



STATE OF ILLINOIS )

)

) SS.

COUNTY OF )  
SANGAMON )

Affirm and adopt (no changes)

Affirm with changes

Reverse

Modify

Injured Workers' Benefit Fund (§4(d))

Rate Adjustment Fund (§8(g))

Second Injury Fund (§8(e)18)

PTD/Fatal denied

None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DUSTIN DYAS,

Petitioner,

vs.

NO: 15 WC 13955  
18IWCC0413

RETROFOAM,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the parties herein and proper notice given, the Commission, after considering the issues of causal connection, medical expenses, permanent partial disability, credit and reimbursement of Blue Cross Blue Shield lien, 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 thereof.

The Arbitrator awarded reimbursement to Blue Cross Blue Shield, Petitioner's health insurance carrier, for certain medical payments made. Payment for this claim is being satisfied by the Illinois Insurance Guaranty Fund (the Fund) by virtue of Respondent's workers' compensation insurance carrier being liquidated on May 23, 2016. The payments made by Blue Cross Blue Shield result from the same facts and injury that give rise to this matter. Because the Fund was created to be a source of last resort in the event of such insolvency of an insurer, Petitioner was required to first exhaust his medical benefits under the Blue Cross Blue Shield policy at issue, with the Fund being entitled to a corresponding set off. See *Roth v. Illinois Insurance Guaranty Fund*, 366 Ill. App. 3d 787 (2006). The Commission therefore vacates the award of reimbursement to Blue Cross Blue Shield.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay directly to Petitioner's providers outstanding medical expenses, if any, as set forth in Petitioner's Exhibit 10 pursuant to Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of reimbursement to Blue Cross Blue Shield for the medical payments made on Petitioner's behalf is hereby vacated.

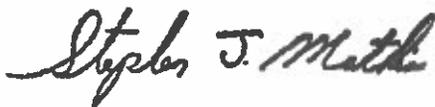
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$253.00 per week (the minimum permanent partial disability rate) for a period of 25 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 5 percent disability to the person as a whole. This award is in addition to the statutory payment of \$5,895.60 Respondent made to Petitioner for the four spinal fractures Petitioner sustained.

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 \$6,400.00. 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: JUL 25 2018  
o- 5/3/18  
SM/msb  
44



Stephen Mathis



David L. Gore



Deborah Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

DYAS, DUSTIN

Employee/Petitioner

Case# 15WC013955

RETROFOAM

Employer/Respondent

18IWCC0413

On 9/15/2017, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 1.14% 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:

2217 SHAY & ASSOCIATES  
KATHERINE E WOOD  
1030 DURKIN DR  
SPRINGFIELD, IL 62704

2461 NYHAN BAMBRICK KINZIE & LOWRY  
BRIAN T RATERMAN  
20 N CLARK ST SUITE 1000  
CHICAGO, IL 60602

18IWCC0413

STATE OF ILLINOIS )

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COUNTY OF Sangamon )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§§(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§6(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

**DUSTIN DYAS**

Employee/Petitioner

v.

**RETROFOAM**

Employer-Respondent

Case # 15 WC 13955

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 **Springfield**, on **June 20, 2017**. 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 How many dependents does the Petitioner have?

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FINDINGS

On January 28, 2015, 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 \$10,071.38; the average weekly wage was \$406.10.

On the date of accident, Petitioner was 21 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 \$11,541.46 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

*Medical benefits*

Respondent shall pay reasonable and necessary medical services as set forth in Petitioner's Exhibit 10, directly to the providers, according to the fee schedule, as provided in Section 8(a) of the Act.

Respondent shall reimburse Blue Cross Blue Shield for payments made for reasonable and necessary medical services as set forth in Petitioner's Exhibit 10, the lesser of the amount actually paid for the services or the amount set forth in the fee schedule, as provided in Section 8(a) of the Act.

*Permanent Partial Disability*

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that the record contains an impairment rating of 3% of the thoracic spine and 1% of the pelvis as determined by Dr. Timothy Payne, pursuant to the most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment. RX I. The Arbitrator notes that this level of impairment does not necessarily equate to permanent partial disability under the Workers' Compensation Act, but instead is a factor to be considered in making such a disability evaluation. The doctor noted that Petitioner did have continued symptoms of stiffness in his low back with bending, as well as limited range of motion in the left hip. Notably, the limited range of motion is not considered as part of the impairment rating of the pelvis under the AMA Guidelines. Because the Petitioner's most significant problem as to the pelvis is not considered as part of the impairment evaluation, the Arbitrator therefore gives lesser weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as an insulation installer at the time of the accident and that he *is* able to return to work in his prior capacity as a result of said injury. The Arbitrator notes that the Petitioner did not in fact return to his prior employment for reasons unrelated to the accident. Currently, Petitioner works for a pizza restaurant, and is able to work that job full duty without problem. Because the Petitioner has been able to return

to work full duty and does not appear to have any pain, problems or limitations because of the accident, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 21 years old at the time of the accident. Although the Petitioner generally does not have any limitations with his work because of his accident, he does have some limited range of motion in the left hip and has pain and stiffness in his lower back with extended bending, the Arbitrator therefore gives *greater* weight to this factor.

