

STATE OF ILLINOIS)
)SS
COUNTY OF CHAMPAIGN)

BEFORE THE ILLINOIS WORKERS'
COMPENSATION COMMISSION

Michelle Brooks a.k.a,
Michelle Williams)
Petitioner,)
)
vs.)
)
Regional Elite Airline)
Services, LLC, and Federal)
Insurance Company and)
Gallagher Bassett Services)
Respondent.)

No. 11WC 12905
17IWCC 0405

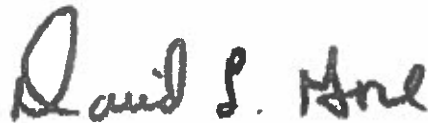
ORDER

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

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision dated June 27, 2017, is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner David L. Gore.

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



David L. Gore

DATED: JUL 11 2017



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

Michelle Brooks,

Petitioner,

vs.

NO: 11 WC 12905
17IWCC0405

Regional Elite Airline Services, LLC,
Federal Insurance Company and
Gallagher Bassett Services
Respondent,

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, causal connection, medical, prospective medical, penalties, 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. 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 22, 2016, 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

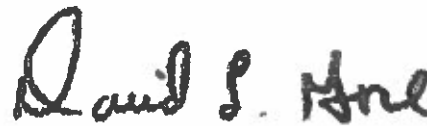
without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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: JUL 11 2017
o060817
DLG/mw
045



David L. Gore



Deborah Simpson



Stephen Mathis

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

BROOKS, MICHELLE

Employee/Petitioner

Case# 11WC012905

REGIONAL ELITE AIRLINE SERVICES

Employer/Respondent

17IWCC0405

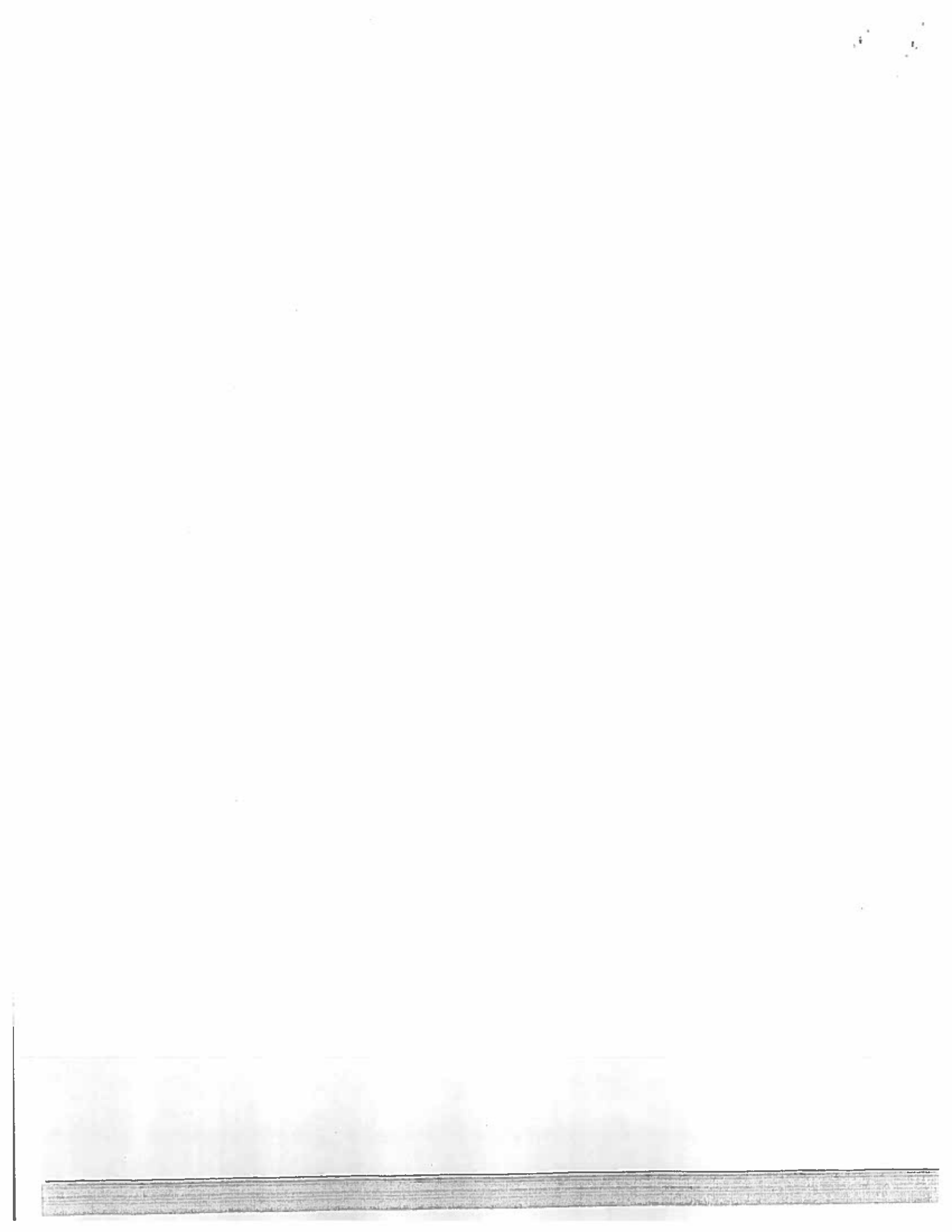
On 7/22/2016, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.43% 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:

