issue of causation. A claimant must prove by the preponderance of credible evidence all elements of the claim in order to receive compensation under the Act. Orisini v. Industrial Commission, 117 Ill. 2d 38, 44-45, 509 N.E.2d 1005, 109 Ill. Dec. 166 (1987). In cases involving the repetitive trauma concept, the petitioner must show the injury arose out of and in the course of his employment and was not the result of a normal degenerative aging process. Peoria County Bellwood Nursing Home v. Industrial Commission, 115 Ill. 2d 524, 505 N.E.2d 1026, 106 Ill. Dec. 235 (1987). Simply performing work over a period of years is not legally sufficient to prove that work is repetitive enough to cause an increased risk to the petitioner. Id. The Arbitrator also notes a claimant fails to prove a causal relationship through repetitive trauma where the medical opinion upon which they have relied is based upon incorrect or incomplete information about the claimant's job duties. The Commission has determined a claimant fails to prove causation from repetitive trauma when the treating physician testified repetitive motions caused the injuries but failed to detail what repetitive motions the petitioner engaged in and the frequency of the motions. Gambrel v. Mulay Plastics, 97 IIC 238. The record is devoid of any testimony as to the force, frequency and duration of any of the activities performed by Petitioner. In the present case, there was evidence of factors other than the Petitioner's employment that most likely caused his carpal tunnel condition, including Petitioner's obesity and his work on his farm – particularly the operation of farm machinery. On this issue, the Arbitrator finds persuasive the opinions of Dr. Sudekum as opposed to Dr. Brown, to whom Petitioner was referred by his attorney and who did not have an accurate account of Petitioner's job duties as evidenced by the testimony at trial.
3. Based on the Arbitrator's findings regarding the issues of accident and causation, all other issues are rendered moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input checked="" type="checkbox"/> Reverse no accident/no CC	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Damian Feret,

Petitioner,

14IWCC0518

vs.

NO: 11 WC 17279

Millard Maintenance,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, notice, temporary total disability, medical expenses, and permanent partial disability and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

- Petitioner was a 20 year old employee of Respondent, who described his job as a provider of janitorial services for Respondent. Petitioner testified that he was to use a floor cleaning machine to clean the floors at the building he was assigned to, 900 North Michigan. Petitioner testified to having worked for Respondent for a period of time providing janitorial services at other buildings but with different responsibilities like picking up garbage, wiping things down, keeping them clean, cleaning bathrooms. At the 900 North Michigan location, Petitioner's job responsibility was to clean the floors using the floor cleaning machine. Petitioner testified that the machine has a handle to push and make it go faster or slower. Petitioner stated that the machine has a scrubber on the bottom and a vacuum that was not working properly. To clean a certain area he passed the machine over it with the machine. Petitioner testified he had to fill the machine up with water. He indicated he had six floors to clean and he had to fill the machine with water two to three times in a day. Petitioner testified that while he worked for Respondent

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there was a problem with that machine; Petitioner stated that the machine was not sucking up the water properly so it would leave spots and pieces of water so it was still wet. Petitioner testified that he reported the problems with the machine to Respondent. Petitioner stated that he told a couple of guys he worked with and they told him to tell Gracie; the supervisor or manager there. Petitioner testified that on several occasions he had notified Respondent of the problem with the machine and there was nothing done with it. Petitioner stated that he continuously used that machine as he had to do his job. Petitioner did not have to push the machine with strength; it pushed itself when he pushed on the handles to make it go; like motorcycle controls but the machine is electric. Petitioner stated that he could make the machine turn if he had to or go straight.

- On the date of accident, April 19, 2011, Petitioner testified he slipped and fell while he was using the machine and he hit his head very hard. Petitioner stated that he was slipping and falling because the machine was dripping water and they did not fix it. Petitioner testified that he slipped on the water that was collecting on the floor. Petitioner indicated that after the accident occurred he was unconscious; he remembered waking up in the Northwestern Hospital Emergency Room (ER). Petitioner did not remember being taken via ambulance from the location to the hospital (ambulance report noted by Petitioner's attorney). Petitioner was aware that on April 19, 2011 he was taken to Northwestern Hospital. The ER records noted that Petitioner was mopping the floor when he fell and had a seizure. The ER records also reflected Petitioner did not remember the event; Petitioner agreed.
- Petitioner had prior seizures and on different occasions a possible seizure. Petitioner had gone to Stroger Hospital on his own for those events. Petitioner testified that he gets a seizure only after he wakes up. When he wakes up he has a twitchiness where his body just shakes and maybe he will lose consciousness for about a second. He indicated he feels that he is going to have a seizure and that only happens when he wakes up. Petitioner stated that when he feels a seizure coming he tries to lay somewhere or call someone to come and stay with him. Petitioner testified that he never had a seizure doing physical activities like working, driving, or sports.
- Petitioner testified that after he woke at Northwestern he had head and neck pain and a scalp laceration; he believed he had stitches or staples, he did not recall. Petitioner agreed that at that time he was diagnosed with a seizure and scalp lacerations and neck pain. At that time he was not given a discharge to return to work; he was told to follow up at Northwestern. On April 21, 2011 he followed up at Northwestern Memorial Corporate Health and indicated that he had trouble adjusting to his schedule. Petitioner stated that he was again diagnosed with scalp lacerations and head contusions and was then released to full duty. Petitioner indicated that he was then still experiencing pain and trauma from this accident; Petitioner stated he still had a headache, neck pain and felt like a constant buzzing in his ear. On April 27, 2011 Petitioner sought his own medical attention at Southside Medical Group. Petitioner stated that he informed them that he had slipped and fell striking his head which knocked him unconscious. Petitioner also indicated that he was experiencing constant headaches, pain in the lower left jaw, ringing in the ears, sensitivity to light, sound, dizziness, vomiting and neck pain. Petitioner was diagnosed

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with possible post-concussion syndrome, cervical strain/sprain and a possible disc bulge. An MRI of the brain, a skull x-ray, and physical therapy was prescribed. Petitioner stated that he was given medication and taken off of work. Petitioner testified that he underwent the brain MRI on April 28, 2011. On May 4, 2011, Petitioner followed up at Integrity Medical Group. At that time he was still experiencing headaches, neck pain, ringing in the ears, dizziness and insomnia. Petitioner was then, again diagnosed with a cervical sprain and post-concussion syndrome as well as a thoracic strain/sprain. Petitioner stated that therapy was recommended and he was referred to a neurologist for further evaluation and kept off of work. Petitioner testified that he had not received any benefits from Respondent at all. Petitioner stated that they did not pay any medical bills or help him at all or ask how he was doing; Petitioner testified they never called him. Petitioner testified he had called Respondent to file a WC claim. Petitioner stated that he had therapy from May 6 to September 2, 2011. Petitioner indicated that he had seen a neurologist at Integrity Medical Group on May 6, 2011. Petitioner testified that he advised the doctor of the work-related incident and that he suffered from constant headaches, dizziness, light and sound sensitivity, and vomiting. Petitioner stated that he was again diagnosed with the same conditions and also diagnosed with stress and anxiety secondary to this matter. Petitioner stated that he was further kept off work and in physiotherapy.

- Petitioner had a follow up at Integrity on May 13, 2011 where the rest of his stitches were removed and they indicated that they wanted to consider cognitive rehabilitation and a neuropsychology evaluation. Petitioner testified that he was still kept off work and instructed to continue therapy. Petitioner stated that he returned to Integrity on May 25, 2011 and they advised him if the headaches and vomiting continued or increased to go to the emergency room. Petitioner returned to Integrity June 29, 2011 and was still kept off work and recommended a cervical MRI because he was still having neck pain. Petitioner stated that he was then referred to Dr. Sean Salehi, but he never went to see him. Petitioner underwent the cervical MRI on July 5, 2011 and a CT of his head. Petitioner again saw his doctors there August 3, 2011, was advised to continue therapy and again referred to Dr. Salehi. Petitioner indicated he did not see Dr. Salehi because it had not been approved by the insurance company. Petitioner again followed up with Southside Medical Group on August 31, 2011; he stated that he was then having difficulty with his memory and performing daily tasks as well as still having neck and back pain. Petitioner stated that he was again referred to Dr. Salehi, kept in therapy and still kept off work. Petitioner again saw Dr. Johnson at Integrity on September 28, 2011 and he was still experiencing severe headaches, pain, vomiting and insomnia; his neck pain had then diminished. Petitioner then was discharged regarding his cervical spine but he was transferred to a neurologist for further treatment of his headaches and dizziness. Petitioner indicated that the plan then was to keep him off work due to the symptoms.
- Petitioner was seen for a §12 examination (IME) at Parkview Orthopedic Group on October 26, 2011. Petitioner stated that he recalled the doctor saying that working or mopping could not aggravate a seizure disorder. Petitioner agreed the doctor thought he should not be driving or operating heavy machinery and should not work at heights. Petitioner testified that at that point he stopped going to Dr. Johnson at Southside because he understood that, after that report, nothing was getting approved. Petitioner testified

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that since he stopped seeing the doctors he had some more seizures and had been seen several times at Advocate Christ Medical Center.

- Petitioner testified that he was currently working for a new company; he still does janitorial services, which is very close to the duties he performed with Respondent. Petitioner testified that he still suffers from symptoms of this accident. Petitioner stated he felt he has more seizures and headaches, always here and there; he did not know if that was normal. He indicated he knew people had ringing in their ears but he gets a lot of ringing in his ears. Since he had been at his new employer there was never a situation where he possibly just passed out at work and had a seizure. Petitioner testified he never had a seizure while doing physical activity. Petitioner testified his seizures occur 15-20 minutes after he wakes. When he wakes right away he feels the twitching and knows it is about to come on. If he wakes normal he does not have a seizure; if he wakes twitching, he knows it's a 50-50 possibility he will have a seizure. He indicated within an hour or so he would have it or not. Petitioner testified that he never had a seizure just during the day; when he is up for hours it does not happen. Petitioner testified from the time of the accident until he started working the new company he was off work. Petitioner stated that he had no off work slips after he saw the doctor at Parkview for the IME as he was not seeing a doctor on a regular basis to get a note. Petitioner testified that after the IME he was still suffering the symptoms and was in pain and that was why he had gone to Christ hospital several times.
- Mr. Ali appeared at hearing for Petitioner via subpoena. He is a security officer at 900 North Michigan. He was employed at Respondent on April 19, 2011 on a set schedule of 12:00am-8:00am. Witness stated that he had worked the night before the hearing. Mr. Ali testified that on April 19, 2011 he recalled seeing Petitioner pushing the machine and saying hello to Petitioner. He stated the next thing he knew he saw Petitioner on the floor. Mr. Ali stated that he did not actually see Petitioner fall; he was about 100 feet away. Mr. Ali testified that his job requires him to issue a report when he sees something happen. Mr. Ali testified when he saw Petitioner on the floor he called his supervisor, Mr. Van (also present for this hearing but not then in the room). Mr. Ali testified he reported to Mr. Van that Petitioner was on the ground and that they should call an ambulance. He did not assist anyone because he is not medical; he just stood there and waited for the ambulance. Mr. Ali testified all he saw was Petitioner's head was down and when he lifted his head, there was blood all over the place. He stated Petitioner was then unconscious and he saw Petitioner shaking on the ground. He does not record video; all he does is observe and report. He indicated the recording is done in a separate security office and that is not his responsibility. Mr. Ali testified that it was just him and Petitioner on that floor at that time and no one else was present so no one else could have seen the fall. Mr. Ali testified that was the first night he had seen Petitioner working there but he had seen Petitioner in that building before. To his recollection, Mr. Ali never noted or heard of Petitioner passing out or having a seizure prior to that event. Mr. Ali testified he could not recall if there was anything on the floor, but he was not sure.
- Mr. Van appeared per subpoena for Petitioner. Mr. Van is employed by 900 Services, LLC as the overnight security supervisor. He testified his responsibility is to take care of

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the building from 12:00am-8:00am, file paperwork at night, any incidents that happen he does a report. Mr. Van testified when an accident occurs on the job, regardless of what happens an accident report that must be filled out by him. Mr. Van stated that he did recall an accident that occurred during his shift on April 19, 2011. Mr. Van testified that he had been notified of the accident via radio by the base operator, William Obeng. Mr. Van testified he was notified there had been an accident on the 6th floor and that he needed to get up there right away. Mr. Van testified he is familiar that the area of the accident was under camera surveillance. Mr. Van stated that he had gone to the scene and observed the subject on the ground, passed out, with his head in a puddle of blood, and Petitioner was unconscious. Mr. Van testified that Petitioner was not shaking and he did not see Petitioner having a seizure, but Petitioner was unconscious and there was a lot of blood. Mr. Van testified he checked Petitioner's pulse to make sure he was still alive and kept everyone back from the scene while waiting for the paramedics to arrive. Mr. Van stated that Petitioner was taken by the paramedics via ambulance to Northwestern Hospital as that is the closest hospital.

- Mr. Van testified that he had gone back to his office and started his report. He identified PX 1 as the accident report he completed on 4/19/11. The report basically indicated what had occurred. Mr. Van read, from the report, "R/O recorded the footage from the camera #42, which showed the incident." He recalled viewing the video. Mr. Van saw PX 2 and identified it as a copy of the video surveillance. (The video was then viewed and was noted to start at 2:05am). Mr. Van identified it as the video as recorded; noted camera 10 then camera 42 that showed the accident. He indicated that the cameras are numbered and that they record 16 cameras at a time. The cameras record to devices; through a series of 16 cameras. Mr. Van testified that PX 2 was the only view of the accident site. Mr. Van agreed that when the video starts, Petitioner is already on the ground and there are a number of people around Petitioner. Mr. Van noted that a sign obstructed part of the view. He noted the floor scrubber in front and Petitioner behind it. Mr. Van testified that he did NOT remember Petitioner being wet at all. He agreed the video was from Petitioner already on the ground until being carried out by the paramedics. Mr. Van indicated he was the one who recorded the video footage and to his knowledge it accurately reflected what was recorded. Mr. Van had attached the video to his accident report and forwarded it to management. The report noted "Accident Status 2, Nature of Accident: Passed out while running floor scrubber machine." Mr. Van stated that when he got there, Petitioner was lying on the floor passed out. Mr. Van agreed he did not specifically see Petitioner fall and to his knowledge no one actually saw Petitioner fall. He was aware Mr. Ali was at his post on the floor at the time. Mr. Van testified that Petitioner and Mr. Ali were the only ones on the 6th floor when the incident occurred. Mr. Van did not recall meeting Petitioner prior to this accident so he was not aware of Petitioner ever having an episode of passing out in their building before that night; he never came to find Petitioner passed out on the floor before. Mr. Van stated that he had reports of people slipping and falling in their building but he indicated that was from a lot of reasons; a broken heel on a shoe, slippery floors, raining outside, wet floor. He had not seen or talked to Petitioner before this incident and he had not seen Petitioner since. Mr. Van testified that when he got to the scene Petitioner's supervisor from Respondent was there. Mr. Van stated that he did not know how many people from Respondent worked

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that shift; Respondent's people punch in at a different location than 900 Michigan building people do. Mr. Van indicated that there could have been 3-5 of Respondent's people in the building. Mr. Van testified that the building does not supply the equipment for Respondent; Respondent brings its own equipment and is responsible for it. Mr. Van stated that he has worked at the 900 North Michigan building for 14 years. Mr. Van testified to being aware of Respondent's equipment breaking down in the building during his shift and that Respondent calls for service on it.

- Mr. Hilario testified for Respondent, he is currently employed by Respondent as supervisor on the 3rd shift; 12:00-8:00am. Mr. Hilario testified that he had been a supervisor there for eight and a half years. Mr. Hilario works at the 900 North Michigan location and testified that his duties are to make sure everyone is doing their job and whatever Respondent asks of him. As part of his job there he supervises the janitors and if they have a problem they are to report it to him. Mr. Hilario was working there on 4/19/11. Mr. Hilario stated that he knew Petitioner and testified that Petitioner was working that shift. Mr. Hilario testified on 4/19/11 they had 2 machines there; one that was working and the other was not (it would not even turn on). Mr. Hilario testified that when Petitioner started he would use that machine; currently they only had one machine there. Mr. Hilario testified that on 4/19/11 that auto scrubber machine was working fine and that no one before 4/19/11 or immediately after that date reported that the machine was not functioning properly. Mr. Hilario testified that if it was malfunctioning it was the janitor's duty to report that to him and he would report it to his manager, Casey. Mr. Hilario did not see Petitioner fall; he testified he saw Petitioner when he was on the floor. He knew Petitioner was on the floor as they have radios so they can hear and he heard that Petitioner fell. Mr. Hilario testified that it took him less than 5 minutes to reach Petitioner when he received notice Petitioner fell. He was walking by the elevators when he heard. When he arrived, Mr. Hilario testified that security, Mr. Ali, was close to Petitioner. Mr. Hilario testified when he arrived he did NOT notice any water on the floor; just blood coming from Petitioner's head. Mr. Hilario testified after he spoke with the paramedics and security he cleaned up the area. Mr. Hilario testified that at no time did he see water on the floor. Mr. Hilario testified that he personally used the auto scrubber machine and all the materials that are in the building. Mr. Hilario stated that he was present when the paramedics took Petitioner but did not remember if the back of Petitioner's pants were wet at all.
- Mr. Giza testified for Respondent. Mr. Giza stated that he is employed by Respondent as branch manager and has been with Respondent 24 years. Mr. Giza stated that he worked at the '900 North Michigan' location at that time. Mr. Giza testified that he has to oversee the midnight shift and the supervisor from 2nd shift. When he comes early in the morning he sees the supervisor from the midnight shift (3rd shift) to see what was done and what needed to be done. Mr. Giza stated that he spends about an hour every morning with that supervisor. Mr. Giza indicated that when the 2nd shift supervisor comes at 4:00 he spends time with him to give directions about what needed to be done and what to start with. Mr. Giza basically oversees most of the work that Respondent does at that building. Mr. Giza testified that if there is malfunctioning or broken equipment, Respondent employee reports that to their supervisor and the supervisor reports it to Mr. Giza verbally. If

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broken equipment is reported to him he then reports it to his boss/manager who then makes the service call. Mr. Giza did not recall any reports of malfunctioning equipment in April 2011. Mr. Giza was familiar with the auto scrubber used at the 900 building. Mr. Giza testified that on April 19, 2011 there was only one functioning auto scrubber and he did not remember anyone reporting to him at any time that it was malfunctioning. Mr. Giza testified that the auto scrubber has 2 scrubbing pads on the front. He stated on the back of the machine there is a squeegee with a vacuum. The front pads use water from the water tank to wash the floor. He testified the floor is getting wet in front and they rotate and the machine is moving forward and the vacuum behind and squeegee picks up the water so there is no water left on the floor behind the squeegee. Mr. Giza stated the machine is fully automatic and does not need to be pushed; nothing different than just steadying the machine and directing which way you want to go with the machine. The squeegee is at the back of the machine by the handles. Mr. Giza testified that the squeegee on the back completely dries the floor as the scrubber moves forward. The squeegee is screwed to the machine and moves together with the machine drying the floor. Mr. Giza testified that as you are moving the machine forward you should be walking on dry ground. Mr. Giza agreed that the accident report was from 900 building security; he stated they always give reports to Respondent whenever Respondent employees report an accident and then Respondent fills out their own paperwork. Mr. Giza testified it is Respondent's policy to immediately report a malfunctioning machine; then a service call has to be made to a vendor to fix it. He indicated 99% of the time Cathy would contact the vendor. The report would go to him and he would report it to Cathy. Mr. Giza testified there is a switch to control the water in the auto scrubber machine. The janitor is washing using the machine to wash the floors and he is turning the switch on and the water comes out the wash bits and then the janitor is supposed to turn the switch off and shut off the water flow. Mr. Giza testified that he was not aware of any leak in the machine around April 19, 2011.

- The Accident report (PX 1) prepared by 900 North Michigan Security April 19, 2011 noted Van and Ali reporting the incident. Nature of accident - 'passed out while running floor scrubber machine.' Bleeding from back of head. Taken to Northwestern. It noted that Ali called for help over the radio stating that Respondent employee passed out on the 6th floor hitting his head on floor. They called 911 and Van went to the 6th floor to assist. Van observed Petitioner passed out on floor, bleeding from back of head. While waiting for ambulance Petitioner woke up confused and attempted to get off floor. Advised him to stay sitting until ambulance came. Noted paramedics came and wrapped Petitioner's head and asked what happened. Petitioner was still confused and could not answer questions. Placed in chair and transported. Noted video footage from camera #42 showed the incident.
- The DVD accident video tendered by Respondent (PX 2) is the video sometime after the fall occurred on April 19, 2011. The view is from 50+ feet; all activity was down the hall. In the video you can see the machine at the far end with Petitioner apparently on floor behind it. The Paramedics arrive and after a while take Petitioner out in a chair. There is no indication of the floor being wet from that distance.

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- The Chicago Fire Department records (PX 5) indicated they were at the location at 2:09am, at the patient at 2:12am; and departed scene at 2:24am. They noted a head laceration. When they arrived, co-workers stated patient appeared to have had a seizure and fell to the floor, causing a laceration to back of head. Patient very combative, still appears post-ictal; unable to obtain medical history. Taken to Northwestern.
- The medical records of Northwestern Memorial Hospital Emergency room (PX 5) noted Triage-April 19, 2011 - 2:51 per paramedics, patient had witnessed seizure at work; witnessed by co-workers mopping floor then falling to floor and having seizure like activity. Head laceration. Patient does not remember the event. Patient was post-ictal and combative per medics. Patient now oriented to self and year, disoriented to month and day. Patient reported having two seizures in past year and after last seizure a month ago was given two week prescription for Dilantin and then told to stop. The April 19, 2011 ER records further noted that the patient was brought via ambulance for seizure. Patient was at work waxing floors when co-worker saw him fall to ground and hit his head and began shaking. EMS found him confused and combative with large occipital scalp laceration hematoma. Patient now more calm and cooperative and answering questions but still confused. Known seizure disorder but not sure when last seizure was, maybe a month ago. Patient denies remembering anything from earlier this night.
- Records from Stroger Cook County Hospital indicated prior seizure visits.

The Commission finds that On the date of accident, April 19, 2011, Petitioner testified he slipped and fell while he was using the machine and he hit his head very hard. Petitioner stated that he was slipping and falling because the machine was dripping water and they did not fix it. Petitioner testified that he slipped on the water that was collecting on the floor. Petitioner indicated that after the accident occurred he was unconscious; he remembered waking up in the Northwestern Hospital Emergency Room (ER). Petitioner did not remember being taken via ambulance from the location to the hospital (ambulance report noted by Petitioner's attorney). Petitioner was aware that on April 19, 2011 he was taken to Northwestern Hospital. The ER records noted that Petitioner was mopping the floor when he fell and had a seizure. The ER records also reflected Petitioner did not remember the event; Petitioner agreed.

Petitioner had prior seizures and on different occasions a possible seizure. Petitioner had gone to Stroger Hospital on his own for those events. Petitioner testified that he gets a seizure only after he wakes up. When he wakes up he has a twitchiness where his body just shakes and maybe he will lose consciousness for about a second. He indicated he feels that he is going to have a seizure and that only happens when he wakes up. Petitioner stated that when he feels a seizure coming he tries to lay somewhere or call someone to come and stay with him. Petitioner testified that he never had a seizure doing physical activities like working, driving, or sports.

Petitioner testified that after he woke at Northwestern he had head and neck pain and a scalp laceration; he believed he had stitches or staples, he did not recall. Petitioner agreed that at that time he was diagnosed with a seizure and scalp lacerations and neck pain. At that time he was not given a discharge to return to work; he was told to follow up at Northwestern. On April 21,

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2011 he followed up at Northwestern Memorial Corporate Health and indicated that he had trouble adjusting to his schedule. Petitioner stated that he was again diagnosed with scalp lacerations and head contusions and was then released to full duty. Petitioner indicated that he was then still experiencing pain and trauma from this accident; Petitioner stated he still had a headache, neck pain and felt like a constant buzzing in his ear. On April 27, 2011 Petitioner sought his own medical attention at Southside Medical Group. Petitioner stated that he informed them that he had slipped and fell striking his head which knocked him unconscious. Petitioner also indicated that he was experiencing constant headaches, pain in the lower left jaw, ringing in the ears, sensitivity to light, sound, dizziness, vomiting and neck pain. Petitioner was diagnosed with possible post-concussion syndrome, cervical strain/sprain and a possible disc bulge.

Mr. Ali appeared at hearing for Petitioner via subpoena. He is a security officer at 900 North Michigan. He was employed at Respondent on April 19, 2011 on a set schedule of 12:00am-8:00am. Witness stated that he had worked the night before the hearing. Mr. Ali testified that on April 19, 2011 he recalled seeing Petitioner pushing the machine and saying hello to Petitioner. He stated the next thing he knew he saw Petitioner on the floor. Mr. Ali stated that he did not actually see Petitioner fall; he was about 100 feet away. Mr. Ali testified that his job requires him to issue a report when he sees something happen. Mr. Ali testified when he saw Petitioner on the floor he called his supervisor, Mr. Van (also present for this hearing but not then in the room). Mr. Ali testified he reported to Mr. Van that Petitioner was on the ground and that they should call an ambulance. He did not assist anyone because he is not medical; he just stood there and waited for the ambulance. Mr. Ali testified all he saw was Petitioner's head was down and when he lifted his head, there was blood all over the place. He stated Petitioner was then unconscious and he saw Petitioner shaking on the ground. He does not record video; all he does is observe and report. He indicated the recording is done in a separate security office and that is not his responsibility. Mr. Ali testified that it was just him and Petitioner on that floor at that time and no one else was present so no one else could have seen the fall. Mr. Ali testified that was the first night he had seen Petitioner working there but he had seen Petitioner in that building before. To his recollection, Mr. Ali never noted or heard of Petitioner passing out or having a seizure prior to that event. Mr. Ali testified he could not recall if there was anything on the floor, but he was not sure. Mr. Ali testified he had called his supervisor and the supervisor called the ambulance. Mr. Ali testified that after Petitioner fell his supervisor came and a supervisor for Respondent showed up there. Respondent's supervisor knew Petitioner was taken via ambulance to Northwestern, and that something had occurred there that night. On cross examination Mr. Ali indicated he saw Petitioner go by about midnight. Mr. Ali works at a desk and was sitting there facing where Petitioner was. He saw Petitioner pass with the machine. Petitioner was about 100 feet away from Mr. Ali when Petitioner fell; there was nothing to block his view. Mr. Ali testified that he heard a noise that Petitioner was on the ground and he rushed over there. He did not notice anything unusual about Petitioner when he had passed with the scrubber. He testified it took him about 3 minutes or less from his desk to get to where Petitioner was on the ground. He indicated he heard Petitioner fall and he got up from his desk and went over; he indicated he just ran over. He indicated there was a small amount of time to reach Petitioner. Mr. Ali did NOT recall any water around Petitioner when Mr. Ali got to Petitioner on the ground. He did not think there were any substances on the floor but the blood coming from Petitioner's head. Mr. Ali testified when he ran over to Petitioner he basically followed the line Petitioner had just cleaned and he did NOT think it was wet or slippery at all. Mr. Ali was there when Petitioner

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regained consciousness; he did not talk to Petitioner, he just stood there with the paramedics. Mr. Ali is only employed at the 900 North Michigan address security and not employed by Respondent. On re-direct Mr. Ali testified he could not recall if there was anything on the floor, but he was not sure.

Mr. Van appeared per subpoena for Petitioner. Mr. Van is employed by 900 Services, LLC as the overnight security supervisor. He testified his responsibility is to take care of the building from 12:00am-8:00am, file paperwork at night, any incidents that happen he does a report. Mr. Van testified when an accident occurs on the job, regardless of what happens an accident report that must be filled out by him. Mr. Van stated that he did recall an accident that occurred during his shift on April 19, 2011. Mr. Van testified that he had been notified of the accident via radio by the base operator, William Obeng. Mr. Van testified he was notified there had been an accident on the 6th floor and that he needed to get up there right away. Mr. Van testified he is familiar that the area of the accident was under camera surveillance. Mr. Van stated that he had gone to the scene and observed the subject on the ground, passed out, with his head in a puddle of blood, and Petitioner was unconscious. Mr. Van testified that Petitioner was not shaking and he did not see Petitioner having a seizure, but Petitioner was unconscious and there was a lot of blood. Mr. Van testified he checked Petitioner's pulse to make sure he was still alive and kept everyone back from the scene while waiting for the paramedics to arrive. Mr. Van stated that Petitioner was taken by the paramedics via ambulance to Northwestern Hospital as that is the closest hospital.

Mr. Van testified that he had gone back to his office and started his report. He identified PX 1 as the accident report he completed on 4/19/11. The report basically indicated what had occurred. Mr. Van read, from the report, "R/O recorded the footage from the camera #42, which showed the incident." He recalled viewing the video. Mr. Van saw PX 2 and identified it as a copy of the video surveillance. (The video was then viewed and was noted to start at 2:05am). Mr. Van identified it as the video as recorded; noted camera 10 then camera 42 that showed the accident. He indicated that the cameras are numbered and that they record 16 cameras at a time. The cameras record to devices; through a series of 16 cameras. Mr. Van testified that PX 2 was the only view of the accident site. Mr. Van agreed that when the video starts, Petitioner is already on the ground and there are a number of people around Petitioner. Mr. Van noted that a sign obstructed part of the view. He noted the floor scrubber in front and Petitioner behind it. Mr. Van testified that he did NOT remember Petitioner being wet at all. He agreed the video was from Petitioner already on the ground until being carried out by the paramedics. Mr. Van indicated he was the one who recorded the video footage and to his knowledge it accurately reflected what was recorded. Mr. Van had attached the video to his accident report and forwarded it to management. The report noted "Accident Status 2, Nature of Accident: Passed out while running floor scrubber machine." Mr. Van stated that when he got there, Petitioner was lying on the floor passed out. Mr. Van agreed he did not specifically see Petitioner fall and to his knowledge no one actually saw Petitioner fall. He was aware Mr. Ali was at his post on the floor at the time. Mr. Van testified that Petitioner and Mr. Ali were the only ones on the 6th floor when the incident occurred. Mr. Van did not recall meeting Petitioner prior to this accident so he was not aware of Petitioner ever having an episode of passing out in their building before that night; he never came to find Petitioner passed out on the floor before. Mr. Van stated that he had reports of people slipping and falling in their building but he indicated that was from a lot of reasons; a broken heel on a shoe, slippery floors, raining outside, wet floor. He had not seen or talked to

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Petitioner before this incident and he had not seen Petitioner since. Mr. Van testified that when he got to the scene Petitioner's supervisor from Respondent was there. Mr. Van stated that he did not know how many people from Respondent worked that shift; Respondent's people punch in at a different location than 900 Michigan building people do. Mr. Van indicated that there could have been 3-5 of Respondent's people in the building. Mr. Van testified that the building does not supply the equipment for Respondent; Respondent brings its own equipment and is responsible for it. Mr. Van stated that he has worked at the 900 North Michigan building for 14 years. Mr. Van testified to being aware of Respondent's equipment breaking down in the building during his shift and that Respondent calls for service on it.

Mr. Hilario testified for Respondent, he is currently employed by Respondent as supervisor on the 3rd shift; 12:00-8:00am. Mr. Hilario testified that he had been a supervisor there for eight and a half years. Mr. Hilario works at the 900 North Michigan location and testified that his duties are to make sure everyone is doing their job and whatever Respondent asks of him. As part of his job there he supervises the janitors and if they have a problem they are to report it to him. Mr. Hilario was working there on 4/19/11. Mr. Hilario stated that he knew Petitioner and testified that Petitioner was working that shift. Mr. Hilario testified on 4/19/11 they had 2 machines there; one that was working and the other was not (it would not even turn on). Mr. Hilario testified that when Petitioner started he would use that machine; currently they only had one machine there. Mr. Hilario testified that on 4/19/11 that auto scrubber machine was working fine and that no one before 4/19/11 or immediately after that date reported that the machine was not functioning properly. Mr. Hilario testified that if it was malfunctioning it was the janitor's duty to report that to him and he would report it to his manager, Casey. Mr. Hilario did not see Petitioner fall; he testified he saw Petitioner when he was on the floor. He knew Petitioner was on the floor as they have radios so they can hear and he heard that Petitioner fell. Mr. Hilario testified that it took him less than 5 minutes to reach Petitioner when he received notice Petitioner fell. He was walking by the elevators when he heard. When he arrived, Mr. Hilario testified that security, Mr. Ali, was close to Petitioner. Mr. Hilario testified when he arrived he did NOT notice any water on the floor; just blood coming from Petitioner's head. Mr. Hilario testified after he spoke with the paramedics and security he cleaned up the area. Mr. Hilario testified that at no time did he see water on the floor. Mr. Hilario testified that he personally used the auto scrubber machine and all the materials that are in the building. Mr. Hilario stated that he was present when the paramedics took Petitioner but did not remember if the back of Petitioner's pants were wet at all.

On cross examination Mr. Hilario agreed he was using an interpreter at hearing; he testified he understands English but not perfectly. He communicates with co-workers who do not speak Spanish by trying to learn a little of their language; but not much. He had been with Respondent close to 10 years; he became a supervisor 8-8.5 years ago. He had only been assigned to the 900 building the entire 8.5 years. Mr. Hilario testified there were two machines there; one that was working and the other just parked; no one touched it because it did not work. The broken machine had been sitting there a long time. They could not operate two machines at a time as one was broken. He indicated that one was not fixed because it was about to go to the garbage as it had been broken a long time. Mr. Hilario testified that he is familiar with operating the machine and stated that it is operated all by hand. He indicated if you let it go it shuts off automatically. Mr. Hilario testified you do have to use water to wash the floor. He was familiar with Petitioner from meeting him at the job. Mr. Hilario did not recall Petitioner ever having been hurt or having

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an accident prior to that night, April 19, 2011. Mr. Hilario agreed on that night he did not actually see Petitioner fall. Mr. Hilario testified when he got there Petitioner was unconscious and breathing. Mr. Hilario testified that there was NO water on the floor. He could not recall if there was water on Petitioner's clothes because of the blood; he could see a lot of blood and it was wet and Petitioner's clothes were wet; there was no water on the floor.

Mr. Giza testified for Respondent. Mr. Giza stated that he is employed by Respondent as branch manager and has been with Respondent 24 years. Mr. Giza stated that he worked at the '900 North Michigan' location at that time. Mr. Giza testified that he has to oversee the midnight shift and the supervisor from 2nd shift. When he comes early in the morning he sees the supervisor from the midnight shift (3rd shift) to see what was done and what needed to be done. Mr. Giza stated that he spends about an hour every morning with that supervisor. Mr. Giza indicated that when the 2nd shift supervisor comes at 4:00 he spends time with him to give directions about what needed to be done and what to start with. Mr. Giza basically oversees most of the work that Respondent does at that building. Mr. Giza testified that if there is malfunctioning or broken equipment, Respondent employee reports that to their supervisor and the supervisor reports it to Mr. Giza verbally. If broken equipment is reported to him he then reports it to his boss/manager who then makes the service call. Mr. Giza did not recall any reports of malfunctioning equipment in April 2011. Mr. Giza was familiar with the auto scrubber used at the 900 building. Mr. Giza testified that on April 19, 2011 there was only one functioning auto scrubber and he did not remember anyone reporting to him at any time that it was malfunctioning. Mr. Giza testified that the auto scrubber has 2 scrubbing pads on the front. He stated on the back of the machine there is a squeegee with a vacuum. The front pads use water from the water tank to wash the floor. He testified the floor is getting wet in front and they rotate and the machine is moving forward and the vacuum behind and squeegee picks up the water so there is no water left on the floor behind the squeegee. Mr. Giza stated the machine is fully automatic and does not need to be pushed; nothing different than just steadying the machine and directing which way you want to go with the machine. The squeegee is at the back of the machine by the handles. Mr. Giza testified that the squeegee on the back completely dries the floor as the scrubber moves forward. The squeegee is screwed to the machine and moves together with the machine drying the floor. Mr. Giza testified that as you are moving the machine forward you should be walking on dry ground. Mr. Giza agreed that the accident report was from 900 building security; he stated they always give reports to Respondent whenever Respondent employees report an accident and then Respondent fills out their own paperwork. Mr. Giza testified it is Respondent's policy to immediately report a malfunctioning machine; then a service call has to be made to a vendor to fix it. He indicated 99% of the time Cathy would contact the vendor. The report would go to him and he would report it to Cathy. Mr. Giza testified there is a switch to control the water in the auto scrubber machine. The janitor is washing using the machine to wash the floors and he is turning the switch on and the water comes out the wash bits and then the janitor is supposed to turn the switch off and shut off the water flow. Mr. Giza testified that he was not aware of any leak in the machine around April 19, 2011. Mr. Giza testified that Gracie used to be a supervisor on 2nd shift (4:00pm to midnight) at the 900 building for 10 years. He testified Gracie was no longer employed by Respondent. Mr. Giza testified on April 19, 2011 Fidencio Hilario was the 3rd shift supervisor there. On cross examination, Mr. Giza agreed he stated if a machine is broken or there is a problem he verbally reports it to his manager Cathy. Mr. Giza stated that he sees her usually every day and if he does

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not see her he calls her; she does have an office at the building. She is in charge of a few buildings (she was not present for this hearing). Mr. Giza testified ultimately she would be responsible for the machines getting fixed; she would call in for service. He did not recall if there was a service request put in. He testified it not possible Gracie told Cathy; he stated Gracie was 2nd shift supervisor 10 years ago. Mr. Giza testified Cathy was basically on the premises there every day and she worked all different times so she could be there at night sometimes; he had seen her on the different shifts. Mr. Giza is part of the management team for Respondent, only at the 900 North Michigan building. Mr. Giza became aware that Petitioner sustained an accident when he came in the morning it happened. Mr. Giza testified that Fidencio told him about the accident, that Petitioner was washing the floor and fell and they called 911 and the Paramedics came and took Petitioner out. Mr. Giza testified that he had reported it to Cathy and there was the report to Cathy. He did not know if Fidencio reported it to Cathy but he knew and he reported it to Cathy. Mr. Giza testified he had a conversation with Cathy and told her what had happened. Mr. Giza testified he told her and also handed her a copy of the report as they always give a copy of an accident report if something happens. Mr. Giza viewed PX 1 and he believed he saw it before as the accident report of Petitioner's accident; he was sure Cathy, as a manager, had seen the report. He agreed sometimes machines break down and sometimes they do not work perfectly. Mr. Giza agreed the auto scrubber machine uses water and he agreed it is possible water leaks out of the machine. On re-direct, Mr. Giza agreed the accident report was from 900 building security; he stated they always are giving reports to Respondent whenever Respondent employees report an accident and then Respondent fills out their own paperwork. Mr. Giza testified it is a Respondent policy to immediately report a malfunctioning machine; then a service call has to be made to a vendor to fix it. He indicated 99% of the time Cathy would contact the vendor. The report would go to him and he would report it to Cathy. Mr. Giza testified there is a switch to control the water in the auto scrubber machine. The janitor is washing using the machine to wash the floors and he is turning the switch on and the water comes out the wash bits and then the janitor is supposed to turn the switch off and shut off the water flow. Mr. Giza testified that he was not aware of any leak in the machine around 4/19/11. On re-cross, Mr. Giza testified that scrubber machine has been repaired in the past. He testified the machine has not had problems in the past; it was repaired. There is no problem, but there is a service that comes and looks at the machines. On re-re-direct, Mr. Giza did not recall when the machine had been repaired. He did not remember if it was repaired around April 2011 and he did not recall it stop functioning around that time. He did recall at some point it needed repair and his recollection was it had been repaired thereafter. He indicated they need the machine so whenever it needs to be fixed, they need to fix it.