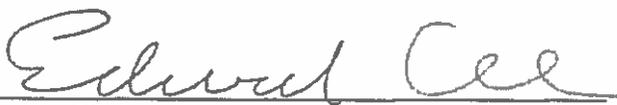
With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that the Petitioner was returned to full duty work after his accident, and has returned to work in full duty capacity, although with a different employer. Because Petitioner has sustained no difference in earning capacity, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator focuses on the complaints and findings of near the end of Petitioner's significant medical treatment. When Petitioner presented to Dr. Williams on October 5, 2015, he complained of continued muscle soreness. PX 6. Upon discharge from physical therapy on September 24, 2015, at which time he transitioned to work hardening, the therapist noted Petitioner had failed to meet four out of six of his goals. PX 8. Further, in the discharge evaluation for occupational therapy on November 19, 2015, Petitioner reported pain at 2 out of 10 and noted continued mild soreness. PX 9. On November 20, 2015, Petitioner reported having a little pain in the lower back if he overworked himself. PX 6. Because of Petitioner's ongoing complaints even after significant physical and occupational therapy, the Arbitrator therefore gives *greater* weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 5% loss of use of the person as a whole for the injuries to the Petitioner's spine and pelvis in addition to statutory payments she has received. Respondent shall receive a credit of \$5,895.60 representing statutory payments of 24 weeks for the four spinal fractures at the rate of \$245.65 per week. However, as set forth below, Respondent is not due any overpayment credit for overpayment of statutory PPD benefits.

**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

9/14/17  
Date

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ADDENDUM

STATEMENT OF FACTS

The Petitioner testified that he is 25 years old and has a five-year-old daughter. He testified that he graduated Athens High School, and has not received any college credits or technical training since obtaining his diploma. He is currently employed at Gabatoni's Restaurant, a pizza place, where he makes pizzas, takes orders, makes deliveries, serves and busses tables, and bartends.

Previously, Petitioner worked at Retrofoam from August 2014 until his date of accident, January 28, 2015. He testified that he worked at Retrofoam installing insulation. He testified that on January 28, 2015, he was working in the pool room of a new construction Holiday Inn Express in Litchfield, Illinois. He testified he was hanging plastic on an approximately twelve-foot ceiling. He was standing on a six-foot, A-frame ladder, when the ladder slipped from underneath him and he fell. Petitioner testified that he landed on his "butt" on concrete.

Immediately after the accident, Petitioner was driven to Springfield by his boss for medical treatment. He testified that he was initially taken to a prompt care facility, but was instructed by personnel there that he would need to go to the hospital as a trauma case.

Petitioner was then taken to Memorial Medical Center, where he was examined by Dr. David Beal. PX 2. He reported a history of fall from a six-foot ladder onto his tailbone. PX 2. He complained of pain in his tailbone. PX 2. Dr. Beal ordered CT examinations of the cervical, thoracic, and lumbar spine, as well as the chest, abdomen and pelvis. PX 2. The CT of the thoracic spine revealed an acute mild compression fracture of the T9 vertebral body, an acute burst fracture of the T11 vertebral body, with mild to moderate loss of height anteriorly and a 4 mm bony retropulsion into the spinal canal, age indeterminate mild height loss in the T3 and T4 vertebral bodies, chronic appearing mild height loss of the T12 vertebral body, and a prevertebral soft tissue hematoma at T9 through T11-12. PX 4. The CT of the pelvis revealed acute left inferior sacral and left iliac fractures, and also identified the T9 and T11 vertebral body fractures shown on the thoracic imaging. PX 3. Subsequently, Petitioner underwent an MRI of the thoracic spine, which showed the burst fraction at T11 and compression fracture at T9, but also revealed additional compression fractures of the T10 and T12 vertebral bodies. Petitioner testified that prior to this accident he had never been diagnosed with fractures to his pelvis or back and had never had any other injuries involving the pelvis or the back.

Petitioner was evaluated by Dr. Brett Wolters while at the hospital for an orthopedic consult. PX 2. Petitioner noted back and coccyx pain. PX 2. On physical examination, Dr. Wolters noted pain on palpation over the lower lumbar spine. PX 2. Dr. Wolters admitted Petitioner to the trauma ward. PX 2.