0696 RITTENBERG BUFFEN GULBRANDSEN
IVAN M RITTENBERG
309 W WASHINGTON ST SUITE 900
CHICAGO, IL 60606

2904 HENNESSY & ROACH PC
EMILIE A MILLER
2501 OLD CHATHAM RD
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)

Michelle Brooks
Employee/Petitioner

Case # 11 WC 12905

v.

Consolidated cases: _____

Regional Elite Airline Services
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 Commission, in the city of **Urbana**, on **April 13, 2016**. 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, 5/12/2010, 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 not* causally related to the accident.
 In the year preceding the injury, Petitioner earned \$9,888.00; the average weekly wage was \$190.00.
 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 \$10,437.60 for TTD, \$0 for TPD, \$4,266.56 for maintenance, and \$0 for other benefits, for a total credit of \$14,704.16.
 Respondent is entitled to a credit of \$0 under Section 8(j) of the Act.

ORDER

Prospective medical treatment is denied as Petitioner's current conditions of ill-being are not causally related to her work accident.

TTD and maintenance beyond that already paid by Respondent, or stipulated to be paid at the time of hearing is denied.

Vocational rehabilitation is denied.

Penalties and fees pursuant to Section 16, Section 19(k) and Section 19(l) are denied.

Respondent shall pay reasonable and necessary medical services incurred through March 27, 2013, pursuant to the fee scheduled as provided in Section 8(a) and 8.2 of the Act.

Respondent shall be given a credit for any medical benefits paid.

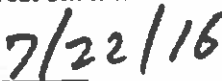
In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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



 Date

ICArbDec19(b)

JUL 22 2016

FINDINGS OF FACT

Petitioner worked for Respondent as a customer service agent and ground service worker. (T. 17). Petitioner was hired in March of 2010 and worked part-time earning \$8.25 per hour. (T. 18). Petitioner testified that her job duties included loading and unloading baggage and freight from planes, hooking up ground power units, running the jet bridge, checking passengers in, cleaning the planes, stocking the planes, taking out the trash, running the deicer and marshaling in planes. Petitioner testified that the baggage she handled weight up to 70 pounds and that she would classify her job as heavy duty. (T. 26).

On May 12, 2010 Petitioner was helping a co-worker bring a jet bridge into a plane when she was struck by the plane's door. Petitioner testified that she was warned by her co-worker that the door was opening and in response turned her back to the door, put her hands behind her head with her hands interlocked and bent forward protecting her head with her shoulders up and her neck bent. (T. 33). Petitioner testified that when the door struck her it hit her upper back, neck, head, shoulders and elbows. (T. 31). Petitioner testified that when the door struck her it knocked her to her knees and she rolled over. (T. 33). Petitioner testified that the door that struck her was approximately three feet wide and weighed 600 pounds. (T. 31 and 34).

Petitioner was transported from the scene of her accident to Carle Foundation Hospital by ambulance. A CT scan of her neck and head were performed but were reported as normal. Petitioner was diagnosed with a head contusion and cervical strain and prescribed medication and light duty restrictions of no overhead work and no twisting with her neck. Petitioner was referred to Carle Clinic for follow up with Dr. Thomas Sutter. (Px's 6).

Petitioner first presented to Dr. Sutter on May 14, 2010. Based on Dr. Sutter's recommendation, Petitioner underwent multiple diagnostic tests of her cervical spine. Other than evidence of mild degenerative changes, Dr. Sutter noted Petitioner's diagnostic tests were normal. Dr. Sutter diagnosed Petitioner with chronic neck pain and recommended physical therapy and use of a TENS unit. He also continued Petitioner on light duty restrictions of no overhead work and no twisting her neck. After Petitioner's complaints worsened, Dr. Sutter recommended a second opinion. (Px's 6).

Petitioner was seen by Dr. David Fletcher on May 17, 2011. Dr. Fletcher diagnosed Petitioner with cervical myofascial pain syndrome superimposed on degenerative disc disease, but confirmed right shoulder impingement needed to be ruled out. Dr. Fletcher restricted Petitioner to light duty work involving no overhead activities and prescribed ongoing physical therapy and use of a TENS unit. He also recommended an MRI arthrogram of Petitioner's right shoulder. The MRI arthrogram of Petitioner's right shoulder completed on July 18, 2011 revealed a partial tear of the supraspinatus tendon and AC joint arthritis. (Px's 7 and 7a).