The Commission finds that there is no evidence the machine was malfunctioning at the time for there to be excess water on the floor so there is no evidence that Petitioner slipped on water, fell and struck his head losing consciousness and having a seizure. The distant video shows Petitioner on the floor afterwards. To assume that Petitioner slipped on water and fell and then had a seizure when he struck his head appears to be speculation more so than the fact. Petitioner indicated the machine was dripping/pooling water and also indicated it was not vacuuming the water up (different statements). Petitioner's testimony is rebutted by the witnesses who came to the scene who indicated the floor was not wet but for the blood. There is no evidence the machine was malfunctioning before or after this event. Clearly that was the only machine at the location that worked so if it was malfunctioning it would have been needed to be fixed and

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testimony indicates no such thing occurred. The medical records from Northwestern and others, including the EMS indicated Petitioner appeared post-ictal and he apparently fell and struck his head and was unconscious and combative when EMS arrived. There is nothing until later records that Petitioner indicated he slipped and fell and then struck his head and lost consciousness. The surveillance video does not show anything of note as it was from down the hall with Petitioner behind the machine, it does not evidence a wet floor. Petitioner told the §12 examining doctor that he never had seizures prior to this event, but the records clearly evidence a history of seizures for some time before. Petitioner testified of only having seizures shortly after waking in the morning, but that is clearly contradicted with medical records noting evening seizures with ER visits shortly after. Christ Hospital ER records from November 13, 2011 (11:19pm) noted a history of seizures that only happens when he drinks ETOH or smokes marijuana. Christ Hospital ER records from June 17, 2012 noted a head trauma in past; he had been struck with blunt object of unknown identity. Petitioner then thought he was twitching because he was smoking marijuana every day but quit 2.5 weeks ago. The credibility of Petitioner's testimony is questioned further with the various witnesses as well as medical records and reports indicating Petitioner was shaking in an apparent post-ictal state even when EMS arrived and had post-ictal confusion at Northwestern emergency room. The evidence and testimony regarding Petitioner having slipped and fallen on a wet floor due to a malfunctioning machine appears speculation at best. The Arbitrator felt it was speculation that he had a seizure and then fell. However, in the absence of supporting evidence that the floor was wet or the machine malfunctioning allowing for more water than normal being left on the floor, finds only Petitioner's testimony of water, and that was after waking in the ER in an apparent post-ictal state. The evidence clearly indicates an idiopathic fall. The evidence and testimony finds that Petitioner failed to meet the burden of proving accident and causal connection to any accident. The Commission finds the decision of the Arbitrator as contrary to the weight of the evidence, and herein, reverses the Arbitrator's findings to find Petitioner failed to meet the burden of proving accident that arose out of and in the course of his employment with Respondent and further the Commission reverses the Arbitrator's findings and finds Petitioner failed to meet the burden of proving causal connection to any accident. All remaining issues rendered as moot for a denial of any and all benefits.

The Commission finds the evidence does show that Respondent supervisors were on notice the same day of Petitioner's incident so if accident and causal connection had been found for Petitioner above, Petitioner would have met the burden of proving timely notice. The Commission finds the decision of the Arbitrator as to these issues as not contrary to the weight of the evidence, and herein, affirms and adopts the Arbitrator's finding of timely notice of an incident, albeit a moot point.

The Commission finds with the above findings that Petitioner failed to meet the burden of proving accident and causal connection renders the issue of temporary total disability moot and warrants a reversal to deny any and all benefits. The Commission finds the decision of the Arbitrator as contrary to the weight of the evidence, and herein, reverses the Arbitrator's award of total temporary disability and to deny any and all such benefits.

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The Commission finds with the findings that Petitioner failed to meet the burden of proving accident and causal connection renders the issue of medical expenses moot and warrants a reversal of the medical award to deny any and all said benefits. The Commission finds the decision of the Arbitrator as contrary to the weight of the evidence, and herein, reverses the Arbitrator's award of medical expenses and to deny any and all such benefits.

The Commission finds with the above finding that Petitioner failed to meet the burden of proving accident and causal connection renders the issue of permanent partial disability moot and warrants a reversal to deny any and all such benefits. The Commission finds the decision of the Arbitrator as contrary to the weight of the evidence, and herein, reverses the Arbitrator's award as to Permanent partial disability and to deny any and all such benefits.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is herein reversed to find that Petitioner failed to meet the burden of proving accident that arose out of and in the course of employment and further failed to meet the burden of proving any causal connection to any such accident/incident, thereby rendering all remaining issues moot and for a denial of any and all benefits under the Act.

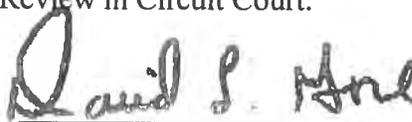
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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.

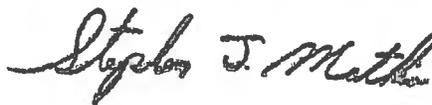
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$-0-. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
o-4/17/14
DLG/jsf
45

JUN 3 0 2014



David L. Gore



Stephen Mathis



Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

FERET, DAMIAN

Employee/Petitioner

Case# 11WC017279

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MILLARD MAINTENANCE

Employer/Respondent

On 9/16/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.03% 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:

1067 ANKIN LAW OFFICE LLC
DEREK S LAX
162 W GRAND AVE SUITE 1810
CHICAGO, IL 60654

0766 HENNESSY & ROACH PC
ERIN K MCGRAW
140 S DEARBORN ST 7TH FL
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14IWCC0518

Case # 11 WC 17279

Consolidated cases: _____

Damian Feret

Employee/Petitioner

v.

Millard Maintenance

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Molly C. Mason**, Arbitrator of the Commission, in the city of **Chicago, Illinois**, on **July 26, 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 _____

FINDINGS

On **April 19, 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 headache condition of ill-being *is* causally related to the accident. Petitioner did not establish that the accident aggravated his pre-existing seizure disorder.

In the year preceding the injury, Petitioner earned **\$24,245.52**; the average weekly wage was **\$466.26**.

On the date of accident, Petitioner was **20** years of age, *single* with **1** dependent child.

Petitioner *has in part* received all reasonable, related and necessary medical services.

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

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

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

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of \$310.84/week for 26 3/7 weeks, commencing April 27, 2011 through October 28, 2011, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from April 27, 2011 through October 28, 2011, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of \$0.00 for temporary total disability benefits that have been paid.

Medical benefits

Respondent shall pay reasonable and necessary medical services of \$18,600.94, as provided in Sections 8(a) and 8.2 of the Act. For the reasons set forth in the attached decision, the Arbitrator finds Respondent is not liable for the \$5,044.00 bill from Advocate Christ Medical Center.

Respondent shall be given a credit of \$0.00 for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Permanent Partial Disability: Person as a whole

Respondent shall pay Petitioner permanent partial disability benefits of \$279.76/week for 15 weeks, because the injuries sustained caused the 3% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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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.

Molly C. Mason
Signature of Arbitrator

9/16/13
Date

SEP 16 2013

Arbitrator's Findings of Fact

As of April 19, 2011, the date of his claimed accident, Petitioner worked for Respondent. His job involved performing janitorial services at different locations. T. 16. On April 19, 2011, he was assigned to the 900 North Michigan Avenue building in Chicago, where he operated a floor cleaning machine. T. 17. Petitioner testified he filled this machine with water three times daily. T. 18. Petitioner also testified he experienced problems with this machine before April 19, 2011. The machine was equipped with a scrubber and a vacuum. According to Petitioner, the vacuum was malfunctioning. T. 17. It did not suck up water properly and left the floor wet. T. 19. Petitioner testified he reported this problem to co-workers prior to April 19, 2011. The co-workers advised him to report the problem to "Gracie," a supervisor. T. 19-20. The machine was still malfunctioning as of April 19, 2011.

Petitioner testified he did not have to use force to operate the floor cleaning machine. He simply had to push a pedal or handle with his hands to make the machine "go." He could control the direction of the machine. T. 20-21.

Petitioner acknowledged having experienced seizures prior to April 19, 2011. Petitioner testified he underwent treatment at Stroger Hospital in connection with these seizures. Petitioner testified that, prior to April 19, 2011, he never experienced a seizure while performing a physical activity. He would only experience a seizure upon waking in the morning. There were occasions when he would experience "twitches" upon waking and would feel as if a seizure might be coming on. On those occasions, he would call out for assistance.

The Stroger Hospital records in evidence (PX 9) reflect that Petitioner, who was then 20 years old, was seen in the pediatric emergency room on February 24, 2009, secondary to "seizure activity" experienced fifteen minutes prior to arrival. The seizure activity included loss of consciousness and tongue biting. Petitioner was described as stating "he has a pre-sign before seizure activity occurs." The handwritten Emergency Room notes reflect a history of two prior seizures. Petitioner denied taking any medication. Petitioner reported having previously undergone a "work-up w/ MRI at OSH [or OFH]." The notes also state: "pt does not want IV Dilantin." Petitioner underwent blood and urine testing as well as a CT scan of the head, performed with and without contrast. The scan was unremarkable. Petitioner was diagnosed with "seizure disorder, new onset." The Emergency Room physician discharged Petitioner with a prescription for Phenytoin and instructions to follow up with neurology. Other records in PX 9 reflect that Petitioner underwent treatment for a right axillary abscess at Stroger Hospital on March 29 and 31, 2010 and April 3, 2010. On August 26, 2010, Petitioner returned to the Emergency Room and complained of a rash of one month's duration, occasional headaches and "multiple seizures in the past year." One note reflects that Petitioner reported losing consciousness in the shower. Another note reflects that Petitioner had previously been seen for seizures in February of 2009 and "was on Dilantin." The Emergency Room physician

indicated that Petitioner's "episodes sound like a seizure disorder." He recommended Bactrim and a neurology follow-up. Petitioner returned to the Emergency Room on September 17, 2010 and underwent treatment for persistent skin lesions.

Petitioner testified that, on April 19, 2011, he was operating the floor cleaning machine when he slipped and fell, hitting his head. He testified he "hit [his] head very hard by slipping and falling because the machine was dripping water," as he had previously reported to Respondent on several occasions. T. 21-22. The next thing he remembered was "waking up" at Northwestern Memorial Hospital. He did not recall being taken to the hospital via ambulance.

The Chicago Fire Department run sheet (PX 4) reflects that paramedics were dispatched to the 900 North Michigan Avenue building at 2:04 AM on April 19, 2011, arrived at the building at 2:09 AM, arrived "at patient" at 2:12 AM and departed the scene at 2:24 AM. An authorization form in PX 4 reflects that Petitioner was unable to sign due to "mental status." The paramedics took Petitioner to the Emergency Room at Northwestern Memorial Hospital.

The paramedics described Petitioner as confused and exhibiting a head laceration secondary to a fall. The run sheet contains the following account of the accident:

"Pt a/ox1. Co-workers state pt appeared to have a seizure.
Fell to the floor, causing a laceration to the back of his head.
4 x 4 and Kerlez applied. Bleeding controlled. Pt very combative.
Still appears post-ictal. Unable to obtain med hx. Crew attempted
several times to place pt on back board and complete ALS care.
Pt still to [sic] combative. No other trauma or abnormalities noted.
No other changes upon arrival."

A note timed 2:16 AM reflects that Petitioner was talking but using "incomprehensible words." Another note bearing the same time reflects that Petitioner's speech was slurred and aphasic. An ECG performed at 2:16 showed sinus tachycardia. PX 4.

A Northwestern Memorial Hospital nursing triage note authored by Guy Shannon, R.N. sets forth the following history:

"Per medics pt had witnessed seizure at work. Witnessed by co-workers mopping floor, then falling to the floor and having seizure-like activity. Unknown duration. Pt hit head on floor and has large hematoma, laceration to left posterior head. Pt does not remember event. Was post-ictal and combative per medics. Pt oriented to self and year, disoriented to month and day. Pt reports has had two seizures in the past year. Reports after last seizure a month ago, was given two-week prescription to Dilantin and then told to stop. Pt sees MD at Cook County. Pt reports pain to posterior head. Denies nausea, vomiting. Pt in NAD. RR even

and non-labored. C-collar applied per Dr. Schaye. Gauze dressing and ice applied to posterior head."

Dr. Schaye, a resident, saw Petitioner in the Emergency Room "immediately upon arrival." Dr. Schaye recorded the following history:

"22 yo M w/ seizure d/o brought by ambulance for seizure. Pt was at work, waxing floors, when his co-workers saw him fall to the ground, Hit his head and begin shaking. Upon arrival, EMS found pt confused, combative, w/large occipital scalp hematoma. Accucheck 116. Upon arrival in ED pt is more calm, cooperative, answering questions but still confused. States he has a known seizure disorder, is not sure when his last seizure was, thinks maybe one month ago. Believes he takes Dilantin, but not sure. Denies remembering anything from earlier tonight. Denies any recent illness, fevers, vomiting, diarrhea. No drug/ ETOH use. Currently c/o headache, no neck pain, no other MSK pains."

On examination, Dr. Schaye noted a 3 centimeter scalp laceration to the left occipital-parietal region, with a large hematoma. He described Petitioner as "somewhat disoriented." He diagnosed "seizure versus syncope w/ head trauma." He placed Petitioner in a cervical collar. He sutured the laceration and ordered laboratory studies, including Dilantin level, and CT scans of the brain and cervical spine. The brain CT scan showed no evidence of an acute intracranial hemorrhage and a "moderate [illegible] hematoma overlying the left parietal and occipital bones." The cervical spine CT scan showed no acute fractures or subluxations. PX 5.

Dr. Gisondi, who was apparently a physician overseeing Dr. Schaye, indicated he agreed with Dr. Schaye's diagnosis and plan of care. He indicated that Petitioner was "non-compliant with AED therapy and will not receive AED load in" the Emergency Room. He told Petitioner to avoid driving until he had followed up with a neurologist and been seizure-free for six months. PX 5.

On April 21, 2011, Petitioner sought treatment at Northwestern Corporate Health Services, where he saw Dr. Mitton. The records from this facility include a two-page "new injury patient information form" bearing handwritten responses to various questions and what appears to be Petitioner's signature. The form sets forth the following description of the April 19, 2011 injury: "fell and hit my head and passed out." The form reflects that Petitioner had worked for Respondent for five years and that his manager was "Kasey." The form reflects a pain rating of 3/10.

Dr. Mitton's typed note sets forth the following history:

"Pt with episode of syncope April 19 at approx 3 am while at work (works midnight to 8 am). Pt had previous days off (usual days) and has trouble adjusting to schedule when he

is off. Taken to NMH via ambulance and CT head neg. Sutured over left parietal area."

Dr. Mitton described Petitioner as alert and oriented, x3. He described Petitioner's neck as "non-tender." He diagnosed a head contusion and scalp laceration. There is no indication he prescribed medication or treatment. He released Petitioner to full duty. PX 6. [It is not clear whether Petitioner attempted to return to work at this point. Petitioner did not address this. The Section 12 report, PX 11, reflects that Petitioner attempted to return to work for one day, about a week after the accident, but experienced headaches and dizziness. The report reflects that Petitioner became nauseated and "fell to his knees" after being exposed to cleaning products.]

Petitioner testified he was experiencing headaches and neck pain when he saw Dr. Mitton. He was also experiencing constant "buzzing" in his ear.

On April 27, 2011, Petitioner saw Dr. Johnson at South Side Medical Group. Petitioner testified he chose to see this physician. South Side Medical Group insurance verification forms dated April 27, 2011 state "workers' compensation" and list Petitioner's attorney. PX 8.

Dr. Johnson's typed note sets forth the following history:

"Mr. Feret states he was involved in a work-related injury on April 19, 2011, while working at 900 North Michigan Avenue. He states that he was working as a janitor, cleaning the floors with a cleaning machine at approximately 2:00 AM, when he slipped and fell, striking his head, knocking himself unconscious. A security officer who was there helped him. He then went to Northwestern Hospital to get evaluated. He had stitches placed in the back of his head. He then hoped his pain would resolve. He still continued to have constant headaches, pain in his left jaw, ringing in his ears, sensitivity to light and sound, dizziness and he has been experiencing vomiting and numbness in his gums. He also notes that he is experiencing neck pain, which he rates as 6/10, constant."

Dr. Johnson described Petitioner's past medical history as negative for illnesses and positive for a gunshot injury to the abdomen five years earlier. Dr. Johnson indicated that Petitioner's medications consisted of "over-the-counter medications and vitamins."

On cervical spine examination, Dr. Johnson noted pain with range of motion testing, Grade II-III myospasm in the suboccipital musculature bilaterally and tenderness at the posterior occipital region. Dr. Johnson diagnosed possible post-concussive syndrome, cervical sprain/strain, possible intervertebral disc bulge, cephalgia, dizziness and photophobia. She prescribed a brain MRI scan, skull X-rays, physical therapy, Mobic and Zantac. She took

Petitioner off work and instructed him to return in one week. She found Petitioner's signs and symptoms "consistent with the history of the slip and fall injury occurring at work on April 19, 2011." PX 7.

The brain MRI, performed on April 28, 2011, was unremarkable. PX 8. Petitioner underwent a cervical spine MRI the same day. That MRI showed "minimal disc bulging at C4/C5 without stenosis." PX 8.

On May 4, 2011, Petitioner returned to Dr. Johnson and complained of severe dizziness, vomiting, headaches and ringing in his left ear. Petitioner also complained of mid-back pain. He indicated he did not mention this earlier because of the severity of his head and neck pain. Petitioner reported that he had not yet had his stitches removed.

Dr. Johnson reviewed the MRI results. On examination, she noted a decreased range of motion in the cervical and thoracic spine with myospasm noted in the cervical suboccipital musculature and rhomboid musculature. She diagnosed a cervical disc bulge, cephalgia post-concussive syndrome and thoracic sprain/strain. She removed about ten stitches from the posterior occipital region of Petitioner's head. She prescribed Meclizine for dizziness and headaches. She instructed Petitioner to remain off work and continue therapy. She recommended vestibular therapy and a neurological consultation. PX 7.

On May 4, 2011, Petitioner filed an Application for Adjustment of Claim alleging he injured his head and neck on April 19, 2011 when he "fell while scrubbing floors." Arb Exh 2.

On May 6, 2011, Petitioner began a course of physical therapy with Mary Dietz, D.C. of Integrity Medical Group. Dr. Dietz's history reflects that, on April 19, 2011, Petitioner was using a machine to clean floors "when he slipped and fell, striking his head and knocking himself unconscious." Dr. Dietz indicated that Petitioner complained of headaches, dizziness, occasional vomiting and 6/10 neck pain. She noted a history of a gunshot wound to the abdomen. She otherwise described Petitioner's past medical history as negative. She indicated Petitioner was currently taking Meclizine, Mobic, Zantac and Tylenol.

On examination, Dr. Dietz noted significant tenderness and myospasm on palpation in the cervical paraspinals, upper trapezius, levator scapula, scalene and SCM, greater on the left side. She also noted a decreased range of motion and positive Romberg's with the eyes open. She described the cranial nerves II through XII as intact but noted "some nystagmus with lateral gaze bilaterally." She found Petitioner's signs and symptoms "consistent with the history of the significant slip and fall accident while working on April 19, 2011." PX 7.

On May 13, 2011, Petitioner saw Dr. Kaye, a board certified physical medicine physician. Dr. Kaye's history is identical to Dr. Dietz's. Dr. Kaye indicated that Petitioner complained of constant headaches, pain in his left jaw, ringing in his ears, sensitivity to light and sound, dizziness, vomiting, 6/10 neck pain and mid-back pain. Dr. Kaye described Petitioner's past medical history as significant only for a gunshot injury to the abdomen five years earlier.

On cervical spine examination, Dr. Kaye noted Grade II-III spasm in the suboccipital musculature bilaterally, tenderness at the posterior occipital region at C1-C3, tenderness and spasm at C5-C7 on the left and a negative Spurling maneuver bilaterally. On thoracic spine examination, Dr. Kaye noted point tenderness at T3-T4 and T5-T6 on the left as well as Grade II tenderness in the left medial border of the scapula. Dr. Kaye described Waddell signs as negative. He described Petitioner's short term memory/recall as decreased and his long term memory as intact.

Dr. Kaye diagnosed post-concussive syndrome, post-traumatic dizziness and labyrinthitis, cervical sprain/strain, with intervertebral disc bulge, headache, insomnia and a healing scalp laceration. He found the mechanism of injury consistent with that described by Petitioner. He indicated Petitioner might require vestibular therapy if his dizziness persisted. He also indicated Petitioner might require a neuro-psychology examination if his cognitive deficits persisted or worsened. He recommended that Petitioner continue physical therapy and return to him in four weeks. PX 7.

Petitioner continued undergoing therapy and acupuncture with Dr. Dietz and another chiropractor at Integrity thereafter.

On June 29, 2011, Petitioner returned to Dr. Johnson and complained of severe headaches, dizziness, difficulty concentrating, neck pain and back pain. Petitioner indicated he was not receiving workers' compensation payments.

On examination, Dr. Johnson noted a decreased range of motion in the cervical and thoracic spine with extension limited to 40 degrees with pain. She also noted point tenderness at C0-C1, C5-C6 and T6-T8.

Dr. Johnson prescribed Meclizine and Soma, as well as a CT scan of the head. She indicated she planned to refer Petitioner to Dr. Salehi, a neurosurgeon, following the CT scan, for treatment of headaches, dizziness and balance. She instructed Petitioner to remain off work. PX 7.

The head CT scan, performed without contrast on July 5, 2011, was negative. PX 7.

Petitioner continued attending therapy thereafter. On August 3 and 31, 2011, Dr. Johnson re-evaluated Petitioner, made essentially the same findings and again recommended that Petitioner stay off work and see Dr. Salehi. PX 7.

On September 28, 2011, Dr. Johnson saw Petitioner for a "final evaluation." In her report of the same date, she noted she had attempted to refer Petitioner to Dr. Salehi for a neurosurgical evaluation "but was unsuccessful in obtaining authorization for this referral." She also noted that the carrier had scheduled Petitioner to see a "different neurologist" for an IME in the near future. She found Petitioner to have reached maximum medical improvement for

treatment of the cervical spine. She indicated Petitioner's care "should be transferred to a neurologist for further treatment." PX 7.

At Respondent's request, Petitioner saw Dr. Glantz, a neurologist, for a Section 12 examination on October 26, 2011. In his report of the same date, Dr. Glantz indicated that Petitioner reported he was "not currently working because of his accident." Petitioner also indicated he had previously worked for Respondent for five years, since age eighteen.

Dr. Glantz indicated that Petitioner complained of near daily left-sided headaches, random "twitching" episodes, with two or three of these episodes progressing to some form of shaking and loss of consciousness, followed by a brief period of confusion and fatigue. Petitioner reported having seen Dr. Johnson in connection with these episodes, with the doctor prescribing Meclizine. Dr. Glantz also noted a complaint of dizziness and nausea, primarily in the morning.

Dr. Glantz indicated that Petitioner described himself as otherwise healthy and having abstained from alcohol since April 2011.

Dr. Glantz also indicated that Petitioner reported having attempted to return to work since the accident:

"I asked him about whether he had tried to go back to work since his injury. He says he went back to work for one day about a week after the accident but couldn't work. He was dizzy and had headache and the smell of the cleaning substances made him nauseated and he fell to his knees and has not worked since."

Dr. Glantz indicated that Petitioner denied having any seizures prior to the episode in April but acknowledged undergoing treatment at Cook County Hospital two to three years prior to that episode. Petitioner attributed the treatment at Cook County Hospital to an incident where he fell asleep after playing basketball and had to be shaken awake by a friend.

Dr. Glantz's report sets forth the following history of the claimed work accident:

"On April 19, 2011, [Petitioner] was working with his cleaning machine and he states that he slipped and fell. He said that he hit the ground and he states that a security person told him that they had witnessed this on video and saw him shaking on the ground. He was working his night shift, midnight to eight a.m. He says that he slipped and tried to grab onto the machine and that's the last thing he remembers. He woke up in the Emergency Room at Northwestern with his shirt very bloody and he was confused. He did say to me that there was water from the machine

and that's how he slipped. He said that security told him he was shaking. He said that he was confused for minutes after the incident. he said that after he was in the Emergency Room, they discharged him. Since the incident, he has not driven much, only one or two times. He says a friend drove him to the office for my examination. He says that after the accident he felt anxious. There was a cut on his head and he had 25 sutures. He says he now lives back with his mother."

On examination, Dr. Glantz noted that Petitioner was alert, oriented and able to answer his questions. He described Petitioner's cognitive examination as normal except for the fact that Petitioner could not perform math calculations in his head. Petitioner reported that he had always had difficulty doing such calculations. Dr. Glantz described Petitioner's gait as normal. He noted one small area of tenderness over the left retroauricular area and reduced pin sensation over the left face. He also noted reduced pin sensation in the entire left arm and left leg..

Dr. Glantz indicated he reviewed records from Stroger Hospital, Northwestern Memorial Hospital, South Side Medical Group, Dr. Johnson and Integrity Medical Group. He also reviewed CDs concerning the brain and cervical spine MRIs performed on April 28, 2011.

Dr. Glantz responded to a variety of questions posed by Respondent's counsel. Based on the pre-accident records, he opined that Petitioner had a pre-existing seizure disorder. He opined that Petitioner had a seizure while working on April 19, 2011 and that there was no connection between this seizure and a work injury. He noted that Petitioner had been given Dilantin (phenytoin) for seizures in the past and that it appeared Petitioner was not taking this medication as of April 19, 2011. He opined that "mopping or cleaning will not aggravate a pre-existing seizure disorder," noting that seizures "occur from random electrical discharge in the brain." He characterized the initial Emergency Room treatment as "related to the seizure disorder" and appropriate. He indicated there was no evidence Petitioner's personal physician was treating the seizure disorder, based on his record review. He found this "surprising," given that Petitioner "has had further seizures since his injury." He indicated Petitioner needs "additional treatment for his chronic propensity to have seizures." He stated that such treatment "is independent of his work duties." He indicated Petitioner should not drive, operate heavy machinery or work at heights until his seizures are treated. He noted that Respondent's counsel was still awaiting records and indicated he would be happy to review same. PX 11.

On November 12, 2011, Petitioner was taken by ambulance to the Emergency Room at Advocate Christ Hospital. The history reflects that Petitioner was brought to the hospital after a friend witnessed him having a seizure. Petitioner denied any injury secondary to the seizure. He refused to undergo any treatment. He acknowledged a history of seizures and indicated he had experienced two seizures in the last five months. He denied taking any seizure medication. He acknowledged using "K2," an over-the-counter drug similar to marijuana. On examination, Emergency Room personnel noted a small contusion to the right side of Petitioner's tongue.

Personnel described Petitioner as alert and oriented. Petitioner was diagnosed with seizures and substance abuse. Petitioner declined anti-seizure medication. He left the hospital against medical advice. PX 10.

Petitioner returned to the Emergency Room at Advocate Christ Hospital on June 17, 2012 and complained of "twitching that has been going on for 3 years." Petitioner also indicated he had experienced head trauma in the past: "he has been hit with a blunt object and not sure what type of weapon it was." Petitioner reported having quit using marijuana two and a half weeks earlier. Petitioner indicated he had undergone a normal EEG and MRI at Stroger Hospital a year earlier. Petitioner denied taking any medications. The Emergency Room physician diagnosed an "anxiety reaction." He prescribed Xanax and instructed Petitioner to follow up with a physician. PX 10.

On February 16, 2013, Petitioner was again taken to the Emergency Room at Advocate Christ Hospital. The Emergency Room physician, Dr. Urumov, noted Petitioner's mother had called paramedics because Petitioner was disoriented and confused on waking. The doctor noted Petitioner had a bite mark to the tongue. He also noted Petitioner was not currently on anti-seizure medication. On examination, Dr. Urumov described Petitioner as alert, oriented and cooperative. He ordered a head CT scan and laboratory studies. He indicated that a seizure was the "most likely reason" for Petitioner's complaints. The CT scan was unremarkable. Toxicology studies were negative for amphetamines, barbiturates, benzodiazepines, cannabinoids, cocaine, opiates and phencyclidine. Dr. Urumov discharged Petitioner with instructions to avoid swimming or driving until follow up with Dr. Wichter. PX 10.

Petitioner testified he received no workers' compensation benefits. His medical bills remain unpaid. Respondent did not contact him. He called Respondent to ask them when he could start work. He now works for another company, performing janitorial services. He has had more seizures since April 19, 2011 but not while working.

Petitioner denied filing any previous workers' compensation claims.

Petitioner testified he experiences ringing in his ears and occasional seizures. If he feels normal when he wakes up, he does not experience a seizure. If he wakes up twitching, there is a 50/50 chance he will experience a seizure. Once he is up and moving around, he does not experience any seizures.

Petitioner testified that no doctor formally took him off work after the October 28, 2011 Section 12 examination but he was off work and symptomatic after that date. This is why he sought treatment at Christ Hospital.

Under cross-examination, Petitioner testified he started his shift at 12:00 AM on April 19, 2011. He always worked the night shift for Respondent. He fell at around 1:30 or 2:00 AM. As of the accident, he did not have a personal physician. He experienced seizures for about two

years before the accident but underwent scans that did not show any seizure activity. He was given anti-seizure medication before the accident. He sought treatment at hospitals before the accident because he could not afford to see a doctor. He does not know what caused him to experience seizures. He told the doctors he smoked marijuana but they told him this would not cause a seizure. He has not been diagnosed with diabetes. He experienced a head trauma at some point before the accident. He slipped in the shower. He cannot recall exactly when this occurred. The doctors at Northwestern Memorial Hospital were rude. He was confused and ultimately left the Emergency Room. He has experienced confusion after experiencing a seizure. There have been other occasions on which he has awakened in an Emergency Room. On one such occasion, his mother called an ambulance after he woke up "twitchy" and alerted her to this. He is able to feel the twitches but does not experience the seizure while it is taking place. He sought treatment on the south side after a friend recommended the facility to him. When he started his shift on April 19, 2011, he was not under the influence of drugs or alcohol. The floor cleaning machine had not been working well for about three weeks or a month before the accident. He was supposed to report any equipment problems to Respondent. He believes his supervisor was "Gracie." He told "Gracie" about the malfunctioning machine twice before the accident. He is the only employee who used that machine during his shift. He recalls a co-worker named "Fidencio." Fidencio was not a supervisor. He is not currently taking anti-seizure medication. He has worked for his new employer for one year and one month. He still works at night. His shift runs from 5:00 PM to 1:00 AM. After the accident, he did not work anywhere before he began working for his current employer.

On redirect, Petitioner testified that, after he experiences a seizure, his memory comes back with respect to certain pre-seizure events. Immediately before the accident, the last thing he saw was water on the floor. He then slipped and fell backward, striking his head. He used to smoke marijuana from time to time but has not done this in a while. At Stroger Hospital, doctors told him his seizures did not stem from marijuana usage. If he had had medical insurance, he would have continued treatment. He takes over the counter medication, which helps a little with the headaches he experiences. When he has a headache, he also experiences a little neck pain. The physical therapy he underwent helped.

Under re-cross, Petitioner testified the water he saw before the accident "was not a puddle." When a floor cleaning machine is working properly, it leaves thin sheets of water on the floor that dry quickly. The machine he was using "left bigger sheets."

On further redirect, Petitioner testified he walked over sheets of water before the accident.

In addition to the exhibits previously discussed, Petitioner offered into evidence a video of the occurrence [PX 2 – see further below] and bills from various providers totaling \$31,808.59 with an outstanding total balance of \$23,644.94 [PX 3]. The Arbitrator admitted the video into evidence over Respondent's relevancy objection.

Petitioner called two witnesses pursuant to subpoena: Mahmoud Ali and David Van.

Mahmoud Ali testified he was a security officer at the 900 North Michigan Avenue building on April 19, 2011. He worked from 12:00 AM to 8:00 AM that day. T. 75. His job is to "observe and report." T. 76, 79. Immediately before the accident, he saw Petitioner pushing a machine. He was about 100 feet away from Petitioner at that point. He said hello to Petitioner. The next thing he saw was Petitioner lying on the floor. He did not see Petitioner fall. T. 76. He called his supervisor, Mr. Van, and said, "Mr. Feret, he's on the ground and you should call the ambulance." T. 77. The supervisor made the call. Petitioner's head was down. Petitioner was unconscious and "shaking on the ground." No one else was present. T. 79. There is nobody else who could have seen Petitioner fall. T. 79. It was later that his supervisor and a Respondent supervisor showed up.

Ali testified he had never heard of Petitioner previously experiencing a seizure. T. 80. He watched as the paramedics took Petitioner away. T. 81. The Respondent supervisor was present when the paramedics took Petitioner away. T. 81.

Under cross-examination, Ali testified he believes it was around midnight when he saw Petitioner pushing the machine. He was sitting at a desk facing Petitioner. Nothing blocked his view of Petitioner. T. 83. He did not observe anything unusual about Petitioner when Petitioner went by. T. 84. He was about 100 feet away from Petitioner when Petitioner fell. He heard a loud sound, realized that Petitioner had fallen, got up from his desk and rushed over. T. 84. It took him three or five minutes to reach Petitioner. T. 85. He saw blood coming from Petitioner's head. He did not recall seeing any water on the floor. T. 85. When he went to Petitioner's aid, he essentially followed the path of the machine. He did not think the floor was wet or slippery. T. 86. He was present when the paramedics arrived. Petitioner regained consciousness. He did not ask Petitioner anything. T. 86. He is not employed by Respondent. He works for the 900 North Michigan Avenue building. T. 86-87.

On redirect, Ali initially testified he could not recall anything being on the floor. He then indicated he was "not sure" whether something was on the floor. T. 88.

Under re-cross, Ali reiterated there was blood coming from Petitioner's head. T. 89.

David Van testified he works as an overnight security supervisor for 900 Services, LLC. T. 92. His job involves taking care of the building from midnight to 8:00 AM and preparing incident and accident reports. T. 92. He recalls an accident that occurred on April 19, 2011. He received a call from William Obeng, a base supervisor, alerting him to the accident. T. 93. He went to the sixth floor and saw an unconscious individual lying on the floor. The individual's head was surrounded by a puddle of blood. There was a lot of blood. T. 95. The individual was not shaking. T. 94. He did not see the individual have a seizure. T. 94. Van testified he checked the individual's pulse and kept everyone else away. T. 95. After paramedics took the individual away, he went back to his office and completed PX 1. T. 96. [PX 1, a 900 N. Michigan Security accident report, reflects that Petitioner "passed out while running floor scrubber machine" on the sixth floor at 2:00 AM on April 19, 2011. PX 1 also reflects that security officer

Ali alerted Obeng, who called Van, with Van arriving at the scene of the accident at 2:05 AM and observing Petitioner "passed out on the floor bleeding from the back of his head." PX 1 further reflects that Petitioner woke up, confused, and was unable to answer the paramedics' questions as to what had occurred. PX 1 states that Van "recorded the footage from camera #42, which showed the accident."]

Van testified there are more than 100 security cameras inside the 900 North Michigan Avenue building. T. 102. Camera 42 was the only camera inside the building that could have afforded a view of the accident but the view was in fact partially blocked by a sign inside the building. T. 103. The video itself refers to camera 10 rather than camera 42 because camera 42 is plugged into slot 10 of the building's recording device. The video begins at 2:05 AM, at which point Petitioner is already on the ground with people huddled around him. T. 102-103. The video does not show Petitioner falling. Although his report states that a camera captured footage showing the accident, no such footage appears in the video. Van testified that all he could video was what he could actually see. T. 103. Van did not recall Petitioner being wet after the accident. T. 103.

The Arbitrator, counsel, Petitioner and Van watched the video during the hearing. The video contains only post-accident footage, taken from a distance. It shows Petitioner lying behind the floor scrubber and being attended to by paramedics. T. 103-104.

Van testified he attached the video [PX 2] to PX 1, his report, and sent it to management. T. 105.

Van testified that when he used the term "passed out" in his report, he meant that Petitioner was lying on the ground at the scene. He did not see Petitioner fall. He has no knowledge of anyone claiming to have witnessed the accident. T. 106. He did not meet Petitioner before the accident. He has no awareness of Petitioner having ever passed out on previous occasions. T. 108. Petitioner and Ali were the only people on the sixth floor of the building when the accident occurred. T. 107.

Van testified that individuals slip and fall at the 900 North Michigan Avenue building for various reasons. A person can fall due to a broken heel or because the floor is wet. T. 109.

Van testified he did not talk to Petitioner after the accident. A Respondent supervisor was present when he arrived at the scene. T. 109. Respondent employees provide their own equipment and punch in at a different location from the building employees. He has worked for the building for fourteen years. Respondent equipment has broken on occasion, with Respondent having to call for service. T. 111.

Under cross-examination, Van testified he began working the night shift at the building after about 8 ½ years. He does not work for Respondent.

Respondent called two witnesses: Fidencio Hilario and Casey Giza.

Fidencio Hilario testified through a Spanish-speaking interpreter. Hilario testified he has worked as a supervisor for Respondent for 8 ½ years. T. 121. He works from 12:00 AM to 8:00 AM at the 900 North Michigan Avenue building. He oversees janitors. T. 121. He knows Petitioner. Petitioner worked with him. Petitioner's responsibility was to operate the floor cleaning machine. T. 122. As of April 19, 2011, Respondent had two such machines, one that worked and one that did not work. The machine that did not work could not be turned on. T. 122-123. The other machine was "functioning fine" as of the accident. T. 123. The janitors were supposed to advise him of any machine malfunctions. He would then report the malfunction to Casey, his manager. T. 124.

Hilario testified he did not see Petitioner fall. T. 124. He learned of the accident via radio. He arrived at the scene of the accident less than five minutes after hearing about the accident on the radio. T. 125. When he arrived, he saw Petitioner lying on the floor. He also saw blood coming from Petitioner's head. He did not see water on the floor. T. 125-126. "Mr. Ali" was close to Petitioner. Hilario testified he was present when the paramedics arrived. He could not recall if the back of Petitioner's pants was wet. T. 127. He had to clean up the area later, after the paramedics took Petitioner away. T. 125.

Under cross-examination, Hilario testified he understands English but not perfectly. T. 128. Not all of Respondent's employees speak Spanish. He tries to learn a little of each employee's native language. T. 128. He has worked for Respondent for ten years. He became a supervisor eight and a half years ago. T. 128. He has always been based at the 900 North Michigan Avenue building. T. 129. As of the accident, Respondent had two floor cleaning machines, only one of which worked. The machine that was broken had been "parked" in an area for a long time. No one touched it. It was "about to go in the garbage." T. 130.

Hilario testified he is familiar with the operation of a floor cleaning machine. The machine is operated by hand. If you let go of the handle, the machine stops automatically. T. 130. You have to put water in the machine if you plan to use the machine to wash floors. T. 131.

Hilario testified he could not recall Petitioner having any accident before April 19, 2011. Nor could he recall Petitioner passing out or lying on the floor and shaking at any time before April 19, 2011. T. 131. After the accident, Petitioner was breathing but unconscious. T. 132. After the accident, he could see a lot of blood. Petitioner's clothes were wet but there was nothing on the floor. T. 132.

Hilario testified that Petitioner always performed his assigned tasks. T. 132. He cannot say whether Petitioner is a nice guy because he only knew Petitioner through work. T. 133. He does not view Petitioner as a bad person. T. 133. Petitioner "would work well." T. 133.

Hilario testified that other Respondent employees were in the building at the time of the accident but "they didn't see anything." They work "in a different section." T. 134. They did not come to the accident scene.

Hilario testified he provided Respondent with a written report concerning the accident. He handed this report to either Casey or Cathy. T. 136-137. He did not discuss the accident with any security personnel affiliated with the building. T. 138. He never saw Petitioner after the accident. T. 138.

On redirect, Hilario testified that Respondent cleans the lower level and the six higher floors at the 900 North Michigan Avenue building. Only one machine is needed to clean these floors. T. 140. The third shift consists of him and three other employees. One of these employees is responsible for washing all the floors. T. 141.

In response to a question posed by the Arbitrator, Hilario testified that, to his knowledge, no one affiliated with Respondent accompanied Petitioner to the hospital. T. 141-142.

Casey Giza testified he has worked for Respondent for twenty-four years. He has always been based at the 900 North Michigan Avenue building. T. 146. He is a branch manager. T. 145. He oversees the third shift and the second shift supervisor. He spends time with the second and third shift supervisors each day, reviewing what needs to be done. T. 146. He oversees most of the work that Respondent performs at the 900 North Michigan Avenue building. T. 147. A Respondent employee is supposed to report any equipment malfunction to his supervisor. The supervisor, in turn, is supposed to report this to his manager. The report is verbal. T. 147.

Giza did not recall receiving any reports concerning malfunctioning equipment in April 2011. T. 147. As of April 19, 2011, there was only one functioning floor cleaning machine at 900 North Michigan Avenue. Giza did not remember receiving any report indicating this machine was not working properly. T. 148. The machine has two scrubbing pads in the front and a "squeegee" with a vacuum in back. The machine is fully automatic. It has to be steadied but not pushed. T. 149. As the machine moves forward, it dispels water from its water tank. The scrubber pads rotate and wash the floor, using the dispelled water. The "squeegee" in back absorbs this water and completely dries the floor as the machine moves forward. T. 149. As the machine operator moves along, he should be walking on a dry surface. T. 149-150.

Giza testified that "Gracie" worked as Respondent's second shift supervisor for ten years. T. 150. She worked from 4:00 PM to midnight. She no longer works for Respondent. T. 151. On April 19, 2011, Hilario was Respondent's third shift supervisor. T. 151.

Under cross-examination, Giza testified he would report any equipment malfunction to a manager named Cathy. Cathy has an office at 900 North Michigan Avenue. She is the individual who arranges to have equipment serviced. T. 152-153. Giza did not recall whether

anyone put in a request to have the floor cleaning machine fixed. Gracie would not have been the person to make such a request to Cathy because "Gracie was a supervisor on second shift ten years ago." T. 153. Cathy did not attend the hearing. She oversees several buildings. Her schedule varies but she is on the premises of 900 North Michigan Avenue every day. T. 154. She is at the building at night as well as during the day.