On January 29, 2015, Petitioner was discharged from Memorial Medical Center. PX 2. Prior to discharge, Petitioner was instructed to follow up with Dr. Wolters and was given a referral to Dr. Joseph Williams for his spine. Petitioner was fitted for a TLSO brace. Petitioner testified that the brace "was like a shell that encased your whole body." He testified that the brace was both front and back, and spanned from the "top of the chest to right above the - - right at the hip." Petitioner testified the he wore the brace for two-and-half months continually, and that he was not able to take the brace off while he was at home. The instructions for TLSO brace use set forth in the discharge instructions indicate that Petitioner was to wear the TLSO at all times, and that he may remove the front and back one at a time for sponge bathing, but that he was not to remove both the front and back at the same time.

Petitioner testified that he was kept off work after his accident. He was paid temporary total disability benefits by the Respondent for the time he missed from work.

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On February 3, 2015, Petitioner presented to Dr. Joseph Williams, an orthopedic surgeon, for evaluation of his spine fractures. PX 6. Petitioner reported pain in the thoracic spine rated at 7 out of 10, but noted no radicular symptoms. PX 6. Dr. Williams performed an examination of Petitioner, which was normal. PX 6. He further took x-rays in office, which showed a burst fracture at T11 and compression fractures at T9, T10 and T12. PX 6. Dr. Williams noted no change in findings from Petitioner's prior films. PX 6. Dr. Williams diagnosed Petitioner with thoracic spine pain, burst fracture of the thoracic vertebra, and thoracic compression fractures. PX 6. Dr. Williams opined that Petitioner was not in need of surgery at that time. PX 6. He recommended continued use of the TLSO brace, which he expected Petitioner to wear for two and one half months. PX 6. Dr. Williams placed Petitioner off work until further evaluation. PX 6.

Petitioner returned to Dr. Williams on February 17, 2015. Petitioner reported pain when sleeping and when he first woke up. PX 6. He reported his pain was located in the posterior low back and rated it at 5 out of 10. PX 6. X-rays were taken of the thoracic spine, which showed no significant changes and signs of healing. PX 6. Petitioner reported he continued to wear his brace and continued activity restrictions. PX 6. Dr. Williams noted it was important Petitioner continue to use his TLSO brace. PX 6. Dr. Williams restricted Petitioner's activity to no repetitive lifting, bending, or twisting, and no lifting more than 10 pound. PX 6. He further continued to restrict Petitioner from work entirely. PX 6.

On February 27, 2015, Petitioner presented to Dr. Brett Wolters at Springfield Clinic for follow-up evaluation of his pelvic fractures. PX 6. Petitioner reported he was not having any problems with the left sacral olla and iliac wing fractures. PX 6. Dr. Wolters performed a physical examination, which revealed pain with trip impingement testing as well as scarring testing on the left side. PX 6. Follow-up x-rays were taken of the pelvis, which showed no evidence of displacement of the fractures. PX 6. Dr. Wolters recommended conservative management of the sacral and iliac fractures, and noted that he did not believe Petitioner required any further treatment specifically for these fractures as his activities were being restricted due to his spinal injuries. PX 6.

Petitioner returned to Dr. Williams on March 17, 2015. Petitioner noted pain in his low back that was very mild at 2 out of 10. He noted that his pain occurred most of the day. PX 6. X-rays were taken which showed stable fractures. PX 6. Dr. Williams recommended Petitioner wear the TLSO brace for the next two weeks, until his follow-up appointment, and continued to keep Petitioner off work. PX 6.

On April 6, 2015, Petitioner returned to Dr. Williams. PX 7. Petitioner noted he was not experiencing any pain, but was having some discomfort in the spine. PX 6. X-rays taken in office continued to show stable alignment in the spine. PX 6. Dr. Williams discontinued use of the TLSO brace, and placed Petitioner on restrictions of no repetitive lifting, bending, or twisting, no lifting more than 20 pounds, and sit down work only. PX 6. Respondent was unable to provide work within these restrictions, but continued to pay Petitioner temporary total disability benefits.

Petitioner returned to Dr. Williams on May 15, 2015. Petitioner noted he was having pain a few times per week, and that his pain was exacerbated with standing and sitting for extended periods of time, rolling over in bed, and riding in a car. PX 6. Petitioner further reported he had been walking for exercise. PX 6. Petitioner explained his job duties with Respondent to Dr. Williams, noting it involved a lot of heavy lifting. PX 6. Dr. Williams recommended Petitioner undergo physical therapy in order to allow Petitioner to safely return to full duty work. PX 6. He continued to keep Petitioner off work. PX 6.

On May 26, 2015, Petitioner presented to Memorial Industrial Rehab for an initial physical therapy evaluation. PX 8. Petitioner reported that since his TLSO brace had been removed he was feeling weakness and pain in his back. PX 8. He noted in the past 24 hours his pain had reached 4 out of 10. PX 8. He further reported difficulty walking, pain at night, and difficulty sleeping. PX 8. The therapist noted minimal tenderness over the bilateral lumbar paraspinals on palpation, as well as 75% limited thoracic rotation. PX 8. He further noted that

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Petitioner's functional movements were guarded. PX 8. The therapist initiated a plan for Petitioner to be seen 2-3 times per week for an initial period of four weeks. PX 8. Petitioner initiated physical therapy on May 28, 2015 and continued to receive physical therapy until September 24, 2015. PX 8.