Subsequently, Petitioner came under the care of Dr. Lawrence Li for her right shoulder. Dr. Li initially administered a steroid injection into Petitioner's shoulder; however, when conservative treatment did not resolve her symptomology Dr. Li recommended arthroscopic rotator cuff repair and subacromial decompression. (Px's 3). That surgery was authorized following an Independent Medical Examination at Respondent's request with Dr. Richard Kube. Dr. Kube felt that if someone was struck from behind "very soundly with a large object" it was reasonable that could have resulted in the condition of Petitioner's right shoulder. (Px's 12).

On November 4, 2011, Petitioner underwent a right shoulder arthroscopic rotator cuff repair and subacromial decompression and distal clavicle excision with Dr. Li. Postoperatively Petitioner was sent for physical therapy and continued to treat with Dr. Li and Dr. Fletcher. (Px's 2). Shortly after her surgery Petitioner began to experience numbness in her lower right arm near the elbow and extending towards the hand. Dr. Li diagnosed Petitioner with right cubital tunnel syndrome and recommended a release and transposition of the ulnar nerve. However, EMG/NCV testing completed did not confirm cubital tunnel syndrome. . (Px's 3). Petitioner has a documented history of right cubital tunnel syndrome and release in 2006

Based on Dr. Li's new surgical recommendation, Respondent submitted Petitioner for an Independent Medical Examination with Dr. Thomas Kiesler on April 9, 2012. Based on Dr. Kiesler's opinion that Petitioner did not have cubital tunnel syndrome, but rather ulnar neuritis and that her symptoms of pain were not related to her work injury on May 12, 2010, surgery as recommended by Dr. Li was denied. (Rx's 5).

Petitioner also continued to complain of pain and popping in her right shoulder. Another injection was attempted by Dr. Li; however, after a bone scan revealed moderate radionuclide uptake in the right acromion in the area of the right AC joint Dr. Li recommended revision right shoulder arthroscopy with excision of the distal clavicle and debridement of scar tissue. That surgery was done on June 1, 2012 and revealed right shoulder AC joint dysfunction and scar tissue formation. (Px's 3).

Following her second surgery Petitioner did well; however, she continued to report symptoms in her right elbow and neck, as well as headaches. On August 7, 2012, Dr. Fletcher recommended a home exercise program and functional capacity evaluation. Petitioner submitted for a FCE at Safeworks Illinois on August 27, 2012. (Px's 7 and 7a). Petitioner was also submitted for updated EMG/NCV testing by Dr. Li on June 26, 2012. Petitioner's updated testing confirmed ulnar neuropathy at the right elbow. (Px's 3).

Based on the results of her FCE Dr. Fletcher placed Petitioner at maximum medical improvement effective September 4, 2012, with the exception of her right cubital tunnel, and released her with permanent restrictions per the FCE of no lifting more than 5 pounds floor to waist, 5 pounds waist to crown, and 5 pounds front carry on an occasional basis. However, Dr. Fletcher also referred Petitioner for a neurology consult due to her report of ongoing cervicogenic headaches. Dr. Fletcher's diagnosis for Petitioner as of September 4, 2012 included cervical myofascial pain syndrome imposed on degenerative disc disease, recurrent right ulnar neuropathy and cervicogenic headaches. (Px's 7 and 7a).

Petitioner was seen by neurologist Dr. Barry Riskin on September 20, 2012 for her headaches. After reviewing the results of an updated MRI of Petitioner's cervical spine completed on September 14, 2012, Dr. Riskin noted no cervical radiculopathy and recommended she work on her guarding behaviors, including elevation of the shoulders and forward thrusting of the chin to prevent a cycle of spasms and pain, and advised her to stop smoking. Dr. Riskin noted that smoking has been reported to intensify pain sensitivity. (Rx's 5).

After seeing Dr. Riskin Petitioner returned to Dr. Fletcher on September 24, 2012. Due to Petitioner's ongoing reports of cervicogenic headaches Dr. Fletcher

referred her back to Dr. Thatcher for pain management treatment and cervical epidural steroid injections. (Px's 7 and 7a).

Medical records from Dr. Thatcher confirm that Petitioner underwent a series of three epidural steroid injections on October 10, 2012, November 14, 2012 and December 11, 2012. (Px's 5). Petitioner testified that the injections helped a lot. (T. 78).