Giza testified that Hilario reported Petitioner's accident to him. Hilario told him that Petitioner "was washing the floor and fell." Hilario also told him that Petitioner was taken away via ambulance. T. 155. Giza testified he reported this accident to Cathy. He also handed an accident report to Cathy. Giza testified he previously saw PX 1. He is sure Cathy also saw PX 1. T. 156.

Giza acknowledged that machines sometimes break or work imperfectly. The machine Petitioner operated used water. It is possible that water leaked out of the machine. T. 157.

On redirect, Giza clarified that PX 1 is a report generated by "900 security." If a Respondent employee has an accident, "900 security" makes a report and gives it to Respondent. Respondent then completes its own paperwork. T. 158.

The following exchange then occurred:

Q: Is it [Respondent's] policy to immediately report a malfunctioning machine?

A: Yes.

Q: And previously employees have reported that machine was malfunctioning, correct?

A: That machine was – was repaired. We had –

Q: No, let me strike that.

A: Okay.

Q: Any machine. I'm saying if any machine is malfunctioning, they are supposed to report it to you immediately, correct?

A: Yes.

Q: And then a service call has to be made to a vendor to fix it, correct?

A: Yes, ma'am.

Q: Are there not times that you called the vendor yourself if Cathy is not there?

A: I would say 99 percent she's calling it. She's doing it."

Giza went on to testify that the floor cleaning machine does not create a continuous flow of water. The flow is controlled by a switch. The operator is supposed to turn the switch off, stopping the flow, when he turns the machine on. T. 160.

Under re-cross, Giza reiterated that the machine in question had previously broken down. T. 161. A serviceman came and looked at the machine. T. 161.

On further redirect, Giza testified he did not recall when the machine was repaired. Giza also testified he did not recall if the machine stopped functioning around April 2011. T. 163. Respondent needed to be able to use the machine. "Whenever the machine need[ed] to be fixed, we need to fix it." T. 164.

Under further re-cross, Giza testified the machine Petitioner used was new but needed repairs. T. 165-166.

Respondent did not offer any documentary evidence.

[CONT'D]

Arbitrator's Credibility Assessment

Petitioner's presentation was somewhat unusual. At times, he appeared to have difficulty processing information and responding to questions. Petitioner was able, however, to provide quite a bit of detail concerning the difficulties he encountered with the floor cleaning machine he was using at the time of his claimed April 19, 2011 accident. The Arbitrator finds credible Petitioner's testimony that the machine was malfunctioning and leaking water before April 19, 2011. Particularly persuasive is Petitioner's comparison of the thin, quick-drying sheets of water created when the machine was working properly with the thicker sheets created when the machine malfunctioned. Respondent's branch manager, Casey Giza, conceded that the machine could have been leaking and that it had been repaired before April 19, 2011. Respondent called two witnesses but did not call Cathy, the manager who handled 99% of machine servicing and repairs.

The Arbitrator also finds credible Petitioner's testimony that he slipped on water that had collected due to the machine's malfunction. There is no dispute that Petitioner was operating the machine immediately before he fell. Nor is there any dispute that the machine had an internal water tank. Respondent's witness, Mahmoud Ali, saw Petitioner pushing the machine in a normal fashion very shortly before he heard a loud noise and realized Petitioner had fallen. Initially, Ali testified he did not recall seeing any water on the floor after the incident. Ultimately, he admitted he was not sure about this. His primary concern, quite naturally, was with Petitioner's bleeding head wound.

Did Petitioner sustain an accident arising out of and in the course of his employment on April 19, 2011?

The Arbitrator finds that Petitioner sustained a compensable work accident on April 19, 2011. Petitioner was clearly in the course of his employment when the accident occurred. He was at his assigned building performing his customary task during his regular shift. Petitioner's accident also arose out of his employment. Petitioner credibly testified the machine he was operating was expelling more water than it was supposed to. Respondent's manager, Casey Giza, acknowledged the machine had been repaired in the past and could possibly have been leaking on the night in question. The Arbitrator finds that Petitioner was subject to an increased risk of injury by virtue of the machine's malfunction. Petitioner credibly testified he slipped on water from the machine and fell backward, hitting his head. The paramedic run sheet and Emergency Room records support Petitioner's testimony as to a backward fall. Petitioner sustained a significant laceration and hematoma to the left occipital region of his head. PX 4-5. Had Petitioner crumpled rather than lost his footing and fallen backward, it seems unlikely he would have sustained the kind of head injury he did.

The Arbitrator has given careful consideration to the question of whether Petitioner's fall was in fact secondary to a seizure and thus idiopathic. No one who testified in this case saw Petitioner fall. Ali, who was the only person who saw Petitioner shortly before he fell, testified he observed nothing unusual about Petitioner at that time. Petitioner was simply pushing his machine. Ali did not see Petitioner fall. He went to Petitioner's aid after he heard a loud noise and realized Petitioner had fallen. He testified it took him three to five minutes to reach Petitioner. He observed that Petitioner was shaking but that does not necessarily mean that Petitioner was experiencing a seizure or that a seizure precipitated the fall.

The only "evidence" that suggests Petitioner fell due to a seizure is secondhand information that, at the hearing, proved to be inaccurate. The run sheet states: "**co-workers state pt appeared to have a seizure, fell to the floor**" [emphasis added]. At the hearing, however, no co-worker testified to this. In fact, Hilario made it quite clear he was the only co-worker who came to the scene. He arrived after the fact. PX 1, the accident report prepared by David Van, reflects that Ali "called for help over the radio, stating [Petitioner] passed out on the 6th floor, hitting his head on the floor." Ali did not testify that he saw Petitioner pass out or hit his head. Ali merely indicated that, at some point after Petitioner passed near him, he heard a loud noise and realized Petitioner had fallen. Van admitted he did not witness the accident. Van also admitted he used the term "passed out" simply to indicate he found Petitioner lying on the floor. Respondent's examiner, Dr. Glantz, concluded that Petitioner had a "witnessed seizure at work on 4/19/11," based, in part, on his review of the Emergency Room records. In fact, no one claims to have witnessed Petitioner experiencing a seizure at work on April 19, 2011. Dr. Glantz was asked to address the question of whether mopping could aggravate or induce a seizure. There is no evidence indicating Petitioner was mopping before he fell.

While the burden of proving accident rests on Petitioner, the Arbitrator notes that both of Respondent's witnesses testified they prepared written accident reports and that Respondent did not offer either of these reports into evidence. The Arbitrator infers that these reports would have been unfavorable to Respondent. REO Movers, Inc. v. Industrial Commission, 226 Ill.App.3d 216, 224 (1st Dist. 1992).

Did Petitioner provide Respondent with timely notice of his April 19, 2011 accident?

The Arbitrator finds that Petitioner provided Respondent with timely notice of his April 19, 2011 accident. In so finding, the Arbitrator relies on the testimony of Respondent's witnesses, Fidencio Hilario and Casey Giza. Hilario, who identified himself as Respondent's third shift supervisor, testified he learned of the accident via radio, promptly went to the accident scene and watched as Petitioner was taken away via ambulance. Giza, Respondent's branch manager, testified he learned of Petitioner's accident from Hilario when he came to work early on the morning of April 19, 2011. Hilario testified he submitted a written accident report to a Respondent manager, either Giza or Cathy. Giza testified he submitted a written accident report to Cathy. After looking at PX 1, the report generated by David Van, Giza testified that Respondent always fills out its own accident-related paperwork. As noted above,

Respondent did not submit any of this paperwork into evidence.

The Arbitrator also notes that Petitioner filed his Application for Adjustment of Claim on May 4, 2011, well within the 45-day notice period.

Did Petitioner establish causal connection?

The Arbitrator finds that Petitioner established causation as to the head injury and laceration for which he underwent Emergency Room care on April 19, 2011 and follow-up care two days later. The Arbitrator further finds that Petitioner established causation as to the headaches, dizziness and neck pain for which he underwent treatment from April 27, 2011 through September 28, 2011. In so finding, the Arbitrator relies on the various causation opinions set forth in the records from Integrity Medical Group. PX 7. Dr. Mitton of Northwestern Corporate Health released Petitioner to full duty on April 21, 2011 but did not release Petitioner from treatment that day. PX 6. There is evidence indicating that Petitioner tried to resume working shortly after April 21, 2011 but developed dizziness and headaches. PX 11.

The Arbitrator also finds that Petitioner established a causal relationship between the work accident of April 19, 2011 and his current headaches.

The Arbitrator further finds that Petitioner failed to establish that the work accident resulted in any worsening of his acknowledged pre-existing seizure condition.

Is Petitioner entitled to temporary total disability benefits?

Petitioner claims temporary total disability benefits from April 27, 2011, the date on which Dr. Johnson recommended treatment and took him off work, through October 28, 2011, a month after Dr. Johnson instructed Petitioner to remain off work for four weeks and continue treatment for his dizziness and headaches. Arb Exh 1. PX 7.

The Arbitrator finds that Petitioner was temporarily totally disabled from April 27, 2011 through October 28, 2011, a period of 26 3/7 weeks. Dr. Mitton released Petitioner to full duty on April 21, 2011 but did not release Petitioner from care. Petitioner began a course of treatment with Dr. Johnson six days later and remained under her care until September 28, 2011, at which point the doctor noted that the carrier had failed to authorize the neurosurgical evaluation by Dr. Salehi that she had recommended earlier. On September 28, 2011, Dr. Johnson recommended that Petitioner stay off work for four weeks and continue to pursue care for his headaches and dizziness. PX 7. There is no evidence indicating Petitioner ever got to see Dr. Salehi. The Arbitrator finds that Petitioner's causally related head condition remained unstable from April 27, 2011 through October 28, 2011, the end date of Petitioner's claim for benefits. Arb Exh 1.

Is Petitioner entitled to medical expenses?

14IWCC0518

Petitioner claims medical expenses totaling \$23,644.94. PX 3. Based on the foregoing findings as to accident and causation, the Arbitrator finds that Petitioner is entitled to the ambulance and medical expenses associated with his treatment through September 28, 2011, the date of his last visit to Dr. Johnson. Those expenses total \$18,600.94. The Arbitrator awards these expenses subject to the fee schedule. The Arbitrator declines to award the \$5,044.00 in expenses associated with Petitioner's subsequent visits to Advocate Christ Hospital since those visits appear to relate to suspected or actual seizures. Petitioner acknowledged having seizures prior to the accident. Petitioner did not offer any evidence indicating that the accident aggravated his underlying seizure condition.

Is Petitioner entitled to permanent partial disability benefits?

Petitioner testified to persistent headaches for which he takes over the counter medication. As of the hearing, Petitioner had been working full duty for another cleaning contractor for a year. Petitioner had not undergone additional treatment for his accident-related complaints but he testified he had no means of pursuing such treatment. As noted earlier, Dr. Johnson indicated she had been unable to secure authorization for her recommended neurosurgical consultation with Dr. Salehi when she last saw Petitioner on September 28, 2011. PX 7.

Based on the treatment records and Petitioner's credible testimony concerning his ongoing headaches, the Arbitrator awards permanency equivalent to 3% loss of use of the person as a whole, or 15 weeks of benefits, under Section 8(d)2 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input checked="" type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT WALKER,
Petitioner,

14IWCC0519

vs.

NO: 09 WC 42989

STATE OF ILLINOIS/MENARD C.C.,
Respondent,

DECISION AND OPINION ON REVIEW

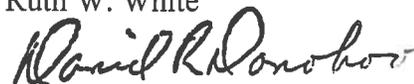
Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, notice, and medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, with the exception of the clerical error noted below.

In the Findings section, the Arbitrator's decision indicates that the alleged date of accident was September 9, 2009. Although the Arbitrator correctly wrote, in the Statement of Facts, that the alleged date of accident was September 30, 2009, we hereby correct the clerical error in the Findings section to reflect that the alleged accident date was September 30, 2009.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 21, 2013, is hereby affirmed and adopted with the correction of the clerical error noted above.

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: JUN 30 2014


 Ruth W. White

 Daniel R. Donohoo

SE/
O: 5/27/14
49

DISSENTING OPINION

I must respectfully dissent. Based on the facts of this case, I find the opinions of Dr. Brown and Dr. Choi to be more credible on the issue of causal connection than those of Dr. Katz and Dr. Cohen. As such, I would find that Petitioner's job duties for many years at Menard Correctional Center were a causative factor in his development of left cubital tunnel syndrome, which manifested on September 30, 2009.



Charles J. DeVriendt

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

WALKER, ROBERT

Employee/Petitioner

Case# 09WC042989

SOI/MENARD CORRECTIONAL CENTER

Employer/Respondent

14IWCC0519

On 6/21/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

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

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0558 ASSISTANT ATTORNEY GENERAL
AARON L WRIGHT
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

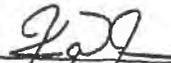
0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

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

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

JUN 21 2013




KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

14IWCC0519

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
19(b)

Robert Walker
Employee/Petitioner

Case # **09 WC 042989**

v.

Consolidated cases: **None**

SOI/Menard Correctional Center
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Herrin**, on **April 17th, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

14IWCC0519

FINDINGS

On the date of accident, **September 9, 2009**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of the asserted accident *was* given to Respondent.

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

In the year preceding the injury, Petitioner earned **\$78,292.00**; the average weekly wage was **\$1505.62**.

On the date of accident, Petitioner was **56** years of age, *married* with **2** dependent children.

Respondent *has* 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 **\$0.00** for other benefits, for a total credit of **\$0.00**.

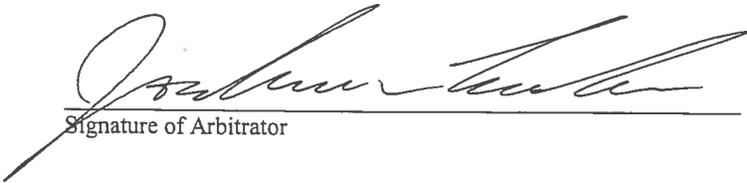
Respondent would be entitled to a credit under Section 8(j) of the Act; this issue is moot given the above.

ORDER

For reasons set forth in the attached decision, benefits are denied.

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

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



Signature of Arbitrator

June 20, 2013
Date

ICArbDec19(b)

JUN 21 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT WALKER,)	
)	
Petitioner,)	
)	
vs.	)	No. 09 WC 42989
)	
STATE OF ILLINOIS/MENARD C.C.,)	
)	
Respondent.)	

ADDENDUM TO ARBITRATION DECISION

This matter was heard pursuant to Sections 8(a) and 19(b) of the Act.

STATEMENT OF FACTS

The petitioner began employment with the respondent as a corrections officer in 1994 at the Menard facility. He worked in that capacity until 1998, when he was promoted to sergeant. In 2000, he was promoted to lieutenant, and in 2006, he was promoted to major. He continued working at Menard during this period. In 2009, he transferred to the Shawnee Correctional Center and became the assistant warden at that facility. After eight or nine months there, he transferred to the Vienna Corrections Center in 2010 to be the warden, where he remained until his retirement on November 1, 2011. The petitioner asserts repetitive trauma as his accident theory with an effective date of loss of September 30, 2009.

On September 30, 2009, the petitioner presented to Dr. David Brown at the Orthopedic Center of St. Louis. PX3. The petitioner reported a five year history of pain, numbness and tingling in both hands. He denied specific injury. Dr. Brown assessed possible carpal tunnel syndrome and recommended an EMG study. The EMG studies were performed the next day, and were normal for both carpal and cubital tunnel syndrome. PX4. Dr. Brown reviewed the EMG study that same day and noted "from a hand surgical point of view I have no further recommendations at this point." PX3.

On November 15, 2011, the petitioner returned to Dr. Peeples for another EMG study. PX4. This report indicates the petitioner was referred there by Dr. Paletta; however, the referral prescription is not present. The petitioner reported complaints of approximately six years duration. The examination at this time noted mild demyelinative ulnar neuropathy at the left elbow which had developed since the previous study.

The claimant next presented to Dr. Luke Choi on November 28, 2011. At this time he noted a six year history of elbow pain, left greater than right. Dr. Choi diagnosed left ulnar neuropathy and recommended night splints and NSAIDs. On January 27, 2012, the petitioner returned and denied improvement. Dr. Choi recommended left elbow ulnar nerve transposition. See PX5. Dr. Choi testified in deposition regarding his causal opinion. See PX6.

The respondent secured a Section 12 examination with Dr. Katz (RX2) and a Section 12 records review with Dr. Cohen (RX3). They each testified in deposition (RX4, RX5). Each opined the petitioner's employment at Menard Correctional Center had no causal relationship to any medical condition of ill-being.

OPINION AND ORDER

Accident and Causal Relationship

A claimant must prove by the preponderance of credible evidence all elements of the claim in order to receive compensation under the Act. See, e.g., *Orsini v. Industrial Commission*, 117 Ill.2d 38, 44-45 (1987), *Parro v. Industrial Commission*, 260 Ill.App.3d 551, 553 (1993). The Arbitrator finds the petitioner has failed to do so.

When performance of the employee's work involves constant or repetitive activity that gradually causes deterioration of or injury to a body part, the case may be compensable, provided it can be medically established the origin of the injury was the repetitive stressful activity. However, it is required that a claimant prove that the injury is related to the employment and not the result of a normal degenerative process, as simply performing work over a period of years is not legally sufficient to prove that work is repetitive enough to cause an increased risk to the petitioner. See, e.g., *Peoria County Bellwood*, 115 Ill.2d 524 (1987); *Quaker Oats Co. v. Industrial Commission*, 414 Ill.2d 326 (1953). In such cases, the claimant generally relies on medical testimony to establish a causal connection between the claimant's work and the claimed disability. In this case, the medical opinions on which the claimant relies do not satisfy the burden of proof to a medical and surgical certainty. Examining his treating physician's testimony and Dr. Brown's written opinion, it is clear that they had an inaccurate history of the claimant's work assignments and duties. The claimant testified that his job tasks did continue to involve physical duties such as key turning as he progressed through his promotions, but the Arbitrator notes the evidence suggested that the number and intensity of these duties appeared to lessen as he progressed in rank, concomitant with his increased administrative and ministerial duties. Dr. Brown's causal opinion, when it was made, relied on his knowledge of the job duties of Menard correctional officer. Dr. Choi similarly relied on knowledge of the Menard correctional officer duties. Dr. Choi's assertion of a latency period does not appear well supported. Drs. Katz and Cohen appear to have a more thorough foundation on which to base their opinions.

The problem with attempting to relate the petitioner's medical condition to strenuous and repetitive physical duties at the Menard facility is that the petitioner's condition did not arise during the period where those duties were paramount. Rather, he asserts the symptoms began during the period within which those duties were actually the least. Moreover, his negative 2009 EMG study was performed roughly contemporaneous with his departure from Menard. The petitioner's condition then apparently progressed entirely divorced from those physical stressors which are asserted to be the contributory cause of the current condition of ill-being. The argument that having been exposed to repetitive work at a given employment facility would thereafter causally relate repetitive stress injuries when those injuries did not arise during the repetitive work improperly conflates the concept of repetitive trauma with the workplace occupational disease exposure standard.

Dr. Brown and Dr. Choi's opinion relies upon incorrect and/or incomplete information about the claimant's job duties. The EMG which was positive was years after he ceased employment at Menard and years after the asserted manifestation date. Dr. Katz' and Dr. Cohen's assessment is deemed persuasive. Accident and causal relationship to any condition of ill-being is denied. Given the findings above, medical expenses incurred to date and the future medical services requested are also denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input checked="" type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Artur Zaborowski,
Petitioner,

vs.
Ziggi Pionier II, Inc./Injured Workers' Benefit Fund,
Respondent,

NO: 08 WC 32767

14IWCC0520

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 benefit rates, temporary total disability, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 1, 2013 is hereby affirmed and adopted.

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.

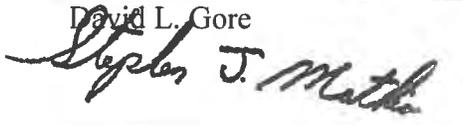
Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$2,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 30 2014

MB/mam
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Mario Basurto


David L. Gore


Stephen Mathis

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ZABOROWSKI, ARTUR

Employee/Petitioner

Case# 08WC032767

14IWCC0520

ZIGGI PIONER II INC/INJURED WORKERS'
BENEFIT FUND

Employer/Respondent

On 8/1/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% 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:

1938 BELCHER LAW OFFICE
MATTHEW D GOODSTEIN
350 N LASALLE SUITE 750
CHICAGO, IL 60654

ZIGGI PIONER II INC
4754 N LINDER AVE
CHICAGO, IL 60630

5145 ASSISTANT ATTORNEY GENERAL
KATHARINE ARISS
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

14IWCC0520

STATE OF ILLINOIS)

)SS.

COUNTY OF COOK)

- | | |
|-------------------------------------|---------------------------------------|
| <input checked="" type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

Artur Zaborowski

Employee/Petitioner

v.

Ziggi Pionier II, Inc. / Injured Workers' Benefit Fund

Employer/Respondent

Case # **08 WC 32767**

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 **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Chicago**, on **July 16, 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

14IWCC0520

FINDINGS

On **June 16, 2008**, 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 **\$33,800.00**; the average weekly wage was **\$650.00**.

On the date of accident, Petitioner was **34** years of age, *single* with **no** 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

Injured Workers' Benefit Fund

As explained more fully in the Arbitration Decision Addendum, the Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

Temporary Total Disability

As explained more fully in the Arbitration Decision Addendum, Petitioner's claim for temporary total disability benefits is denied.

Medical Benefits

Respondent shall pay the outstanding reasonable and necessary medical services incurred by Petitioner and reflected in the parties' request for hearing form and Petitioner's Exhibits 1-2 as provided in Sections 8(a) and 8.2 of the Act. See AX1; PX1-PX2.

Permanent Partial Disability

Respondent shall pay Petitioner permanent partial disability benefits of \$390.00/week for 5 weeks, because the injuries sustained caused Petitioner 1% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

14IWCC0520

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

August 1, 2013

Date

ICArbDec p. 3

AUG 1 - 2013

14IWCC0520

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION *ADDENDUM*

Artur Zaborowski
Employee/Petitioner

Case # **08 WC 32767**

v.

Consolidated cases: **N/A**

Ziggi Pionier II, Inc. / Injured Workers' Benefit Fund
Employer/Respondent

FINDINGS OF FACT

Notice of a hearing set for July 17, 2013 in the above-captioned matter was sent to Respondent via U.S. certified mail on April 10, 2013 as well as via United Parcel Service ("UPS") delivery. Petitioner's Group Exhibit ("PX") 4. Petitioner offered a report from the National Council on Compensation Insurance ("NCCI") and stamped by the Illinois Workers' Compensation Insurance Compliance Department as well as a letter from the Insurance Compliance Department reflecting that Respondent Ziggi Pionier II was uninsured on Petitioner's claimed date of accident, June 16, 2008. PX5-PX6. Respondent did not appear for trial on July 17, 2013. The matter proceeded to trial with Petitioner and counsel for the Injured Workers' Benefit Fund ("IWBF") in Respondent's absence.

Petitioner testified that his date of birth is November 9, 1972 and that he was 34 years old at the time of injury and single with no dependent children. Petitioner worked as a construction worker in of June of 2008 and had been so employed since November of 2004.

Petitioner testified that he was employed with Ziggi Pionier II ("Ziggi") and that he was offered a job by Zbigniew Szeligia ("Mr. Szeligia"), the owner. While working for Ziggi, Petitioner worked at multiple job sites including residential and commercial shops. Petitioner testified that he would arrive at a garage in the morning at around 7:00 a.m. where Mr. Szeligia conducted his business. Mr. Szeligia would tell Petitioner where to go and what to do at each job site. Petitioner did not clock in or out and his schedule depended on the day, but he knew what his schedule was based on what Mr. Szeligia told him.

Then, Petitioner was transported by van, which was owned by Mr. Szeligia, to his job site. Mr. Szeligia owned two such vans and would drive one of them transporting anywhere from two to seven employees to their respective job sites. Petitioner testified that he mostly performed tuckpointing, which he described as "construction-type" work involving the use of saws, spatulas, and other tools as well as raw materials that were all provided by Mr. Szeligia. Petitioner did not pay for these materials or provide any tools personally. Petitioner testified that Mr. Szeligia would be at the various job sites, tell him how to perform his job, and whether Petitioner needed to leave one job site to go to another job site. Petitioner testified that he was required to abide by Mr. Szeligia's instructions.

Petitioner testified that he worked for Ziggi six days per week and 10 hours per day, weather permitting. Mr. Szeligia paid Petitioner by business check or cash \$13 per hour during the time that he worked for Ziggi; Petitioner was not paid by any homeowners directly for any work that he performed. Petitioner testified that he did not bring copies of the checks with him to trial. Petitioner testified that he was supposed to be paid every week, but sometimes Mr. Szeligia was late with payments and some checks would compensate him for more than one week's worth of work. Petitioner testified that he made approximately \$33,800 per year. Petitioner testified that Mr. Szeligia did not provide him with any tax forms.

14IWCC0520

On June 16, 2008, Petitioner was working for Ziggi and that Mr. Szeligia was his boss and supervisor at the time of the accident. The job site was in Chicago. Petitioner testified that he started work at approximately 8:00 a.m. (after being at the garage at approximately 7:00 a.m.). Petitioner used the aforementioned tools and materials provided by Mr. Szeligia to perform his work on this date. Mr. Szeligia was at the job site along with two others.

Petitioner testified that he sustained an injury while walking outside of the building at approximately 10:00/11:00 a.m. Petitioner testified that he does not really know what happened, but that he fell down. Later, Petitioner came to understand that he was hit in the head with a propane tank on the forehead just above his eyebrow on the right side. Petitioner testified that the construction crew was using propane tanks that day to fix the roof.

Petitioner spoke to Mr. Szeligia about what happened after his accident. Mr. Szeligia was on the roof at the time of the accident and came down approximately 15 minutes later. Petitioner did not work the full day. Due to his injury, Petitioner testified that he went to Mr. Szeligia's garage and then back home. Petitioner testified that, when he got home, the right side of his face around his right eye began to swell. At the insistence of a neighbor, Petitioner went to the hospital.

The medical records reflect that Petitioner went to Lutheran General Hospital on June 16, 2008 arriving at 12:46 p.m. and that he received treatment for a facial injury/closed head injury. PX1 at 5-7, 17-24, 32-33. Petitioner reported being struck in the head with a propane tank that fell from a roof approximately 10 to 15 feet above him and weighing about 20 pounds. *Id.* He denied loss of consciousness, headache, visual changes, numbness, tingling, acute pain in the face, or neck pain. *Id.* Petitioner did report initial swelling and progressed swelling until his right eye closed. *Id.* On examination, the emergency room physician noted a large amount of swelling in the right forehead extending down to the eye with some periorbital ecchymosis spreading inferiorly into the superior eyelid. *Id.* Petitioner underwent a CAT scan which was negative for intracranial injury or skull fracture. *Id.* The physician diagnosed Petitioner with a contusion of the orbital fracture and discharged Petitioner home. *Id.*

Petitioner testified that he later called and spoke with Mr. Szeligia. During that conversation, Petitioner testified that he asked Mr. Szeligia about insurance and he responded "wait wait wait don't do anything yet." After some time, Petitioner's brother arrived at Petitioner's home and took a picture of his face. *See* PX3.

Petitioner testified that he followed up with Dr. Forys as referred by his neighbor. Petitioner testified that his eye was still swollen and that he could not see through his right eye because it was almost completely swollen shut.

The medical records reflect that Petitioner went to the Central Medical Clinic and saw Dr. Forys on June 17, 2008. PX2. Petitioner reported that he propane tank fell causing an injury to the right side of his face. PX2. Petitioner denied loss of consciousness and reported he had no history of head trauma. *Id.* After an examination during which Dr. Forys noted an "ex. Severe" circumference of ocular edema hematoma and reviewing Petitioner's CT scan results, he diagnosed Petitioner with a contusion and hematoma "circumocular" right eye. *Id.* Dr. Forys also released Petitioner to work without restrictions effective June 18, 2008. *Id.*

Petitioner testified that the swelling around his eye got worse on the day after his accident and that his eye was swollen shut for a week. Petitioner testified that the swelling was worse in the morning, and then improved somewhat as the day went on. Petitioner testified that he was unable to do his work that week and that Mr. Szeligia did not pay him any benefits for that week.

Petitioner testified that he returned to work on June 25, 2008 because Mr. Szeligia told him to return to work, and so he did. Petitioner testified that he continued to experience redness inside his eye.

Petitioner testified that he does not work for Mr. Szeligia anymore. He stopped working for Mr. Szeligia approximately 3-4 weeks after his claimed accident because the medical bills started coming in and there were some problems getting them paid. Petitioner testified that none of the medical bills have been paid by Ziggi, Mr. Szeligia, or anyone else to his knowledge. Petitioner has not paid any of these bills out of pocket. Petitioner testified that he has not received any compensation from Mr. Szeligia at all and that Mr. Szeligia told him that he would get something from someone else. Petitioner testified that he had no health insurance of group medical insurance before injury.

Regarding his current condition, Petitioner testified that his head is alright. He described that the right side of his face by the eye is much thicker than on the left side. Petitioner also testified that when there is contact between something and the right side of his face by the eye he feels pain and swelling, which he did not experience before his claimed accident at work. Petitioner also testified that he is more careful now than he was before the accident when he works and that he works slower than he did before, thus, he does not complete as much now as he did before the accident.

Petitioner testified that he had no injuries to or symptoms in the face or right eye area prior to his claimed injury at work and that he has not re-injured these areas thereafter. Petitioner testified that he feels pain in the affected area when the weather changes and he feels what he described to be an impulse that lasts a couple of seconds with pain at a level of 5/10. The Arbitrator directly observed Petitioner's face and right eye area and notes that there was observable swelling above the eye/eyebrow measuring approximately 1½ x 2¾ inches. The area was not discolored. The swelling was also observable when viewing Petitioner's face on profile from the left while comparing the area over the right eye and the area over the left eye.

Petitioner testified that he has not seen any other doctors after his visits to the emergency room and clinic and that he does not take any medication now. Petitioner is now a maintenance man and has been so employed for approximately three months. Petitioner had not been disciplined for inability to perform his work as a maintenance worker.

ISSUES AND CONCLUSIONS

The Arbitrator hereby incorporates by reference the Findings of Fact delineated above and the Arbitrator's and parties' exhibits (AX1, PX1-PX6) are made a part of the Commission's file. After reviewing the evidence and due deliberation, the Arbitrator finds on the issues presented at trial as follows:

Issue A

The Illinois Workers' Compensation Act ("Act") defines those businesses that are considered "employers" and, thus, come under its jurisdiction. Under Section 3, various types of businesses automatically come under the Act's jurisdiction due to their extra-hazardous activities including those businesses that utilize "sharp edged cutting tools, grinders or implements are used[,] " "[a]ny enterprise in which explosive materials are ... handled or used in dangerous quantities[,] " or "[a]ny business ... in which electric, gasoline, or other power driven equipment is used in the operation thereof." 820 ILCS 305/3 (LEXIS 2005).

The Arbitrator notes that no representative of Respondent appeared at the hearing date despite proper service of notice of a hearing in Petitioner's claim. Thus, the hearing proceeded *ex parte* without Respondent Ziggi. Petitioner testified that he worked for Respondent Ziggi performing "construction-type" work involving the use of saws. On the claimed date of accident, Petitioner testified that he was hit in the head with a propane tank. The Arbitrator finds that Petitioner credibly testified at trial and notes that his testimony at trial is uncontroverted. Based on all of the foregoing, the Arbitrator finds that Respondent Ziggi was involved in work which was extra hazardous under Section 3 of the Act and, thus, operating as an employer under and subject to the Act.

Issue B

The existence of an employer-employee relationship between Petitioner and Respondent is a prerequisite to determining further compensability of his claim. The Illinois Supreme Court has articulated various factors to be considered in determining whether a claimant is an employee under the Act including: "whether the employer may control the manner in which the person performs the work; whether the employer dictates the person's schedule; whether the employer pays the person hourly; whether the employer withholds income and social security taxes from the person's compensation; whether the employer may discharge the person at will; and whether the employer supplies the person with materials and equipment." *Roberson v. Industrial Commission*, 225 Ill.2d 159, 175, 866 N.E.2d 191 (2007) (citing *Wenholdt v. Industrial Commission*, 95 Ill. 2d 76, 81, 447 N.E.2d 404, 69 Ill. Dec. 187 (1983), quoting *Morgan Cab Co. v. Industrial Commission*, 60 Ill. 2d 92, 97, 324 N.E.2d 425 (1975)). Determination of the existence of an employer-employee relationship rests on the totality of the circumstances in each case; however, the "right to control the manner in which work is performed is the most important consideration, among others, in determining whether an employer/employee relationship existed." *Roberson*, 225 Ill.2d at 175.

Petitioner credibly testified that he Mr. Szeligia hired him. Petitioner reported to a garage every morning where Mr. Szeligia would instruct Petitioner where to go work. Then, Mr. Szeligia or another driver would take Petitioner and other employees by vans owned by Respondent Ziggi to various work sites. Mr. Szeligia would go to the various sites and instruct Petitioner how to perform his job. Mr. Szeligia would also tell Petitioner whether he needed to leave one job site to go to another one. Petitioner testified that he was required to abide by Mr. Szeligia's instructions and that he was paid \$13 per hour. Mr. Szeligia also provided all of the tools and materials used by Petitioner to perform his work. No evidence was submitted to the contrary.

Thus, the Arbitrator finds that Respondent had and exercised the right to control Petitioner in the performance of his duties, mandated Petitioner's work schedule, paid Petitioner hourly, and supplied Petitioner with the materials and equipment to perform his job such that an employee-employer relationship existed on the claimed date of injury. *See Roberson*, 225 Ill.2d at 175.

Issues C and D

An employee's injury is compensable under the Act only if it arises out of and in the course of the employment. 820 ILCS 305/2 (Lexis 2005). Petitioner testified that he was working for Respondent Ziggi at one of its work sites on the claimed date of injury coming downstairs from performing work on the roof and the medical records reflect that Petitioner was hit in the head with a propane tank that fell 10 to 15 feet from the roof and weighing about 20 pounds. This injury resulted in emergency medical care and some medical treatment thereafter for a closed head/facial injury. Petitioner's testimony is corroborated by the medical records submitted into evidence and no evidence was submitted to the contrary. Based on all of the foregoing, the Arbitrator finds that an accident occurred that arose out of and in the course of Petitioner's employment with Respondent Ziggi on June 16, 2008 pursuant to the Act.

Issue E

Section 6(c) of the Act provides that notice of an accident must be provided to the employer not later than 45 days after the accident. 820 ILCS 305/6 (LEXIS 2005). Proper notice is a prerequisite to maintain a right of action under the Act. *Lambert v. Industrial Commission*, 79 Ill.2d 243, 247, 402 N.E.2d 617, 620 (1980). Petitioner testified that Respondent Ziggi's owner, Mr. Szeligia, was present at the job site on the date of injury and that he spoke with Mr. Szeligia shortly after the accident about the injury as well as during conversations over the following weeks related to medical bills stemming from Petitioner's medical treatment. No evidence was submitted to the contrary. Thus, the Arbitrator finds that Petitioner gave timely notice of the accident to Respondent pursuant to the Act and that Respondent was aware of Petitioner's work accident on June 16, 2008.

Issue F

The medical records submitted into evidence reflect contemporaneous recitation of an accident causing Petitioner's injury over his right eye as claimed. After carefully observing the Petitioner at trial and reviewing all evidence proffered at trial, the Arbitrator finds that Petitioner credibly testified about his injury and presented a consistent sequence of events corroborated by contemporaneous medical records reflecting that Petitioner sustained a facial/closed head injury resulting in medical treatment after being struck in the head with a propane tank. The medical records also reflect that Petitioner went to the Central Medical Clinic on June 17, 2008 for the same reported injury and that he was diagnosed with a contusion and hematoma "circumocular" right eye. Dr. Forsys also released Petitioner to work without restrictions effective June 18, 2008. Petitioner received no further medical treatment. However, Petitioner also testified at trial about occasional painful "impulses" in the affected area and pain with weather changes. The Arbitrator also observed swelling over the right eye on the date of trial. The record is devoid of evidence that Petitioner had any injury, symptomatology or medical treatment to this area before the date of accident. Thus, the Arbitrator finds that Petitioner's claimed current condition of ill-being is causally related to his injury at work.

Issue G

Petitioner testified that he worked for Respondent Ziggi and that he was paid \$13 per hour. He also testified that he worked six days per week, 10 hours per day (weather permitting) earning \$33,800.00 per year. No evidence was submitted establishing the actual hours worked by Petitioner each week that he worked for Respondent Ziggi. However, the Arbitrator finds that Petitioner credibly testified about his wages as he did regarding other issues at trial and his testimony on this issue is uncontroverted. Thus, the Arbitrator finds that Petitioner earned \$33,800.00 annually and that his average weekly wage was \$650.00 as claimed.

Issues H and I

Petitioner testified that his date of birth is November 9, 1972 and that he was 34 years old at the time of injury and single with no dependent children. The emergency room medical records reflect that Petitioner was 34 years old, but they also contain a different date of birth. Petitioner's testimony on these issues, however, was credible. Thus, the Arbitrator finds that Petitioner was 34 years old and single with no dependants under the age of 21 at the time of his injury at work.

Issue J

Petitioner claims entitlement to payment of reasonable and necessary medical bills totaling \$4,205.00. AX1. The medical bills submitted into evidence relate to diagnostic testing, physicians' services, emergency medical care and medical treatment beginning June 16, 2008 through June 17, 2008. PX1-PX2. In consideration of the record as a whole, the Arbitrator finds that the medical bills submitted into evidence are for reasonable and necessary medical services required to alleviate Petitioner of the injury sustained on June 16, 2008 during an accident at work. The Arbitrator further finds that Respondent Ziggi is liable for payment of these bills and that it has not paid all appropriate charges for these reasonable and necessary medical services as claimed by Petitioner. Thus, the Arbitrator awards payment of the submitted medical bills and orders Respondent to pay the outstanding medical bills identified in the parties' request for hearing form and proffered by Petitioner as exhibits pursuant to Sections 8(a) and 8.2 of the Act. See AX1; PX1-PX2.

Issue K

"If the period of temporary total incapacity for work lasts more than 3 working days, weekly compensation as hereinafter provided shall be paid beginning on the 4th day of such temporary total incapacity and continuing as long as the total temporary incapacity lasts. 820 ILCS 305/8(b) (LEXIS 2005). Petitioner requests temporary total disability benefits from June 17, 2008 through June 24, 2008. Petitioner was injured at work on June 16, 2008 and he underwent emergency treatment and follow up medical treatment with Dr. Forys, but he was released back to full duty work effective June 18, 2008. Thus, the Arbitrator finds that Petitioner has not established that he is entitled to temporary total disability benefits and such benefits are denied.

Issue L

Based on the record as a whole, showing credible evidence that Petitioner sustained a traumatic head injury at work resulting in continued occasional pain and observable swelling years after his injury, the Arbitrator finds that Petitioner has established permanent partial disability to the extent of 1% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Reymundo Uriostegui,

Petitioner,

vs.

NO: 10 WC 47621

14IWCC0521

Rollex Corporation,

Respondent,

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 temporary total disability, medical expenses, prospective medical expenses, whether the current condition is related to the accident 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 6, 2013 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.

14IWCC0521

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 \$5,200.00. 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: **JUN 30 2014**

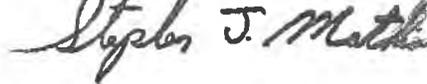
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Mario Basurto



David L. Gore



Stephen Mathis

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

URIOSTEQUI, REYMUNDO

Employee/Petitioner

Case# **10WC047621**

14IWCC0521

ROLLEX CORPORATION

Employer/Respondent

On 9/6/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% 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:

1315 DWORKIN & MACIARIELLO
THOMAS GAYLE
134 N LASALLE ST SUITE 1515
CHICAGO, IL 60602

2965 KEEFE CAMPBELL BIERY & ASSOC LLC
SHAWN R BIERY
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

14IWCC0521

STATE OF ILLINOIS)

)SS.

COUNTY OF Cook)

- 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)**

Reymundo Uriostegui

Employee/Petitioner

Case # **10 WC 47621**

v.

Consolidated cases: _____

Rollex Corporation

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Deborah L. Simpson**, Arbitrator of the Commission, in the city of **Chicago**, on **August 6, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

14IWCC0521

FINDINGS

On the date of accident, **December 1, 2010**, 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 **\$36,088.00**; the average weekly wage was **\$694.00**.

On the date of accident, Petitioner was **35** years of age, *married* with **3** 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 **\$10,178.74** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$10,178.74**.

The Petitioner's Petitioner for fees and penalties was withdrawn.