On June 15, 2015, Petitioner returned to Dr. Williams. He reported pain in his low back and "a little tightness in the thoracic area." PX 6. He rated his pain at 2-3 out of 10. PX 6. He reported his pain was relieved by NSAIDs and that he had been taking Ibuprofen. PX 6. Petitioner reported that he had undergone four weeks of physical therapy, which had provided relief. PX 6. Dr. Williams continued physical therapy for two weeks. PX 6.

Petitioner returned to Dr. Williams on July 27, 2015, reporting he had completed physical therapy and that he was continuing to have pain a few times per week at a 1 out of 10. PX 6. However, Petitioner reported he was no longer taking any pain medicine. PX 6. Dr. Williams continued Petitioner's physical therapy and continued to keep him restricted from work. PX 6.

On September 8, 2015, Petitioner returned to Dr. Williams. PX 6. Petitioner reported no pain at that time. PX 6. However, he reported he was still unable to do a sit up and attempts caused pain. PX 6. He further reported pain when attempting to lift. PX 6. He was concerned that if he returned to work at that time, he would only be able to perform part of his job duties. PX 6. However, he did report he wished to return to his employment and that he enjoyed the work. PX 6. Dr. Williams recommended continued therapy, and recommended he return in one month, with the hope he would be able to return to work at that time. PX 6.

Petitioner returned to Dr. Williams on October 5, 2015. He complained of muscle soreness, but denied pain. PX 6. Dr. Williams recommended that Petitioner transition from physical therapy to work hardening in an effort to get him back to work. PX 6.

Petitioner was discharged from physical therapy on September 24, 2015, in order to transfer to work hardening, which he began on October 1, 2015 at Memorial Industrial Rehab. PX 8, PX 9. The discharge notes from the physical therapist noted that Petitioner had 30 out of 31 appointments, but had only met 2 out of his 6 goals. PX 8. Petitioner subsequently received occupational therapy until November 19, 2015. PX 9. During his discharge evaluation, Petitioner reported pain at 2 out of 10, noting he was "a little sore but noting too bad." PX 9. The therapist noted in his discharge note that Petitioner was "motivated and challenged himself throughout the therapy program." PX 9. Petitioner met all of his occupational therapy goals. PX 9. Further, Petitioner was instructed to continue home exercises. PX 9.

Petitioner returned to Dr. Williams on November 20, 2015. PX 6. He noted he had completed therapy and that it had been helpful. PX 6. He reported he was able to lift 85 pounds from the floor to his waist and indicated he was doing well. PX 6. The Petitioner testified at hearing that he was feeling much better at this time. He testified that he would have a little pain in his lower back if he overworked himself. Dr. Williams recommended a trial return to work without restrictions at this time. PX 6. The Petitioner testified that, at the time of his release to return to work, he felt physically able to return to his duties at Retrofoam, but that he was unable to return to his employment with Retrofoam for unrelated reasons.

On January 11, 2016, Petitioner had his last appointment with Dr. Williams. PX 6. He reported completing physical therapy. PX 6. At this time, Petitioner was released from care and placed at maximum medical improvement. PX 6.

On April 15, 2016, Petitioner presented to Dr. Timothy Payne, at the request of the Respondent for an Independent Medical Examination and AMA Impairment Rating. Dr. Payne testified via his evidence deposition, taken on June 7, 2017, and entered into evidence as Respondent's Exhibit 1. Dr. Payne testified he

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practices general orthopedics and is board certified in orthopedic surgery. RX 1, pp. 5-6. Upon presenting to Dr. Payne, Petitioner noted that he would experience stiffness and pain across his lower back if he was bending or stooping for twenty to thirty minutes. RX 1, pp. 12-13. He further reported left hip stiffness with motion. RX 1, p. 13.

Dr. Payne performed a physical examination as part of his evaluation. RX 1, p. 14. Dr. Payne noted that Petitioner did not have any signs of symptom magnification. RX 1, p. 14. His examination of the spine was essentially normal. RX 1, p. 14. With regards to the hip, the Petitioner exhibited some stiffness with rotation of the left hip with the Faber maneuver. RX 1, p. 15. Further, the left hip showed decreased external rotation of 30 degrees on the left versus 45 degrees on the right, and decreased internal rotation of 20 degrees on the left versus 30 degrees on the right. RX 1, p. 15. Dr. Payne testified that Petitioner may continue to have some residual stiffness or tightness based on activity indefinitely. RX 1, p. 42.