After her first injection Petitioner returned to Dr. Fletcher on November 8, 2012 and reported improvement in her cervicogenic headaches and neck pain. On examination Dr. Fletcher noted improved range of motion in Petitioner's cervical spine and right shoulder. Range of motion in Petitioner's right shoulder was noted to be normal. Dr. Fletcher noted Petitioner's cervical spine was definitely improved. Due to Petitioner's response to the first injection, Dr. Fletcher recommended a second injection. (Px's 7 and 7a).

After her second injection on November 14, 2012 Petitioner returned to Dr. Fletcher on November 29, 2012. Despite her exam findings and noted improvement, Petitioner reported right shoulder pain and swelling and swelling in her neck with pressure in her head. However, Dr. Fletcher continued to note improvement in Petitioner's cervicogenic headaches and range of motion. (Px's 7 and 7a).

Petitioner again returned to Dr. Fletcher on December 31, 2012 with reports of popping in her neck with headaches. After noting that Petitioner had been seen for 35 visits for two years, Dr. Fletcher again confirmed Petitioner was a maximum medical improvement and noted that aside from her right ulnar nerve issue she would not benefit for any further medical treatment. (Px's 7 and 7a).

Despite confirming again that Petitioner was at maximum medical improvement and required no further treatment as of December 31, 2012, Dr. Fletcher saw Petitioner again on January 28th, February 28th and March 27th, 2013. As of March 27, 2013 Petitioner reported that her condition was worse. However, again Dr. Fletcher confirmed Petitioner was at maximum medical improvement. (Px's 7 and 7a).

After March 27, 2013 there is no record of treatment of Petitioner again until March 10, 2014. On March 10, 2014 Petitioner presented to the emergency room at Carle Foundation Hospital with complaints of a headache, neck pain and right shoulder

pain after falling on ice and hitting the right side of her face on the bumper of a car and then falling to the ground. (Px's 6).

Thereafter, on April 17, 2014 Petitioner presented to Dr. Patrick Sweeney with complaints of ongoing popping and grinding to the back right side of her neck, headaches, neck pain radiating into both shoulder blades, and burning, numbness, and tingling in her right elbow down to her right fourth and fifth fingers related to her work injury on May 12, 2010. Petitioner testified that her examination with Dr. Sweeney was arranged by her attorney. Petitioner did not report her March 10, 2014 fall to Dr. Sweeney. (Px's 8).

After examining Petitioner and reviewing her medical records Dr. Sweeney diagnosed Petitioner with cervical facet syndrome and suboccipital neuritis. For treatment Dr. Sweeney recommended referral for a facet block trial and suboccipital injections. (Px's 8).

Dr. Sweeney was deposed on October 2, 2015 and testified that in his opinion Petitioner's neck problems were causally related to her work accident. On cross examination Dr. Sweeney explained that in his opinion Petitioner's facet joints were chronically injured at the time of her accident due to the fact that her accident involved a complex whiplash type injury. Dr. Sweeney explained that a whiplash type injury involves a sudden acceleration and deceleration that results in injuries to the ligaments, the tendons, the facet joint capsules and the muscles. However, on cross examination, Dr. Sweeney admitted that Petitioner's ongoing problems as of April of 2014 could be related to her falling and hitting her head on the bumper of a car rather than her work accident, especially if there were no medical records between the end of 2012 or beginning of 2013 and March 10, 2014 showing ongoing complains by Petitioner related to her work accident. (Px's 10).

After seeing Dr. Sweeney, Petitioner was submitted for an Independent Medical Examination with Dr. Timothy VanFleet to address her need for ongoing treatment related to her work accident. Dr. VanFleet examined Petitioner on October 22, 2014 and was deposed on December 9, 2015. Dr. VanFleet testified that after examining Petitioner and reviewing all of her medical records he diagnosed her with chronic cervicgia and cervical spondylosis. Dr. VanFleet testified that in his opinion Petitioner's current condition was not casually related to her work accident. Dr.

VanFleet explained that given the period of time between Petitioner's accident and her intervening injury of March 10, 2014, her current condition is related to her intervening injury and not her work accident. Dr. VanFleet also testified that in his opinion Petitioner did not require ongoing work restrictions. (Rx's 4).

Dr. Kube was also deposed by Petitioner's attorney related to his examinations of Petitioner. Dr. Kube's deposition took place on October 19, 2016. Dr. Kube examined Petitioner at Respondent's request on July 1, 2011 and February 24, 2012 in regard to both her neck and right shoulder. Dr. Kube testified that after examining Petitioner on July 1, 2011 he diagnosed her with a crush injury to her shoulder and neck. Dr. Kube testified he felt Petitioner's conditions were causally related to her work accident and recommended ongoing treatment for her right shoulder as of July 1, 2011 in the form of an MRI and physical therapy and TENS unit for her neck. Petitioner ultimately had that treatment and more upon authorization by Respondent. Dr. Kube testified that after conducting an updated examination of Petitioner on February 24, 2012, it was his opinion that she required ongoing treatment of her right shoulder with Dr. Li, but had reached maximum medical improvement for her neck absent work conditioning and possibility an FCE. Dr. Kube had no opinion as to Petitioner's status after February 24, 2012. (Px's 12).