ORDER

Respondent shall pay Petitioner Temporary Total Disability benefits of \$462.66/week for 26 3/7 weeks, commencing 12/1/10 through 5/27/11 and 6/15/11 through 6/23/11, as provided in section 8(b) of the Act.

Respondent shall pay Petitioner Temporary Partial Disability benefits of \$245.33/week for 12 3/7 weeks commencing 5/27/11 through 6/15/11 and 6/23/11 through 8/30/11, as provided in section 8(b) of the Act.

Respondent shall be given a credit of \$10,178.74 for Temporary Total Disability benefits that have been paid.

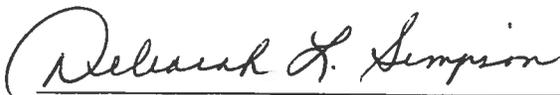
Respondent shall pay reasonable and necessary medical services as provided in sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay the reasonable, necessary and related charges for the recommended and prescribed surgery and all related medical care pursuant to section 8(a) of the Act.

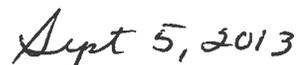
In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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



Date

SEP 6 - 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Reymundo Uriostegui,)	
)	
Petitioner,)	
)	
vs.	)	No. 10 WC 47621
)	
Rollex Corporation,)	
)	
Respondent.)	
)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on December 1, 2010, the Petitioner and the Respondent were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer. On that date the Petitioner sustained an accidental injury or was last exposed to an occupational disease that arose out of and in the course of the employment. They further agree that the Petitioner gave the Respondent notice of the accident within the time limits stated in the Act.

At issue in this hearing is as follows: (1) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure; (2) Is the Respondent liable for the unpaid medical bills to Accelerated Rehabilitation (\$3,162.84), Dr. Ronald Silver (\$3,552.00), Prescription Partners (\$8,317.50) and EQMD (\$13,803.29); (3) Has Respondent paid all reasonable and related medical bills; (4) Is Petitioner entitled to Temporary Total Disability and Total Partial Disability benefits; and (5) Is Petitioner entitled to prospective medical care.

Petitioner testified via interpreter, Ramsey Bacerott.

Petitioner withdrew the Petition for Penalties and Attorney Fees during the course of the hearing.

STATEMENT OF FACTS

Petitioner testified he had been employed by Respondent for approximately 19 years and that he was working for Respondent on December 1, 2010, when he was injured at work. Petitioner testified his job duties involved working on a painting line where he worked to stamp materials. Petitioner testified he stood at his workstation. Petitioner testified that he was in generally good health at the start of the day and that, prior to that day, December 1, 2010; he had never had any issues with his left leg or ankle.

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Petitioner was working that day when a machine that he was working on began shooting oil and drenched the immediate area, the floor as well as him, in the oil. Petitioner testified that he slipped and fell because of the oil on the floor, landing with all of his weight on his left leg, heel and ankle. The Petitioner immediately felt pain which he reported to his employer. They sent Petitioner for medical treatment.

Petitioner went to Advocate Occupational Health that day and was treated by Dr. Ramon Castillo. Petitioner complained of left ankle and left knee pain. An X-ray of the left ankle and the left knee was obtained, and Dr. Castillo diagnosed Petitioner with a left ankle sprain and prescribed an ACE wrap and boot. Dr. Castillo made the determination that Petitioner should not return to work at the time. Dr. Castillo referred Petitioner to an orthopedic doctor for treatment of the left knee and left ankle and discharged Petitioner from his care. (P. Ex. 1).

On December 2, 2010, Petitioner went to Ramirez Foot and Ankle Clinic to treat with Dr. Samuel Ramirez. Dr. Ramirez obtained X-rays and performed a diagnostic ultrasound of the left ankle. The ultrasound revealed an area of effusion on the left ankle and a fracture was ruled out. Dr. Ramirez kept Petitioner off work, applied a soft cast, and instructed Petitioner to continue to use a below the knee fracture walker with crutches. (P. Ex. 3).

At a December 7, 2010, follow up visit, Petitioner reported being off weight bearing and using a prefabricated pneumatic fracture walker and crutches. Dr. Ramirez reapplied the soft cast, and advised Petitioner to contact his company for approval of further treatment.

On January 11, 2011, Petitioner returned for follow up with increased pain in the left ankle. Petitioner described the pain as a seven on a scale of zero to ten. Petitioner reported that he had been continuing use of the pneumatic walker. A diagnostic ultrasound was performed to rule out a fracture and Petitioner was advised to have an MRI. Dr. Ramirez reapplied the soft cast and took Petitioner off work for six to eight weeks. (P. Ex. 3).

On January 13, 2011, Petitioner went to Advantage MRI – Oak Park for an MRI of his left ankle. The study ruled out bone contusions, acute fractures, and lesion of the talar dome. The results indicated a posterior ankle impingement, although the study was not definitive. (P. Ex. 2).

On February 1, 2011, Petitioner returned to Dr. Ramirez for a follow up concerning his left ankle pain. Petitioner subjectively described the pain level at five out of ten. Based on the results of the MRI, Dr. Ramirez injected 500 milligrams of Naprosyn into the ankle joint and the subtalar joint. At this visit, Dr. Ramirez also recommended that Petitioner begin physical therapy three times a week to strengthen his left ankle. (P. Ex. 3). Petitioner went for his initial physical therapy evaluation with Accelerated Rehabilitation Centers on February 7, 2011. (P. Ex. 4).

At a follow up visit with Dr. Ramirez on February 15, 2011, Petitioner complained about the pain in his left knee. Petitioner indicated that the knee had been painful for the previous two weeks. Petitioner indicated his left ankle was fifty percent better after physical therapy. Dr. Ramirez continued the Petitioner's physical therapy, and directed him to continue using a brace. Dr. Ramirez also referred Petitioner to Dr. Ronald Silver for a follow up about the knee pain. (P. Ex. 3). Petitioner was continued off work at that time. Dr. Ramirez informed Petitioner that a

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second round of injections may be necessary, and on February 23, 2011, this second round of injections was administered. (P. Ex. 3).

On February 24, 2011, Petitioner was evaluated by Dr. Ron Silver at the Illinois Bone & Joint Institute. The examination revealed medial and lateral joint line tenderness and a mild effusion, as well as patellofemoral clicking. Dr. Silver found Petitioner's range of motion to be limited due to pain. The initial treatment plan was to treat with physical therapy and pain medication. Dr. Silver indicated that Petitioner was temporarily disabled and would consider an MRI if there was no improvement at his follow up appointment. (P. Ex. 5).

In his evidence deposition, Dr. Silver testified that his diagnosis at the first visit was damaged cartilage. On cross examination, Dr. Silver testified that the knee issues began on the date of accident, and that the ankle was more bothersome, so he saw the podiatrist first. (P. Ex. 6).

Petitioner returned to Dr. Ramirez for follow up regarding his left ankle on March 1st and 15th of 2011. During those visits, Dr. Ramirez recommended Petitioner continue physical therapy and advised him that a third round of injections may be necessary. Petitioner was kept off work at that time. During the March 15 visit, the third round of injections was approved and scheduled. Dr. Ramirez expected 80-90% improvement in four weeks and that Petitioner would be discharged with regards to the ankle in 4-6 weeks. Petitioner was still complaining of knee pain and advised to follow up with Dr. Silver. The injections were administered March 23, 2011. (P. Ex. 3).

On March 24, 2011, Petitioner followed up with Dr. Silver for left knee pain. Dr. Silver noted that the knee continued to deteriorate and that Petitioner had only been approved for a couple of physical therapy episodes. Petitioner was continued on his pain medication and given a knee brace. Dr. Silver again recommended physical therapy and requested an MRI scan. (P. Ex. 5).

On April 5, 2011, Petitioner returned for a follow up with Dr. Ramirez and reported his ankle was 70% better. Petitioner complained of increased pain in the left knee. As of this visit physical therapy had not been approved for the knee. Dr. Ramirez advised Petitioner to continue with the ankle brace and follow up with Dr. Silver. Dr. Ramirez also extended physical therapy for another 2-3 weeks.

On an April 14, 2011, at a follow up visit with Dr. Ramirez, Petitioner reported increased pain in the left ankle, registering at a six out of ten. Dr. Ramirez continued Petitioner off weight bearing and continued his physical therapy. Additionally, Dr. Ramirez indicated more injections were necessary and Petitioner was continued off work for another 6 weeks. On April 19, 2011, Dr. Ramirez administered another round of injections. (P. Ex. 3).

On April 28, 2011, Petitioner presented for a Section 12 Medical Evaluation with Dr. Simon Lee at the request of the Respondent. According to Dr. Lee, Petitioner suffered a left ankle sprain as a result of his industrial accident. Dr. Lee believed that Petitioner's "prolonged period of immobilization as well as physical therapy and rehab" was sufficient and that no further treatment was necessary. Dr. Lee recommended a Functional Capacity Evaluation to

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assess Petitioner's capabilities and thought that Petitioner would be at Maximum Medical Improvement following the FCE. (R. Ex. 4).

On May 5, 2011, Petitioner returned to Dr. Ramirez for follow up treatment of his left ankle. Petitioner still complained of pain but reported that he felt 50% better. Dr. Ramirez noted Petitioner was still treating with physical therapy. Petitioner was still complaining of left knee pain and Dr. Ramirez recommended that he follow up with Dr. Silver. Dr. Ramirez applied a Bioskin ankle brace and noted that he would try to obtain approval for further treatment from the Respondent's workman's comp adjuster. (P. Ex. 3).

On May 10, 2011, Petitioner returned to Dr. Ramirez complaining of increased pain in his left ankle, knee, and low back. After the IME with Dr. Lee, Petitioner returned to work with the ankle brace and gym shoes. Petitioner told Dr. Ramirez that Respondent asked him to wear dress shoes, which did not allow him to wear the brace. Petitioner began to have pain and swelling after the change in footwear. Dr. Ramirez took Petitioner off work for a week and advised him to try and obtain treatment for his knee and back. (P. Ex. 3).

On May 12, 2011, Petitioner went to Salt Creek Medical Imaging for an MRI of his left knee. The results found no evidence of meniscus tear or ligamentous injury. The study found a trace amount of free fluid in the knee joint, as well as a tiny popliteal cyst. (P. Ex. 7). On May 18, 2011, Dr. Silver wrote to the adjuster that Petitioner required an additional MRI scan. The MRI scan of May 12, 2011, was, in Dr. Silver's opinion, insensitive to articular cartilage. The 3-T MRI scan Dr. Silver recommended uses a stronger magnet to demonstrate the damage to the articular cartilage. (P. Ex. 5). Dr. Silver testified, at his deposition, that "MRIs are relatively insensitive . . . to localized articular cartilage damage" and that he was "hoping to get a 3D MRI to better elucidate the problem." Dr. Silver further testified that the damage to the articular cartilage was demonstrated by "crunching in his knee" and that cartilage damage is something that can be felt with examination. He testified that he "could feel a crunching sensation" in Petitioner's knee upon examination. In addition, Dr. Silver testified that Petitioner's temporary relief from the intra-articular injection indicated "that the problem lay within the joint, which confirmed what we were thinking in terms of cartilage damage." (P. Ex. 6).

On May 14, 2011, Petitioner returned to Dr. Ramirez for follow up with his left ankle pain, which he then rated as a seven out of ten. Dr. Ramirez administered an injection to the left Subtalar Joint and continued Petitioner using the Bioskin brace.

Petitioner began working light duty on May 27, 2011. At a follow up visit on May 27, 2011, Dr. Ramirez continued the ankle brace after Petitioner complained of continued left ankle pain. Dr. Ramirez recommended more physical therapy for the left ankle and advised Petitioner that another injection might be necessary. (P. Ex. 3)

Petitioner was continued on light duty work, at the June 10, 2011, follow up with Dr. Ramirez. At the time of this visit, an FCE had been scheduled and a follow up visit was planned after the results of the FCE. (P. Ex. 3). Petitioner testified that he worked light duty from May 27, 2011, until June 15, 2011, and did some of his regular job. He stated that the difference between his regular job and light duty was that he was paid a wage of approximately \$8.25 per hour, instead of his normal wage of \$17.35 to \$17.40 per hour.

On June 15, 2011, Petitioner went to Accelerated Rehabilitation for a Functional Capacity Evaluation. Petitioner demonstrated the physical capabilities and tolerances to function at the Medium-Heavy category of work. Based upon the job description provided by the case manager with respect to the Petitioner's job duties, Petitioner needed to function at the Very-Heavy category of work. Petitioner was found to demonstrate consistent reliability with maximum performance throughout the evaluation. The results were considered valid and reliable. Accelerated recommended a work conditioning program, but otherwise found that Petitioner did not demonstrate the physical capabilities and tolerances to perform all of the essential job functions. (P. Ex. 4).

After the FCE, Petitioner followed up on June 15, 2011, with Dr. Ramirez for pain in the ankle and knee. Dr. Ramirez took Petitioner off work for a few days to recover from the FCE and advised that further evaluation would wait until the results of the FCE. (P. Ex. 3).

On June 20, 2011, Petitioner was seen by Dr. Mark Levin at the request of the Respondent for an evaluation pursuant to Section 12 of the Act. This evaluation specifically assessed and evaluated the Petitioner's left knee pain. In reviewing the history of Petitioner's left knee, Dr. Levin noted that Physical Therapy was not approved and Petitioner had only had two visits with Dr. Silver. Petitioner reported clicking in the left patella and described the pain level at six out of ten. Dr. Levin diagnosed Petitioner's current knee condition as consistent with patellofemoral pain syndrome and reported that Petitioner's "current knee complaints do not appear to have been caused by the alleged work injury." Dr. Levin acknowledged that Petitioner "is noted on clinical exam to have marked atrophy of the left quadriceps muscle . . . which can contribute to the patient having patellofemoral pain syndrome." Dr. Levin continues that "[i]f this patient was on crutches and immobile with the left lower extremity, it is possible that his quadriceps could have atrophied from lack of use of the left lower extremity to the point of now making his patellofemoral syndrome symptomatic." (R. Ex. 2)

The Arbitrator notes that based on Dr. Ramirez's records, Petitioner was non weight bearing for over 19 weeks with regard to the left lower extremity.

Dr. Levin recommended aggressive physical therapy and a knee brace, but did not believe further diagnostic studies or surgery would be necessary. (R. Ex. 2).

On June 23, 2011, Petitioner followed up with Dr. Ramirez for his ankle pain. Dr. Ramirez reviewed the FCE results and discussed Petitioner's limitation to sitting work only. Dr. Ramirez recommended continued use of the brace and to continue physical therapy if it was approved. Petitioner indicated he would follow up with Dr. Silver for his left knee pain. Petitioner's final appointment with Dr. Ramirez was on June 30, 2012. Petitioner was still complaining of pain in the left ankle and Dr. Ramirez noted that he would seek approval for injections. (P. Ex. 3).

The Petitioner testified that he returned to regular duty on August 30, 2011, and that he began receiving full duty pay at this time. Petitioner testified that he still had significant pain in his knee however he had to return to full duty work for financial reasons. He testified that at the time of the hearing (August 6, 2013), that he continues to have pain but he is working, full duty, and able to complete his job duties.

On August 30, 2011, Petitioner followed up with Dr. Silver for left knee pain. Dr. Silver recommended return to physical therapy and restated his request for the stronger, 3-T MRI. Petitioner was allowed to continue his work activities. (P. Ex. 5).

On cross-examination, Petitioner testified he had been released from care for his ankle by his treating physician, Dr. Ramirez, sometime in mid 2011, he was not sure of the exact date.

On September 1, 2011, Petitioner began treating at Accelerated Rehabilitation with physical therapy sessions for his left knee. Petitioner would have twelve visits total through October 11, 2011. (P. Ex. 4).

On September 27, Petitioner had a follow up appointment with Dr. Silver who found pain and swelling in the left knee. Dr. Silver again noted waiting for approval of the 3-T MRI. Petitioner was allowed to continue his work activity.

At an October 25, 2011 follow up Dr. Silver wrote, there was no update on the 3-T MRI. During his physical examination of Petitioner's knee Dr. Silver noticed further deterioration of the knee. Dr. Silver administered an intra-articular cortisone injection at that time. Petitioner was allowed to continue work, pain permitting. (P. Ex. 5).

On November 10, 2011, Dr. Mark Levin made an addendum to his IME after reviewing Petitioner's physical therapy records. He did not perform a re-evaluation and did not perform an additional physical exam. Dr. Levin concluded that Petitioner reached Maximum Medical Improvement as of the final physical therapy session October 11, 2011. (R. Ex. 3).

On December 6, 2011, Petitioner followed up with Dr. Silver. Dr. Silver wrote that Petitioner experienced temporary relief from the injection, however, the pain worsened afterwards. Dr. Silver prescribed pain medication at this visit. Also, Dr. Silver restated his request for approval of the 3-T MRI and allowed Petitioner to work as pain permitted. (P. Ex. 5).

Respondent offered a Peer Review note dated December 19, 2011, from Drs. Abraham and Grossman noting that the "MRI on [Petitioner's] left knee on 05/12/11, showed no evidence of meniscus tear or ligamentous injury," that the MRI of the left knee appeared normal, and further opining that the prescriptions for Omeprazol, Meloxicam, and Vicodin were not medically necessary. (R. Ex. 1.) They challenged the necessity of the Vicodin twice per day, based upon "sparse medical records" for what they believed was an ankle injury that developed knee pain along the way. Having not required surgery for the injury they believe there is no reason for the level of narcotic pain medication that has been prescribed for the Petitioner. (R. Ex. 1)

On January 3, 2012, Dr. Silver concluded that the temporary relief from the injection indicated that the problem is intra-articular and likely requiring arthroscopic surgery. (P. Ex. 5).

Letters from January 31, 2012 and February 28, 2012, indicate that the prognosis was the same. Petitioner's knee was worsening, pain medicine was prescribed, and the request for a 3-T MRI made to determine whether arthroscopic surgery would be necessary was repeated. (P. Ex. 5).

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In letters written on April 3, 2012, May 1, 2012, and May 29, 2012, Dr. Silver warned that without proper arthroscopic surgery, made necessary by the work injury, Petitioner was risking permanent disability as his left knee continues to deteriorate. (P. Ex. 5).

Dr. Silver continued to monitor Petitioner's knee with follow up visits throughout 2012. After office visits July 3, August 9, September 15, and October 16, Dr. Silver repeated warnings of permanent disability without arthroscopic surgery. Lacking approval for the recommended treatment, pain medication continued to be the course of treatment.

According to Dr. Silver's letter on December 12, 2012, Petitioner was limping and having difficulty walking and Dr. Silver took him off work as temporarily disabled. Dr. Silver's diagnosis, treatment plan, and observation that the knee was deteriorating remained the same. (P. Ex. 5).

Petitioner was permitted to return to work on March 4, 2013, pain permitting, due to his financial distress, by Dr. Silver. Further follow up visits with Dr. Silver in April and June 2013 revealed that returning to work made the knee pain worse. However, due to financial need, Petitioner was allowed to continue to work. (P. Ex. 5).

The Petitioner testified Dr. Silver recommended surgery for his left knee, and Petitioner wants to have the surgery as recommended by Dr. Silver. He testified that he has been working full duty since August of 2011, and that he is able to do the work despite being in pain. He has been generally active at home and at work. When he goes home from work the Petitioner relaxes. He also testified that he walks around to relieve the pain. He testified that he has not had any other traumatic injury to his left leg, knee or ankle other than the work injury on December 1, 2010.

On May 15, 2013, Dr. Silver gave his testimony in an evidence deposition regarding his treatment of Petitioner's left knee. Dr. Silver testified that his initial diagnosis was "damaged cartilage" and he "recommended conservative care of physical therapy, anti-inflammatory, and pain medication." Dr. Silver testified that "unfortunately [Petitioner] had only been permitted two or three episodes of physical therapy by the workers' compensation carrier" by the time of the follow up visit. By then "the clicking and crunching under [Petitioner's] kneecap had worsened." Dr. Silver later testified that cartilage damage is something he could feel with examination, specifically that on examination he could "feel a crunching sensation." Dr. Silver explained that the initial MRI was too weak to effectively show the damaged cartilage, and that a stronger, 3D MRI was necessary. (P. Ex. 6).

Dr. Silver testified that his diagnosis was unchanged as he continued to treat Petitioner's knee conservatively. Absent approval for recommended treatments, Dr. Silver's treatment plan included pain medication and a knee brace. Eventually, Dr. Silver testified that he recommended arthroscopic surgery to "repair, trim, shave, and smooth the damaged and torn cartilage that we expected was in the knee." His testimony was that the work injury "is causally connected to his need for surgery" based on temporary relief from an intra-articular cortisone injection. "[T]he cortisone within the joint gave temporary relief to his pain indicating that the problem lay within the joint, which confirmed what we were thinking in terms of damaged cartilage." (P. Ex. 6).

On the issue of the petition for fees and penalties, Petitioner testified he had received some payments for lost time, however he could not recall the amounts or the number of payments. Upon detailed cross-examination, Petitioner conceded that he had received a number of payments, Petitioner was unable to dispute the number of payments received as he did not know the number of payments, the amounts of the payments or the dates of the payments. He could not confirm or deny the specific payments Respondent's attorney was questioning him about. Petitioner testified he had received payments prior to the last month, and may have received payments prior to his full-duty return to work. The cross-examination on that point was ended after counsel for Petitioner agreed to withdraw the penalty petition.

CONCLUSIONS OF LAW

The burden is upon the party seeking an award to prove by a preponderance of the credible evidence the elements of his claim. *Peoria County Nursing Home v. Industrial Comm'n*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987).

An injury arises out of one's employment if it has its' origin in a risk that is connected to or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Technical Tape Corp. vs Industrial Commission*, 58 Ill. 2d 226, 317 N.E.2d 515 (1974) "Arising out of" is primarily concerned with the causal connection to the employment. The majority of cases look for facts that establish or demonstrate an increased risk to which the employee is subjected to by the situation as compared to the risk that the general public is exposed to.

To be compensable under the Act, the injury complained of must be one "arising out of and in the course of the employment". 820 ILCS 305/2(West 1998). An injury "arises out of" one's employment if it originates from a risk connected with, or incidental to, the employment, involving a causal connection between the employment and the accidental injury. *Parro v. Industrial Comm'n*, (1995) 167 Ill. 2d 385,393, 212 Ill. Dec. 537, 657 N.E. 2d 882.

Is Petitioner's Current Condition of Ill-being Causally Related to the Injury?

The Arbitrator finds the Petitioner's current condition of ill-being to be causally related to the undisputed December 1, 2010, work accident. The Arbitrator finds the medical opinions of the Petitioner's treating physicians, Drs. Castillo, Ramirez and Silver, to be consistent and more credible than the opinions expressed by Respondent's Section 12 examiners, Dr. Simon Lee & Dr. Mark Levin, and establish that the work accident of December 1, 2010 was the cause of Petitioner's current state of ill-being. Dr. Lee's opinions primarily addressed the ankle injury, while the opinions of Dr. Levin dealt with the knee injury. With respect to the knee, the reported pain and injury to his knee when he first sought treatment at Advocate Occupational Health, in Elk Grove, the date of the injury. Dr. Silver's numerous follow up visits and examinations, consistent diagnosis and repeated requests for more aggressive treatment represent a more credible foundation of treatment and outweigh the opinion of Dr. Mark Levin.

At the time of the Independent Medical Examination, Dr. Levin only had notes from two orthopedic visits with Dr. Silver available for review and conservative treatment had not been completed because physical therapy was not approved. Dr. Levin's review of the MRI confirms no evidence of meniscal tears or significant joint effusions. Dr. Levin fails to rule out potential cartilage damage as diagnosed by Dr. Silver. Dr. Silver's diagnosis, after over a year of treatment offers the more credible explanation for the symptoms and mechanism of injury. Dr. Silver's diagnosis and treatment plan is corroborated by early complaints of knee pain while Petitioner treated with Drs. Castillo and Ramirez.

Dr. Silver testified that the intra-articular cartilage damage was consistent with the description of the work injury and treatment records available for review. Dr. Silver treated the left knee conservatively with physical therapy and pain medication. A cortisone injection temporarily relieved the knee pain, indicating arthroscopic surgery was necessary. On the date of the accident, Dr. Castillo ordered an X-ray of both the left knee and ankle. Dr. Castillo also referred Petitioner to an orthopedic doctor for both the left knee and ankle. Dr. Ramirez's corroborating records and immobilization of the left lower extremity are consistent with the knee becoming symptomatic at a later date. Dr. Levin's diagnosis of patellofemoral pain syndrome, potentially caused by atrophy of the left quadriceps while the lower extremity was immobilized, does not contradict Dr. Silver's diagnosis of cartilage damage, as Dr. Ramirez immobilized the lower left extremity for about nineteen weeks to treat the ankle injury. Respondent's own IME doctor opined that a period of immobilization, such as Dr. Ramirez required, could contribute to an atrophy of the left quadriceps and contribute to a diagnosis of patellofemoral pain syndrome. This does not contradict a diagnosis of cartilage damage.

The Arbitrator accordingly gives more weight to the testimony of Dr. Silver and finds that the accident caused damage to the cartilage in the left knee. Also, the lengthy period of immobilization of the left lower extremity to treat the ankle injury contributed to the issues with Petitioner's knee. As such, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the December 1, 2010 work injury.

Were the Medical Services Provided to Petitioner Reasonable and Necessary, and has the Respondent Paid all Appropriate Charges for all Reasonable and Necessary Medical Services?

The Illinois Worker's Compensation Commission Request for hearing contained a list of the unpaid medical bills that the Petitioner is claiming the Respondent is liable for, the Respondent denies liability based upon their belief that there is no causal connection. The unpaid bills are to the following agencies and in the following amounts:

Accelerated Rehabilitation	\$3,162.84
Dr. Ronald Silver	\$3,552.00
Prescription Partners	\$8,317.50
EQMD	\$13,803.29

Having established causal connection, the Arbitrator finds the medical treatment ordered and rendered by Dr. Silver to be both reasonable and necessary, and that Respondent's continued

denial of treatment contributed to outstanding bills for pain medication. Respondent has not paid all appropriate charges for the reasonable and necessary medical services. After conservative treatment was exhausted and surgical intervention determined to be the only remaining option, medication was the only pain relief available to Petitioner as he awaited further approval.

As such, the treatment was both reasonable and necessary, and Respondent has not paid all of the appropriate charges for medical treatment. Therefore, the Arbitrator orders Respondent to pay for said treatment pursuant to sections 8(a) and 8.2 of the Act.

Is Petitioner is Entitled to Temporary Total Disability Benefits and Total Partial Disability Benefits?

Having established causal connection, the Arbitrator finds Petitioner to have been Temporarily Totally Disabled from December 1, 2010, through May 27, 2011, a period of 25 2/7 weeks. From May 27, 2011 through June 15, 2011, a period of 2 5/7 weeks, the Arbitrator finds Petitioner to have been Temporarily Partially Disabled. For a 1 1/7 week period from June 15 through June 23, 2011 Petitioner was Temporarily Totally Disabled. Finally, from June 23, 2011 through August 30, 2011 Petitioner was Temporarily Partially Disabled for 9 5/7 weeks. As such, the Arbitrator finds Petitioner is owed \$3,049.11 based on 12 3/7 weeks of being Temporarily Partially Disabled and \$12,227.44 based on 26 3/7 weeks of being Temporarily Totally Disabled.

Is Petitioner is Entitled to Prospective Medical Treatment?

Having established causal connection, the Arbitrator finds Petitioner to be entitled to the prospective medical care as prescribed by Dr. Silver. Dr. Silver affirmatively diagnosed Petitioner with intra-articular cartilage damage. Dr. Silver found this to be consistent with the work injury and corroborated by early treatment records. After resolving the causal connection issue in Petitioner's favor, the Arbitrator finds Petitioner entitled to the arthroscopic surgery "to repair, trim, shave, and smooth the damaged and torn cartilage" as recommended by Dr. Silver in his evidence deposition and orders Respondent to approve the medical treatment and pay the reasonable related charges for the surgery and all associated medical care.

ORDER OF THE ARBITRATOR

Respondent shall pay Petitioner Temporary Total Disability benefits of \$462.66/week for 26 3/7 weeks, commencing 12/1/10 through 5/27/11 and 6/15/11 through 6/23/11, as provided in section 8(b) of the Act.

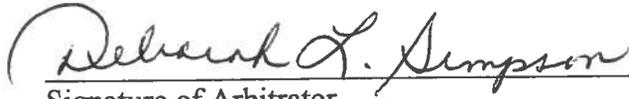
Respondent shall pay Petitioner Temporary Partial Disability benefits of \$245.33/week for 12 3/7 weeks commencing 5/27/11 through 6/15/11 and 6/23/11 through 8/30/11, as provided in section 8(b) of the Act.

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Respondent shall be given a credit of \$10,178.74 for Temporary Total Disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services as provided in sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay the reasonable, necessary and related charges for the recommended and prescribed surgery and all related medical care pursuant to section 8(a) of the Act.



Signature of Arbitrator

Sept 5, 2013
Date

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael K. Durbin,
Petitioner,

vs.

NO: 04 WC 49564

Archer Daniels Midland,
Respondent,

14IWCC0522

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 occupational disease, permanent partial disability, medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 9, 2013 is hereby affirmed and adopted.

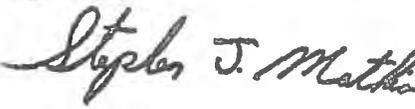
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 30 2014

MB/mam
o:5/29/14
43


Mario Basurto


David L. Gore


Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

DURBIN, MICHAEL K

Employee/Petitioner

Case# **04WC049564**

14IWCC0522

ARCHER DANIELS MIDLAND

Employer/Respondent

On 5/9/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

2453 CALLIS LAW FIRM
LARRY A CALVO
1326 NIEDRINGHAUS AVE
GRANITE CITY, IL 62040

0771 FEATHERSTUN GAUMER ET AL
JERROLD H STOCKS
225 N WATER ST SUITE 200
DECATUR, IL 62523

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STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

MICHAEL K. DURBIN

Employee/Petitioner

v.

ARCHER DANIELS MIDLAND

Employer/Respondent

Case # **04 WC 49564**

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 **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Springfield**, on **March 6, 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 _____

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FINDINGS

On **June 11, 2003**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned **\$38,700.48**; the average weekly wage was **\$744.24**.

On the date of accident, Petitioner was **49** years of age, *married* with **0** dependent children.

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$100,660.11** for other benefits, for a total credit of **\$100,660.11**.

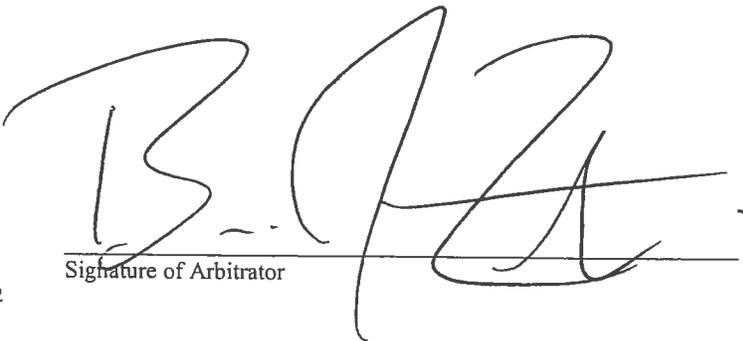
Respondent is entitled to a credit for all medical bills paid under Section 8(j) of the Act.

ORDER

Petitioner failed to prove he sustained an accident on June 11, 2003 arising out of and in the course of his employment with Respondent. For the foregoing reasons, Petitioner's claim for compensation is denied and no benefits are awarded.

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

05/06/2013
Date

MAY - 9 2013

STATE OF ILLINOIS)
)SS
COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MICHAEL K. DURBIN
Employee/Petitioner

v.

Case # 04 WC 49564

ARCHER DANIELS MIDLAND
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, Michael K. Durbin, was born in 1953. Petitioner commenced employment with Respondent, Archer Daniels Midland, in 1972. (Respondent's Exhibit (RX) 3-B, pp. 12-17). Respondent's plant is a food packaging facility. (Arbitration Transcript (AT), p. 80). The major activity of the plant is the packaging of vegetable oils that do not contain Diacetyl. (RX 2, p. 3). Petitioner has worked at multiple facilities of Respondent in Decatur, Illinois. (RX 3-B, p. 12-17). Petitioner worked two stints as a pumper/loader in the production department at Respondent's packaging plant in Decatur, Illinois. (AT, pp. 26, 32, 72). The first stint was approximately 1978 to the early 1980s. (AT, p. 32; RX 3-B, pp. 12-17). The second stint was from approximately 1993 to 2003. (AT, p. 32; RX 3-B, p. 12-17). Petitioner's last day of work for Respondent was May 15, 2003. (See AT, pp. 4-5; see also Arbitrator's Exhibit 1).

As a pumper/loader, Petitioner alleges exposure to butter flavorings containing the compound identified as Diacetyl. (AT, p. 11). Petitioner claims diminished lung function and shortness of breath as a result of his exposure to butter flavors containing Diacetyl to which he was exposed during his employment as a pumper/loader. (PX 1, p. 53; AT, p. 11).

Case studies at microwave popcorn plants have suggested a correlation between high exposures to butter flavorings containing Diacetyl and a specific lung disease identified as Bronchiolitis Obliterans. (RX 2, p. 13). The editorial relied upon by Petitioner's medical expert was specific for Bronchiolitis Obliterans. (PX 1, p. 22). Commentators have indicated a need for data gathering of respiratory diseases of unknown etiology to identify common exposures which may be relevant. (PX 1, Dep. Exh. 3, pp. 17-18).

Petitioner did not know which butter flavoring products he handled contained Diacetyl. (AT, p. 34). Petitioner testified that he handled butter flavors from the 1980s through 2003. (AT, p. 34). However, Diacetyl containing butter flavors were not introduced to the Decatur packaging plant until the early 1990s. (RX 3-B, p. 16). Respondent was required to take precautions to assure that the food grade components were protected from contamination. (AT, p. 80). Butter flavoring added to the oil tanks generally was a Flavorchem product. (AT, pp. 117, 121). Flavorchem was kept in a refrigerated state until it was needed for the oil tanks. (AT, p. 77). The lab would unseal the refrigerated Flavorchem product by

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removing the lid and cap on the plastic bucket. (AT, pp. 122-123). After mixing the additive in the lab, the lab would replace the lid and screw the cap on the bung hole on the top of the lid. (AT, p. 123). The plastic buckets contained five gallons. (AT, p. 77). When a lesser quantity of flavoring was required, the lab workers would pour Flavorchem product into a stainless steel bucket and place a lid upon the bucket inside the lab. (AT, pp. 79, 83, 124). The lab personnel would then place the bucket outside the lab door for the pumper/loader's retrieval and delivery to the oil tank. (AT, p. 121). Petitioner testified that the lid on the stainless steel bucket was not always present. (AT, p. 16). Kelly Singleton, Respondent's quality control agent for the laboratory, testified that the lid was always on the stainless steel bucket because of product integrity issues for the food grade operation. (AT, pp. 115-116, 124). Petitioner never worked in the lab. (AT, p. 121). Petitioner would carry the bucket of butter flavorings to oil tanks and pour the flavorings into the tank. (AT, pp. 14-17). The amount of flavoring which would be poured into the tank would be based upon the customer's specifications. (AT, p. 119). The tanks contained approximately 50,000 to 100,000 pounds of flavoring. (AT, p. 119). The total additive which Petitioner would pour into the tank would approximate .002% of the oil tank. (AT, p. 120). The bucket of flavoring would contain less than 2% Diacetyl when a Flavorchem butter flavoring was carried to the oil tank. (AT, p. 119). The concentration of Diacetyl in the oil tank, after addition of the butter flavoring would be $.002 \times .02 = 0.00004$. (AT, p. 120). During the time Petitioner was employed by Respondent as a pumper/loader, less than two to three percent of all product mixed or packaged by Respondent at the Decatur packaging plant contained butter flavors. (AT, pp. 82, 84).

The tank system into which additives were placed at Respondent's facility was a closed system. (AT, pp. 79-80). Respondent's oil tanks were not heated. (AT, p. 86). The oil tanks had a nitrogen blanket seal to prevent the escape of vapors. (AT, p. 80). To fill the oil tanks, the pumper/loader would remove an approximate one foot diameter lid at the top of the tank and pour the additive into the tank. (RX 7(a) & (b)). Brian Richardson, Respondent's safety and environmental manager, testified that the pouring operation would take two minutes to pour five gallons into the tank. (AT, p. 76; also see AT, p. 16).

Pumper/loaders would prepare a batch sheet for retention in the lab each time the pumper/loader would take butter flavor to the oil tanks. (AT, pp. 80-81, 122; RX 5). Respondent's batch records available during the last 16 months (approximately 500 days) of Petitioner's employment as a pumper/loader record 26 different dates on which Petitioner had occasion to pour butter flavor into the oil tanks. (RX 4; RX 5). Thus, Petitioner had occasion to deliver butter flavor to the oil tanks approximately two occasions per month based on Respondent's batch records. (RX 4; RX 5). Petitioner reported to Dr. Parmet, one of his retained experts in the pending civil case against the butter flavor manufacturers, that he would deliver up to 15 buckets per day, but averaged about 12 per day. (PX 14). At hearing, Petitioner disputed the recordation of history by Dr. Parmet and stated that he told Dr. Parmet he delivered up to 15 buckets per week. (AT, p. 47).

Petitioner claims exposure to butter flavoring in other operations in the packaging plant to include the whirl room, the combinator cleaning, remelt room cleaning, oil filter changing, washing of plastic buckets, and washing of stainless steel buckets. (AT, pp. 17-26). Petitioner's job duties did not include working in the whirl room. (AT, pp. 33, 71). Petitioner's duties included no responsibilities for the combinator. (AT, pp. 33, 71-72). Mr. Richardson testified that the combinator was cleaned by the maintenance department because the combinator was a closed system requiring ammonia purging. (AT, p. 72). Mr. Richardson explained that maintenance department duties and production department duties were distinct and separate. (AT, pp. 72-73). Mr. Richardson testified that Petitioner had no duties in the remelt room and explained that remelt activity was a laborer's job. (AT, p. 73). Mr. Richardson testified that Petitioner had no duties in the whirl room. (AT, p. 71). Mr. Richardson and Ms. Singleton testified that the cleaning of oil filters did not encompass any crystallized oils. (AT, pp. 74-75). Each explained that the

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only oils that would contain a Diacetyl butter flavoring would be crystallized oils. (AT, pp. 75, 125-126). Each explained that there was no exposure to Diacetyl in the course of cleaning filters because the product that possibly could contain Diacetyl would clog the filters. (AT, pp. 75, 125-126). Stainless steel buckets used by the pumper/loader were returned to the lab and the lab washed the stainless steel buckets (because they were reused in food grade production). (AT, p. 86). Mr. Richardson testified that the used plastic buckets were the subject of disposal and not reuse. (AT, p. 86). Mr. Richardson testified that Petitioner had no duties that would result in Petitioner cleaning any plastic buckets. (AT, p. 86). Petitioner did not work with Sweetex. (AT, p. 118).

On June 24 and 25, 2003, Respondent conducted a series of industrial hygiene monitoring tests at the Decatur packaging plant. (RX 8; AT, p. 95). Diacetyl was not detectable in the background workplace environment. (RX 8; AT, p. 101). The air re-circulates in the facility seventeen times per hour. (RX 3-B, p. 17). On November 9 and 10, 2004, in response to a request for a health hazard evaluation submitted by Pace International Union, NIOSH conducted a health hazard evaluation at the Decatur, Illinois and Granite City, Illinois packaging plants. (RX 6). NIOSH compared Respondent's Decatur facility to the microwave popcorn production plant in Missouri. (RX 6). At the Decatur plant, NIOSH observed the laboratory worker weigh and pour flavoring from a five gallon bucket into a metal container which was covered with a lid. (RX 6). NIOSH observed a different worker carry the metal container to large oil containing tanks and pour the flavoring into the tank through a small opening at the top of the tank. (RX 6). NIOSH noted that the opening in the tank and others was kept tightly sealed except when flavoring or other ingredients are added. (RX 6). NIOSH measured total VOCs (Volatile Organic Compounds) during the pouring of flavoring into the tank to increase to 1.5 ppm from a background meter reading of zero ppm. (RX 6). A specific concentration for Diacetyl was not calculated. (RX 6). NIOSH found that the air concentrations of Diacetyl measured by Respondent during flavoring use were low (all less than 0.07 ppm). (RX 6). NIOSH observed that Archer Daniels Midland (ADM) workers have less opportunity for exposure to butter flavoring chemicals compared to workers in microwave popcorn plants. (RX 6). NIOSH concluded that compared to microwave popcorn plants evaluated by NIOSH, the two ADM packaged oil plants differ with regard to factors that would affect worker exposure to airborne butter flavoring chemicals. (RX 6). The differences included tanks that contain oil and flavorings are tightly sealed at ADM, whereas tanks in the microwave popcorn plants are not sealed. (RX 6). NIOSH observed that the proportion of flavorings relative to the amount of oil in the tanks is much lower at the ADM plants. (RX 6). NIOSH noted that in the popcorn plants, mixtures of butter flavoring and oil measure and pour flavorings into tanks several times per work shift. (RX 6).