Dr. Payne noted he reviewed the report of the MRI taken of Petitioner's thoracic spine. RX 1, p. 18. He noted the MRI showed a mild burst fracture at T11 with minimal retropulsed fragments, mild compression fractures at T9 and T10, and edema at T12. RX 1, p. 18. Dr. Payne testified that a retropulsed fragment on the spine is similar to a crack in an eggshell, where the fragment is still attached, but is partially pulled away from the rest of the structure. RX 1, p. 38. Dr. Payne testified this can cause problems, and it was likely the reason Petitioner was placed in the TLSO brace. RX 1, p. 39. Dr. Payne noted that the retropulsed fragment had healed in a way that it did not cause clinical symptoms, although there was some change in the anatomy. RX 1, p. 39. He further noted reviewed thoracic spine x-rays of the thoracic spine, Pelvis, and lumbar spine. He noted in addition to the spinal fractures, he noted fractures of the left ala and left iliac wing. RX 1, p. 19. Dr. Payne testified that the ala and iliac wing fractures were not one continuous fracture across multiple bodies, but rather were two different fractures. RX 1, p. 40.

Dr. Payne diagnosed Petitioner with compression fractures of T9, T10, T11 and fractures of the left ala and iliac wing. RX 1, p. 22. He noted that the fractures had healed. RX 1, p. 22. Dr. Payne opined that these fractures were all caused by the fall Petitioner had sustained at work. RX 1, p. 23. Dr. Payne further agreed that Petitioner's treatment was reasonable and necessary. RX 1, pp. 23-24. He further noted that due to the trauma Petitioner had sustained, there may be future issues with degeneration of the spine. RX 1, p. 25. He further noted that Petitioner may have some future problems with whether changes. RX 1, pp. 25-26. Additionally, he noted that petitioner may develop pain in the back because of inactivity, and may develop some stiffness in the hips due to the fracture in the ala. RX 1, p. 26. Dr. Payne testified that these potential future problems would not be expected if he had not had the fractures. RX 1, p. 40.

Dr. Payne testified that he performed impairment ratings as to the thoracic spine and pelvis. RX 1, p. 28. He agreed that impairment does not equal disability. RX 1, p. 28. Petitioner completed a pain disability questionnaire, which rendered a total pain disability score of seven. RX 1, p. 31. Dr. Payne testified that he used page 568, table 17-3, the Thoracic Spine Regional Grid: Spine Impairment for impairment rating of the thoracic spine. RX 1, p. 32, 35. He used the diagnosis of "Single or Multiple Level Fractures, less than 25 percent of any vertebral body." RX 1, p. 32. This placed Petitioner in Class 1, with a disability range of 2-6, with a default rating of 4. RX 1, pp. 32-33. Dr. Payne noted he only used two grade modifiers, as the clinical study modifier was used in rendering the diagnosis. RX 1, p. 43. With regards to the functional history, he looked to the pain disability questionnaire, which he noted provided a modifier of 1, as he had minimal impairment based on the questionnaire. RX 1, p. 33. For the physical exam modifier, he gave a score of 0 as there were no findings as to the spine. RX 1, p. 33. Dr. Payne gave a total rating of 3% for the spine.

With regards to the pelvis, Dr. Payne used Table 17-11, page 593, Fracture of the Ilium, and found it was a Class 1 based on a non-displaced fracture, which has a default value of 2. RX 1, p. 36. Again, Dr. Payne did not use the clinical study modifier as it was used in rendering the diagnosis. RX 1, p. 43. Further, he did not use the

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pain disability questionnaire for the functional history modifier, as it had been used in his evaluation of the spine, and he testified that he was unable to use it for both. RX 1, p. 36. He granted a physical exam modifier of 0. RX 1, p. 36. Dr. Payne testified that the physical exam adjustment did not take into consideration limitations in range of motion. RX 1, p. 45. Dr. Payne found Petitioner had an impairment rating of 1 percent as to the pelvis. RX 1, p. 36.

Dr. Payne testified that he performs approximately five independent medical evaluations per week. RX 1, p. 7. He further testified that he charges \$1200 for an IME, but in cases where he evaluates two different body parts, the charge is \$1500. RX 1, p. 45.

Petitioner testified that his back still bothers him occasionally. He testified that prolonged bending will cause pain.

## CONCLUSIONS OF LAW

Issue F: Is the Petitioner's Current Condition of Ill-Being Causally Related to the Injury?

The Arbitrator finds that the Petitioner's current conditions of fractures to T9, T10, T11, T12 of the thoracic spine and to the left ala and iliac wing of the pelvis are causally related to his work accident of January 28, 2015.

The medical evidence is undisputed as the causal relationship for the pelvic fractures and the fractures to T9, T10, and T11. With regards to the fracture to T12, the Petitioner underwent several radiological studies to his thoracic spine at Memorial Medical Center on the date of his accident. PX 2. The CT of the thoracic spine only showed fractures of T9 and T11. PX 2. However, a subsequent MRI was taken revealed fractures at T9, T10, T11, and T12. PX 2. Further, when Petitioner initially presented to Dr. Williams on February 3, 2015 for evaluation of his spine, he took x-rays in office which showed a burst fracture at T11 and compression fractures at T9, T10, and T12. PX 6.