Petitioner ultimately underwent an FCE as recommended by Dr. Fletcher; however, Dr. Fletcher never ordered work conditioning for Petitioner. Instead, Dr. Fletcher imposed permanent restrictions as noted based on the FCE and discharged Petitioner at maximum medical improvement effective September 4, 2012. (Px's 7 and 7a).

In addition to seeking ongoing treatment related to her neck as recommended by Dr. Sweeney, Petitioner is also seeking ongoing treatment of her right arm related to her right cubital tunnel syndrome. Dr. Li, who initially diagnosed Petitioner's right cubital tunnel syndrome in 2011 testified via deposition on December 7, 2015. Dr. Li testified that in his opinion Petitioner has recurrent right cubital tunnel syndrome that resulted from her being placed in a sling for six weeks following her first shoulder surgery on November 4, 2011. Dr. Li testified that cubital tunnel sometimes occurs in these cases as a result of swelling from the shoulder pooling in the elbow. However, Dr. Li testified that this only occurs in 5 out of 150 cases, or less than 0.04% of the time. (Px's 11).

As noted, Petitioner was previously diagnosed with right cubital tunnel syndrome in 2006 and underwent surgery. Records from that surgery were not admitted into evidence. However, EMG/NCV testing completed in December of 2011, right after Petitioner was taken out of the sling, showed no evidence of right ulnar neuropathy. In fact, Dr. Li testified that the EMG/NCV results from December of 2011 were within normal limits and could have been residuals from her prior surgery. (Px's 11).

Dr. Li testified that Petitioner did not begin complaining of pain in her elbow or numbness and ringing until after her first surgery. However, Petitioner testified to pain in her elbow since the time of her accident. Petitioner also reported to Dr. Kiesler, Respondent's IME doctor, ongoing swelling in her right elbow since her surgery in 2006. (Rx's 5).

Dr. Kiesler was deposed on November 3, 2015 and testified that Petitioner did not have recurrent right cubital tunnel syndrome, but rather ulnar neuritis unrelated to her work accident. (Rx's 5).

While Petitioner ultimately had an updated EMG/NCV study of her right upper extremity in June of 2012 that showed right ulnar neuropathy, Dr. Li noted in his review of the results of that testing on July 10, 2012 that Petitioner's condition was related to a work injury she suffered in 2006 and the fact that the previous surgeon had not performed transportation of the ulnar nerve (Px's 3).

Dr. Sweeney also provided an opinion related to Petitioner's right cubital tunnel at Petitioner's attorney's request. Dr. Sweeney opined that in his opinion Petitioner's ulnar neuropathy was not causally related to her work injury. (Px's 10, Exh. 1).

Petitioner returned to Dr. Li for treatment on October 28, 2015. Prior to October 28th Petitioner had not been seen by Dr. Li since July 10, 2012. As of October 28th Dr. Li ordered an updated MRI of Petitioner's right shoulder and EMG/NCV study. Petitioner's MRI was completed on October 30, 2015 and was negative for any recurrent tear but showed residual tendinopathy consistent with Petitioner's surgery. Petitioner's EMG/NCV was completed on November 17, 2014 and confirmed right ulnar neuropathy. After both tests Petitioner followed up with Dr. Li on November 24, 2015 Dr. Li again recommended Petitioner proceed with a right cubital tunnel release and ulnar nerve transposition. Dr. Li recommended no ongoing treatment related to Petitioner's right shoulder. (Px's 11, Exh. 1-8).

Despite initially returning to work light duty for Respondent after her accident, Petitioner's employment with Respondent ended effective August 31, 2010 when Respondent went out of business. (T. 47). Petitioner remained off work until released at maximum medical improvement effective September 4, 2012. Respondent has paid and/or stipulated to paying Petitioner TTD from August 31, 2010 through September 4, 2012 and maintenance from September 5, 2012 through March 10, 2013. Petitioner's maintenance benefits were terminated effective March 10, 2013 for failure to conduct a job search.

Petitioner testified that she looked for work after being laid off by Respondent. Petitioner testified that she looked at 30 to 40 places but no one would accommodate her restrictions. (T. 48). No documentation of job searches was admitted into evidence by Petitioner.

Petitioner testified that she has continued to experience pain in her head, neck, shoulders and elbows since her accident. Petitioner testified that she became subsequently employed in April of 2014 as a cashier at a gas station. (T. 57). Petitioner testified that she found the job through her fiancé's uncle who was the manager. (T. 58). Petitioner testified she was original hired in the kitchen but that the kitchen never opened so they moved her to a cashier. (T. 70). Petitioner testified that she earned \$9.00 an hour when initially hired but received a raise to \$9.25. Petitioner testified that she worked full time 40 hours a week and worked within her restrictions. (T. 57 and 75).