There is no established permissible exposure level (safe) for Diacetyl. (PX 1, p. 52; PX 1, Dep. Exh. 3). No toxic exposure level has been established. (PX 1, p. 52; PX 1, Dep. Exh. 3). Diacetyl has been deemed by the Food and Drug Administration (FDA) as "generally regarded as safe." (PX 1, p. 53). The MSD sheet for Flavorchem does not identify any toxic hazard in connection with Diacetyl. (PX 1, Dep. Exh. 3). The Givaudan MSD sheet provides that its butter flavoring has no known medical conditions generally aggravated by exposure. (PX 1, Dep. Exh. 3). Diacetyl is highly water soluble. (RX 1, p. 36; PX 1, p. 76). Diacetyl vapors are heavier than air and do not vaporize readily. (AT, pp. 102, 103; PX 1, Dep. Exh. 3).

Respondent called John Jurgiel, an industrial hygienist, to testify regarding the NIOSH report, Respondent's environmental monitoring report, and his knowledge of the microwave popcorn plants. (AT, pp. 96-99). Mr. Jurgiel has a bachelor of science (BS) in Civil Engineering and a masters degree in Industrial Hygiene from Harvard University. (AT, p. 96). Mr. Jurgiel explained that his professional experience as an industrial hygienist involved the recognition and evaluation of chemical and biological stresses that can cause sickness and impact the health of workers. (AT, p. 97). Mr. Jurgiel testified that

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Diacetyl was non-detectable at Respondent's Decatur plant. (AT, pp. 101, 102, 109-110). Upon the specific activity of pouring additive into the butter flavoring tank, volatile organic compounds would measure 1.5 ppm. (AT, p. 101). Diacetyl would be a lesser component of the volatile organic compounds. (AT, p. 107). Mr. Jurgiel testified that there was no generally accepted standard for permissible exposure levels to Diacetyl. (AT, p. 106). He stated that current industry suggestions are for establishing a permissible level at 25 ppm. (AT, p. 106). Mr. Jurgiel testified that the only NIOSH reading potentially in excess of currently considered permissible exposure levels occurred briefly in the lab under a hood during the NIOSH testing at the ADM facility measured at 40 ppm – total VOCs. (AT, p. 107). Petitioner did not work in the lab. (AT, p. 107). Mr. Jurgiel testified that the common exposure to Diacetyl when opening a bag of microwave popcorn is far greater than the potential exposure to Petitioner when performing his job activities. (AT, p. 115). Mr. Jurgiel also described the differences in the microwave popcorn facilities compared to Respondent's facility. (AT, pp. 103-105, 110). Microwave popcorn plants deal with workers exposed for an entire shift to open vats of heated product. (AT, p. 110).

Respondent called Dr. Robert J. McCunney, who has practiced occupational and environmental medicine for 30 years. (RX 2, p. 18; RX 1, p. 7). Dr. McCunney is board certified by the American Board of Preventive Medicine and Occupational and Environmental Medicine and is a research scientist at the Massachusetts Institute of Technology where he conducts research and teaches courses in epidemiology, the evaluation and treatment of workers exposed to potential occupational and environmental hazards. (RX 2, p. 18; RX 1, p. 6-7). Dr. McCunney has a BS in chemical engineering, a master of science degree in environmental health and a masters degree in public health in occupational medicine from Harvard University. (RX 2, p. 18; RX 1, p. 7). Dr. McCunney has research experience relative to Diacetyl. (RX 2, p. 18; RX 1, pp. 10-11).

Dr. McCunney testified that the butter flavoring and oil at Respondent's facility are not heated like the microwave popcorn plants and that the time associated with any potential exposure to flavorings during pouring was limited to, at most once to twice per week and often less than that amount based on ADM batch sheets, for very short duration, less than two to five minutes. (RX 2, p. 10). Dr. McCunney's comparison of published case studies at the microwave popcorn plants to Respondent's packaging plant in Decatur, Illinois disclosed an exposure differential at a magnitude of 450 to 1. (RX 1, p. 30; RX 2, p. 13).

Dr. McCunney concluded that the NIOSH evaluation of Respondent's plant in Decatur indicates that the potential for exposure to butter flavorings and the corresponding risk of developing a specific lung disease (Bronchiolitis Obliterans) is not present and finds no support by a comparison to microwave popcorn plants. (RX 2, p. 10). The exposure to butter flavorings that may have contained Diacetyl was so infrequent that such exposure did not play a role in the development or aggravation of Petitioner's chronic lung disorder. (RX 2, p. 14). As a result of the limited exposure, the absence of typical findings on the HRCT and generally accepted alternative scientific explanations for his lung disease such as smoking, asthma, obesity and family history, it was Dr. McCunney's opinion that Petitioner's exposure to butter flavorings did not play a role in the development or aggravation of his chronic lung disorder. (RX 2, p. 14).

Petitioner proffered the testimony of Dr. Donald Gumprecht to offer opinions supporting the diagnosis of an occupational disease resulting in disablement arising out of exposures in the workplace. (PX 1). Dr. Gumprecht is a medical doctor whose practice concentrates in pulmonology. (PX 1, pp. 4-5). Dr. Gumprecht is not an expert in industrial hygiene. (PX 1, pp. 53-54). Dr. Gumprecht was the physician treating Petitioner's respiratory symptoms since approximately May 2003. (PX 1, Dep. Exh. 6). Dr. Gumprecht offered the opinion that Petitioner suffered from a fixed obstructive lung disease, non-specific, specifically caused by workplace exposure to butter flavorings containing Diacetyl. (PX 1, p. 44).

Respondent objected to the admissibility of Dr. Gumprecht's opinions diagnosing an occupational disease and opinions regarding causation connecting any occupational disease to a workplace exposure, on the basis that the opinions were speculative, failed to satisfy the generally accepted methodology requirements of *Frye*¹, and failure to meet threshold requirements for admissibility pursuant to Illinois Rule of Evidence 702. (AT, p. 7; Arbitrator's Exhibit 2, p. 2; PX 1, pp. 21, 22, 23, 26, 27, 28, 33 and 36).

Dr. McCunney ruled out Bronchiolitis Obliterans based on review of medical studies. (RX 1, p. 19). Dr. Gumprecht agreed that Diacetyl is not a common explanation for fixed obstructive lung disease. (PX 1, p. 52).

Bronchiolitis Obliterans is diagnosed by specific findings of air trapping and a patchy and heterogeneous mosaic pattern in the lungs documented upon high resolution computerized tomography (HRCT) examination (hereinafter "imaging studies"). (RX 1, p. 20; PX 1, pp. 45-46; RX 2, p. 13). Petitioner has undergone imaging studies on three separate occasions. (PX 1, pp. 44-46; RX 1, p. 20). On October 20, 2009, a chest CT scan and MRI did not disclose typical radiographic signs associated with Bronchiolitis Obliterans. (PX 1, pp. 44-46). In February 2009, HRCT examination showed no findings associated with Bronchiolitis Obliterans. (PX 1, pp. 44-46). In connection with the February 2009 examination, Dr. Lawrence Repsher, an Occupational Medicine Specialist, concluded that Petitioner had no evidence of Bronchiolitis Obliterans. (RX 11). In July 2003, at the order of Dr. Gumprecht, high resolution HRCT testing to "rule out" Bronchiolitis Obliterans failed to document any evidence of Bronchiolitis Obliterans. (PX 1, pp. 44-46). HRCT examinations do reveal diffuse generalized emphysematous changes noted throughout both lungs indicative of chronic obstructive pulmonary disease (COPD) caused by smoking. (PX 1, pp. 45-46).

Dr. Gumprecht did not visit Respondent's facility or otherwise review/conduct any audit of the workplace activities of Petitioner. (PX 1, p. 55). Dr. McCunney conducted an audit and visit of Respondent's facility to evaluate the potential exposures. (RX 1, pp. 16-17; RX 2, p. 6). Dr. Gumprecht conceded that he had no data that would enable him to quantify the exposure of Petitioner to any Diacetyl containing butter flavoring. (PX 1, pp. 55, 58-61). Dr. Gumprecht testified that he had no knowledge regarding quantifying the exposure levels of workers at the microwave popcorn plant, the case reports on which he based his opinions of causation. (PX 1, pp. 56, 58-61). Dr. Gumprecht had no knowledge of safe exposure or toxic exposure levels for Diacetyl. (PX 1, p. 52). Dr. Gumprecht had no knowledge of latency periods for Diacetyl. (PX 1, p. 62). Dr. Gumprecht was unable to determine disease onset within a range of ten years. (PX 1, p. 62). The editorial relied upon by Dr. Gumprecht notes that there is a short latency between hazardous exposure to Diacetyl and manifestation of Bronchiolitis Obliterans. (RX 1, McCunney Dep. Exh. 3). Dr. Gumprecht agreed that it is difficult to draw conclusions when there are "unknowns." (PX 1, p. 74).

Dr. Gumprecht testified that quantifying the exposures of Petitioner compared to the exposures of the workers in the microwave popcorn plant case studies upon which he relied was unnecessary. (PX 1, pp. 55-56). Dr. Gumprecht does not require any minimum exposure threshold to support his causation opinion for the non-specific diagnosis of fixed obstructive lung disease. (PX 1, p. 61). According to Dr. McCunney, a valid evaluation of the potential links between exposure to any hazard and any health effect requires a full understanding of the nature of the exposure and the precise diagnosis under review. It is not appropriate to simply indicate that any exposure regardless of dose is capable of causing the health effects reported with higher exposures. "It would be as silly as claiming that since heavy alcohol use is associated with liver disease, that drinking one beer poses a similar risk of liver disease." (RX 2, p. 14).

¹ See *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

Dr. Gumprecht bases his opinions on the assumption that the Diacetyl compound was sufficiently volatilized for injury causing inspiration because the Diacetyl could be smelled. (PX 1, pp. 60-61, 76-77). Dr. Gumprecht stated, "...it's smellable, and it's enough for me." (PX 1, p. 60). Dr. Gumprecht assumed that smell is sufficient exposure to injure until somebody proves the smell is safe. (PX 1, p. 60). Dr. Gumprecht was unable to identify any studies to support his foregoing "smell theory." (PX 1, pp. 61, 77).

Dr. McCunney testified, based on generally accepted scientific methods, that Dr. Gumprecht's methodology was unreliable. (RX 1, p. 46). Dr. McCunney evaluated the "smell theory" proffered by Dr. Gumprecht. (RX 2, pp. 8-9). Dr. McCunney testified that Dr. Gumprecht's opinion is inconsistent with scientific literature on odors explaining that odor threshold is the concentration when the presence of a substance can be detected and a toxic threshold is the concentration at which the substance is harmful. (RX 2, p. 8). Relying upon published studies relating to the odor threshold of Diacetyl, Dr. McCunney calculated that the odor threshold of Diacetyl is 7,000 times lower than levels associated with Bronchiolitis Obliterans in the microwave popcorn industry. (RX 2, p. 9). Dr. McCunney further testified that it has been well known in toxicology that solubility is the most important feature of a compound that predicts whether it will reach the deep lungs. (RX 2, p. 8). Dr. McCunney explained that particle size has a limited role in olfaction since the receptors are present in the nose and the nose plays a role in filtering out particles so as to debunk Dr. Gumprecht's assertion that anything that has been in the air long enough to smell has small enough particle size to make it distally into the lungs beyond the upper airways. (RX 2, p. 8). Diacetyl is highly water soluble, which is why symptoms are expected to be experienced in the upper airway, eyes, etc. (RX 1, p. 36). Petitioner denied any eye irritation during any of his workplace exposures. (AT, p. 59). The butter flavoring was not heated sufficiently to create vapors. (RX 2, p. 6). At no time during his employment with Respondent did Petitioner report any symptoms associated with odors while performing his work activities. (AT, p. 47).

At trial, Petitioner testified that he could smell the odors of the butter during his entire 20 year history at the packaging plant. (AT, p. 34). On two occasions during his sworn testimony in the civil case against the butter flavoring manufacturers, Petitioner denied recalling or recognizing any distinctive odors when dealing with the butter flavorings. (AT, pp. 35-37). Petitioner confirmed that he never told any of his treating medical personnel that the smell of the butter would irritate his nasal passageways because he did not "feel it was relevant." (AT, p. 60). Petitioner's work accident history did not record any complaint of exposures or odor complaints. (AT, pp. 85-86; RX 12). Petitioner never complained to the lab that any additive he handled was irritating. (AT, p. 125).

During Petitioner's work at Respondent's plant, there was no change in his lung function by spirometry from 1995 to 2003, the period for which data are available. (PX 1, pp. 80-81; RX 2, pp. 11, 13). In 1995, Petitioner's FEV1 was 1.67 liters; in 2003, it was 1.65 liters – no change over the last eight years of his work at Respondent's plant. (RX 2, pp. 11, 13). Since leaving work, his FEV1 declined from 1.46 liters in early 2004 to 1.05 liters in December 2011 – a 410 ml decline over a nearly eight year period. (RX 2, pp. 14-15). The average annual decline of approximately 50 ml per year, slightly higher than the customary 30 ml annual age related decline, is consistent with smoking and/or natural accelerated decline based on individual factors. (RX 2, pp. 14-15). Dr. Gumprecht agreed that smokers can decline 90 ml per year. (PX 1, pp. 72-73). Analysis of Petitioner's pulmonary function tests fails to disclose an accelerated decline in lung function typically associated with lung disease caused by Diacetyl containing butter flavorings. (RX 2, p. 7). The editorial Dr. Gumprecht relies upon in offering opinions sets forth a diagnostic criterion for a 330 ml decline in FEV1 over 6 to 12 months after injurious exposure to Diacetyl. (RX 2, p. 7). However, Dr. Gumprecht did not know of the existence of the diagnostic criterion contained in the editorial upon which he relied. (PX 1, p. 63). The pulmonary function testing does not disclose any acute decline meeting the diagnostic standard. (PX 1, pp. 80-81; RX 2, pp. 12-13).

Dr. Gumprecht's diagnosis was based on spirometry testing exhibiting results by Petitioner that failed to meet the predicted findings for an individual of the same age and height as Petitioner. (PX 1, pp. 47, 68-69). The data against which Petitioner's examination findings are predicted did not account for smokers. (PX 1, pp. 69-70). Dr. Gumprecht did not know the database utilized for determining predicted values in his spirometry testing. (PX 1, p. 69). Dr. Gumprecht acknowledged that predicted values for pulmonary function are affected by smoking. (PX 1, pp. 69-73). Dr. Gumprecht acknowledged that the younger one starts smoking, or is exposed to smoking, the earlier pulmonary function will plateau and commence regression. (PX 1, pp. 70-73). Dr. Gumprecht conceded that maximum pulmonary function is not realized by individuals that smoke or are exposed to smoking at an early age. (PX 1, pp. 70-73). Dr. Gumprecht agreed that the extent of one's smoking and smoking exposure history can accelerate the regression of one's pulmonary function over time. (PX 1, pp. 70-73). Dr. McCunney concluded that the diminished pulmonary function findings in spirometry are explained readily by the smoking history of Petitioner. (RX 2, pp. 11, 14-15).

Based on reports to Dr. Arnold, Petitioner's pulmonologist in the mid 1990's, Petitioner commenced smoking at or about the age of 15. (RX 10, PX 1, p. 65). His smoking habit was one and a half to two packs per day. (RX 10). Petitioner quit smoking in November 1997. (PX 1, p. 66). Petitioner's parents smoked from birth to the time he left the residence at age 18. (AT, p. 50; PX 1, p. 67). The second-hand smoke contributed to the pack-year history to which Petitioner was exposed. (PX 1, pp. 67-68). Two of Petitioner's wives smoked. (AT, p. 53). Petitioner has given differing reports of his smoking history to other physicians [25 pack-years to 50 pack-years (RX 1, p. 40-41)] and stated that he did not start smoking, himself, until walking the picket line in 1979. (AT, pp. 50-51). Historical reports support a 58 pack-year first hand smoking history before cessation in 1998 (PX 1, p. 66), which Dr. Gumprecht agreed would be sufficient for COPD (PX 1, p. 66).

Dr. Gumprecht agreed that smoking is the most common explanation for COPD. (PX 1, p. 68). Dr. McCunney diagnosed COPD caused by smoking and chronic asthma. (RX 1, pp. 12-13). The findings on the imaging studies were classic findings for COPD. (PX 1, pp. 45-46). Petitioner's mother died from emphysema/COPD at age 53. (PX 1, pp. 73-74; AT, p. 53). Petitioner's father died in his 50s from coronary disease complicated by a smoking history. (AT, p. 55). Dr. McCunney and Dr. Gumprecht agreed that family history is a genetic indicator for COPD. (RX 2; PX 1, p. 73). Dr. McCunney testified that it is not generally accepted in the medical community that Diacetyl causes COPD. (RX 1, p. 18).

Dr. Gumprecht cited an editorial article to support his opinions on diagnosis and causation, but that editorial was not offered into evidence. (PX, pp. 21-22, 34). According to Dr. McCunney, a medical editorial is not generally accepted scientific source and does not constitute an independent scientific study. (RX 1, pp. 37-39). Dr. Gumprecht agreed that the editorial is "getting toward the concept of" general acceptance, but, inferentially, not generally accepted science. (PX 1, p. 34).

Dr. Gumprecht denied that Petitioner suffered from asthma during his course of treatment with Petitioner. (PX 1, pp. 46). Dr. Gumprecht acknowledged that there is a longstanding previous history of asthma documented in the medical records. (PX 1, pp. 50, 63, 64). Dr. Gumprecht did not interpret his spirometry testing as showing reversibility sufficient to document asthma. (PX 1, p. 47). Dr. McCunney, citing the standards established by the American Thoracic Society and noting results from bronchodilation tests, found that Petitioner did document reversibility diagnostic for longstanding asthma. (RX 2, pp. 4-7). Dr. McCunney also documented reversibility comporting with the standards of the American Thoracic Society. (RX 2, p. 4). Longstanding asthma is a recognized cause for diminished lung function on spirometry testing. (RX 2, pp. 7, 12). Further, Dr. Repsher diagnosed asthma. (RX 11).

The report of Dr. Parmet, the physician retained by Petitioner's attorney in the civil case, assumed that Petitioner was exposed to an open system (similar to popcorn plants), delivering up to 15 buckets of additives per day in a heated process. (PX 14). Petitioner denied prior lung conditions to Dr. Parmet. (PX 14). Petitioner's prior lung condition history included: childhood pneumonia (AT, p. 51); 1972 – asthma (AT, p. 50); bronchitis/asthma during the 1980s and thereafter (RX 10); sinus surgery – 2000 (RX 10); and paint exposures (RX 10).

When Dr. Gumprecht reviewed the report of Dr. Repsher diagnosing asthma and ruling out Bronchiolitis Obliterans, Dr. Gumprecht prepared an unsolicited report to Petitioner's attorney challenging Dr. Repsher's opinion. (PX 1, p. 32). When Dr. Gumprecht reviewed a CT report prepared by Dr. Jill Sullivan, which described mild diffuse emphysematous changes, Dr. Gumprecht prepared a report telling her that the changes were "severe." (PX 1, p. 79). Dr. Gumprecht conceded that he has diagnosed COPD in other patients at younger ages. (PX 1, pp. 64-65).

Dr. McCunney conducted a medical examination of Petitioner at Respondent's request pursuant to Section 12 of the Illinois Workers' Occupational Diseases Act, 820 ILCS 310/1 et seq. (hereafter the "Act"). (RX 2, p. 1). Petitioner's body mass index was 32.7, a value reflecting obesity. (RX 2, p. 4). Dr. McCunney's examination disclosed an unchanged oxygen saturation rate after mild exercise. (RX 2, p. 4). Bronchodilator examination indicated reversibility consistent with asthma. (RX 2, p. 4). Dr. McCunney's examination disclosed reversibility, a key feature of asthma, consistent with the American Thoracic Society guidelines for airway reversibility associated with asthma. (RX 2, p. 6).

Dr. McCunney testified, within a reasonable degree of medical and scientific certainty, that Petitioner's lung disease is due to a combination of non-work related factors, including his smoking history, asthma, obesity and family history. (RX 2, pp. 14-15). Dr. McCunney opined that Petitioner's work at Respondent's plant that involved limited exposure to Diacetyl containing butter flavorings played no role in the development or aggravation of his lung ailment. (RX 2, pp. 14-15).

CONCLUSIONS OF LAW

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

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

Petitioner Failed to Prove an Occupational Disease

To prove an occupational disease, Petitioner must establish a disease arising out of and in the course of the employment or which has become aggravated and rendered disabling as a result of the exposure of the employment. 820 ILCS 310/1(d). Petitioner has the burden of showing by a preponderance of credible evidence that his disease arises out of and in the course of employment, which requires a showing of causal connection. *See Horath v. Industrial Comm'n*, 96 Ill.2d 349, 356, 449 N.E.2d 1345 (1983). After evaluating the admissibility of opinion testimony, the weight to be accorded to the testimony of competing experts, the credibility of Petitioner and the totality of legal and factual circumstances presented in the record, the Arbitrator finds that Petitioner has failed to meet his burden to prove an occupational disease that arose out of and in the course of employment.

In Illinois, the admission of expert testimony is governed by the standard first expressed in *Frye v. United States*, 293 F.3d 1013 (D.C. Cir, 1923). *In re Commitment of Simons*, 213 Ill.2d 523, 529 (2004).

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Commonly called the “general acceptance” test, the *Frye* standard dictates that scientific evidence is admissible at trial only if the methodology or scientific principle upon which the opinion is based is sufficiently established to have gained general acceptance in the particular field in which it belongs. *Bernardoni v. Industrial Comm’n*, 362 Ill. App. 3d 582, 594, 840 N.E.2d 300, 310 (3d Dist. 2005) (citing *Simons*, 213 Ill.2d at 529-30). The proponent of expert testimony has the burden of demonstrating that the proffered opinion is worthy of admission into evidence. *Bernardoni*, 362 Ill. App. 3d at 595, 840 N.E.2d at 310. (COPD from smoking, non-work related). An expert witness opinion cannot be based on mere conjecture and guess. *Dyback v. Weber*, 114 Ill.2d 232, 244, 500 N.E.2d 8, 13 (1986). If the basis of an expert’s opinion is grounded in guess or surmise, it is too speculative to be reliable. *Modelski v. Navistar International Transportation Corp.*, 302 Ill. App. 3d 879, 885, 707 N.E.2d 239, 244 (1st Dist. 1999). Based on the record, Dr. Gumprecht’s opinions diagnosing an occupational disease and opinions relating a workplace cause for fixed obstructive lung disease are insufficient for Petitioner to meet his burden of proof.

Petitioner Does Not Have Bronchiolitis Obliterans

Limited case study of microwave popcorn plant workers exposed to butter flavoring containing Diacetyl in high concentrations for prolonged exposures has noted the presence of the specific diagnosis of Bronchiolitis Obliterans in certain workers. There is no generally accepted science relating COPD to Diacetyl exposure. As applied in this case, Petitioner does not satisfy the diagnostic criteria for the occupational disease, Bronchiolitis Obliterans. Petitioner fails to present admissible or persuasive evidence to meet his burden of proving an occupational disease.

Lung biopsy is the most definitive test for diagnosing Bronchiolitis Obliterans. Petitioner has not had a lung biopsy. The signature pathology for a Diacetyl induced lung disease is the heterogeneous patchy mosaic findings on imaging studies. HRCT imaging is diagnostic for Bronchiolitis Obliterans. More specifically, HRCT imaging should disclose the heterogeneous patchy mosaic pattern. Three HRCT imaging studies were performed on Petitioner. None supported the diagnosis of Bronchiolitis Obliterans. Drs. McCunney, Gumprecht and Repsher each agree on this point. However, the signature pathology for COPD from smoking, diffuse emphysematous findings, are documented. From the outset of the analysis, the evidence indicates that Petitioner does not suffer any disease for which Diacetyl is the suspected causative factor.

The pulmonary function tests, including more particularly, FEV1, remained constant from 1995 to initial testing in 2003 after Petitioner’s cessation of work for Respondent. In other words, Petitioner did not experience any decline in his pulmonary function during the last eight years of his workplace exposure to any butter flavoring containing Diacetyl. Even if the editorial relied upon by Dr. Gumprecht had obtained the level of generally accepted science, the editorial identifies a diagnostic criterion of a 330 ml drop in FEV1 in a six month to twelve month time frame following the injurious exposure to the Diacetyl product. Dr. Gumprecht’s conclusion defies the very scientific data upon which he relies. Accordingly, the diagnosis of the occupational disease, Bronchiolitis Obliterans, is not supported by the diagnostic testing. Thus, even if one accepts for argument purposes that it is a widely accepted fact that exposure to Diacetyl can cause Bronchiolitis Obliterans, there is no evidence that Petitioner has Bronchiolitis Obliterans. Accordingly, Petitioner has failed to satisfy his burden of proof that an occupational disease has been sustained. *See Lukesh v. ABF Freight*, 10 IWCC 862 (Sept. 7, 2010).

Petitioner's Disease Did Not Arise Out of and in the Course of His Employment

To satisfy the concept that Diacetyl is a cause for any lung disease as generally accepted in the medical community, a sufficiently broad sample of experts need to concur. *Bernardoni*, 362 Ill. App. 3d at 595, 840 N.E.2d at 311. The causes for Bronchiolitis Obliterans with obstructive lung disease are unknown. See *Hughes v. Performers Flooring*, 08 IWCC 354 (March 25, 2008) (theories are not medical fact). Notwithstanding, even if any recognized hazard meeting the standard for occupational disease was confirmed, the methodology employed by Dr. Gumprecht to relate the occupational disease to Respondent is not generally accepted. Dr. Gumprecht assumes that the smell of butter flavor in the workplace is sufficient evidence of causation until Respondent proves otherwise. The “smell test” masks the fact that Dr. Gumprecht has no quantitative data arising from any scientific article or the particular circumstances of Petitioner’s exposure to support a causal connection. Dr. Gumprecht confesses that he has no data regarding the exposures confronting Petitioner at Respondent’s plant. Dr. Gumprecht concedes that he has no data regarding the exposures experienced by the microwave popcorn employees in the limited case studies which he accepts for purposes of his opinions. Dr. Gumprecht acknowledges that he has performed no comparison to ascertain whether the activities of Petitioner were in any way comparable to the activities of the popcorn workers who carried the diagnosis of Bronchiolitis Obliterans. Thus, Dr. Gumprecht embraces a principle that says that smell alone enables inspiration of sufficient quantities of the compound without any scientific support for the theory.

First, the “smell theory” proffered by Dr. Gumprecht requires, as its central factual tenet, complaints by Petitioner when smelling the product. On this central factual tenet, the credibility of Petitioner is at issue. At hearing, Petitioner said that the smells would “take his breath away.” In his discovery deposition in the related civil case against the butter flavoring manufacturers, Petitioner denied both recognition and any irritation caused by odors. At hearing, Petitioner said that the odors would cause nasal airway irritation. However, Petitioner admitted that he never reported such symptom to a single treating physician. Petitioner’s explanation for failure to report the nasal airway symptoms was that he did not consider it relevant. Noteworthy, Petitioner never reported eye irritation when encountering the odors or when exposed to any product. Given the highly water soluble characteristic of Diacetyl, the absence of eye irritation shows an absence of significant exposure. Further, Petitioner never complained to his employer regarding any irritation or breathless episodes for over 20 years. Accordingly, Petitioner was not a credible witness.

Dr. McCunney evaluated the science related to odor threshold versus toxic threshold for the compound Diacetyl. Assuming toxicity at the level documented in the microwave popcorn plant workers diagnosed with Bronchiolitis Obliterans and reviewing research related to the odor threshold for Diacetyl, Dr. McCunney calculated that the toxic threshold was 7,000 times greater than the odor threshold for Diacetyl. Not only does Dr. Gumprecht fail to identify any authority or publication recognizing the “smell test” as a generally accepted methodology in the medical community, the scientific evidence weighs 7,000 to 1 against his approach.

Opinion testimony premised upon the assertion that an exposure to microwave popcorn butter flavor at any level is unsafe unless the respondent can prove otherwise has been rejected as a non-scientific conclusion. See *Newkirk v. ConAgra Foods, Inc.*, 727 F. Supp. 2d 1006, 1031 (E.D. Wash. 2010) (affirmed on appeal). In *Newkirk*, Dr. Parmet testified to an assumption that a consumer’s exposure to microwave popcorn butter flavor, at any level, was unsafe unless defendants could prove otherwise. *Id.* Dr. Parmet’s conclusions failed to present any parameters as to what a safe or unsafe level of exposure would be and his methodology was not the product of reliable principles based upon sufficient facts or

data as required by Federal Rule of Evidence 702. *Id.* “This conclusion is not only scientifically unsound, it is legally unsound in light of the plaintiff’s burden to prove causation...” *Id.*

The *Newkirk* analysis supports rejecting the diagnostic and causation opinions of Dr. Gumprecht in the instant case. Dr. Gumprecht had no data to support his opinions of workplace causation. The diagnostic criterion for Bronchiolitis Obliterans is not present. Dr. Gumprecht admitted that he was unaware of any safe level of exposure and no knowledge of a dangerous level of exposure. Like Dr. Parnet, Dr. Gumprecht assumed that any exposure [from smell] was dangerous until someone proved otherwise. Dr. Gumprecht’s principle and methodology are not supported by any scientific study and are not generally accepted methodologies. The proponent of expert testimony has the burden of demonstrating that the proffered opinion is worthy of admission into evidence. *Bernardoni*, 362 Ill. App. 3d at 595, 840 N.E. 2d at 310. (MCS not generally accepted diagnosis). Said opinions are therefore entitled to no weight and the preponderance of evidence is against the opinions provided by Dr. Gumprecht.

On the other hand, Dr. McCunney is better qualified by training, education, and professional experience to address the diagnosis and causation issues presented in this case. Unlike Dr. Gumprecht, Dr. McCunney performed an extensive review of the facts and circumstances related to Petitioner’s exposures and had an extensive understanding of the exposures of the microwave popcorn workers diagnosed with Bronchiolitis Obliterans. The preponderance of the evidence supports the opinion of Dr. McCunney that Petitioner’s exposure to butter flavorings did not play a role in the development or aggravation of his chronic lung disorder. It is well settled that where one opining physician has superior information versus another, the former is to be accorded greater weight. *Hickman v. Beniach Construction*, 07 IWCC 233 (March 5, 2007).

The scientific literature balances in favor of Dr. McCunney’s conclusions. The independently documented exposure data supports Dr. McCunney’s conclusions. The alternative diagnoses for the current state of ill being suffered by Petitioner related to non-work causes is well supported by literature, overwhelming historical data regarding Petitioner, and is generally accepted.

Dr. McCunney conducted a comparative evaluation of popcorn plant exposure to Petitioner’s potential exposure. The documented background presence of Diacetyl in the workplace was undetectable. The exposure when pouring the liquid butter flavoring into the tank was .07 ppm. Dr. McCunney calculated that the highest exposure indicated in the NIOSH investigation at Respondent’s plant remained a magnitude of 450 times less than the exposure experienced by the popcorn plant workers diagnosed with Bronchiolitis Obliterans.

Petitioner testified to numerous activities where he may have been exposed to butter flavoring. Petitioner acknowledged that he had no personal knowledge as to which butter flavorings contained Diacetyl and which did not. Petitioner, a union member, claimed that he performed job duties of other union members at the Decatur packaging plant. Brian Richardson, safety director and former whirl room operator at the same plant, testified to his personal knowledge of Petitioner’s job duties. Petitioner did not work in the whirl room. Petitioner did not work in the re-melt room. Laborers performed the operations in the re-melt room. Kelly Singleton, laboratory quality control officer, testified that Petitioner did not clean stainless steel buckets. Mr. Richardson and Ms. Singleton testified that there was no Diacetyl in the oils that run through the oil filters. Mr. Richardson testified that the plastic Flavorchem buckets were disposed of and not cleaned. Petitioner had no duties relative to the combinator. Petitioner’s claims that he would perform the job functions of other union workers outside his job description are not credible. The exposures claimed by Petitioner are overstated and speculative. Respondent’s documents and witnesses were more credible.

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The data relied upon by Dr. McCunney in his opinions finds further support in his understanding of the job duties executed by Petitioner. Review of Respondent's batch records disclosed that Petitioner added butter flavoring with Diacetyl on only 26 occasions during his last 16 months of employment. Dr. McCunney's use of a frequency of two to three times a month for a two to five minute duration is consistent with Respondent's batch records and Petitioner's job duties. On the other hand, Petitioner advised Dr. Parmet, the expert retained by Petitioner's attorneys in the pending civil litigation, that he would deliver butter flavoring to the oil tanks twelve to fifteen times per day, thus, an approximate 75 to 1 overstatement of frequency by Petitioner. At hearing, Petitioner sought to retreat from the excessive frequency described to Dr. Parmet. Dr. McCunney accurately understood the closed, non-heated ADM process. Petitioner told Dr. Parmet that the process was open with heated product. Petitioner acknowledged at hearing that Dr. Parmet's assumptions were erroneous. Dr. Gumprecht had no knowledge of the process or quantification of any activity.

Dr. McCunney provides a credible explanation for the diminished pulmonary function of Petitioner. Dr. McCunney diagnosed COPD, long standing asthma, genetic predisposition for COPD, and obesity. The imaging studies disclosed the classic presentation for COPD based on smoking. Drs. McCunney and Gumprecht agreed that smoking was the most commonly recognized cause for COPD. Drs. McCunney and Gumprecht both agreed that smoking reduces the expected pulmonary function of the smoker such that the smokers PFTs will be less than predicted. Dr. McCunney testified that the reductions in pulmonary function, to the extent spirometry testing was valid, was consistent with the smoking history, standing alone.

Petitioner reported to his treating physicians (and at hearing), different histories regarding his smoking. Petitioner grew up in a home with two smoking parents. His mother died at age 53 from emphysema, a genetic marker for Petitioner's COPD. His father died of coronary disease complicated by smoking history. The history reported to his pulmonologist in 1995 was that he had smoked a pack and a half to two packs a day since age 15. At trial, Petitioner reported that he did not start smoking regularly until age 26. The date for cessation of smoking has not been consistent. However, it appears that his last period for smoking regularly was November 1997. Based on the most extensive smoking history that Petitioner has reported to treating physicians, Petitioner has a pack-year history well in excess of 50 pack-years before one considers the effects of secondary smoke from two parents and two smoking wives. Dr. McCunney relied upon American Cancer Society-published reports supporting the conclusion that Petitioner is high risk for COPD based on smoking history alone. The genetic marker increases the COPD risk. The longstanding asthma history further increased the risk – all non-work related causes.

The greater weight of evidence establishes that Respondent's packaging plant and processes were not comparable to the microwave popcorn plants. Petitioner's opinion evidence requires comparability to provide any support for the medical/scientific opinions necessary to meet Petitioner's burden of proof. On the other hand, the factual and scientific data relied upon by Respondent's opinion witnesses has evidentiary support in the record and is to be accorded greater weight. *See Hickman v. Beniach Construction*, cited *supra*.

Respondent's industrial hygiene testing disclosed no detectable Diacetyl in the background at Respondent's facility in June 2003. NIOSH performed its audit and testing concluding that the Decatur packaging plant and the microwave popcorn plants presented significant differences. Respondent called John Jurgiel, an experienced industrial hygienist, to explain the significance of Respondent's monitoring and NIOSH testing of the Decatur packaging plant. All evidence in the record establishes that both

quantitatively and qualitatively, the workplace at Respondent's packaging plant was not comparable to the microwave popcorn plants.

There is no permissible exposure limit or unsafe exposure limit that has been adopted with respect to Diacetyl. Mr. Jurgiel testified that there are considerations in the industry that could place a permissible exposure limit at 30 ppm for Diacetyl. The measurement for volatile organic compounds (for which Diacetyl is a presumed component) during the pouring of additives activity did not exceed 1.5 ppm. Only briefly in the laboratory while working under a ventilation hood did NIOSH take any measurement in excess of the currently considered permissible exposure limit. However, Petitioner never worked in the laboratory and was not exposed to the brief borderline concentration in the lab. Petitioner's potential exposure was less than a bag of popcorn – an exposure level common to the public.

Based on the totality of evidence, determinations of the credibility of witnesses and the respective weight to be assigned to the evidence presented by both parties, the finding is that Petitioner has failed to prove an occupational disease caused by a workplace exposure and, as such, Petitioner's claim is denied.

Petitioner's Current Condition of Disability is Related to Non-Work Causes

Petitioner did not experience any documented decline in pulmonary function during the last eight years of his alleged workplace exposure to Diacetyl. On the other hand, the pulmonary function of Petitioner, compared against predicted values for non-smokers of his age and height, is explained by his extensive smoking history (in some reports in excess of 58 pack-years) and normal age related reductions in lung function. Further, longstanding asthma explains the decline in pulmonary function in conjunction with genetic predisposition. The diagnosis of Dr. McCunney that Petitioner's lung disease is due to a combination of non-work related factors including his smoking history, asthma, obesity and family history without contribution from any limited exposure to Diacetyl containing butter flavorings, is the more persuasive testimony. The information possessed by Dr. McCunney was superior and entitled to greater weight. Respondent has shown that Petitioner's COPD was not causally related to workplace exposures to Diacetyl and that Petitioner's current pulmonary function is consistent with normal regression for smokers and age.

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?;

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

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

Based on the foregoing findings concerning accident and causation, the Arbitrator therefore finds that all other issues are moot. Accordingly, no medical expenses, temporary benefits or permanent partial disability benefits are awarded.

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Clara J. Heitz,
Petitioner,

vs.

Jacksonville School District #117,
Respondent,

NO: 10 WC 01035
10 WC 01036

14IWCC0523

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 statute of limitations, accident, notice, medical expenses, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 7, 2013 is hereby affirmed and adopted.

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

DATED: JUN 30 2014

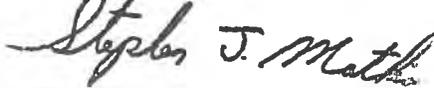
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Mario Basurto



David L. Gore



Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HEITZ, CLARA J

Employee/Petitioner

Case# **10WC001035**

10WC001036

JACKSONVILLE SCHOOL DISTRICT #117

Employer/Respondent

14IWCC0523

On 5/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

0101 THOMSON McNEELY & TOBIN
RICHARD K CREWS
226 W STATE ST
JACKSONVILLE, IL 62650

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

14IWCC0523

STATE OF ILLINOIS)
)SS.
COUNTY OF Adams)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

Clara J.Heitz
Employee/Petitioner

Case # 10 WC 1035

v.

Consolidated cases: 10 WC 1036

Jacksonville School District #117
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Quincy**, on **March 7, 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 **Statute of limitations**

14IWCC0523

FINDINGS

On **May 13, 2008**, 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$23,863.84**; the average weekly wage was **\$458.92**.

On the date of accident, Petitioner was **48** years of age, *married* with **1** child under 18.

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 **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, **\$0** in non-occupational disability benefits and **\$0** for other benefits for which credit may be allowed under Section 8(j) of the Act.

Respondent is entitled to a credit of **\$21,729.77** in medical bills through its group medical plan for which credit may be allowed under Section 8(j) of the Act.

ORDER

Petitioner failed to prove her conditions of ill-being in her right hand and cervical spine are causally connected to her accident of May 13, 2008 and/or employment duties for Respondent. Petitioner's claim for compensation is denied. No benefits are awarded.

Alternatively, if Petitioner had a compensable claim for right carpal tunnel syndrome, it occurred/manifested itself in 2004. Therefore, since more than three years passed before the instant claim (10 WC 1035) was filed, the claim (10 WC 1035) would be barred by the statute of limitations.

Petitioner's claim for compensation is denied.

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

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



Signature of Arbitrator

May 2, 2013

Date

Clara J. Heitz v. Jacksonville School District #117

Petitioner has two claims pending against Respondent. Case #10 WC 1036 and 10 WC 1035 both allege an accident date of May 13, 2008. As a result of an alleged accident on that date, Petitioner claims injuries to her right hand, back, and neck. Both cases were consolidated for hearing with one decision to be issued.