While Dr. Payne did not render a diagnosis of T12 fracture upon his independent medical examination, it is clear based on the evidence from Petitioner's MRI and the x-rays taken by Dr. Williams on February 3, 2015 that Petitioner did in fact sustain a T12 fracture as a result of the accident. The Arbitrator, therefore, finds that the Petitioner did sustain a fracture to T12 as a result of the January 28, 2015 accident.

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?

Dr. Payne testified that all of Petitioner's medical treatment has been reasonable and necessary. RX 1, p. 23-24. Therefore, the Arbitrator finds that all Petitioner's medical treatment has been reasonable and necessary. The Petitioner's medical bills are set forth in Petitioner's Exhibit 10. The Respondent is ordered to pay Petitioner's medical bills, as set forth in Petitioner's Exhibit 10, directly to the providers, according to the fee schedule, as set forth in the Act.

Issue L: What is the Nature and Extent of the Injury?

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that the record contains an impairment rating of 3% of the thoracic spine and 1% of the pelvis as determined by Dr. Timothy Payne, pursuant to the most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment. RX 1. The Arbitrator notes that this level of impairment does not necessarily equate to permanent partial disability under the Workers' Compensation Act, but instead is a factor to be considered in making such a disability evaluation.

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The doctor noted that Petitioner did have continued symptoms of stiffness in his low back with bending, as well as limited range of motion in the left hip. Notably, the limited range of motion is not considered as part of the impairment rating of the pelvis under the AMA Guidelines. Because the Petitioner's most significant problem as to the pelvis is not considered as part of the impairment evaluation, the Arbitrator therefore gives lesser weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as an insulation installer at the time of the accident and that he *is* able to return to work in his prior capacity as a result of said injury. The Arbitrator notes that the Petitioner did not in fact return to his prior employment for reasons unrelated to the accident. Currently, Petitioner works for a pizza restaurant, and is able to work that job full duty without problem. Because the Petitioner has been able to return to work full duty and does not appear to have any pain, problems or limitations because of the accident, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 21 years old at the time of the accident. Although the Petitioner generally does not have any limitations with his work because of his accident, he does have some limited range of motion in the left hip and has pain and stiffness in his lower back with extended bending, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that the Petitioner was returned to full duty work after his accident, and has returned to work in full duty capacity, although with a different employer. Because Petitioner has sustained no difference in earning capacity, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator focuses on the complaints and findings of near the end of Petitioner's significant medical treatment. When Petitioner presented to Dr. Williams on October 5, 2015, he complained of continued muscle soreness. PX 6. Upon discharge from physical therapy on September 24, 2015, at which time he transitioned to work hardening, the therapist noted Petitioner had failed to meet four out of six of his goals. PX 8. Further, in the discharge evaluation for occupational therapy on November 19, 2015, Petitioner reported pain at 2 out of 10 and noted continued mild soreness. PX 9. On November 20, 2015, Petitioner reported having a little pain in the lower back if he overworked himself. PX 6. Because of Petitioner's ongoing complaints even after significant physical and occupational therapy, the Arbitrator therefore gives *greater* weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent 5% loss of use of the person as a whole for the injuries to the Petitioner's spine and pelvis. Respondent shall receive a credit of \$5,895.60 representing statutory payments of 24 weeks of permanent partial disability for the four spinal fractures at the rate of \$245.65 per week. However, as set forth below, Respondent is not due any overpayment credit for overpayment of statutory PPD benefits.

## Issue N: Is the Respondent Due Any Credit?

As to Issue N, the Arbitrator finds that the Respondent is not due credit for overpayment of statutory ppd. As noted in Issue F above, the radiological studies clearly show that Petitioner sustained four fractures to the thoracic spine. PX 2, PX 6.

The Respondent paid statutory permanent partial disability for four spinal fractures. As the Arbitrator finds that the Petitioner in fact had four spinal fractures and Respondent paid for four spinal fractures, the Arbitrator finds that the Respondent is not due any credit for statutory overpayment.

# 18IWCC0413

Issue O: How Many Dependents Does the Petitioner Have?

As to issue O, the Arbitrator finds that the Petitioner has one dependent. The Petitioner testified that he has a five year old daughter. The Arbitrator finds the Petitioner's testimony to be credible. The Respondent has provided no evidence to contradict the Petitioner's testimony. Therefore, the Arbitrator finds that, for purposes of determining the minimum rate for permanent disability, the Petitioner has one dependent in addition to himself.

13 WC 26975

18IWCC429

Page 1

STATE OF ILLINOIS

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BEFORE THE ILLINOIS WORKERS' COMPENSATION  
COMMISSION

) SS

COUNTY OF COOK

)

Daniel Roberts,  
Petitioner,

vs.