Respondent admitted a copy of Petitioner's employment file from her employer, Gilman OPCO, into evidence. Those records confirm Petitioner's employment beginning April 21, 2014. At the time Petitioner's position was changed to a cashier she signed a job description confirmed her acknowledgement of her job duties. Within the job description is a section entitled "Requirement of the Job" that outlines the "essential functions" of the job of a cashier. Included in those functions is the following: (Rx's 3).

1. Can lift up to 50 pounds, and carry cases of milk cartons and soft drinks, beer, and juice containers;
2. Stands and walks 8-10 hours a day without breaks on a tile or concrete surface while completing job duties.

3. Lifts and carries stock weighing up to twenty-five (25) pounds while stocking shelves and cooler.
4. Pulls and pushes up to twenty-five (25) pounds to move stock.
5. Bends and stoops to stock low shelves in store, cooler and to clean.
6. Frequently reaches in order to stock and clean store. *Id.*

All of these essential functions exceed Petitioner's restrictions as imposed by Dr. Fletcher. Petitioner acknowledged signing the job description, but testified that she did not perform these functions. (T. 72 and 78).

Petitioner testified that she remained employed with Gilman OPCO until October 4, 2015 when they went out of business. After October 4, 2015 Petitioner testified she was unemployed until April 12, 2016 when she found employment as a cashier at Casey's gas station. (T. 73-74).

CONCLUSIONS OF LAW

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

The current conditions of Petitioner's neck and right arm are not causally related to her work accident on May 10, 2010. After last seeking active treatment for her neck in 2012 Petitioner sustained an intervening injury that severed the chain of causation between her condition and work accident. Petitioner had a significant accident on March 10, 2014 requiring emergency room treatment after she fell on ice and hit her face on the bumper of a car. Upon presenting to the emergency room Petitioner complained of a headache, neck pain and right shoulder pain, since her fall. Petitioner did not report a history of ongoing headaches, neck pain or right shoulder pain related to her work accident. While Petitioner testified that she had ongoing headaches, neck pain, right shoulder pain and right elbow pain since her work accident, Petitioner did not seek treatment for these complaints after the end of 2012 beginning of 2013.

Petitioner testified that the reason she did not seek treatment was that Respondent's insurance carrier was denying her treatment. However, it is noted from records admitted into evidence by Petitioner that she did in fact seek medical treatment between the end of beginning of 2013 and March 10, 2014 at Carle Clinic for conditions unrelated to her work accident. During those visits Petitioner did not report any

complaints of headaches, neck pain, right shoulder pain or elbow pain. It is also noted that Petitioner failed to report her intervening injury to Dr. Sweeney even though it occurred only one month prior to her visit with him.

These facts when taken together with Dr. VanFleet's and Dr. Sweeney's testimony, supports that the current condition of Petitioner's neck is not causally related to her work accident. Both Dr. VanFleet and Dr. Sweeney testified that Petitioner's ongoing neck problems could solely be related to her intervening injury in March of 2014. This Arbitrator believes that if Petitioner's neck continued to be a problem after the beginning of 2013 she would have sought treatment as she did for problems unrelated to her work injury.

With regard to Petitioner's cubital tunnel, Dr. Li's opinion that Petitioner's recurrent cubital tunnel syndrome is causally related to her work accident is not credible. Dr. Li testified that Petitioner's problems with her cubital tunnel only began after her first surgery. However, Petitioner reported ongoing problems with her right elbow following her first surgery in 2006. Also, the EMG/NCV testing conducted in December of 2011, most contemporaneously with the time Petitioner was in a sling, was normal. It was not until June of 2012 that Petitioner's EMG/NCV testing showed a right ulnar neuropathy. Furthermore, Dr. Li testified that Petitioner's findings on EMG/NCV could have been consistent with a residual from her surgery in 2006. Also, Dr. Sweeney opined that Petitioner cubital tunnel was unrelated to her work accident.

J. Were the medical services that were provided to Petitioner reasonable and necessary?

Petitioner is seeking payment of medical bills incurred from the date of her accident to the present. Respondent is ordered to pay Petitioner's related medical bills incurred through March 27, 2013, Petitioner's last visit with Dr. Fletcher. Respondent is also given a credit for any bills already paid. Respondent is not responsible for Petitioner's unpaid medical bills incurred after March 27, 2013.

K. Is Petitioner entitled to prospective medical care?

As a finding has been made that Petitioner's current conditions of ill-being are not causally related to her work injury, Petitioner's request for prospective medial treatment is denied.

L Is Petitioner entitled to TTD and/or maintenance benefits?