The Arbitrator finds:

Petitioner presented to her family doctor, Dr. Bohan, on September 1, 2004, complaining of tingling and numbness in both hands and wrists for 2-3 months. The nurse noted, " ? attributes to moving in June. c/o recurrent neck pain and stiffness x 2 weeks." Dr. Bohan noted nocturnal symptoms and problems driving. He prescribed motrin, cock-up splint, reduced activity, and a referral to Dr. Trudeau for nerve conduction studies. (RX 2, pp. 1-2)

Dr. Trudeau saw Petitioner on on September 20, 2004. According to Dr. Trudeau's report Petitioner was complaining of upper extremity problems that she believed stemmed from the repetitive way in which she used them at work for Respondent where she was a secretary. Petitioner complained of worse symptoms of paresthesia in her right hand than her left hand but neck and shoulder pain worse on the left side. Petitioner further reported that her symptoms were not as bad over the summer when she was off work but after she returned to work in the preceding month her symptoms had returned. Dr. Trudeau also noted that Petitioner had requested some job modifications and they had been provided. Additionally, Dr. Trudeau referenced a letter/note from Dr. Bohan in which Dr. Bohan indicated Petitioner had no second job nor did she engage in any repetitive motion activities at home; rather, she believed her work duties for Respondent brought on her problems. Petitioner was found to have bilateral median neuropathies at her wrists, mild and neurapractic on either side. (PX 6; RX 1)

On September 23, 2004 Respondent completed an Employee's First Report of Injury Petitioner alleged an accident date of August 27, 2004 resulting in bilateral carpal tunnel syndrome. (RX 5)

Petitioner was contacted by Dr. Bohan's office on October 11, 2004 advising her she had carpal tunnel syndrome and referring her to Dr. Greatting. (RX 2,3)

Petitioner completed a Patient History form on December 9, 2004 as part of her appointment with Dr. Greatting. Petitioner's presenting problem was identified as hand and arm numbness which occurred at "different times at p.m. (sleeping), driving, typing and which had been bothering her since September. Petitioner denied any injury, reported she was working, and commented that sometimes her fingers would get numb at work. Petitioner believed she had a work-related problem and noted her bills had been turned in to workman's comp. (RX 4)

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Petitioner signed a Springfield Clinic W/C Accident Report/Special billing form on January 10, 2008 in which she indicated her billing should be listed as "workers' comp," the date of accident was 8/27/04 and the bill should go to Gallagher Bassett. (RX 4—0003)

Petitioner called Dr. Bohan's office on August 15, 2005 reporting a problem with her left arm (numbness down to fingertips) which began 6-8 weeks earlier. Petitioner was seen later that same day with the pain being pinpointed to the left axilla/underarm area. Dr. Bohan noted Petitioner did upper body weight training. His assessment was cervical radiculopathy. A cervical MRI was ordered. Petitioner was told to decrease her activities, including lifting. (RX 2, pp. 004-5)

Petitioner underwent a normal cervical MRI on August 17, 2005. (RX 5, 0002)

Petitioner was sent back to Dr. Trudeau approximately one year later on September 6, 2005. According to the report, Petitioner's situation had worsened while Petitioner tried to avoid surgery and continued working full duty and full-time. Once again Petitioner noted the onset of symptoms with her recent return to work with the left side being worse than the right side. Testing revealed carpal tunnel syndrome at the left wrist, mild to moderately severe and increased since the 2004 study. (PX 6)

Petitioner returned to see Dr. Greatting on November 10, 2005, almost one year since her last visit with him. Petitioner reported doing well since the last visit and throughout the school year. Petitioner advised the doctor that after a summer vacation she developed some pain, numbness, and tingling involving her entire left arm but with no specific injury or trauma being noted. Petitioner did mention she had begun some weight lifting activities which corresponded with the onset of her complaints. Petitioner denied any neck pain but numbness in her arm during the day. Petitioner denied any significant complaints related to either upper extremity. Dr. Greatting noted Petitioner's 2005 EMG which showed left mild median neuropathy and left brachial plexopathy. Tinel's and Phalen's were negative; Petitioner's cubital tunnels were positive. Dr. Greatting's impression was very mild bilateral carpal tunnel syndrome - in fact, she appeared essentially asymptomatic. He believed her complaints were probably related to the brachial plexopathy and he recommended observation. (RX 4 - 0030,31)

Petitioner returned to Dr. Bohan on April 12, 2007 for right-sided neck pain that radiated down her arm for the past 6-7 months. A diagnosis of radiculopathy was suspected. Motrin was prescribed. (RX 2, pp. 6-7)

Petitioner returned to see Dr. Greatting on January 10, 2008. Petitioner reported worsening of her bilateral hand symptoms since previously being seen by Dr. Greatting several years earlier. Petitioner reported she still worked for Respondent as a secretary and that her most significant complaints involved her left

elbow and forearm area; on the right side, it was her hand. Petitioner was experiencing night-time wakening and complaints associated with keyboarding, typing, using a mouse, writing, driving, and reading. Petitioner further noticed less bothersome symptoms in the summer with a noticeable return in the fall. Petitioner denied any neck pain.

Based upon his clinical exam Dr. Greatting believed Petitioner had bilateral carpal tunnel syndrome and probable left cubital tunnel syndrome. She was sent for an EMG. Dr. Greatting believed Petitioner's work activities caused or contributed to both conditions based upon Petitioner's work history. (RX 15)

Petitioner returned to Dr. Trudeau on February 11, 2008, having been referred by Dr. Greatting. Dr. Trudeau's testing revealed bilateral carpal tunnel syndrome and left cubital tunnel syndrome consistent with Dr. Greatting's clinical assessment. The right carpal tunnel and left cubital tunnel syndromes were noted to be new findings since the 2005 diagnostic studies. (PX 6)

Petitioner sent an e-mail to Jill Dillard and Mike McGiles on March 4, 2008 advising them she had an upcoming appointment with a back/neck specialist on March 10th and would need to take a sick day. She also reported that her recent MRI had shown a ruptured disc in her neck and that is why she was in pain. She apologized for any inconvenience. (PX 11a)

Dr. Payne examined Petitioner on March 10, 2008 as requested by Dr. Greatting. Noting her upcoming surgery with Dr. Greatting, Dr. Payne also noted Petitioner was complaining of left-sided pain beginning in her neck, going down her arm and extending all the way to her long finger. Dr. Payne noted neck pain, numbness and tingling, beginning in her trapezius muscles, and worse with flexion and extension. Petitioner reported it began late last summer. An MRI showed a herniated disc at C6-7. Dr. Payne's physical exam was consistent with the MRI. He recommended several alternatives including surgery and epidural steroid injections, the latter of which Petitioner elected to pursue. (RX 4, 0005)

On April 15, 2008 Petitioner sent Jill Dillard and Mike McGiles an e-mail regarding upcoming surgery. Petitioner advised she would be having carpal and cubital tunnel surgery on May 13th (she could not remember if she had officially told them or not) and would be out for 6-8 weeks. Ms. Dillard responded by e-mail inquiring if she had another surgery on the 20th or was the one scheduled for the 13th moved to the 20th. (PX 11b)

On April 23, 2008 Petitioner sent an e-mail to Ed Wainscott advising him that she had spoken to Linda Thies on April 15, 2008 to let her know she would be having surgery on May 13, 2008 and would not be around to do the end of the year state reports. Ms. Thies advised her she would take care of it herself or find someone else. Petitioner and Wainscott exchanged responses whereby Wainscott

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wished Petitioner well and wondered if she would be returning before the summer vacation. Petitioner did not think she would. (PX 11c)

Petitioner underwent surgery with Dr. Greatting on May 13, 2008. He performed surgery on Petitioner's left hand and elbow.

Petitioner returned to see Dr. Greatting on August 21, 2008, after her left hand and elbow surgery. She reported using her arm without restrictions or limitation and she was released from care since she was at maximum medical improvement. Petitioner was told to return as needed. (RX 4, 0006)

Petitioner returned to see Dr. Greatting on October 15, 2008, for a dull aching sensation in her left elbow. Petitioner complained of some intermittent numbness but felt it could be related to her neck problems. Dr. Greatting suspected medial epicondylitis post-surgery and related to her earlier elbow surgery. Petitioner was given a corticosteroid injection. Dr. Greatting also noted Petitioner had been to therapy. (RX 4, 0009)

Petitioner presented to Dr. Bohan on January 6, 2009 regarding painful range of motion and pain at the back of her head. Petitioner reported having a ruptured disc in her neck on the left side and numbness down her arm with problems sleeping. Petitioner was prescribed flexeril. (RX2, 0008-9)

Dr. Payne re-examined Petitioner February 5, 2009 for right-sided cervical pain, Petitioner reported getting "much better" after her epidural injections. Petitioner's complaints that day were muscular in nature and located up over the occiput and back of her head. Dr. Payne suspected occipital neuralgia and referred Petitioner to Dr. Gelber for a nerve block. Petitioner's neurovascular exam was normal. (RX 4 -0010)

Dr. Gelber treated Petitioner for occipital neuralgia on February 13, 2009. (RX 4, 0011-12)

Dr. Bohan referred Petitioner to Dr. VanFleet for evaluation of Petitioner's neck. In his referral letter of March of 2009, Dr. Bohan noted Petitioner's neck symptoms had persisted despite conservative measures and that a 2005 MRI showed no evidence of disc herniation or spinal stenosis. (PX 3)

Petitioner was scheduled to see Dr. VanFleet on April 15, 2009. She completed a Spine Sheet questionnaire that same date indicating she had not had an accident but noted the first onset of pain in late 2007. Petitioner wrote, "Tightening in neck and back progressively have gotten worse over time - Notice it more during day when doing secretarial duties." Petitioner reported previously seeing Drs. Payne and Jung in 2007 and 2008. (PX 3)

When examined by Dr. VanFleet on April 15, 2009 Petitioner reiterated her onset date of late 2007. She also reported that Dr. Bohan had previously referred her to Dr. Payne. Petitioner had undergone 3 steroid injections to date. They would help initially especially with regard to resolution of her arm pain but it returns eventually. Petitioner's complaints included diminished range of motion with rotation bilaterally. She was not taking any medication and was still working. Petitioner was specifically interested in an opinion regarding the necessity of surgery. Dr. VanFleet ordered x-rays which showed normal cervical lordosis. He felt she had cervical disc disease with radiculopathy and ordered a cervical MRI. (PX 3)

A cervical MRI was performed on April 22, 2009. It revealed disc bulging and, possibly, a herniation to the left of midline at C5-6. Asymmetric osseous encroachment on the left neural foramen at C6-7 was also noted. (PX 3)

When re-examined by Dr. VanFleet on April 28, 2009, Dr. VanFleet recommended surgery in the form of a fusion at C5-6 and C6-7. Petitioner wished to think about it but believed she would probably proceed ahead. Dr. VanFleet noted that "Certainly it is likely, and also possible that her work has contributed to the difficulty that she is currently experienc[ing] in the form of an aggravation of a preexisting condition." (PX 3)

On April 21, 2009, Mary Lou Heaton documented that Petitioner had called to see if Mary Lou had heard back from Gloria Casey regarding Petitioner's May 19, 2009 surgery. Petitioner was informed surgery was not being authorized and if there were questions, the parties' attorneys should speak with one another. (RX 9, 0002)

On April 29, 2009 Petitioner advised Jim Bormann and Mary Lou Heaton that "due to a work related condition, [she would] be having surgery in the near future." She planned to let them, as well as her supervisors at the high school, know the date as soon as she did. (PX 11d)

On May 12, 2009 Petitioner advised Jim Bormann, Mary Lou Heaton, Mark Grounds, Jill Daillard, Kurt Spilker and Laurie Jokisch that her surgery had been moved up to June 1, 2009. (PX 11e)

Petitioner underwent surgery with Dr. VanFleet on June 1, 2009. (PX 3)

Petitioner followed-up with Dr. VanFleet thereafter. At her three month visit she was doing well with her only complaint being that of a little tightness in the interscapular area of her spine. Dr. VanFleet wanted to see her in three months. Petitioner called in on September 2, 2009 reporting she had just resumed her full work schedule the week before and was experiencing a sharp pain in her posterior neck. She declined a muscle relaxer and was told to continue with her stretching exercises. (PX 3) As of November 20, 2009 Petitioner was fusing nicely and Petitioner felt well overall with only occasional stiffness in her neck. (PX 3)

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Petitioner underwent a pre-employment physical for Memorial Medical Center on December 2, 2009. Petitioner was being considered for a position as a business office technician per diem at Jacksonville Family Medical Center. Petitioner's medical information sheet indicated she had undergone cervical spine surgery in May of 2009 and was still treating with Dr. VanFleet. Petitioner was also treating with Dr. Werries for left knee problems which were probably arthritic in nature. Petitioner reported she had no work restrictions from Dr. VanFleet and her knee was not preventing her from doing anything. On her questionnaire, she indicated she was "doing fine" after her spine surgery. Petitioner also reported undergoing left carpal and cubital tunnel releases and was symptom free and unbothered by them. A functional capacity evaluation was recommended and it was scheduled for later that day. (PX 2)

Petitioner underwent a Fitness for Duty exam as requested. She denied any significant functional limitation as a result of her medical conditions. Petitioner was later deemed qualified for employment with the following restrictions: no high force, high frequency tasks with her right arm. It was also recommended that she undergo an ergonomic evaluation at the job site when starting to work and that she undergo re-evaluations for any job changes. (PX 2)

Dr. VanFleet released Petitioner with no restrictions as of December 2, 2009. (PX 2)

Dr. Werries indicated she could work without any restrictions on December 3, 2009. (PX 2)

Petitioner settled her claim for repetitive trauma injuries to her left hand and arm (case # 09 WC 16423). Contracts were approved on December 16, 2009. The date of accident was 5/13/08. The accident was described as "Repetitive trauma from job duties." According to the contract, Respondent was provided with oral notice of the accident. The "Terms of Settlement" state that "This settlement includes all workers' compensation claims for this accident in any applicable jurisdiction." (RX 6)

Petitioner voluntarily terminated her employment with Respondent on January 15, 2010. (RX 9) Petitioner began working at Illinois College as a Data and File Processor effective January 18, 2010 (RX 10, 0005, 0011)

Per Commission records, Petitioner's Application for Adjustment of Claim in 10 WC 1035 was filed with the Commission on January 12, 2010 and alleged an accident date of May 13, 2008 and injury to Petitioner's hand(s). Petitioner's Application for Adjustment of Claim in 10 WC 1036 was filed with the Commission the same day and alleged the same date of accident but injury to Petitioner's neck and back.

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Dr. VanFleet re-examined Petitioner on May 21, 2010. Petitioner was doing well and had no complaints. She indicated she had done very nicely with only occasional stiffness noted in her back. Her fusion was described as "solid." She was released to return as needed. (PX 3)

Petitioner returned to see Dr. Greatting on June 17, 2010. She was scheduled for a right carpal tunnel release in the near future but was developing some right lateral elbow pain and right shoulder pain. Based upon his physical examination Dr. Greatting believed Petitioner not only had right carpal tunnel syndrome but also right lateral epicondylitis and right shoulder AC joint arthrosis/impingement. Dr. Greatting recommended elbow and shoulder injections while Petitioner was in surgery for her wrist. (PX 2)

Petitioner underwent a pre-operative visit with Dr. Greatting on July 9, 2010. (PX 2)

Petitioner underwent a right carpal tunnel release and elbow and shoulder injections on July 13, 2010. (PX 2)

Dr. Greatting authored a letter to Petitioner's attorney on July 19, 2010 setting forth his opinion that Petitioner's work for Respondent has caused, aggravated, or contributed to the development of Petitioner's right carpal tunnel syndrome. He noted Petitioner had been diagnosed with right carpal tunnel syndrome several years earlier. Dr. Greatting based his opinion on Petitioner's history to him. Dr. Greatting noted Petitioner had a long history of right hand numbness and tingling and her symptoms have gotten worse over time and in conjunction with her duties as a secretary for Respondent. Dr. Greatting noted Petitioner's job duties included typing, mousing, keyboarding, and writing. Petitioner had undergone surgery on her right wrist and her prognosis was deemed excellent with no permanent future problems related to the condition and surgery being anticipated. (PX 7)

At the request of Respondent Petitioner was examined by Dr. Howard on September 13, 2010. (RX 14)

Dr. VanFleet authored a letter to Petitioner's attorney on September 21, 2010 setting for his opinion regarding Petitioner's condition and its relationship, if any, to her work for Respondent. Dr. VanFleet stated that it was "plausible" that what Petitioner described at work (in terms of lifting and performing secretarial duties with her neck flexed and typing on a computer) could have exacerbated an underlying degenerative condition. Her prognosis was described as good although she could be a risk for degenerative disc disease in the form of a transitional syndrome adjacent to the fusion. (PX 8)

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Dr. Howard authored a supplemental report on November 23, 2010. Dr. Howard expounded on his causation opinion opining Petitioner's work at Illinois College would account for her problem, not her work for Respondent. (RX 14)

Petitioner was examined by Dr. Petkovich at Respondent's request on February 14, 2011 and a written report issued. (RX 13) Dr. Petkovich is a board certified orthopedic surgeon specializing in general orthopedic surgery with a specialty for spinal surgery. He performed a records review on September 14, 2010, a Section 12 evaluation on February 14, 2011, and issued a follow-up report on June 6, 2011. His deposition was taken on September 26, 2011. (RX 13)

Dr. Petkovich examined Petitioner and took a history of cervical spine discomfort beginning sometime in 2005. He noted the prior medical history, specifically the disc protrusion at C5-6 and the stenosis at C6-7 for which Dr. VanFleet performed surgery.

According to Petitioner's history, her job required her to work ten months out of the year and during the two months in the summer when she was not working that she received significant relief of pain from her symptoms. She stopped working for Respondent in early 2010 and was working a different job at home doing data entry.

Physical examination showed a normal heel-toe gait and examination of her cervical spine showed a well-healed cervical scar from the surgery. She had some decreased range of motion of the neck and X-rays obtained at his office showed good placement of the cervical surgery hardware.

The MRI study of the cervical spine obtained in 2008 and 2009 showed progressive stenosis and quite severe degenerative disc disease at C5-6 and C6-7.

Dr. Petkovich's diagnosis was degenerative disc disease at C5-6 and C6-7. If one assumes Petitioner's history of the neck pain resolving or becoming less severe in the summer months, then he was of the opinion that her work could have caused some exacerbation and possible acceleration of the underlying degenerative disc disease. However, Dr. Petkovich described exacerbation as a temporary condition. In other words, the work would not have caused any permanent condition of the neck. In addition, if one assumed that Petitioner had neck pain while off for the Christmas break in 2009, then the work would have no relationship whatsoever to the neck complaints.

On cross-examination, Dr. Petkovich explained that in his February 14, 2011, report, his statement that the work could have caused an exacerbation of the condition meant that, under the impairment guidelines, the definition of exacerbation is a temporary condition. At no time did Dr. Petkovich state Petitioner's work would have caused an aggravation of the degenerative disc disease or any condition in Petitioner's cervical spine. (RX 13)

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Dr. Timothy VanFleet's deposition was taken on April 20, 2011. (PX 9) Dr. Timothy VanFleet is a board certified orthopedic surgeon practicing in Springfield. Dr. VanFleet testified that he began treating Petitioner on April 13, 2009, after she had been referred to him by her family doctor, Dr. Bohan. Petitioner's primary complaint was arm pain. Dr. VanFleet initially diagnosed Petitioner with cervical disc disease accompanied by radiculopathy. He recommended an MRI that was performed on April 22, 2009 and revealed left-sided C6-7 foraminal stenosis and a left-sided disc protrusion at C5-6. Dr. VanFleet testified that the MRI findings were consistent with Petitioner's arm pain complaint.

After the MRI, Dr. VanFleet re-examined Petitioner on April 28 2009 and Dr. VanFleet recommended Petitioner consider a two level cervical fusion to address her persistent symptoms at C5-6 and C6-7. Surgery proceeded on June 1, 2009. Over time Petitioner's symptoms improved By November 20, 2009, Petitioner was doing well, displayed good range of motion about her neck, and had fused well. Petitioner had no restrictions at that point in time and while Dr. VanFleet could not recall exactly when he released Petitioner to go back to work, his usual practice is to do so between six and twelve weeks. Dr. VanFleet saw Petitioner one more time after that - May 21, 2010. She was a year out, healed, and had a solid fusion. According to Dr. VanFleet, everything looked good and Petitioner was fully released.

Both sides asked Dr. VanFleet several questions regarding the cause of Petitioner's spinal condition. Dr. VanFleet testified that at their initial two visits Petitioner mentioned to him that her left arm pain had been progressively worsening over time and that she noticed it more during the day when she was performing her secretarial duties that she described. Dr. VanFleet was unable to recall what duties she described to him but he testified to having "some idea" what most secretaries do. As such, Dr. VanFleet was of the opinion those duties could have had "an effect" on Petitioner's condition. He further testified that Petitioner's job duties could have exacerbated or aggravated both Petitioner's foraminal stenosis at C6-7 and her disc protrusion at C5-6. Dr. VanFleet based his opinion on his understanding that Petitioner's job duties required flexion, extension, and lateral rotation of her neck such that it would repetitive close down the neural foramen on a regular basis. Even if she had some underlying or pre-existing narrowing around the nerve, the repetitive movement of her neck "back and forth" could serve to exacerbate that underlying condition. However, Dr. VanFleet acknowledged that he did not know what degree of flexion, extension, or lateral movement of her neck was required by Petitioner's job. He also acknowledged that his opinion is based upon his making certain assumptions regarding the frequency of times Petitioner performed certain motions in a particular time frame. Dr. VanFleet was aware Petitioner typed, answered the phone, looked down at a computer screen, and "those sorts of things;" however, he had no knowledge how frequently she did so.

Dr. VanFleet agreed that an MRI would not reveal how long a condition has been present. He also agreed that foraminal stenosis, once diagnosed, can be a

progressive condition. The same is true for degenerative disc disease and Petitioner had both conditions. Dr. VanFleet further explained that individuals with degenerative disc disease and foraminal stenosis generally experience no symptoms although, over time, one can begin to feel neck pain. It can be axial neck pain or arm pain, if the nerve roots are becoming irritated.

According to Dr. VanFleet, Petitioner's arm pain began in 2007. Dr. VanFleet had no prior records to review, just a letter of introduction from Dr. Bohan advising him that Petitioner had a history of persistent neck pain which was not responding to conservative measures. He acknowledged a 2005 MRI which showed no evidence of a disc herniation or spinal stenosis but he, himself, did not review the MRI.

Dr. VanFleet was asked about the relationship, if any, between foraminal stenosis and general movement and discomfort. He explained that some people find relief from the condition by flexing their neck down somewhat. Extension and rotation are usually fairly painful; however, it can vary by the degree of the process. If the pain is secondary to a soft disc extrusion, it really won't matter what position one's neck is in – it will hurt all the time. In Petitioner's case, Dr. VanFleet believed her pain was coming from C6-7 but he wanted to include C5-6 in the surgery because of the apparent small disc protrusion which was towards the left. He also explained that stenosis can be changed by position. If one tilts away from the compression, one opens up the stenosis; tilting towards it, narrows it down. Dr. VanFleet did not believe Petitioner's job duties caused the stenosis but he definitely believed they contributed to the exacerbation of it. Dr. VanFleet also explained that he uses the term protrusion rather than herniation as the latter is a layperson's term. He prefers to use protrusion, extrusion or sequestration. A herniation is more of an extrusion where it has kinds of ruptured. What Petitioner had was basically a bulge.

Dr. VanFleet testified that the MRI cannot identify the length of time the protrusion has been in existence. One can also have a protrusion but not symptoms. Upper extremity strength testing could cause stenosis to become symptomatic and if done repetitively it could cause a protruded disc; however, those are usually the result of degenerative changes within the disc space. Weight-lifting might cause a protruding disc to become symptomatic, if it was in the right location. Dr. VanFleet could not recall if Petitioner ever told him she was a weight lifter or engaged in weight lifting.

Dr. VanFleet was not opining that Petitioner's work caused the protrusion to become any greater. His opinion between the work and the exacerbation of Petitioner's condition is based upon the fact that is what Petitioner related to him. Dr. VanFleet further explained that Petitioner's being away from work would not necessarily abate her complaints as it can vary by how much irritation has set into the nerve. If the pain was due to repetitive activity he doubted that stopping the activity for several hours would end the pain. Several weeks away might.

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Dr. Van Fleet agreed that he did not have a definition of "repetitive" in terms of motion in relation to Petitioner's job and in relation to any exacerbation of her condition. If Petitioner turned her head to the right and the left more than two times or several times per hour, that would be repetitive.

Dr. VanFleet did not believe there was a real special relationship between the disc protrusion and Petitioner's need for surgery. He was really focusing on the C6-7 problem. (PX 9)

Dr. Greatting's deposition was taken on March 27, 2012. (PX 10) Dr. Greatting is a board certified orthopedic surgeon who specializes in upper extremity conditions. He first examined Petitioner on December 9, 2004 for bilateral hand numbness and tingling. Petitioner had undergone an EMG/nerve conduction study with Dr. Trudeau that showed bilateral carpal tunnel syndrome and her examination was consistent with that. According to Dr. Greatting, Petitioner's symptoms had been very bothersome in August or September but by the time of their exam they weren't bothering her too much so they decided to simply observe the situation. Dr. Greatting eventually performed surgery in July of 2010 proceeding with the left wrist. According to Dr. Greatting, Petitioner did well post-operatively and she was released to return to work on August 23, 2010 which she did. When he saw her again on September 8, 2010 her symptoms had resolved albeit for some ongoing and not unusual tenderness at the incision site and she was released from care.

Dr. Greatting testified that Petitioner's work duties either caused or aggravated Petitioner's condition. Dr. Greatting recalled that Petitioner's history went back to 2004 and she worked as a secretary for Respondent. She had held that job for seven years and when she returned to school in August her symptoms returned when typing, driving and things such as that. She also experienced nighttime numbness. Petitioner described a pattern of symptoms where she would experience more symptoms during the school year and then it would get better during the summer when she didn't work. School would then resume and her symptoms would worsen again.

On cross-examination Dr. Greatting testified that he was unaware of Petitioner having any risk factors for carpal tunnel syndrome and that the condition can wax and wane depending upon one's activities. Petitioner was right-handed. Dr. Greatting further testified that he believed Petitioner was still working for Respondent when she underwent surgery in July of 2010. He did not know Petitioner had worked at Illinois College or what she did there. He did not believe Petitioner worked for Respondent during the summer months because Petitioner told him so. Dr. Greatting acknowledged that he examined Petitioner in June of 2010 and that her symptoms had progressed enough that she wished to have surgery performed during the summer. He did not know what Petitioner was doing for the six months preceding June of 2010. (PX 10)

Petitioner's Testimony at Arbitration

Petitioner testified she worked for Respondent for twelve years as an attendance secretary for the high school. Petitioner voluntarily left Respondent's employment on January 15, 2010.

Petitioner described her job duties as data entry which included typing, entering attendance records for 1100 students and that she worked 8 hours a day 5 days per week. Petitioner did not work during the summer months or during holiday breaks. Petitioner answered the telephone, gave out passes to students, and filed documents.

Petitioner testified she began having problems with her hands during 2004. Petitioner testified she was diagnosed with bilateral carpal tunnel syndrome and cubital tunnel syndrome in her left elbow by Dr. Trudeau. She testified that her symptoms continued to increase from 2004 until 2008 at which time she also began having problems with her back and her neck. Petitioner testified that she would begin her work day with some discomfort in her hands, her elbow, and her neck and, as the work day progressed, the pain and discomfort would increase. Petitioner testified she returned to Dr. Trudeau when her right and left wrists were becoming more symptomatic. Petitioner continued working for Respondent. Petitioner testified that she had surgery on her left hand and elbow on May 13, 2008. It was at this point when she was taken off work for the first time due to her injuries.

Petitioner testified that she chose to have surgery on her left hand and elbow first as she had been told that relieving those symptoms might help her other hand and her back problems.

Petitioner testified that when school started in August of 2008 she felt increased complaints in her neck and right hand. Petitioner testified she did not work during the Christmas/winter break. Winter break for the 2008/2009 school year was between December 20, 2008 and January 5, 2009 and Petitioner did not work for Respondent during that time.

Petitioner testified that her work station for Respondent was adjusted. Her computer was placed higher and her chair was adjusted. This was during the 2008-2009 school year.

Petitioner testified she underwent neck surgery in June of 2009. Up until then she described her neck pain as "excrutiating" or a "10/10." Petitioner described her pain upon wakening as a "4" and that it would be "off the scale" after work. Petitioner did not want to take time off from work to have the surgery so she waited for summer vacation. Petitioner testified that the surgery provided instant relief and by August of 2009 she was returning to work and her neck was fine. She also testified that her right hand was pretty good.

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Petitioner testified to increasing complaints when school began in August of 2009.

Petitioner testified she decided to leave Respondent's employment and underwent an employment physical for a part-time job at Memorial Medical Center in Springfield, Illinois on December 4, 2009 (Respondent's Exhibit 4-20).

Petitioner left Respondent's employment on January 15, 2010 and went to work for Illinois College. By the time she left Respondent her hand pain was an "8,9,10." Petitioner eventually returned to see Dr. Greatting and underwent surgery.

Petitioner testified that she had surgery on her neck on June 1, 2009, and her right hand on July 13, 2010. Petitioner testified that her right hand felt better after her surgery.

Petitioner testified that she sent e-mails and had conversations with representatives of Respondent regarding her condition.

Petitioner no longer works for Illinois College. Her position was to become full-time and she did not wish to work full-time. Petitioner worked for a short time at the Farm Business/Farm Management office doing part-time data entry on tax claims. She voluntarily left that job because she didn't wish to work there any longer. Petitioner currently works for a company which sells candle ("Scentsy") and bags up products for the director. Her hobbies include scrapbooking, painting (walls), ballroom dancing, and reading.

The Arbitrator concludes:

1. On the one hand (no pun intended) Petitioner sustained an accident on May 13, 2008 which arose out of and in the course of her employment with Respondent. This is based upon RX 6, the settlement contract entered into between the parties in 09 WC 16423 (d/a: 5/13/08). Notice of that accident was given as also referenced by the settlement contract in 09 WC 16423 (RX 6). The bigger issue in these claims is whether Petitioner's right carpal tunnel syndrome and neck condition are causally connected to the May 13, 2008 accident and Petitioner's work duties for Respondent.
2. While Petitioner sustained an accident on May 13, 2008, that accident was solely with regard to Petitioner's left upper extremity as that is the date she underwent surgery on that extremity. Nothing suggests Petitioner's right carpal tunnel syndrome or cervical condition manifested itself on that date.

Petitioner failed to prove that her right carpal tunnel syndrome and cervical spine condition were causally connected to Petitioner's job duties for Respondent and/or the accident of May 13, 2008. Petitioner was diagnosed with right carpal tunnel syndrome dating back to, at least, 2004. Her

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complaints would wax and wane. In November of 2005 when re-examined by Dr. Greatting, Petitioner's bilateral carpal tunnel syndrome was described as "mild" and he noted, "in fact, [Petitioner] appeared essentially asymptomatic." Her 2005 EMG had been negative for right carpal tunnel syndrome. Thereafter, Petitioner sought no further treatment for her right hand until January of 2008. Dr. Greatting believed Petitioner's work activities were causing or contributing to her condition. Electrodiagnostic studies showed bilateral carpal tunnel syndrome. Petitioner proceeded to have surgery on her left upper extremity but not the right. Thereafter, she had no further treatment to her right hand/wrist until after she had left Respondent's employment and was working for Illinois College. In the interim, Petitioner had seen Dr. Greatting on several occasions but never mentioned any right-sided upper extremity complaints. In the meantime, Petitioner settled her May 13, 2008 repetitive trauma claim which arguably included a waiver of rights regarding any other claims stemming from that accident. In the meantime, Petitioner underwent a fitness for duty exam for another job at Memorial Medical Center and indicated that she was symptom free from her right carpal tunnel syndrome and it was not bothering her. Petitioner presented no information suggesting her right carpal tunnel syndrome was any type of ongoing medical problem when she left her employment with Respondent. During her Fitness for Duty exam she denied any current paresthesia. Petitioner did not resume treatment for any right upper extremity problems until 2010 after going to work for a different employer.

Based upon this record, it appears that Petitioner's right carpal tunnel syndrome manifested itself back in 2004 when Petitioner was originally diagnosed with the condition and felt it was related to her job duties with Respondent. The test of whether a claim is timely filed is centered around the claimant's knowledge/awareness of a work-related injury. This record indicates Petitioner knew that in 2004. Indeed, she told Dr. Greatting to bill worker's compensation and referenced an accident date of "8/27/04." Since Petitioner's claim was not filed until January 12, 2010, the claim is barred by the statute of limitations.

Petitioner further knew she had a work-related right carpal tunnel syndrome in January of 2008 when she sought additional treatment for ongoing complaints but even if this Arbitrator amends the date of accident for the right hand to January of 2008 Petitioner's claim must be denied because of lack of notice. The record is devoid of evidence indicating Petitioner gave notice of a January 2008 accident to her right hand/wrist.

Dr. Greatting's causation opinion is not persuasive given his limited knowledge of Petitioner's activities outside of her employment with Respondent, his lack of knowledge concerning the complete resolution of her symptoms in 2009, and additional relevant information after she stopped working for Respondent.

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Petitioner's right lateral epicondylitis which Dr. Greatting diagnosed in June of 2010 is not causally related to Petitioner's accident of May 13, 2008 or her employment with Respondent. Dr. Greatting noted she was "developing" some lateral epicondylitis when he saw her in June of 2010. This would be a new complaint never having been previously mentioned or complained about.

Petitioner's neck complaints are not causally related to the May 13, 2008 accident or Petitioner's employment duties with Respondent. The medical records indicate Petitioner's neck complaints go back to at least 2004 when she was seen for "recurrent neck pain." When complaints are noted in the records they are associated with a variety of causes - moving items, summer vacation, and weight lifting as examples. The only reference to Petitioner's secretarial duties is found in Dr. VanFleet's April 15, 2009 Spine Sheet questionnaire in which Petitioner described an onset date of late 2007 associated with secretarial duties. While Dr. VanFleet opined that Petitioner's job duties for Respondent contributed to or caused her cervical condition the Arbitrator is not persuaded by Dr. VanFleet's testimony as he did not have a complete knowledge and understanding of Petitioner's medical history - both with regard to her spine condition and her prior left upper extremity problems. He was under the impression Petitioner's arm pain began in 2007 which was incorrect. Furthermore, he acknowledged Petitioner never said anything about her weight training activities which he agreed could cause symptoms. Finally, Dr. Van Fleet really knew no particulars or specifics regarding Petitioner's secretarial duties for Respondent.

In summary, one can conclude Petitioner sustained an accident on May 13, 2008 which arose out of and in the course of her employment with Respondent but that she failed to prove her conditions of ill-being in her right hand, right elbow, and cervical spine were causally related to that accident. Alternatively, one can also conclude that Petitioner failed to prove that she sustained a repetitive trauma accident on May 13, 2008 because she failed to prove that her right hand, right elbow, and cervical spine conditions arose out of her employment with Respondent or manifested themselves on that date. Either way, Petitioner's claims for compensation are denied and no benefits are awarded.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Adam Hamdaoui,
Petitioner,

vs.

NO: 02 WC 06423

Fedex Express,
Respondent,

14IWCC0524

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 the Arbitrator erring by allowing John Shegg's testimony more than three months after the first hearing date without good cause shown over Petitioner's objection in violation of 50 Illinois Administrative Code, Section 7030.20. Testimony must be stricken, maintenance benefits, accident, benefit rate, temporary total disability, causal connection, medical expenses, penalties and fees, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 12, 2013 is hereby affirmed and adopted.

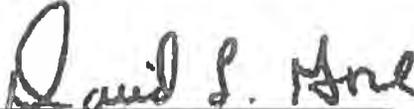
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 30 2014

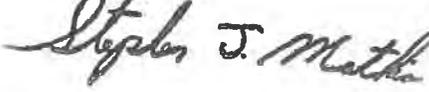
MB/mam
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43



Mario Basurto



David L. Gore



Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HAMDAOUI, ADAM

Employee/Petitioner

Case# 02WC006423

14IWCC0524

FEDEX EXPRESS

Employer/Respondent

On 8/12/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

4227 PFISTER EDWARD M LLC
440 W BOUGHTON RD SUITE 204
WEBER PLAZA
BOLINGBROOK, IL 60440

2912 HANSON & DONAHUE LLC
KURT HANSON
900 WARREN AVE SUITE 300
DOWNERS GROVE, IL 60515

14IWCC0524

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

Adam Hamdaoui

Employee/Petitioner

v.

FedEx Express

Employer/Respondent

Case # **02 WC 06423**

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 **Svetlana Kelmanson**, Arbitrator of the Commission, in the city of **Chicago**, on **12/13/2012, 12/18/2012, 2/7/2013, 3/7/2013, 4/4/2013 and 5/16/2013**. 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 _____

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FINDINGS

On **12/21/2001**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of the alleged accident *was* given to Respondent.

On the date of alleged accident, Petitioner was **29** years of age, *single* with **0** dependent children.

ORDER

Claim for compensation is denied. Petitioner failed to prove he sustained an accident on December 21, 2001, that arose out of and in the course of his employment with Respondent.

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

8/10/2013

Date

AUG 12 2013

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On February 6, 2002, Petitioner filed an application for adjustment of claim, alleging that on December 21, 2001, he sustained accidental injuries to his low back while lifting boxes at work.

Petitioner, a native of Morocco, testified without the aid of an interpreter that his birth name was Abdelhak Hamdaoui. He immigrated to the United States in 1999. Approximately 10 years ago, he legally changed his name to Adam Harvard. Subsequently, in 2006, he legally changed his name to Adam Hamdaoui when he became a United States citizen. Thus, his medical records and other documents are under these three different names. Respondent was satisfied that Petitioner had adequately established his identity, and the medical records he introduced into evidence are his.

Regarding his English language proficiency, Petitioner testified that when he immigrated to the United States, he could understand English. However, it was hard for others to understand him because of his accent. His ability to read English was "very poor" at the time, but is much better now.

Petitioner further testified that in June of 2000, he started working part-time as a package handler for Respondent's Schaumburg distribution center. His job duties included unloading packages, weighing up to 150 pounds, from trucks or a conveyor belt. When he was unloading packages from a conveyor belt, he had to turn to stack each package into an appropriate container. He then pulled or pushed a loaded container to a semitruck. Petitioner's regular work schedule was five to six hours a day in the evenings, Monday through Friday. Sometimes, he was scheduled to work on Saturdays. Petitioner variously testified that it was mandatory to work on a scheduled Saturday and that he could ask to be off on a scheduled Saturday; in other words, Saturdays were flexible. Petitioner stipulated his average weekly wage from his employment with Respondent during the year preceding December 21, 2001, was \$257.02.

Petitioner further testified that he concurrently worked as a marketing director and martial arts instructor for Champion Jiu Jitsu (Champion), a martial arts academy, beginning in August of 2000. Petitioner explained that he had a black belt in jiu jitsu. Petitioner's work hours at Champion were in the morning and early afternoon, Monday through Saturday. His annual salary from Champion was \$35,000.00. In addition, he earned a commission for selling various items and signing up new students. Petitioner introduced into evidence his W-2 and 1099 forms from Champion for the year 2001 to that effect. Petitioner maintained that on multiple occasions he advised John Shegog, his supervisor with Respondent, of his concurrent employment. Petitioner stated he stopped working for Champion upon becoming injured on December 21, 2001.

The following testimony was elicited on direct examination regarding notice to Mr. Shegog of Petitioner's concurrent employment:

"Q. [W]hen you spoke with Mr. [Shegog] about your employment with Champion, do you recall where the conversations may have taken place?

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A. Yes. I recall sometimes in his office and sometimes *** in cafeteria or working around the warehouse during the work hours before or after shift.

Q. Do you remember specifically how many times you spoke with Mr. [Shegog] about your job?

A. It was often, like, most of the time, yes.”

Petitioner stated that on multiple occasions he invited Mr. Shegog to train or attend events at Champion. Also, he told Mr. Shegog about his concurrent employment with Champion when he was scheduled to work for Respondent on a Saturday and had a conflict because he had to work at Champion. In November and December of 2001, Respondent’s distribution center was busy because of holiday shipping, and Mr. Shegog asked Petitioner to work on Saturdays. On at least one occasion, Petitioner told Mr. Shegog he could not do it because he needed to attend an event for Champion.

The following colloquy occurred after Petitioner testified he wore a T-shirt with Champion’s logo to work at Champion:

“Q. [W]ere you ever scheduled to work both jobs the same day; in other words, Champion during the day and [Respondent] in the evening?

A. Yes.

Q. And when you went to work at [Respondent], did you always change out of your Champion shirt?

A. Yes.

Q. You took it off?

A. Yes.

Q. Did you ever wear it at [Respondent]?

A. Depending; not always, but sometimes.

Q. So there were occasions where you wore your Champion shirt at [Respondent]?

A. Yes.

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Q. To the best of your recollection, did Mr. [Shegog] ever comment about your Champion shirt?

A. Yeah.

[H]e called me 'Champ,' and *** this is sometimes whenever when I came to my work with my uniform. He told me: Adam, why—Come on, Champ, why don't you change your clothes? Because he was mad at me during the shift that I didn't wear my uniform, FedEx shirt."