NOS. 13 WC 26975  
18 IWCC 429

Wildfire Restaurant,  
Respondent.

ORDER OF RECALL UNDER SECTION 19(F)

A Petition to Recall Decision pursuant to Section 19(f) of the Illinois Workers' Compensation Act to correct an error in the Decision and Opinion on Review of the Commission dated July 12, 2018, having been filed by Petitioner herein, and the Commission having considered said Petition, the Commission is of the opinion that the Petition should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated July 12, 2018, is hereby recalled pursuant to Section 19(f).

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

DATED: **JUL 16 2018**

DLS/rm  
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\_\_\_\_\_  
Deborah L. Simpson

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DANIEL ROBERTS,

Petitioner,

vs.

13 WC 26975  
18 IWCC 429

WILDFIRE RESTAURANT,

Respondent.

CORRECTED OPINION AND DECISION  
ON PETITION FOR REVIEW PURSUANT TO §§19(h)/8(a)

This matter comes before the Commission on Petitioner's Petition for Review Pursuant to §§19(h)/8(a). A Hearing was held in Chicago on December 19, 2017 before Commissioner Simpson. The parties were represented by counsel and a record was taken. Prior to the hearing, Petitioner acknowledged that Respondent had paid for the majority of current medical expenses and was entitled to credit therefor.

*Findings of Facts & Conclusions of Law*

1. Petitioner testified that his claim was adjudicated before Arbitrator Bocanegra on October 6, 2015. Since that hearing, he returned to work for Respondent. However, he "was never really completely 100%" in his abilities and "still felt strain and tightness" in his groin and right hip, as well as fatigue, pain, and discomfort in his right hip. He "never managed to get back to a full schedule at work" and was basically "giving up shifts."
2. He was getting progressively worse and returned to Dr. Dunlop on February 9, 2017. He reported that he had "difficulty getting through the shift and the pain after work was overwhelming." Dr. Dunlop referred Petitioner to Dr. Bashyal. He recommended a total hip replacement, which was performed on March 10, 2017.

3. He had postop physical therapy and work conditioning. He had a Functional Capacity Evaluation (“FCE”) on August 7, 2017.
4. On October 9, 2017, Petitioner was sent to Dr. Weber for a Section 12 examination. About a week and a half after that examination, he returned to work for Respondent as a waiter. He was currently employed by Respondent in that capacity. Petitioner testified that currently he has tightness in his groin and the inside buttocks while getting out of bed in the morning and getting up after prolonged sitting or standing. “Getting in and out of the car with bending to sit down at the angle takes caution” and he notices “tightness and strain getting out and starting to walk.” At work, he walks short distances and then stops and notices “strain and fatigue after the end of” a shift. Petitioner identified some medical bills that remained outstanding.
5. On cross examination, Petitioner testified he was not taking any prescription medication at the time; only “Tylenol, Advil on occasion after work.” He was trying to get back to a full schedule.
6. While neither party submitted the arbitration decision, the Commission takes judicial notice of it. The decision indicates that on July 27, 2013 Petitioner sustained a fall on a wet floor in the bathroom and landed on his right hip. He sustained a “peritrochanteric hip fracture, extrascapular.” He underwent internal fixation surgery (“ORIF”) on July 29, 2013. Thereafter, he was an inpatient at a rehabilitation facility from August 1, 2013 to September 14, 2013. He returned to work for Respondent on November 10, 2013, in a sedentary position and on a part-time basis.
7. Petitioner consulted with Dr. Bashyal about possible hip replacement. Dr. Bashyal opined that hip replacement was not indicated at that time. After an FCE, Petitioner returned to work full time as a waiter on November 27, 2014. An AMA impairment rating indicated that Petitioner sustained 6% impairment of the right leg, or 2% of the whole person. The Arbitrator awarded Petitioner 96.75 weeks of permanent partial disability benefits, representing loss of the use of 45% of the right leg. Neither party sought review of the Arbitrator’s decision.
8. The medical record shows that x-rays of the right hip taken on February 9, 2017, were compared to those taken on July 8, 2014. It was interpreted as showing “chronic findings” “similar in appearance to the prior study” with no fractures or subluxation.
9. After the x-rays, Petitioner saw Dr. Dunlap. Dr. Dunlap noted that he was 3&½ years post ORIF, “with avascular necrosis and end-stage arthritis” surgery on the right hip. He had gotten a little worse, with more pain, since he last saw Petitioner in December of 2014. Dr. Dunlap noted that the x-rays showed “advanced collapse of the femoral head.” Dr. Dunlap concluded that Petitioner needed total hip replacement, and recommended Petitioner return to Dr. Bashyal.