Petitioner is seeking payment of TTD or maintenance from March 11, 2013 through April 21, 2014 and October 4, 2015 through April 12, 2016. The Arbitrator finds Petitioner is not entitled to TTD or maintenance for these periods. First, maintenance and TTD are separate and distinct benefits. *Freeman United Coal Mining Co. v. Industrial Commission*, 318 Ill.App.3d 170, 741 N.E.2d 1144, 251 Ill.Dec. 966 (5th Dist. 2000). Once the petitioner has reached maximum medical improvement, he or she is no longer temporarily and totally disabled, and entitlement to TTD benefits ceases.

Taking the first period alleged by Petitioner from March 11, 2013 through April 21, 2014, Petitioner's condition had stabilized as of September 4, 2012 when she was placed a maximum medical improvement by Dr. Fletcher. Therefore, all benefits paid after September 4, 2012 are classified as maintenance. Section 8(a) provides that the employer shall pay for the "physical, mental and vocational rehabilitation of the employee, *including all maintenance costs and expenses incidental thereto.*" Therefore, payment of maintenance benefits is incidental to vocational rehabilitation and Petitioner is only entitled to maintenance where there is proof of participation in a vocational rehabilitation program. There is no proof in this case from testimony or records that Petitioner participated in a vocational rehabilitation program.

While Petitioner testified to a self-direct job search beginning after she was placed at maximum medical improvement, no evidence of such job search, via job logs or applications was provided. Petitioner testified that she kept records and provided those records to her prior attorney, Kevin Markes; however, again, those records were not admitted into evidence to support Petitioner's testimony. In fact, Petitioner provided no specific testimony related to any jobs she applied for after she was placed at maximum medical improvement. While Petitioner testified that she ultimately became subsequently employed in April, 2014 with Gilman OPCO, she testified that that job was offered to her by a family friend and was not part of any active job search. (T. 58).

With regard to the second period claimed by Petitioner from October 4, 2015 through April 12, 2016, Petitioner is not entitled to TTD for this period as she was at maximum medical improvement for her work injury. She is also not entitled to maintenance benefits there is no proof of participation in a vocational rehabilitation program.

M. Should penalties and fees be imposed upon Respondent?

Petitioner argues that she is entitled to penalties and attorney's fees pursuant to Section 19(k), 19(l) and 16 due to Respondent's failure to provide her vocational rehabilitation and TTD or maintenance benefits after March 10, 2013. As a finding has been made (see findings with regard to issue O) that Petitioner was not entitled to vocational rehabilitation and Petitioner failed to provide evidence of participation in a job search, Petitioner's petition for penalties and fee is denied.

O. Is Petitioner entitled to vocational rehabilitation?

Petitioner argues that she was entitled to vocational rehabilitation at Respondent's expense after her employment with Respondent ended on August 31, 2013 (Px's 16). The Arbitrator finds Petitioner was not entitled to vocational rehabilitation then or now.

It is undisputed that Petitioner's employment with Respondent ended as of August 31, 2010 due to Respondent going out of business. After Respondent went out of business and Petitioner was laid off Respondent continued to pay Petitioner TTD until she was discharged at maximum medical improvement by Dr. Fletcher effective September 4, 2012 with permanent restrictions. Thereafter, Petitioner's benefits were continued as maintenance benefits until March 10, 2013 when her benefits were terminated for failure to provide evidence of a job search. (Rx's 2). While Petitioner testified that she looked for a job after August 31, 2010, she offered no proof of a job search at hearing.

Petitioner's argument appears to be that Respondent had a statutory right to provide her vocational assistance under Section 8(a) after she was prescribed

permanent restrictions by Dr. Fletcher; however, the Supreme Court in *Hunter Corp. v. Industrial Commission* has confirmed that it is the petitioner that has the burden of proving the necessity for any rehabilitative efforts, as well as the actual benefit that would flow from them. 86 TII.2d 489, 427 N.E.2d 1247, 56 Ill.Dec. 701 (1981). The Arbitrator finds that Petitioner has not met her burden of proof in this regard.

The Supreme Court set forth guidelines in *National Tea Co. v. Industrial Commission*, 97 TII.2d 424, 454 N.E.2d 672, 73 Ill.Dec. 575 (1983), to help determine when an award of vocational rehabilitation is necessary. Those factors include:

Factors favoring rehabilitation:

- a. The employee has sustained an injury that caused a reduction in earning power, and there is evidence rehabilitation will increase his or her earning capacity.
- b. The employee is likely to lose job security due to the injury.
- c. The employee is likely to obtain employment upon completion of rehabilitation training.