Petitioner further testified that he socialized with Mr. Shegog outside of work at "clubs and the bar," which happened "[m]ost of the time or most of the weekend almost." Petitioner explained those were social events with the work team late in the evening, after work hours. Petitioner continued that if Mr. Shegog was angry at him for wearing a Champion shirt to work, he waited "until we went to the bar clubbing, and *** apologized to him," promising not to do it again.

Petitioner acknowledged prior treatment for a back condition, explaining he was involved in a car accident in August of 2000. Petitioner testified he treated with a doctor and missed approximately a month of work, returning to his regular duties with Respondent and Champion in September or October of 2000. Petitioner denied undergoing an MRI or CT scan after the car accident. Further, Petitioner denied having any residual symptoms in his back after returning to work, stating his back was "perfect" and "great." On September 10, 2001, Petitioner started treating for low back symptoms with Dr. Lord, a chiropractor. Petitioner did not recall any specific incident causing his back symptoms in September of 2001. Dr. Lord took him off work through October 8, 2001. Petitioner denied undergoing any diagnostic tests during that time period. In October of 2001, Petitioner again returned to work full duty for both employers. Petitioner testified that until December 21, 2001, his back felt "perfect" and "normal," denying any residual symptoms.

Petitioner further testified that on December 21, 2001, a Friday, he was scheduled to work at the distribution center from 5 p.m. until midnight. The volume of packages that day was double, if not triple, the usual amount. Petitioner was unloading packages from a conveyor belt and stacking them into containers. In the middle of his shift, while pulling a heavy box off the conveyor belt, he felt sharp pain in his low back. He continued to work; however, the pain kept getting worse and radiated to his left buttock. Petitioner stated he reported the pain to Mr. Shegog and continued working, finishing his shift. Upon further questioning, Petitioner elaborated:

"Right away I started to feel very sharp pain in my back. I screamed to him. I will never forget this moment because it messed up my life. I told him: John, I have very bad pain in my back, and he said: Come on, Champ. You're going to make it. Don't worry. We'll talk about it at the end of the shift."

According to Petitioner, Mr. Shegog was standing on the stairs "on top of the conveyor belts." Petitioner affirmed that he continued working and finished his shift. Before leaving for the day, he spoke with Mr. Shegog, "begging" Mr. Shegog to take him off work the following day because of intense pain. According to Petitioner, Mr. Shegog responded: "We are very short staffed. Please, I need you. We have more higher volume. We need you, man. I depend on you." Petitioner therefore agreed to work the following day, a Saturday.

Petitioner further testified that he could not sleep that night because the pain was so sharp. He returned to work on Saturday and performed his regular duties, even though the pain continued to get worse. On Sunday, December 23rd, Petitioner was off work and rested. Petitioner returned to work on Monday, December 24th and performed his regular duties as a package handler. On Christmas Day, December 25th, the distribution center was closed. Petitioner returned to work on December 26th and continued to work full duty through December 31st, even though the pain was "very sharp" and "unbearable." Petitioner stated that he spoke with Mr. Shegog about his back pain "[a]lmost every day" during that time period, explaining: "I was telling him to take me off from work, and he was not able to take me off from work because we have a short staff." Petitioner testified he did not return to Champion after December 21st because he had a really hard time performing his job duties for Respondent and had trouble sleeping because of the pain. Petitioner admitted he did not seek medical attention between December 21 and December 31, 2001. On cross-examination, Petitioner admitted that his job at Champion was considerably lighter duty than his job with Respondent.

On January 4, 2002, Petitioner returned to Chiropractor Lord for treatment. The medical records from Dr. Lord show that Petitioner complained of low back pain with radiation to the legs, which he attributed to a work injury on December 21, 2001. However, a "Work/Comp History" questionnaire signed by Petitioner on January 4, 2002, contains the following description of the accident: "It's hard to detect, although during the holiday season I was assigned to lift packages in average of 30-170+ lbs." Elsewhere in the questionnaire, Petitioner indicated the pain began gradually. He reported the pain was getting worse, rating it an 8/10, even though he was taking Hydrocodone, Ultram, Naproxen and Cyclobenzaprine. In her clinical note, Dr. Lord recorded the following history: "Pt states he was lifting at work and felt a sharp pain in his low back. This pain has gradually gotten worse to the point where he cannot work, sleep or sit comfortably." Dr. Lord ordered X-rays and an MRI and took Petitioner off work from January 4 until January 7, 2002.

On cross-examination, Petitioner admitted signing the "Work/Comp History" questionnaire. The following colloquy then occurred:

"Q. So [Dr. Lord] was asking you about what happened, and you gave her a history?

A. I think so.

Q. When asked to describe in your own words about this accident, is it correct that you told the doctor: It's hard to detect, although during the holiday season I was assigned to lift packages of an average of 30 to 170-plus pounds.

Does that sound accurate?

A. That's what she wrote."

On redirect examination, Petitioner denied completing the questionnaire, stating that his girlfriend and Dr. Lord completed it. Petitioner, however, admitted describing the accident to his girlfriend and her writing down the description of the accident in the questionnaire. The following colloquy then occurred:

"Q. [T]he answer *** it's hard to detect although during the holiday season I was assigned to lift packages in [excess] of 130 pounds, is that what it says to you?

A. Yes.

Q. That's a correct statement, is it not?

A. Yes.

Q. But you had also described for us in your testimony a specific incident, correct?

A. Yes.

Q. And the specific incident isn't necessarily put here is what you're generally doing, correct?

A. Yes."

Petitioner further testified that on January 7, 2002, he attempted to return to his regular duties with Respondent. However, he "wasn't able to do it" because of very sharp pain in his buttocks, radiating down the legs. Petitioner spoke with Mr. Shegog about his symptoms, and Mr. Shegog let him leave work early. Petitioner then sought emergency treatment at Alexian Brothers Medical Center (Alexian Brothers).

The medical records from Alexian Brothers show that at approximately 8 p.m. on January 7, 2002, Petitioner sought emergency treatment for back pain. The triage nurse noted a history of ongoing back problems, which have been getting worse since November. The attending physician recorded the following history: "[The patient] states over the past two months he has had worsening lower back pain, especially on the left, some radiation to both legs, No paresthesias. The pain is much worse with range of motion of the torso. The patient lifts at work, and the pain is worse at work and with lifting." X-ray of the lumbar spine was unremarkable. The attending physician prescribed medication and instructed Petitioner to follow up at Alexian Brothers Occupational Health Clinic the following day.

On January 10, 2002, Petitioner returned to Dr. Lord and continued to treat with her through January 23, 2002. An MRI performed January 15, 2002, showed a left-sided disc herniation at "L4," "compromising the left neural foramen and the left L5 nerve root." On January 16, 2002, Dr. Lord referred Petitioner to Dr. Cybulski, a neurosurgeon. Dr. Lord's medical records are inconsistent regarding whether she took Petitioner off work or released him to return to work on restricted duty.

Petitioner testified that neither Respondent nor Champion offered him light duty work, and Respondent did not pay workers' compensation benefits or authorize medical treatment.¹ Petitioner therefore sought treatment through his group health insurance plan. Petitioner's primary care physician, Dr. Glick, referred him to Dr. Broderick, a neurosurgeon.

The medical records from Dr. Broderick show that on February 19, 2002, Petitioner complained of pain in the low back and left leg. The new patient questionnaire states the following description of accident: "During work hours @ Fed-Ex in the holiday season on December 21, 2001, I was pulling, pushing, lifting packages of 75+ lbs into cans. From bending, twisting I started to feel excruciating pain." Dr. Broderick recorded the following history: "He states the pain began while he was at work lifting packages on the 21st of December 2001. He was pushing and lifting packages that weighed up to 75 pounds when he bent and turned to push a package down the line and had the onset of severe back pain." Dr. Broderick reviewed Petitioner's MRI and diagnosed a left L5 lumbar radiculopathy secondary to a left-sided disc herniation at L4-L5.

On April 26, 2002, Dr. Levin examined Petitioner at Respondent's request. Petitioner complained of persistent low back pain with radiation down the left leg, which he attributed to performing his job duties for Respondent on December 21, 2001. Rather than describing a specific injury, Petitioner alluded to "pulling, bending and pushing more than usual" because of high workloads. Dr. Levin noted that an MRI showed a moderate left-sided disc herniation at L4-L5. Dr. Levin was apparently unaware of Petitioner's prior low back problems. Based on the history Petitioner provided, Dr. Levin opined there "would be causal connection" between Petitioner's job duties and his symptoms, qualifying that her opinion could change if it came to light that another activity, such as practicing jiu jitsu, caused the symptoms. Dr. Levin recommended an EMG and released Petitioner to return to work on restricted duty.

Petitioner testified he promptly notified Mr. Shegog and the owner of Champion about the changes in his work status, including the time on July 16, 2002, when he "went directly to [Mr. Shegog's] office" from Dr. Broderick's office, met with Mr. Shegog, and handed him an off work slip.

On cross-examination, Petitioner was asked when Champion terminated his employment. Petitioner's responses were inconsistent and confusing. Ultimately, Petitioner testified that he did not remember when that occurred, explaining that he took or mailed all his work status slips to Champion and was told by "[t]he owner and the employee," Jinko Julian and Bruce Asu, that they did not want him to come back because of the restrictions. However, Petitioner told his

¹ Petitioner admitted that Respondent's workers' compensation carrier denied his claim on January 28, 2002.

vocational rehabilitation counselor, Joseph Belmonte, that his brother operated Champion. (See Petitioner's Exhibit 37, page 50.)

John Shegog testified that he had retired from Respondent's employ in October of 2003. In December of 2001 and January of 2002, Mr. Shegog was evening operations manager with Respondent, supervising 60 employees. Petitioner worked as a package handler under Mr. Shegog's supervision, and his work hours were 5 p.m. until 11 p.m., Monday through Friday. Mr. Shegog did not generally schedule Petitioner to work on Saturdays. He did not recall whether he had ever asked Petitioner to work on a Saturday. Mr. Shegog explained that Respondent's Saturday operations were very limited, and a number of employees had requested Saturday hours.

Mr. Shegog did not remember Petitioner ever mentioning that he concurrently worked for Champion or inviting Mr. Shegog to join Champion or attend a jiu jitsu tournament. Mr. Shegog also denied calling Petitioner "Champ." Mr. Shegog further testified that Respondent required its employees to wear a uniform polo shirt. Had Petitioner ever showed up for work not wearing the uniform, Mr. Shegog would have asked him to change into one of the extra uniform polo shirts he had on hand. Mr. Shegog did not recall Petitioner ever wearing a Champion shirt to work.

Mr. Shegog further testified that Petitioner first reported a work injury to him on January 9, 2002, and he completed an accident report the same day by entering information into the computer, pursuant to the company policy. Mr. Shegog denied witnessing an incident where Petitioner screamed out in pain or asking Petitioner to work through pain. Rather, if an employee was injured, Mr. Shegog would try to get him medical attention, find someone to replace him, and complete an accident report. Mr. Shegog would not ask an injured employee to continue working, even if Respondent was short staffed. Mr. Shegog had wondered why Petitioner waited until January 9, 2002 to report an accident that occurred on December 21, 2001, but did not investigate the accident. The accident report in evidence indicates that Petitioner reported a back injury as a result of loading a container of freight and moving back and forward in and out of the container.

Mr. Shegog remembered Petitioner as a likeable person. Mr. Shegog admitted that he invited his team members to a bar for pizza approximately once a month, explaining that he did so to build morale. Mr. Shegog denied otherwise socializing with Petitioner outside of work. Mr. Shegog recalled Petitioner giving him an autographed Barry Sanders Detroit Lions jersey as a gift. Mr. Shegog was touched and concerned about the cost of the gift. Mr. Shegog did not recall Petitioner telling him not to worry about the cost because he had a second job.

Mr. Shegog further testified that Respondent required its employees to call if the employee was going to be absent from work. Mr. Shegog wrote up employees who did not call to report an absence. If the absence was three days or more, Mr. Shegog considered it job abandonment. Mr. Shegog did not remember whether Petitioner worked January 2 through January 4, 2002, a Friday. If Petitioner did not, he would have had to call in absent. Petitioner could have reported an absence to another individual. Mr. Shegog did not remember anything unusual involving Petitioner on January 7, 2002, and did not recall whether Petitioner had left

work early that day. Mr. Shegog maintained Petitioner first reported a work injury on January 9, 2002, because that was the date of the accident report. Mr. Shegog denied having any contact with Petitioner after he stopped working under Mr. Shegog's supervision.

Mary Meissner, Respondent's human resources specialist, testified that managers reported work accidents electronically, using a computer system. Respondent's computer system shows Mr. Shegog entered an accident report on January 9, 2002, the day the accident was reported to him.

Catherine Higuera, a team supervisor with Respondent's third party claims administrator, testified that the adjuster's notes indicate the adjuster took a recorded statement from Petitioner, which was not transcribed because the tape was bad. Furthermore, recorded statements are not generally transcribed, and the notes serve as a backup. Ms. Higuera testified that the adjuster's notes were cursory, and she could not tell when Petitioner's statement was taken. The adjuster's notes in evidence indicate Petitioner reported an injury to the left side of the low back as a result of handling and moving boxes, but indicated he could not identify a specific precipitating event.

Petitioner testified in rebuttal that the work accident occurred on December 21, 2001, in the manner he had testified to on direct examination, and he reported it to Mr. Shegog the same day. Petitioner denied describing the accident differently to his medical providers. Petitioner further testified that Mr. Shegog never asked him to review the accident report for accuracy. Petitioner continued that he began losing time from work on January 2, 2002, but attempted to return to work on January 7, 2002. Petitioner maintained he asked Mr. Shegog's permission to leave work early on January 7, 2002, because of sharp low back pain from the work accident. Petitioner denied returning to work on January 9, 2002, and stated that he never returned to work under Mr. Shegog's supervision after January 7, 2002.

Petitioner further testified that he and Mr. Shegog were "very close." When Petitioner gave the Barry Sanders jersey to Mr. Shegog as a gift, Mr. Shegog was very touched, although he expressed concern over the expense of the gift. Petitioner told Mr. Shegog that he had money because he also worked at Champion. Petitioner testified that during the year and a half he worked under Mr. Shegog's supervision, he mentioned to Mr. Shegog at job with Champion more than 50 times. Petitioner maintained that Mr. Shegog saw him wear Champion shirts to work and called him "Champ." Lastly, Petitioner testified that he had not spoken with Mr. Shegog since January 7, 2002.

Petitioner further testified that in late fall of 2002, he returned to work for Respondent as a supply room clerk. The light duty job was supposed to fall within the restrictions imposed by Dr. Broderick. Champion did not offer him a light duty job. According to Petitioner, the job of supply room clerk still involved a lot of standing, sitting, bending and twisting, and exceeded his restrictions. In addition, he was scheduled to work a split shift, with a two to three hour break. Petitioner testified that his back pain increased with prolonged standing and sitting, and his symptoms progressively worsened over time. On October 24, 2003, Petitioner went on medical leave because of severe low back pain, and resumed active treatment for his low back condition. In May of 2004, Respondent terminated Petitioner's employment.

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Petitioner further testified that in 2005, he worked for two and a half months as a rental agent at an apartment complex. Petitioner explained that his girlfriend, who was the general manager, got him the job. When asked about his job duties, Petitioner responded: "I don't know. She hired me, but she'd do all my job. She helped me get money." Petitioner recalled showing the apartments to prospective tenants "a little bit." Petitioner left the job in May of 2005 when his girlfriend left. For approximately two weeks in July of 2005, Petitioner was a trainee at a mortgage company, working from home. He continued to look for work because the mortgage company wanted him to work full-time from the office, which he felt he could not do. From September through December of 2005, Petitioner worked from home for another mortgage company as a broker. During that time, he obtained a mortgage broker's license. From 2006 through May of 2007, Petitioner worked for a third mortgage company, also from home. When the mortgage industry experienced a downturn, his employer wanted him to work full-time from the office. Petitioner stopped working because he felt he could not do that. He had been unsuccessfully looking for work until April 26, 2010, when he abandoned his job search. Petitioner's job search logs in evidence show that in many instances he failed to list the prospective employer.

The medical records in evidence show that from 2002 through 2010, Petitioner underwent conservative treatment on and off with various providers for low back and left-sided radicular symptoms. Repeat MRI studies continued to show a left-sided disc herniation at L4-L5. However, a lumbar myelogram and post-myelogram CT scan performed November 7, 2008, showed no significant pathology. On November 11, 2008, Dr. Broderick reviewed the results of the lumbar myelogram and post-myelogram CT scan, as well as the results of SSEP testing, noting that the SSEP test showed chronic radiculopathy in the left L5 and S1 dermatomes. Dr. Broderick diagnosed chronic radiculopathy without any evidence of compressive pathology in the lumbar spine, and recommended against surgery.

On March 28, 2008, Dr. Ghanayem, a spine surgeon, examined Petitioner at Respondent's request, and on January 12, 2010, he issued a supplement report after reviewing additional medical records. Dr. Ghanayem testified via evidence deposition on July 25, 2011, that Petitioner did not relate a specific accident in December of 2001, instead attributing his back pain to having to work harder because of the holiday season. Petitioner complained to Dr. Ghanayem of low back pain radiating to the left buttock and leg. On physical examination, straight leg raise test was negative. Dr. Ghanayem reviewed Petitioner's medical records and interpreted the MRI studies from January and September of 2002 as showing a left-sided disc protrusion or herniation at L4-L5 impinging on the left L4 nerve root. Dr. Ghanayem thought Petitioner's subjective complaints did not correlate with objective diagnostic findings. Dr. Ghanayem further noted that the medical records from Alexian Brothers referred to a history of back pain since November of 2001. Regarding causal connection, Dr. Ghanayem stated: "I couldn't find a root cause for his nonobjective subjective complaints of pain." Lastly, Dr. Ghanayem opined that Petitioner did not require further treatment and could return to work full duty.

The medical records in evidence further show that Petitioner sought surgical consultation on a number of occasions, most recently in 2010 with Dr. Lorenz. Ultimately, Petitioner decided not to undergo surgery. On April 26, 2010, after Petitioner underwent a functional capacity

evaluation, Dr. Lorenz imposed permanent sedentary to light duty restrictions, limiting Petitioner to working no more than three hours a day. In his evidence deposition, taken December 29, 2010, Dr. Lorenz opined that Petitioner's prognosis was poor.

Regarding his current condition, Petitioner testified that he suffers from constant low back pain with radiation to the left leg. He can only sit for 15 to 30 minutes before needing to change positions. Likewise, he cannot stand for prolonged periods of time. The pain is worse with bending and lifting, and wakes him up at night. He takes over-the-counter ibuprofen, limits his activities and lies down to help alleviate the pain. Petitioner has gained a lot of weight since December of 2001. In his testimony, Petitioner alluded to difficulty obtaining treatment for his low back condition. However, the medical records show that since January of 2002 Petitioner received treatment for a number of other health conditions, including sleep apnea, chest pain and abdominal and liver problems. On cross-examination, Petitioner testified that he received treatment for his multiple unrelated health problems "through insurance of [his] girlfriend," which refused to authorize treatment for his low back problems because "it is *** a work injury." Petitioner then stated the bills for the treatment he received for abdominal pain were never paid. Petitioner next indicated the group health insurance he had through Respondent paid for some of the treatment for his low back condition.

Joseph Belmonte, a certified vocational rehabilitation counselor, testified via evidence deposition on September 7, 2012, that he performed a vocational assessment of Petitioner at the request of his attorney. Petitioner related to Mr. Belmonte his multiple health problems, including depression and occasional suicidal thoughts. Petitioner further related to Mr. Belmonte difficulties or limitations with getting dressed, sitting for longer than 15 minutes, standing for longer than 10 minutes, stooping, bending or driving a car. Mr. Belmonte also reviewed medical records from Dr. Lorenz and Dr. Broderick, and a report from Dr. Ghanayem. Regarding his education, Petitioner reported to Mr. Belmonte that he had taken a number of community college courses. His only professional certification was as a mortgage broker. Mr. Belmonte also noted somewhat limited English language proficiency and minimal computer literacy. Mr. Belmonte opined that Petitioner was not employable in a stable job market and would not benefit from vocational rehabilitation, primarily because of his strict permanent restrictions.

Lastly, Petitioner testified that he was taking some college courses, indicating that his objective was to get student loans in order to "survive." He picked real estate as his major. Petitioner does not intend to use this education to get a job.

In support of the Arbitrator's decision regarding (C), did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The Arbitrator notes that Petitioner's testimony is replete with inconsistencies and dramatic, incredible statements. Also, Petitioner mischaracterized his relationship with Mr. Shegog. Petitioner's testimony on cross-examination was evasive and argumentative. Petitioner provided inconsistent histories to his medical providers and examining physicians, and most of the histories are inconsistent with how he described the accident in his testimony. Petitioner's

description of the accident is also inconsistent with the accident report completed by Mr. Shegog and the adjuster's notes.

The Arbitrator does not find credible Petitioner's testimony that his low back felt "perfect" from mid October of 2001 until December 21, 2001, despite prior treatment in August and September of 2000 after a car accident and from September 10, 2001, through October 8, 2001. The Arbitrator notes that on January 7, 2002, Petitioner complained to the Alexian Brothers emergency room staff of ongoing back problems, which had been getting worse since November of 2001. The attending physician recorded the following history: "[The patient] states over the past two months he has had worsening lower back pain, especially on the left, some radiation to both legs. *** The pain is much worse with range of motion of the torso. The patient lifts at work, and the pain is worse at work and with lifting." The Arbitrator further notes that in a "Work/Comp History" questionnaire Petitioner completed for Dr. Lord on January 4, 2002, he described the accident as follows: "It's hard to detect, although during the holiday season I was assigned to lift packages in average of 30-170+ lbs." Elsewhere in the questionnaire, Petitioner confirmed the pain began gradually, and reported being on Hydrocodone, Ultram, Naproxen and Cyclobenzaprine. Petitioner gave similar histories to Dr. Levin and Dr. Ghanayem.

Petitioner wants the Arbitrator to believe he felt a sharp low back pain while lifting a package at work on December 21, 2001, and promptly reported the accident to Mr. Shegog, who did not complete an accident report, did not send him for treatment, and pressured him to continue working. Petitioner wants the Arbitrator to further believe he continued to perform his regular job duties for Respondent despite severe pain through December 31, 2001, without seeking medical treatment, all while he had a higher paying and lighter duty job at Champion available to him. The Arbitrator does not find Petitioner credible.

As discussed, the medical records show preexisting low back problems, and Petitioner admitted treating with Dr. Lord for low back pain and being off work from September 10, 2001 through October 8, 2001. Petitioner's low back pain worsened in November and December of 2001, and his symptoms were more apparent while he was performing his job duties as a package handler for Respondent. Petitioner does not claim repetitive trauma resulting from the performance of his job duties for Respondent. The Arbitrator finds that Petitioner failed to prove he sustained a specific accident while performing his job duties for Respondent on December 21, 2001.

All other issues are moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="checkbox"/> up	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ALEJANDRO MARTINEZ,

Petitioner,

14IWCC0525

vs.

NO: 12 WC 32764

LABOR NETWORK,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19B having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability and prospective medical care, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation 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).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Labor Network is a temp agency which placed Petitioner at Clover Hill Bakery. He earned \$8.25/hr., working for the bakery from January 1st through September 8th of 2012. His duties were "everything related to cleaning."

2. While cleaning the floor on September 8, 2012 Petitioner had to hold up some metal plates with a screw. The plates are 3 feet by 6 feet and weigh 60-70 pounds. The bottom part of the plate had two hinges. Petitioner lifted the top part of the plate and screwed it into a hole in the wall in order to keep it upright. Petitioner did not notice that one of the bottom hinges did not have screws inserted, and the plate fell off of the wall and hit Petitioner on the left side of his neck and shoulder.
3. Petitioner reported the injury and was then sent to Resurrection Health Care. He complained of left and right shoulder pain as well as back pain. However, the physicians focused on the left shoulder since Petitioner was unable to move it.
4. Petitioner was placed in a sling, told to buy Tylenol and told to rest over the weekend and return to work on Monday. A few days later a left shoulder MRI was performed. When Petitioner returned to work he was given duties of taking copies to secretaries and cleaning cafeteria tables. He did not use his left arm at all.
5. On September 20, 2012 Petitioner treated with Dr. De Las Casas, who recommended therapy and took Petitioner off of work. Petitioner was referred to Chicago Pain and Orthopedics the following day. He was given medications.
6. On November 9, 2012 Petitioner underwent an Independent Medical Examination (IME) with Dr. Biafora, who opined that Petitioner was capable of working, as long as he did not use his left arm. Dr. Biafora also opined that Petitioner's left shoulder injury would reach maximum medical improvement (MMI) by February 9, 2013. Lastly, Dr. Biafora noted that he was unsure of the relationship between chiropractic treatment received by Petitioner and any left shoulder condition.
7. Subsequently Petitioner received correspondence from Respondent requesting he return to work on December 17, 2012. Petitioner attempted to return on this date. He was told to clean tables in the cafeteria and sweep. He was only able to work 1.5 hours that day due to is neck and back pain. He informed his supervisor, who told him that if he could not perform his duties he should punch out. During this time period all of Petitioner's treating physicians had recommended he be off of work.
8. Thereafter, Petitioner saw Dr. Scramberg at Chicago Pain for his ongoing left shoulder complaints. Dr. Scramberg opined that the only solution to the pain was surgery, which was never approved by Respondent.
9. On January 7, 2013 Petitioner was sent for a nerve conduction study. This was after an October and November 2012 neck MRI and spinal MRI, respectively. Petitioner underwent therapy through March 11, 2013 and had several neck and back injections through August 13, 2013.

10. Petitioner is still awaiting approval for left shoulder surgery, but still treats for his neck and low back pain.

11. He has not been returned to work by any treating physician.

The Commission affirms the Arbitrator's rulings on causal connection, medical expenses and prospective medical care.

The Commission, however, modifies the Arbitrator's ruling on temporary total disability. Petitioner was taken off of work by Dr. De La Casas on September 20, 2012 due to his left shoulder, neck and back injuries. He was kept off of work through the date of hearing for these conditions. Despite Dr. Biafora's opinion that Petitioner's left shoulder injury would resolve itself by February of 2013, medical records reveal that Petitioner was still complaining of shoulder pain well past that date, and was eventually recommended for left shoulder surgery by Dr. Sciamberg. At the time of hearing, Petitioner's shoulder pain was still present. Accordingly, based on credible evidence detailing Petitioner's ongoing shoulder symptoms, the Commission awards temporary total disability benefits through the date of arbitration.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's left shoulder condition is causally related to the accident in question.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$319.00 per week for a period of 49 weeks, that being the period of temporary total incapacity for work under §8(b), and that this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that 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.

14IWCC0525

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$3,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
O: 5/1/14
DLG/wde
45

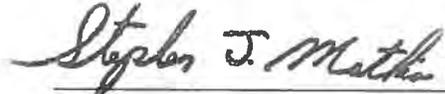
JUN 3 0 2014



David L. Gore



Mario Basurto



Stephen Mathis

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

14IWCC0525

Case# 12WC032764

MARTINEZ, ALEJANDRO

Employee/Petitioner

LABOR NETWORK

Employer/Respondent

On 10/3/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.04% 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:

2512 THE ROMAHER LAW FIRM
CHARLES P ROMAHER
211 W WACKER DR SUITE 1450
CHICAGO, IL 60606

5001 GAIDO & FINTZEN
LUKE S BEHNKE
30 N LASALLE ST SUITE 3010
CHICAGO, IL 60602

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

STATE OF ILLINOIS)
)
 COUNTY OF COOK)

14IWCC0525

ILLINOIS WORKERS' COMPENSATION COMMISSION

19(b) ARBITRATION DECISION

ALEJANDRO MARTINEZ
 Employee/Petitioner

Case #12 WC 32764

v.

LABOR NETWORK
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Robert Williams, arbitrator of the Workers' Compensation Commission, in the city of Chicago, on August 28, 2013. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

- A. Was the 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 the petitioner's employment by the respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to the respondent?
- F. Is the petitioner's present condition of ill-being causally related to the injury?
- G. What were the petitioner's earnings?
- H. What was the petitioner's age at the time of the accident?
- I. What was the petitioner's marital status at the time of the accident?
- J. Were the medical services that were provided to petitioner reasonable and necessary?

- K. What temporary benefits are due: TPD Maintenance TTD?
- L. Should penalties or fees be imposed upon the respondent?
- M. Is the respondent due any credit?
- N. Prospective medical care?

FINDINGS

- On September 8, 2012, the respondent was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship existed between the petitioner and respondent.
- On this date, the petitioner sustained injuries that arose out of and in the course of employment.
- Timely notice of this accident was given to the respondent.
- In the year preceding the injury, the petitioner earned \$14,192.06; the average weekly wage was \$443.50.
- At the time of injury, the petitioner was 40 years of age, *married* with two children under 18.
- The parties agreed that the respondent paid \$3,300.00 in temporary total disability benefits.

ORDER:

- The respondent shall pay the petitioner temporary total disability benefits of \$319.00/week for 20-3/7 weeks, from September 20, 2012, through February 9, 2013, which is the period of temporary total disability for which compensation is payable.
- The medical care rendered the petitioner for his left shoulder was reasonable and necessary and is awarded. The medical care rendered the petitioner for his right shoulder and cervical, thoracic and lumbar spine was not reasonable or necessary and is denied. The chiropractic care rendered the petitioner after November 9, 2012, is denied. The respondent shall pay the medical bills in accordance with the Act and the medical fee schedule. The respondent shall be given credit for any amount it paid toward the medical bills, including any amount paid within the provisions of Section 8(j) of the Act, and any adjustments, and shall hold the petitioner harmless for all the medical bills paid by its group health insurance carrier.
- The petitioner's request for benefits for his cervical, thoracic and lumbar spine and right shoulder is denied.

14IWCC0525

- The petitioner is entitled to have from the respondent the reasonable and necessary cost for the left rotator cuff repair.
- In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of temporary total disability, medical benefits, or compensation for a 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.

14IWCC0525

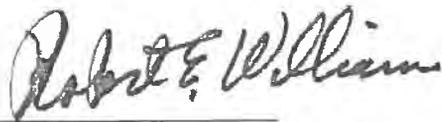
ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

ALEJANDRO MARTINEZ
Employee/Petitioner

Case #12 WC 32764

v.

LABOR NETWORK
Employer/Respondent



Signature of Arbitrator

10/2/2013

Date

OCT 3 - 2013

FINDINGS OF FACTS:

On September 8, 2012, the petitioner sustained injuries when a plate fell and struck him. He received medical care later that morning at Resurrection Health Care and reported a baking sheet falling off a shelf onto his left shoulder. The petitioner complained of severe pain rated at 7/10 and a decreased range of motion and strength. The doctor noted that the petitioner was hunched over holding his left shoulder and visible redness on his left shoulder. X-rays of the left shoulder and clavicle were normal with no evidence of any fractures or dislocations. The petitioner was prescribed a sling, medication, work disability for two days and work restrictions thereafter. The petitioner returned to work on September 10th and followed up for his left shoulder at Resurrection. An MRI of the left shoulder on September 11th demonstrated a moderate-size focus of abnormal signal in the superolateral aspect of the humeral head and along the superior edge of the greater tuberosity and the supraspinatus tendon inserts near the region, an increased signal to the under surface of the supraspinatus tendon and a trace amount of fluid in the subdeltoid region. On September 17th, the petitioner reported bilateral shoulder pain and denied any numbness or tingling.

At the direction of his attorney, the petitioner sought chiropractic care with Dr. Lee De Las Casas at Rehab Dynamix on September 20th and reported cervical, thoracic and bilateral shoulder pain. The doctor's diagnosis was cervical intervertebral disc syndrome with radiculopathy, internal derangement of the shoulder, thoracic sprain/strain and a shoulder contusion. Dr. De Las Casas recommended two weeks of no work, chiropractic modalities and therapy. The petitioner treated with Rehab Dynamix through March 11, 2013. The petitioner began treatment with Dr. Demetrios Louis of Chicago

Pain and Orthopedic on September 21st and Dr. Sclamberg at the same facility on October 19th. An MRI of his cervical spine on October 26th at Advantage MRI revealed diffuse bulges at C3-4, C4-5 and C5-6.

Dr. Biafora evaluated the petitioner pursuant to Section 12 of the Act on November 9th and opined that the petitioner's history, physical exam and diagnostic findings were consistent with a left shoulder contusion, he would be at maximum medical improvement in three months, he could immediately return to work with restrictions and he could work full duty in three months.

The petitioner began treating with Dr. Jain of Chicago Pain and Orthopedic on November 14th and reported his worst pain was his lower back. An MRI of the lumbar spine on November 14th at Advantage MRI demonstrated a disc bulge with a 1 mm posterocentral disc protrusion at L4-L5. On November 30th, Dr. Jain recommended cervical epidural injections, bilateral L4-5 and L5-S1 facet injections and an LSO brace. He saw Dr. Sclamberg on December 3rd. The petitioner returned to work on December 17th but did not work a full day. He had bilateral lumbar facet joint injections at L4-5 and L5-S1 on January 5, 2013. He saw Dr. Sclamberg on January 7th and Dr. Jain on January 10th, where he reported a 45% reduction of low back pain with injections and complained of a new onset of right pelvic pain with walking. An EMG on January 16th at Rehab Dynamix was abnormal with evidence of left C6 cervical radiculopathy and left ulnar neuropathy about the elbow.

On February 4, 2013, Petitioner presented to Dr. Jain with subjective complaints of left shoulder and neck pain, decreased lumbar pain and groin pain following the

lumbar injection. Dr. Jain recommended bilateral L3-S1 medial branch blocks and cervical epidural injections for his neck pain and radicular symptoms.

Dr. Sclamberg opined on February 11, 2013, that an MR-arthrogram revealed a partial-thickness insertional rotator cuff tearing at the supraspinatus distribution and gave the petitioner an injection of Lidocaine and Kenalog. On March 1st, the petitioner sought emergency care at Resurrection for chronic back pain exacerbation. On March 4th, the petitioner reported severe back pain to Dr. Jain after standing at a McDonald's on March 1, 2013. He received medial branch nerve blocks bilaterally at L3, L4, and L5 on March 9th and March 12th. The petitioner received left C4-5, C5-6, and C6-7 facet joint injections on March 23rd. On April 1st, Dr. Sclamberg recommended arthroscopic decompression and possible rotator cuff repair.

On April 4th, the petitioner reported to Dr. Jain a 50% improvement in his neck pain, a significant improvement of his lumbar pain and a new onset of frontal headaches and dizziness and right buttock and groin pain. On May 5th, the petitioner underwent a medial branch radiofrequency ablation at the left L2, L3, L4, and L5 with Dr. Jain. The petitioner followed up with Dr. Sclamberg on May 6th, June 14th and July 19th. On June 18th and 25th, Dr. Vargas gave the petitioner left medial branch nerve blocks at C5, C6 and C7.

Dr. Butler evaluated the petitioner pursuant to Section 12 of the Act on June 28th and opined that there were no objective findings of an injury to the petitioner's cervical or lumbar spine and that there was no need for further care to the upper back or a need for work restrictions for the spine. On July 25th, Dr. Vargas recommended additional

injections and on August 20th, the petitioner underwent left C5, C6 and C7 medial branch radiofrequency ablations with Dr. Vargas.

FINDING REGARDING WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER ARE REASONABLE AND NECESSARY:

Based upon the testimony and the evidence submitted, the medical care rendered the petitioner for his left shoulder was reasonable and necessary. The medical care rendered the petitioner for his right shoulder and cervical, thoracic and lumbar spine was not reasonable or necessary and is denied. Moreover, the chiropractic care rendered the petitioner after November 9, 2012, the date of Dr. Biafora's recommendation for formal therapy with a physical therapist, is denied.

FINDING REGARDING WHETHER THE PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY:

Based upon the testimony and the evidence submitted, the petitioner proved that his current condition of ill-being with his left shoulder is causally related to the work injury. The petitioner's complaints regarding his left shoulder have been consistent and continuous since his work injury.

The petitioner failed to prove that his current condition of ill-being with his right shoulder, cervical, thoracic and lumbar spine is causally related to the work injury. The petitioner reported only a left shoulder injury at Resurrection Health Care the morning of his accident on September 8, 2012. He did not report any other injury to his body and the mechanism of injury was a baking sheet falling off a shelf onto his left shoulder. He returned to work on September 10th and worked through the 17th. He did not have any right shoulder symptoms until the 17th. After starting chiropractic care with Dr. Casas on September 20th pursuant to the referral of his attorney, he then complained of cervical,

thoracic and bilateral shoulder pain. His first report of lower back pain was to Dr. Jain on November 14th. His complaints of symptoms and his descriptions of the accident have not been consistent. Considering the magnitude of the petitioner's cervical and lumbar spine and right shoulder symptoms, he would have had some complaints when he initially treated at Resurrection Health Care. It is not believable that the petitioner reported neck, right shoulder and back injuries but did not insist on some immediate medical care or at least, a medical assessment before returning to work on September 10th. Also, it is noted that on June 28, 2013, Dr. Butler found no objective findings of an injury to the petitioner's cervical or lumbar spine. The petitioner's request for benefits for his cervical, thoracic and lumbar spine and right shoulder is denied.

FINDING REGARDING THE AMOUNT OF COMPENSATION DUE FOR TEMPORARY TOTAL DISABILITY:

The petitioner was temporarily totally disabled from September 20, 2012, through February 9, 2013. Dr. Biafora opined on November 9, 2012, that the petitioner would be at maximum medical improvement in three months and could work full duty.

The respondent shall pay the petitioner temporary total disability benefits of \$319.00/week for 20-3/7 weeks, from September 20, 2012, through February 9, 2013, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner.

FINDING REGARDING PROSPECTIVE MEDICAL:

The petitioner proved that the left rotator cuff repair recommended by Dr. Scramberg is reasonable medical care necessary to relieve the effects of the work injury. The petitioner complains of continuing symptoms with his left shoulder. In April 2013, Dr. Scramberg recommended an arthroscopic decompression and possible rotator cuff

14IWCC0525

repair, which the petitioner requests. The petitioner is entitled to have from the respondent the reasonable and necessary cost for the left rotator cuff repair.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="text" value="down"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Laurier Bourque,
Petitioner,

14IWCC0526

vs.

NO: 12 WC 17414

General Maintenance,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent/Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability/maintenance, evidentiary rulings, and permanent partial disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

- Petitioner was a 60 year old employee of Respondent, who described his job as a working supervisor ('glorified grunt'). Petitioner was working for Respondent on the date of the accident; prior to that he had no problems with his right shoulder or neck, and he had no history of headaches or problems with either hand. He had no prior problems working above head or shoulder level; he had no difficulty lifting with his right shoulder and he had no difficulty performing any of his job duties because of right shoulder pain or weakness. As of the date of accident, and prior to it he was not receiving any medical attention for any such problems. Petitioner did the same work as the people under him but he got paid a little more. Petitioner agreed (and per the functional capacity evaluation [FCE]) his job was a heavy physical demand job.