10. On February 2, 2017, Petitioner presented to Dr. Bashyal for a new problem, which was described as worsening pain and collapse of his right hip. Dr. Dunlap informed Petitioner he had avascular necrosis. Petitioner reported that his pain had been increasing over the past several months. Dr. Bashyal noted that several previous x-rays showed that things were fine, "but now he has gone into AVN collapse." He recommended removal of hardware and complex hip arthroplasty. Petitioner agreed.
11. On March 10, 2017, Dr. Bashyal performed complex right total hip arthroplasty with conversion of prior hip surgery to total hip arthroplasty with removal of hardware, for right hip avascular necrosis subsequent collapse after hip fracture ORIF.
12. By June 29, 2017, Petitioner was doing well 15 weeks post arthroplasty. X-rays showed the arthroplasty was in appropriate position with no signs of loosening or failure. Petitioner would continue to work with physical therapy. Dr. Bashyal would follow up with Petitioner in one to two years.
13. Petitioner had an FCE on August 7, 2017, which was considered valid. He functioned at the medium physical demand level, which was the physical demand level of his job as waiter. He could lift 52.8 lbs above shoulder, 67.8 lbs desk to floor, 57.8 lbs chair to floor, and carry 47 lbs with both arms. He had physical therapy for six weeks and work hardening for another five weeks.
14. Respondent submitted a report dated October 9, 2017, authored by Dr. Weber pursuant to Section 12 of the Act. Dr. Weber noted Petitioner's accident. Alternatives for treatment for his hip fracture was ORIF or hip replacement, ORIF was chosen because of Petitioner's age. He never got back to 100% after the surgery and always had some tightness in his groin. His hip pain progressed eventually resulting in antalgic gait. He never got back to full duty or more than four shifts a week.
15. Dr. Weber noted that Petitioner's pain progressed, and he was told he had avascular necrosis and collapse of the femoral head. He had right hip arthroplasty followed by physical therapy and work hardening. He had an FCE. His doctor deferred about his return to work even though the FCE indicated that he had the physical capabilities to perform his job, and suggested he see an occupational doctor.
16. Currently, Petitioner reported some discomfort in the groin area with prolonged sitting, sleeping, or driving. Dr. Weber's examination was within normal limits for a patient who had hip arthroplasty. The objective findings of her examination were normal and did not correlate to his complaints. Petitioner was at maximum medical improvement and no additional treatment was necessary, though she recommended a home exercise program for strengthening. Based on the FCE results and the job description, Petitioner could return to work at his prior job without restrictions.

Petitioner seeks an additional award of loss of 20% of the use of his right leg, as well as payment of all outstanding medical expenses. Respondent concedes that it is responsible for the outstanding bills but argues an increase in permanent partial disability benefits is not warranted because he had no ongoing treatment and was able to perform his prior job without restrictions. The Commission finds that the treatment Petitioner received since his arbitration hearing was necessary and reasonable and causally related to his initial work-related accident on July 27, 2013. Therefore, the Commission awards all medical expenses submitted by Petitioner incurred since the hearing.

On the issue of permanent partial disability, the Commission reviewed prior Commission awards for hip arthroplasty. The range of permanent partial disability awards generally ranged between loss of 45% of the leg to loss of 60% of the leg. The lower end of the awards tended to involve accidents that aggravated existing osteoarthritis. The higher end of the awards tended to involve some permanent restrictions, limitations, and/or change of occupations. In the instant claim, there is no evidence that Petitioner had pre-existing osteoarthritis and it appears that the acute accident was the direct cause of the initial ORIF surgery and later arthroplasty. On the other hand, Petitioner was able to return to his prior job with no restrictions. In the original arbitration, Petitioner was awarded 96.75 weeks of permanent partial disability benefits, representing loss of use of 45% of the right leg. In looking at the entire record before us, the Commission finds that an additional award of 16.125 weeks of permanent partial disability benefits, representing an additional loss of 7.5% of the use of the right leg, for a total loss of 52.5% of the right leg is appropriate in this matter.

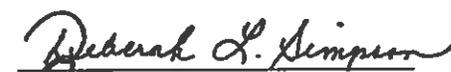
IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Petition for Review Pursuant to §§19(h)/8(a) is hereby granted.

BE IT FURTHER ORDERED BY THE COMMISSION that Respondent pay all outstanding medical expenses incurred for the treatment of Petitioner's right hip since the arbitration hearing submitted into evidence by Petitioner, subject to the applicable fee schedule.

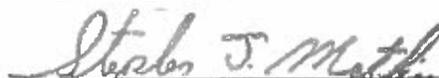
BE IT FURTHER ORDERED BY THE COMMISSION, that Respondent pay Petitioner the sum of \$285.18 a week for an additional 16.125 weeks because Petitioner has sustained the loss of the use of an additional 7.5% of his right leg.

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: JUL 16 2018

  
Deborah L. Simpson

  
David L. Gore

  
Stephen J. Mathis