Mitigating factors against rehabilitation:

- a. The employee has unsuccessfully undergone similar treatment in the past.
- b. The employee has received training under a prior rehabilitation program that would enable him or her to resume employment.
- c. The employee is not trainable due to age, education, prior training, and occupation.
- d. The employee has sufficient skills to obtain employment without further training or education. *Id. at 432*

Other appropriate factors to consider are (a) the relative costs and benefits to be derived from the program, (b) the employee's work-life expectancy, (c) the employee's ability and motivation to undertake the program, and (d) the employee's prospects for recovering work capacity through medical rehabilitation or other means. *Id. at 433*.

There are no factors here favoring the need for vocational rehabilitation. Petitioner was an unskilled part-time employee earning minimum wage. Petitioner had sufficient skills to obtain employment without further training or education within her restrictions. This is evidenced by the fact that Petitioner found two subsequent jobs without assistance earning more than she was earning when employed by Respondent.

17IWCC0405

Furthermore, the cost of vocational assistance in this case would have been outweighed by any benefits. Therefore, no benefit would have flowed from vocational rehabilitation.

14WC8970
17IWCC0340

STATE OF ILLINOIS)
)SS
COUNTY OF CHAMPAIGN)

BEFORE THE ILLINOIS WORKERS'
COMPENSATION COMMISSION

Michael Donovan)
 Petitioner,)
)
vs.)
)
Illinois Bell Telephone Co.)
d/b/a AT&T)
 Respondent.)

No. 14WC 8970
17IWCC0340

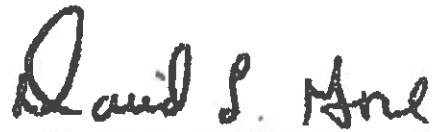
ORDER

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

The Commission finds that said Decision should be recalled for the correction of a clerical error in which the matter was categorized, in error, as discussion only. Furthermore, the parties were not given notice of either the discussion date or that Oral Arguments had been denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision dated June 27, 2017, is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner David L. Gore.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Decision shall be issued upon the Commission hearing Oral Arguments in the matter.



David L. Gore

DATED: **JUL 18 2017**
DLG/mw
045

16 WC 7544
17 IWCC 0413

Page 1

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

Before the Illinois Workers'
Compensation Commission

MARIO SANCHEZ,

Petitioner,

vs.

NO: 16 WC 7544
17 IWCC 0413

FREIGHT CAR SERVICES,

Respondent.


ORDER

This matter comes before Commissioner Michael J. Brennan pursuant to Petitioner's "Motion Under Section 19(f) to Correct Clerical Error" found in the Decision and Opinion on Review of the Illinois Workers' Compensation Commission dated June 28, 2017.

The Commission is of the opinion that the Commission's Decision and Opinion on Review, dated June 28, 2017, should be recalled due to the clerical error. The Decision should list the Petitioner as "Mario Sanchez" and not "Michael Sanchez."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review, dated June 28, 2017, be recalled and a Corrected Decision and Opinion on Review be issued simultaneously. The parties should return their original Decision to Commissioner Michael J. Brennan.

Dated: **JUL 20 2017**



Michael J. Brennan

MJB/pm
7-14-17
052

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

Mario Sanchez,

Petitioner,

vs.

NO: 16 WC 7544

Freight Car Services,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent, herein and notice given to all parties, the Commission, after considering the issues of prospective medical, causal connection, temporary total disability and denial of emergency petition to reopen proofs, 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 28, 2016, 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 \$13,300.00. 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 the Circuit Court.

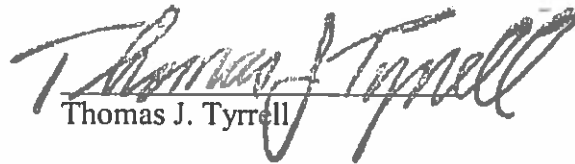
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Michael J. Brennan



Kevin W. Lambohn



Thomas J. Tyrrell

14WC8970
17IWCC0340

STATE OF ILLINOIS)
)SS
COUNTY OF CHAMPAIGN)

BEFORE THE ILLINOIS WORKERS'
COMPENSATION COMMISSION

Michael Donovan)
 Petitioner,)
)
vs.)
)
Illinois Bell Telephone Co.)
d/b/a AT&T)
 Respondent.)

No. 14WC 8970
17IWCC0340

ORDER

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

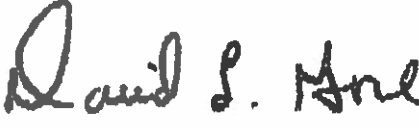
The Commission finds that said Decision should be recalled for the correction of a clerical error in which the matter was categorized, in error, as discussion only. Furthermore, the parties were not given notice of either the discussion date or that Oral Arguments had been denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision dated June 1, 2017, is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner David L. Gore.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Decision shall be issued upon the Commission hearing Oral Arguments in the matter.

JUL 25 2017

DATED:



David L. Gore