14IWCC0526

- As a working supervisor, Petitioner testified he had to pull up tile floors in kitchens or restaurants, demo them, level the floors and reinstall new floors. The tiles were all half inch ceramic or corrie floors and each case weighed about 5 pounds. He stated he also had to replace ceilings, and complete tracks of tiles (2X4), virtually sheets of heavy half inch drywall with a treated surface on them which he had to install by hand. Petitioner stated that he would be on a ladder (balancing) and that everything was overhead for that. He estimated the sheet rock drywall weighed about 20 pounds. Petitioner testified he also had to do concrete work to lay new flooring and also replace sidewalks. Petitioner stated that the bags of concrete they mixed themselves in barrels and the bags weighed about 80 pounds. Petitioner testified he also had to do sewer work and that involved using a 65 pound jackhammer to break up the floor and dig down past the concrete and replace the bad pipes, rebury them, re-pour new concrete and then retile it. Petitioner testified they used to have to do a lot of rough carpentry. He stated they would refinish table tops, rebuild counters, re-sand damaged products, stain and varnish cabinets and rebuild cabinet doors. There were a lot of different things he did. Respondent did work for Darden restaurants; those are Olive Garden, Red Lobster, Smokey Bones, Bahama Breeze and some others. They worked in five states but the majority of work was in three states. Petitioner testified that normally they completed the work overnight. He stated that they had to wait for the employees to leave (sometimes 1:00am), but they had to be ready to get out of there before 10:00am because they opened at 11:00am.
- On the date of accident, October 23, 2011 (Sunday), Petitioner testified he was working as working supervisor for Respondent. Petitioner testified that they got called up on Sunday to do an emergency call at an Olive Garden that had an electrical fire in the wall which was connected to the dish machine. He stated they used the machine from about 10:30-11:00am throughout the day. Petitioner testified he had to work from a ladder because all the electrical was above the machine. Petitioner stated that he did quite a bit of work from the front of the machine, but had to get around to the back of the machine. Petitioner stated that the only way to do that was to step from a ladder on to the table, and when he did that he slipped on the table (stainless steel counter) and crashed, splitting his head and hurting his right shoulder. Petitioner did not seek medical attention that day; Petitioner stated that the manager there cleaned up Petitioner's head and bandaged it as much as she could. Petitioner testified that the next day, October 24, 2011 he went to work at an Olive Garden. Petitioner stated that he just went to pick up his drill with his right hand to mount a door closer, and the drill fell out of his hand. Petitioner stated that he could not do it anymore so he went to Northern Illinois Medical Center emergency room in McHenry. Petitioner testified that he had advised them that he had injured his shoulder and had hit his head. Petitioner next saw Dr. Keli, an orthopedic surgeon, on referral from the ER on October 25, 2011. Dr. Keli went on to perform surgery on Petitioner's right shoulder on November 23, 2011. Petitioner had follow up care with Dr. Keli pretty consistently through at least May 2012 and then saw him in July and October of 2012. Petitioner last saw Dr. Keli on November 2, 2012. Petitioner had a functional capacity evaluation (FCE) in November 2012 and Dr. Keli released Petitioner from care at that time. Petitioner was placed on restrictions at that time. Petitioner continued to treat with other doctors from that time to the time of hearing. Petitioner last saw Dr. Carobene,

14IWCC0526

a pain management doctor, on April 24, 2013. Petitioner had first seen Dr. Carobene on June 13, 2012. Petitioner received a Medrol dose pack and some injections after the initial visit (June 27, 2012-stellate ganglion block and July 18 and August 22, 2012-cervical epidural injections).

- Prior to and after surgery, Petitioner had physical therapy at Conroy Physical Therapy in McHenry, through the end of September 2012 under the direction and guidance and orders of Dr. Keli. Dr. Keli had referred Petitioner to Dr. Carobene. Dr. Keli had also ordered some therapy for Petitioner's hands which was done at Dynamic Hand Therapy. Petitioner testified that his initial evaluation there was on May 31, 2012 and his therapy, primarily for his hand, continued through the end of September 2012, T.18.-20.
- Petitioner was aware there was some surveillance conducted on him from June through September 2012. Petitioner testified that during therapy between June and September 2012 he was using 3-5 pound weights and at one point got as high as 9 pounds doing bicep curls. He was also doing push-ups there (highest repetition being ten). He recalled doing a pendulum exercise where he would lay down on the table with his arm over the side and virtually swing it as high as he could back and forth. Petitioner stated that he got as high as using 5 pounds doing that (3 sets of 10 reps) exercise. Petitioner indicated that therapy had been about three times per week and that he did the pendulum exercise every time. He had also used a Thera-Band and did an exercise lying on his back which involved him doing a punching motion for 10 repetitions and then lifting weight over head as far back as possible. Petitioner did not believe he was able to lift the weight back on the table behind his head, but was close.
- Petitioner testified that after he was released by Dr. Keli, he contacted Respondent as he was released to return to work. Petitioner spoke to the owner's wife, who was virtually a boss, and Petitioner asked her if he could come back to work. She told Petitioner that things were slow and that they had nothing for him at that time. Petitioner had worked for Respondent for about 10 years. He became head supervisor after the first 9 months. Petitioner had never been reprimanded. Petitioner testified that he did not do the initial hiring and firing, but had input with hiring and firing. Petitioner stated that they would follow his advice about someone. Petitioner had not worked since Dr. Keli released him to return to work November 2012. Petitioner testified that he had looked for work and identified his job search records/notes (PX 6). Petitioner stated that he looked for jobs on the internet and newspapers with no response. He indicated that he had looked from anything from Home Depot type jobs to local driving type jobs including at Wal-Mart as a greater. Petitioner had no interviews and no job offers and he continued looking for work (last entry 5/17/13). Petitioner planned to continue looking for work as he wanted to work. Petitioner testified that he is not a college graduate and he had no training beyond high school. He had basically been a working guy his entire life. He believed at the time of his accident he was making \$23.07 per hour and was working more than 40 hours per week. Petitioner was paid time and a half for overtime.
- Petitioner agreed the video he reviewed started June 18, 2011 and continued on various dates through September 7. Petitioner agreed the video showed him at Fish Lake Park,

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near his house on June 18, 2011. He agreed it showed him playing a game (ladder game). He indicated it was two golf balls on a string and you throw it to try and loop it around the ladder; Petitioner identified PX16 as the golf balls used (he made those). Petitioner agreed that day it showed him moving a chair he was sitting on; Petitioner viewed PX 9 & 9A photos showing the lawn chair (with bag) on a scale noting it weighed 9 pounds. Petitioner agreed there was video of him using a power washer. Petitioner viewed PX 7 & 7A as photos of the washer and wand which weighed 17 pounds (Petitioner weighed the washer and wand). Petitioner indicated that he kept the power washer hanging on the wall and his daughter got it down because Petitioner cannot lift anything over his head/above shoulder height. Petitioner testified he had used power washers before on his job lots of times and those were commercial grade, about 6500 PSI for cleaning dumpsters of grease and things; those are pretty powerful. Petitioner indicated that he had used the power washer before doing any kind of painting. He indicated if the dumpster would not get sanded they used the power washer to clean the paint off. He stated that one washer put out 200 degree water; that is a big unit with a burner that needed two hands to operate. Petitioner indicated the power washer pictured is about a 1300 PSI; Petitioner indicated at no time in the video did it show him using the power washer over his shoulders. Petitioner agreed in the video there was a day showing him watering flowers. Petitioner viewed PX 8 & 8A as pictures of a 100 foot hose which weighed 13 pounds; Petitioner testified that he never carried the garden hose all at once then. Petitioner agreed there was video of him moving some garbage cans and he identified PX 11 & 12 as the garbage cans on wheels. He indicated the video probably was him pulling it back to the garage with his left hand with probably a couple fingers as it weighs little; he had no evidence of the weight empty.

- Petitioner agreed that when he took the FCE he was asked to push and pull things. Petitioner stated it was a weight machine with a bar in front which he had to walk as far as possible and also push out with his arms. Petitioner also indicated that he would have to turn around and do a pulling motion also. Petitioner viewed PX13 & 13A as photos of his recycling bin. Petitioner noted that the bin with all his recycling weighed less than 9 pounds. Petitioner identified PX 10 & 10A as photos of his fishing pole weighing less than a pound. Petitioner viewed PX17 (crate is an exhibit) and noted it was some crates he was cleaning with the pressure washer (as seen on the video). He believed he probably lifted it with his right arm. Petitioner viewed PX18 & 18A as boards he had carried in the video. Petitioner testified that he video on June 23, 2011 also showed his daughter building a table using a power drill and hammer. Petitioner indicated she was doing the work because he could not do it.
- Petitioner was not in a union and was not a journeyman. He really did not have skill in building and carpentry; he indicated there was really not much he could do; cement work, he built cabinets, and built a 2 story fort in his backyard and he built decks; that was one thing he could not finish before he was hurt and the deck was still not finished. He agreed one scene in the video showed him at the grocery store unloading the grocery cart and lifting gallons of milk; Petitioner stated he had used his right arm to lift a gallon and it started hurting so he had to drop it right away and it slid in and the second he had lifted with his left hand instead.

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- Petitioner testified that while he was undergoing therapy neither Dr. Keli nor any other provider placed weight restrictions on him or told him not to fish or play the ladder game or not to use a power washer. Petitioner testified that on that day he did go fishing he caught two little fish; less than a pound.
- Petitioner testified that currently it is hard, but not impossible to put T-shirts on, he just has to put one arm in at a time. He testified he really cannot wash his back. He stated he had some motion back but not a lot; he can go across his chest to wash his arms and shoulder; but that still hurts. Petitioner indicated his shoulders are tight even though he is still doing stretching exercises at home. Petitioner testified that he notices that when he goes across his chest to wash his shoulder there is soreness there and if he goes to extend his arm above chest high and do anything with it, even changing a light bulb above, that it hurts. He indicated that if he has to pull open something like big office doors, it hurts; he just tries to refrain from doing that and he ends up using his left arm all of the time (he is right hand dominant). Petitioner testified that right arm activities close to the body are easier than away from his body. Petitioner indicated that since his release from the doctor the most weight he lifted over head was less than a pound. When he tries to perform overhead activities he has pain. Petitioner was taking over the counter medication basically for the pain and he was taking a muscle relaxer for his neck and he was taking Lyrica for his hands as prescribed by Dr. Carobene. He does take an evening migraine aspirin to help him sleep.
- Regarding his neck, Petitioner testified he had not been able to turn to the right since this happened; he can turn to the left a little, that is not too bad, but if he turns to the right it starts to really tighten everything up and he gets a lot of pain that kicks off his headaches. Petitioner agreed that he had received some therapy for his neck and that he did have injections with Dr. Carobene. Petitioner indicated that the ESI's helped a little bit; the stellate ganglion block also helped a little, not much. Petitioner testified that when he wakes in the morning his right hand is extremely swollen and left slightly swollen. Petitioner indicated that his hands get very discolored and change temperatures. Petitioner indicated at hearing that both hands felt like they were imbedded in glass. Petitioner indicated that his hands used to itch a lot but after being on the Lyrica the itching kind of stopped, but now it feels like glass stabbing him and he did not have the strength he had; he testified he did not have 1/10th of the strength he had in his right hand. Petitioner indicated if he had no problems with his left or right hands he would be able to go back to work. Petitioner testified that his daughter cuts the grass since his accident and he believed his daughter cleaned out the gutters the last time. Petitioner testified the motorcycle seen in his garage on the video was his daughter's bike; he stated he had not ridden since the accident; he cannot. It was also noted that the video depicted Petitioner and a friend by his car; Petitioner indicated that he was listening to a ticking the car was making and his friend was trying to pinpoint the problem for Petitioner. Petitioner testified that prior to the accident he did not need help working on his cars.
- Petitioner viewed PX14 and identified it as photo of the ladder game (hung up on the garage wall). He indicated it is made of ½ inch PVC tubing; the video showed him

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loading it in and out of his car.

The Commission finds Petitioner's testimony is un rebutted and the evidence in this record supports Petitioner's testimony of the mechanism of injury and the seriousness of the fall that resulted in large rotator cuff tears that needed to be addressed in surgery. Dr. Keli and Respondent's Dr. Bare both opined a causal connection regarding Petitioner's shoulder. There is also evidence of cervical and cervical radicular complaints that are found shortly after the accident. The MRI noted protrusions with degenerative changes and also annular tears. There are some conflicts in opinions in the evidence as to causal connection regarding the neck, but Dr. Keli noted the symptoms did not start until after the fall, and there is no evidence of prior cervical treatment. Dr. Keli noted the MRI findings could certainly explain some of Petitioner's symptoms; Dr. Lami, to the contrary, did not find significant compressive pathology and did not believe the MRI findings in the cervical spine was the source of Petitioner's paresthesias. Dr. Bare, likewise did not find a causal connection regarding the neck. The significance of the fall is undisputed and it did result in significant rotator cuff tears so it is clearly conceivable that Petitioner had some injury to his neck (aggravating his underlying cervical pathology), as well, given he had no prior evidenced symptoms. As to the hands, there is insufficient evidence to support a causal relationship. The evidence and testimony finds the preponderance of the evidence supports a causal relationship to the right shoulder and some cervical condition of ill-being. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence, and herein, affirms and adopts the Arbitrator's finding as to causal connection to Petitioner's right shoulder and cervical conditions of ill-being.

The Commission finds that there is no question Petitioner reached maximum medical improvement (MMI) in December 2012 and was released from medical care, per a valid FCE, on sedentary restrictions. Petitioner's job was classified at the heavy physical demand level. Petitioner clearly had a number of other prior issues, but had been working his heavy job before the accident. The surveillance video did not reveal anything of significance to discount the FCE validity and findings. Petitioner did evidence some job search logs. Petitioner is in his 60's and has only worked heavy manual labor type jobs. Respondent provided no vocational rehabilitation which, under the circumstances, probably would not have been successful regardless. Respondent clearly requires employees to perform at a heavy level and Petitioner noted Respondent had nothing for Petitioner. The evidence and testimony finds Petitioner was entitled to temporary total disability (TTD) as awarded and further proved entitlement to the maintenance awarded through the date of hearing. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence, and herein, affirms and adopts the Arbitrator's finding as to total temporary disability/maintenance.

The Commission finds, regarding the issue of evidentiary rulings (by Petitioner), that the histories of the prior surgeries are documented in the records, including the prior right arm biceps surgery with the evidenced anchors on diagnostics. While questioning about unrelated back and knee injuries would have no real bearing on the outcome, the Arbitrator allowing such testimony was essentially a situation of no harm, no foul, and was of no violation. Again, the prior injuries

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were evidenced in the medical records; therefore potentially subject to exploration and examination with the medical records as foundation. Questioning in regard to the prior biceps surgery could have potentially been relevant; however, since the prior arm surgery did not involve the right shoulder it really had no effect either way. The Commission finds the ruling of the Arbitrator as not contrary to the weight of the evidence or the applicable law, and herein, affirms and adopts the Arbitrator's rulings and findings.

The Commission finds that there is no question of the significance of the accident resulting in the multiple full thickness rotator cuff tears that resulted in Petitioner's surgery. There is also evidence of at least some cervical injury. The valid FCE found Petitioner at sedentary physical demand level. Petitioner is in his 60's with a high school education and has only worked labor intensive jobs his entire career so the result of the accident clearly bars or extremely limits any labor opportunities. Petitioner had the prior conditions and surgeries, but again he had worked his job prior to this accident. Given the significant surgical findings and valid FCE, the impairment rating appears contrary to the other evidence, and likewise, Dr. Bare's opinions after viewing the surveillance video that Petitioner is capable of working regular full duty is also contrary to the evidence as a whole. Petitioner suffered a significant fall with some cervical involvement. The severity of the rotator cuff tears, however, is the predominate factor that places Petitioner at a sedentary work level. The Commission finds that Respondent's suggestion of 12.5% loss of use of the person as a whole would clearly be considered insufficient. Further, the Commission finds that Petitioner's suggestion of 75% loss of the person as a whole would clearly be considered excessive. While Petitioner clearly met the burden of proving entitlement to a significant permanent partial disability award, argument can be made, given the evidence, that the award is somewhat high. The Commission therefore finds the award of the Arbitrator, herein, somewhat excessive, considering prior Commission decisions of a similar nature, and modifies the award to find Petitioner suffered a 40% loss of use of his person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$640.36 per week for a period of 64.429 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act and Maintenance benefits at \$640.36 per week for a period of 17.571 weeks.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$576.32 per week for a period of 200 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the loss of use of 40% of Petitioner's person as a whole.

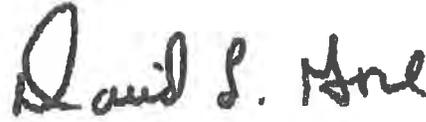
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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.

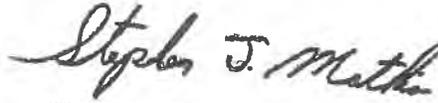
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to file for review in the Circuit Court.

DATED:
o-5/1/14
DLG/jsf
45

JUN 3 0 2014



David L. Gore



Stephen Mathis



Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BOURQUE, LAURIER

Employee/Petitioner

Case# 12WC017414

GENERAL MAINTENANCE

Employer/Respondent

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On 8/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

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

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

3245 LAW OFFICES OF THOMAS POPOVICH
JAMES P TUTAJ
3416 W ELM ST
McHENRY, IL 60050

0445 RODDY LEAHY GUILL & ZIMA LTD
PAUL KRAUTER
303 W MADISON ST SUITE 1500
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14IWCC0526

Laurier Bourque
Employee/Petitioner

Case # 12 WC 17414

v.

Consolidated cases: _____

General Maintenance
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Chicago**, on **May 20, 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 _____

FINDINGS

On **October 23, 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 partially* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$49,948.08**; the average weekly wage was **\$960.54**.

On the date of accident, Petitioner was **60** 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 **\$41,257.48** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$41,257.48**.

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

ORDER

Maintenance

Respondent shall pay Petitioner maintenance benefits of \$ 640.36 /week for 17.571 weeks, commencing 01-18-13 through 05-20-13, as provided in Section 8(a) of the Act.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of \$ 640.36 /week for 64.429 weeks, commencing 11-08-11 through 01-17-13, as provided in Section 8(b) of the Act.

Medical benefits

Respondent shall pay reasonable and necessary medical services of \$ 0, as provided in Section 8(a) of the Act.

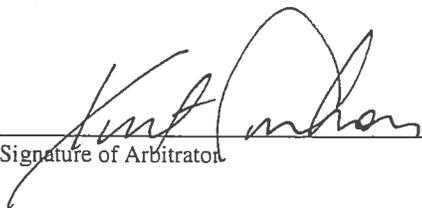
Permanent Partial Disability: Person as a whole

Respondent shall pay Petitioner permanent partial disability benefits of \$ 576.32 /week for 250 weeks, because the injuries sustained caused the 50 % loss of the person as a whole, as provided in Section 8(d)2 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.

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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

8-6-13
Date

AUG 7 - 2013

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STATEMENT OF FACTS

The Petitioner, Larry Bourque, testified that on October 23, 2011 he was working for the respondent, General Maintenance. Bourque stated that prior to that date he had no problems with his right shoulder, neck, headaches, left hand, right hand, lifting with his right shoulder, lifting above his head, or difficulties performing his job due to right shoulder problems. (T. 7) Prior to October 23, 2011 he was not receiving medical attention for his right shoulder, neck, headaches, left hand or right hand. (T. 7)

Bourque testified that his job title with General Maintenance was a working supervisor. (T. 8) He described his job as a "glorified grunt." (T. 8) He did the same work as the people underneath him, but earned a little bit more money. Bourque described his job as being a heavy physically demanding job. (T. 8)

He offered some examples of the types of jobs that he had to perform as follows:

- Pulling up tile floors in restaurants, demo them, level the floors, reinstall new floors. They were all half-inch ceramic tiles or corrie tiles, each weighing 5 lbs.
- Replacing complete tracks of ceiling tiles. They were 2 x 4 sheets of half-inch drywall with a treating surface on them. They were noted to be heavy. The sheet rock drywalls weighed probably 20 lbs.
- Concrete work was also performed. Sometimes new flooring would need to be laid under the tile because the concrete was bad. Sometimes sidewalks would be replaced. They would mix the concrete themselves in barrels. The concrete mix bags weighed 80 lbs.
- They would perform sewer work. It would be done using a 65 lb. jack-hammer. They would break up the floor and dig down past the concrete, replace the bad pipes, and pour new concrete, and re-tile it.
- They would do rough carpentry work. This involved a lot of refinishing of table-tops and rebuilt counters.
(T.8-11)

General Maintenance did a lot of work for Darden Restaurants. (T. 11) Darden owned Olive Garden, Red Lobster, Smokey Bones, Bahama Breeze and a few others. (T. 11) General Maintenance covered five states, although the majority of work was done in three states. (T. 11)

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Bourque stated that were time limitations for the performance of the job. (T. 12). Much of the work would be done overnight after the restaurant employees had left for the night and before they arrived the next morning. (T. 12)

On October 23, 2011 Bourque testified that he received an emergency call to work at an Olive Garden. (T. 12) There had been an electric fire in the wall which was connected to a dish machine they used through out the day. (T. 13) In order to fix the machine, Bourque had to work on a ladder. (T. 13) To reached even higher, he stepped from the ladder onto a table. While performing this activity, he slipped on the table and crashed. (T. 13) Bourque stated that he split his head and hurt his right shoulder. (T. 13) The manager bandaged his head. Bourque did not seek medical attention that day. (T. 14)

The next day, Bourque went back to work at the Olive Garden. He went to pick up a drill with his right hand to mount a door closer. (T. 14) The drill fell out of his hand. (T. 14) At that point, Bourque went to the emergency room at Northern Illinois Medical Center. (T. 14, Px #15) Those records state he injured his right shoulder and had a "minor bump on his head." He received treatment for his right shoulder only. (Px #15)

He was referred from the emergency room to an Orthopedic Physician, Dr. Qeli. (T. 15, Px #1). He was prescribed a course of physical therapy for his right shoulder. He was also prescribed an arthrogram of his right shoulder. (Px #1)

Bourque began treatment at Conroy physical therapy on October 31, 2011. He provided a history to them of past injuries involving:

- Left partial knee replacement.
- Left rotator cuff tear.
- Back surgery involving a lower laminectomy.
- Surgical repair of a right ruptured bicep.

(T.53, Px #2)

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The arthrogram of the right shoulder was performed on November 4, 2011. (Px #1) The impression was fairly large full thickness tear of the supraspinatus tendon with intrasubstance tear of the infraspinatus and subscapularis tendon. There was evidence of previous shoulder surgery with metallic anchors.

On November 8, 2011 Bourque returned to Dr. Qeli. (Px #1) Based upon the lack of improvement with conservative treatment, he recommended surgery to the right shoulder. (T. 15, Px #1)

Dr. Qeli performed surgery to the right shoulder on November 23, 2011. The operative report indicates the procedure involved arthroscopy and repair of the rotator cuff tears; debridement of synovitis; debridement of the superior and anterior labrum; and subacromial decompression. (Px #1)

Following surgery, Bourque had follow up appointments with Dr. Qeli and underwent treatment with Conroy Physical therapy. (Px #1, Px #2) By January 14, 2012, Dr. Qeli noted that Bourque's right shoulder was improving. However, he had cervical paresthesias. He recommended working on the neck in physical therapy, undergoing an MRI of the cervical spine and referral to an orthopedic physician. (Px #1)

An MRI of the cervical spine was performed on January 31, 2012. The impression was disc bulge C6-7 with degenerative disc disease; mild central spinal canal stenosis at C3-4, C5-6, and annular tear at C5-6. (Px #1)

On February 6, 2012 Dr. Qeli examined Bourque and reviewed the cervical MRI. His impression was disc bulge and stenosis of lateral recess at C6-7. He recommended continued physical therapy. (Px #1)

By March 7, 2012 Conroy physical therapy noted that Bourque was 15 weeks post op and had been undergoing therapy three times a week. He no longer was reporting bicep pain. He was having problems performing lifting activities with his right arm. (Px #2) On March 20, 2012 Dr. Qeli noted that Bourque complained of bluish tinges and swelling of the hands. (Px #1)

On March 28, 2012 Dr. Qeli again examined Bourque. (Px #1) He noted that Bourque had prior injuries to both of his shoulders and was not certain if continuing in his profession was best for him. (Px #1)

On April 16, 2012 Bourque saw Dr. Lami, an orthopedic surgeon, for examination of his cervical spine per Dr. Qeli. (Px #1) Dr. Lami did not recommend any treatment for the neck other than a home exercise

program. He did not believe the upper extremity symptoms were from a spinal origin. He did not believe the cervical spine was the source of the paresthesia of the arms. (Px #1) Bourque did not recall Dr. Lami advising him of these facts. (T. 56-57)

Bourque continued medical treatment with Dr. Qeli through May of 2012. He continued to prescribe physical therapy and held him off work. (Px #1) He also referred Bourque to Dr. Carobene, a pain specialist, due to pain in the shoulder and both hands.

On May 31, 2012 Bourque began treatment with Dynamic Hand Therapy per the referral of Dr. Qeli. (T. 20) He advised them he had difficulty writing, dressing with buttons, cutting food, holding a fork, opening containers, mowing the lawn, bathing and pain from water. (T. 58-59, Rx #6)

Dr. Carobene first examined Bourque on June 13, 2012. (Px #3) She prescribed a medrol dosepak and stellate ganglion block.

On June 27, 2012, Dr. Carobene performed a right stellate ganglion block with fluoroscopy. She diagnosed complex region pain syndrome (CRPS) of the right upper extremity. On July 18, 2012 Dr. Carobene recommended an epidural steroid injection of the cervical spine. Her diagnosis was CRPS of the upper extremity and cervical radiculopathy. (Px #3)

On June 28, 2012 Bourque had treatment at dynamic hand therapy. (T. 62) He told them that he was having difficulty writing, cutting food, and holding fork. (T. 63, Rx #6) Bourque testified that he was able to holding a power washing on June 23. (T. 63) He testified that he got into a swimming pool on June 18. (T. 63)

Bourque continued to complain of pain in his right upper extremity. On July 25, 2012 Dr. Qeli indicated that he had no more treatment plans for Bourque from a surgical point of view. (Px #1)

On July 27, 2012 Bourque went back to Dynamic Hand Therapy. (T. 67) He again complained of writing, dressing, buttons, using a fork, opening containers and bathing. (T. 67, Rx #6)

On August 6, 2012 he went fishing from approximately 7:00 am to 7:30 am. (T. 68) He used both hands to fish. Bourque testified on cross-examination that he last fished off a boat when he was a kid. (T. 71) Bourque stated that he had a Facebook account and that he did fish in a canoe. (T. 72) Bourque was shown two

photographs of himself holding a fish from his Facebook account. (T. 73-75) One photo was posted on September 12, 2012 via Blackberry smart phone app. and indicated that he caught the fish in a canoe. Bourque stated that although he posted the photo that day, that it was taken a couple of years ago. There was also a photo of Bourque holding a fish that stated still biting in Illinois and was posted on December 2, 2012. Bourque again denied the photo was taken that day and testified it was taken a couple of years earlier. He stated that he posted the photo to tease his nephew.

On August 22, 2012 Dr. Carobene performed epidural steroid injections at C7-T1, C4-5, and C6-7.

On August 27, 2012 Bourque went back to Dynamic Hand Therapy. He complained of problems dressing, bathing, buttoning things, holding utensils, cutting food and writing. (Rx #6) He did not complain of problems holding a fishing pole. (T. 69)

Dr. Bare performed an independent medical examination on September 10, 2012. (Rx #3) He opined that there was no evidence of CRPS or RSD. He believed that Bourque was at maximum medical improvement for the right shoulder. He recommended a functional capacity evaluation and then a return to work. He also opined that head, neck, arm pain and hand swelling was not related to his surgery.

On September 28, 2012 he went back to Dynamic Hand Therapy and made the same complaints as he did at the other visits to that facility. (T. 69, Rx #6)

On October 10, 2012 Dr. Qeli prescribed a functional capacity evaluation. (Px #1) The FCE was performed on October 29, 2012 at Athletico in St. Charles. (Px # 5) The therapist performing the FCE concluded that it was a valid test. He opined that Bourque was able to function at a sedentary demand level and that his job required a heavy level. (Px #5)

On November 2, 2012 Dr. Qeli reviewed the FCE and met with Bourque. He opined that Bourque was at MMI for the right shoulder with restrictions per the FCE. He opined that Bourque could return on a per need basis. (T. 16, Px #1)

On December 29, 2012 Dr. Bare wrote an addendum report to his previous IME. (Rx #4) Dr. Bare had reviewed several hours of video surveillance. After reviewing the surveillance, Dr. Bare noted that it was in

stark contrast to Bourque's performance at the FCE. He did not believe the FCE was an adequate representation of what he could do, as the video showed he was able to fully utilize his arm without difficulty.

Petitioner's TTD benefits were terminated on January 17, 2013.

Bourque last saw Dr. Carobene on April 24, 2013. (T. 17)

On April 26, 2013, Bourque was examined by Dr. Benson at the request of the respondent for an impairment evaluation.

Bourque testified that between June and September of 2012 he was using weights as part of his physical therapy. (T. 21) He stated that he was using three to five pounds weights. At one point he used nine pound weights for biceps curls. He also did push ups in therapy. His highest number of repetitions was ten. (T. 21) He would also perform a pendulum exercise. He would lie down on a table with his arm hanging over the side, swinging it high as possible. He also performed thera-band exercise. He would do it while lying on his back doing a punching motion. (T. 22)

After being released by Dr. Qeli, Bourque stated that he called General Maintenance and advised them that he was released back to work. (T. 23) Bourque testified that he has not worked anywhere since being released by Dr. Qeli in November of 2012. (T. 24) Bourque stated that he has looked for work. He identified petitioner's group exhibit number six as notes of his notes of his job search. (T. 25, Px #6)

Bourque testified the he is not a college graduate. He does not have any training beyond high school. (T. 26)

Bourque testified regarding several days of video surveillance. (Rx #2) He stated that the video had been reviewed with his attorney. (T. 57) Bourque testified that he personally had the opportunity to review each of the surveillance videos. (T. 57)

He stated that surveillance showed him on June 18, 2012 at Fish Lake. (T. 28) He was shown playing the ladder game. It involves taking two golf balls on a string and trying to loop it around. Bourque identified Px #16 as the golf balls that his was shown throwing on the video. He made them himself. He used his right hand to throw Px #16 and did so in underhand fashion. (T. 60) He confirmed that when he saw Dr. Qeli on July

25, 2012 that he told him he had problems with his shoulder in turning his head. (T. 66) He stated that he does not turn his head to play the ladder game. (T. 66) Bourque stated that he was also shown moving a chair. He identified Px #9 and Px #9-A as a picture of the lawn chair he is shown moving in the video. (T. 29) The picture shows the lawn chair on a scale. Bourque stated the chair weighed nine pounds per the scale. (T. 30) Bourque agreed that at approximately 8:30 am the video shows him wiping down some furniture and using his right hand to do so. (T. 59) He also agreed that it shows him going for a swim in a pool at approximately 12:30 pm that same day. (T. 60)

There was also surveillance of Bourque using a power washer. (T. 30) He identified Px #7 and Px #7-A as photographs of the power washer and wand. The photo showed the items on a scale. Bourque stated that the items weighed seventeen pounds. (T. 31) He used both hands to operate the power washer and clean various items in the front lawn. (T. 62) Bourque stated that he might turn his head to the left when operating the power washer but doubts he turns his head to the right. (T. 66) He stated that he usually keeps the power washer on a wall. His daughter has to get it down because he cannot lift above his head. (T. 31) Bourque stated that he would often use power washers in the performance of his job duties. The machine that he used was commercial grade and probably 6500 PSI. It would be used for cleaning dumpsters, grease and things. (T. 32) He stated that the power washer identified in the photographs and on the video was 1300 PSI.

Bourque stated that the video showed him watering flowers. He identified Px #8 and Px #8-A as a photograph of the garden hose that he is shown using in the video. The photo shows a one hundred foot garden hose on a scale weighing thirteen pounds. (T. 33) He stated that he never carried the garden hose.

Bourque notes that video showed him moving a garbage can. He stated that he used his left hand to do it. On cross-examination, he stated that he used his right hand to drag the garbage can. (T. 60-61) He identified the garbage can in photographs (Px #11 and Px #12) He stated that when he underwent the FCE that he had to push and pull using a weight machine. It had a bar up in front of him and he had to walk it as far as he could and push it out with his arm, then turn and pull it. (T. 35) He identified Px #13 and Px #13-A as photographs of his recycle bin on a scale and stated that it weighed less than nine pounds.

He identified Px #10 and Px #10-A as photographs of his fishing pole weighing less than one pound. He identified Px #17 as crates that he was shown on the video washing with the pressure washer. He next identified Px #18 and Px #18-A as boards that he was shown moving in the video.

Bourque stated that on June 23 the video showed his daughter building a table. (T. 38) He stated that she was using a drill and hammer. He indicated that she was doing the work because he could not do it.

He testified that the video showed him shopping at a grocery store. (T. 39) He was shown lifting a gallon of milk. He started to use his right hand, but stated that it started to hurt so he had to switch to his left hand. (T. 40) Bourque stated that Dr. Qeli never told him that he could not fish, use a power washer, or play the ladder game. (T. 40)

Bourque stated that he has difficulty putting on t-shirts and washing his back. (T. 41) He stated that reaching out above his head and changing a light bulb hurts. Opening big office doors hurt. (T. 41) He currently takes over the counter muscle relaxers for his neck. He takes lycrica for his hands per a prescription by Dr. Carobene. Bourque stated that he has difficulty turning his head to the right. He stated the epidural steroid injections helped his neck a little bit but the stellate ganglion block did not. (T. 45) He stated that the right hand becomes swollen during the night and the left hand slightly swollen. (T. 45) He indicated that they are discolored and affected by temperature change. He stated that his hands felt like they were embedded in glass. (T. 45) Bourque stated that his children do much of his house work now such as mowing the lawn, cleaning the gutters, and shoveling the snow. He no longer rides his motorcycle or works on his cars. (T. 47) Bourque identified Px #14 as a photograph of the ladder game.

CONCLUSIONS OF LAW

WITH REGARD TO ISSUE F. "IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?", THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds a causal relationship between the condition of ill-being regarding Bourque's right shoulder to the work accident of October 23, 2011. The records of Dr. Qeli document a causal relationship with the right shoulder. Furthermore, the respondent's own IME, Dr. Bare, agreed.

The Arbitrator finds a causal relationship between the condition of ill-being regarding Bourque's neck and work accident of October 23, 2011. Admittedly, the evidence on this is conflicting. For instance, the Petitioner's "minor" head injury was documented the day after the fall, but no treatment was rendered. In fact, no injury was suspected until he experienced numbness and tingling in his right arm after the shoulder surgery. While it is true, Dr. Lami did not believe the cervical spine was the source of paresthesias in his arms, the MRI did show a bulge and stenosis at C-6-7, an annular tear at C5-6 which Dr. Queli stated, "could certainly explain some of his symptoms." In contrast, Dr. Lami found no significant compressive pathology. (Px #1) It is noted that Dr. Lami was a treating physician and a referral from Dr. Qeli. (Px #1) Dr. Bare also found no causal relationship between issues his work injury and issues with the head and neck. (Px #3) Dr. Queli stated that "the cervical symptoms started after he fell," but that's not really true. (Px #1) After reviewing all the evidence, the Arbitrator is willing to give the benefit of the doubt to the Petitioner, but only to the extent of a disc bulge. No surgery was ever recommended to the cervical spine, he was finally prescribed a home exercise program. Petitioner's neck symptoms are intermittent according to Dr. Carobene.

The Arbitrator finds no causal relationship between Bourque's hands and work accident of October 23, 2011. The Arbitrator notes that petitioner provided no specific opinion addressing causation with regard to the hands. It is the petitioner's burden to prove all elements of his claim by the preponderance of the evidence. R & D Thiel v. Illinois Workers' Compensation Commission, 398 Ill.App.3d 858, 923 N.E.2d 870 (1st Dist. 2010) It is noted that Dr. Bare found there was no causal relationship between Bourque's hands and work accident. The diagnosis of CRPS and RSD by Dr. Carobene was not compelling enough to find causal connection, but the treatment rendered to investigate this condition was necessary and reasonable.

WITH REGARD TO ISSUE J. "HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?", THE ARBITRATOR FINDS AS FOLLOWS:

The parties listed the issue of medical bills as being in dispute on the request for hearing. The Arbitrator finds that there was no testimony regarding unpaid medical bills and no specific reference make to unpaid

medical bills during the trial. As a result, no award can be given, even though it seems to be related to the treatment with Dr. Carobene on April 24, 2013.

WITH REGARD TO ISSUE K. "WHAT TEMPORARY BENEFITS ARE IN DISPUTE?- MAINTENANCE", THE ARBITRATOR FINDS A FOLLOWS:

Bourque reached maximum medical improvement on November 2, 2012, when he was released by Dr. Qeli, per the FCE. Once a claimant has reached maximum medical improvement, the condition is no longer temporary and entitlement to temporary total disability (TTD) benefits cease. *Freeman United Coal Mining Co. v. Industrial Commission*, 318 Ill.App.3d 170, 741 N.E.2d 1144 (5th Dist 2000).

In support of his claim for maintenance, Bourque presented evidence of his job search. (Px #6). He also presented his request for vocational rehabilitation and maintenance benefits. (Px #19).

The Arbitrator awards maintenance benefits. Dr. Bare opined that the FCE was not an adequate representation of what Bourque could do with the right shoulder. He noted that the video surveillance performed a stark contrast to the FCE and his exam of September 10, 2012. (Rx #4) He did not believe that Bourque had any work restrictions, which the Arbitrator does not find credible for the following reasons. First, the Petitioner was 60 years old at the time of the accident. Second, his right shoulder was already being held together by mitek anchors (2 screws) from an earlier unrelated surgery. Third, the Petitioner had left shoulder surgery in 2009, a partial left knee replacement surgery in 2006 and two prior back surgeries in 1982 and 1983 (lumbar laminectomy). In noting the above, the Arbitrator thinks it likely that if an FCE had been performed before the occurrence, the Petitioner would probably not have been rated at a heavy duty work level.

Having reviewed the evidence and listened to the testimony of Bourque, the Arbitrator disagrees with with Dr. Bare. In summary, the surveillance video was not as compelling to the Arbitrator as it was to Dr. Bare. To the Arbitrator, the Petitioner appeared to be working around his limitations. While watching the three hours of surveillance, the Arbitrator saw the Petitioner favoring his left arm when opening heavy doors and lifting objects. It seemed clear to the Arbitrator that the Petitioner avoided heavy lifting, pulling or pushing with his right arm. He avoided most overhead activity with his right arm. In most respects, the surveillance corroborated

the Petitioner's claim. Yes, the Petitioner went fishing for thirty minutes, but he was not caught reeling in a sailfish off the coast of Florida. It's true he was seen in a swimming pool, but was not swimming freestyle laps. He was seen tossing two golf balls attached by a short rope a short distance, not bowling ten frames. The Arbitrator fully acknowledges that reasonable minds may disagree about the level of Petitioner's work ability. However, to state that the Petitioner has no restrictions whatsoever seems incredible. Assuming arguendo, that he could work at a higher level than the FCE indicates, for instance, at the sedentary to medium or medium level, it still would not meet the employer's job nor trade requirements.

The Arbitrator finds that petitioner's election to recover benefits under Section 8(d)(2) precludes him from an award of ongoing maintenance benefits. Section 8(d)(2) of the Act states in relevant part as follows:

"...the employee elects to waive his right to recover under the foregoing subparagraph 1 of paragraph (d) of this Section then in any of the foregoing events, he shall receive in addition to compensation for temporary total disability under paragraph (b) of this Section, compensation at the rate provided in subparagraph 2.1 of paragraph (b) of this Section for that percentage of 500 weeks that the partial disability resulting from the injuries covered by this paragraph bears to total disability." 820 ILCS 305/8(d)(2)

The cardinal rule of statutory construction is to ascertain and give effect to the true intent and meaning of the legislature. When the language of the statute is clear and unambiguous, courts must interpret the statute according to its terms without resorting to aids of construction. Hollywood Casino-Aurora v. Illinois Workers' Compensation Commission, 967 N.E.2d 848 (2nd Dist. 2012) It is noted that Section 8(d)(2) refers only to temporary total disability. It does not refer to maintenance. As Bourque has made an election for benefits per Section 8(d)(2) of the Act, he is bound by the provisions of that section as such cannot make a claim for ongoing maintenance benefits.

WITH REGARD TO ISSUE L, "WHAT IS THE NATURE AND EXTENT OF THE INJURY", THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator awards 50% loss of use of a man as whole pursuant to Section 8(d)(2) of the Illinois Workers' Compensation Act and pursuant to Will County Forest Preserve Dist. v. Illinois Workers' Compensation Commission, 970 N.E.2d 16, 361 Ill.Dec. 16 (3rd Dist. 2012) . The decision is based upon

Section 8.1b of the Illinois Workers' Compensation Act, which states that in determining the level of permanent partial disability, its determination shall be based upon the following factors:

- The reported level of impairment pursuant to subsection (a);
- The occupation of the injured employee;
- The age of the employee at the time of the injury;
- The employee's future earning capacity; and
- Evidence of disability corroborated by the treating medical records.

The respondent submitted into the evidence the permanent partial disability impairment report of Dr. Leon Benson. He found an impairment of 4% of the upper extremity or 2% whole person. His opinion was based upon AMA guidelines, his physical examination of Bourque, his review of medical records, and his review of video surveillance.

Section 8.1b of the Act states that the relevance and weight of any factors used in addition to the level of impairment as reported by the physicians must be explained in a written order. The Arbitrator has considered all of the following factors in addition to the report of Dr. Benson:

- Bourque described in great detail the physical nature of his pre-injury job duties. (T. 8-12)
- Bourque testified credibly that he has been a "working guy" his whole life with no education beyond the 12th grade. (T. 26)
- Bourque's current age (62).
- Bourque's future earning capacity. With regard to this final factor, please recall that the Petitioner prior injuries. It is no surprise that the Petitioner can no longer work at the heavy level, nor the medium to heavy, nor even at a medium level. His employer has not accommodated his restrictions nor has it attempted to provide vocational rehabilitation. As a result, the Arbitrator finds that is a loss of job claim, as well as a loss of trade. The Petitioner performed his own unsuccessful job search, demonstrating a willingness to work outside his usual and customary