

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	19WC006611
Case Name	Michael R Setters v. State of Illinois - Illinois Dept of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Corrected Decision
Commission Decision Number	22IWCC0483
Number of Pages of Decision	9
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Brenton Schmitz, Matthew Jones
Respondent Attorney	Alyssa Silvestri

DATE FILED: 12/14/2022

/s/ Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL SETTERS,

Petitioner,

vs.

NO: 19 WC 6611
22 IWCC 0483

ILLINOIS DEPARTMENT OF
TRANSPORTATION,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, average weekly wage, medical expenses, temporary total disability, permanent partial disability, and credits, and being advised of the facts of 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 Commission affirms the Decision of the Arbitrator with respect to the issue of causal connection, average weekly wage, medical expenses, temporary total disability, permanent partial disability, and credits, and modifies the Decision of the Arbitrator to correct clerical errors in the calculation of the permanent partial disability benefit rate and to specify the proper payee for the awarded medical expenses.

Regarding the permanent partial disability benefit rate, the parties stipulated that Petitioner's average weekly wage was \$1,009.61. Petitioner is entitled to 60% of the employee's average weekly wage pursuant to section 8(b)(2.1) of the Act, resulting in a permanent partial disability rate of \$605.77. Petitioner was awarded permanent partial disability benefits representing a 25% loss of use of a person as a whole under section 8(d)(2) of the Act. Accordingly, the Commission modifies the Decision of the Arbitrator to order that Respondent shall pay permanent partial disability benefits of \$605.77 per week for 125 weeks, because the

injuries sustained caused a 25% loss of use of a person as whole, as provided in Section 8(d)2 of the Act.

Regarding the medical expenses, the Commission modifies the Decision of the Arbitrator to clarify that this award shall be paid to the Petitioner, not directly to the medical providers.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated June 23, 2022 is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum representing all reasonable and necessary medical services provided by: Midwest Orthopedic Consultants for \$69,333.00; Northwestern Medicine for \$245,104.26; and KSB Amboy for \$91,782.11, subject to the fee schedule as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given a credit for medical benefits that have been paid and for any medical paid through group insurance, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay permanent partial disability benefits of \$605.77 per week for 125 weeks, because the injuries sustained caused a 25% loss of use of a person as whole, as provided in Section 8(d)2 of the Act.

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

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

Pursuant to section 19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

December 14, 2022

o: 12/08/22

CMD/kcb

045

/s/ Carolyn M. Doherty

Carolyn M. Doherty

/s/ Marc Parker

Marc Parker

/s/ Christopher A. Harris

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	19WC006611
Case Name	SETTERS, MICHAEL v. ILLINOIS DEPARTMENT OF TRANSPORTATION
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Matthew Jones
Respondent Attorney	Alyssa Silvestri

DATE FILED: 6/23/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 22, 2022 2.39%

/s/ Gerald Granada, Arbitrator

Signature

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

June 23, 2022



/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation
Commission

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

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

Michael Setters

Employee/Petitioner

v.

Illinois Department of Transportation

Employer/Respondent

Case # **19** WC **006611**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Geneva, IL**, on **April 20, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **November 15, 2018**, 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 **\$52,500.00**; the average weekly wage was **\$1,009.61**. On the date of accident, Petitioner was **56** years of age, *married* with **0** dependent children.

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

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

Respondent shall be given a credit of **\$32,730.57** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$3,156.32** for medical expenses, for a total credit of **\$35,886.89**.

Respondent is entitled to a credit for any benefits paid through its group insurance under Section 8(j) of the Act.

ORDER

Respondent shall pay all reasonable and necessary medical services of Midwest Orthopedic Consultants for \$69,333.00, Northwestern Medicine for \$245,104.26, KSB Amboy for \$91,782.11, subject to the Fee Schedule as provided in Sections 8(a) and 8.2 of the Act.

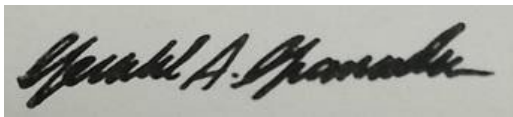
Respondent shall be given a credit for medical benefits that have been paid and for any medical paid through group insurance, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of \$673.01/ week for 85 5/7 weeks commencing 12/27/18 through 8/17/20, as provided in Section 8(b) of the Act.

Respondent shall pay permanent partial disability benefits of \$755.36/week for 37.5 weeks, because the injuries sustained caused a 25 % loss of use of a person as whole, as provided in Section 8(d)2 of the Act.

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

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



Signature of Arbitrator Gerald Granada

JUNE 23, 2022

Michael Setters v. IL Dept. of Transportation, 19WC006611**Attachment to Arbitration Decision****Page 1 of 3****FINDINGS OF FACT**

This case involves Petitioner Michael Setters, who alleges to have sustained injuries while working for the Respondent Illinois Department of Transportation on November 15, 2018. Respondent disputes Petitioner's claim, with the issues being: 1) causation; 2) medical expenses; 3) TTD; and 4) nature and extent.

Petitioner worked for Respondent as a highway maintainer since June 18, 2018. He testified that on November 15, 2018, he was picking up barricades and sandbags, which he loaded onto a trailer and subsequently onto the back of a dump truck. He would later help unload the barricades and sandbags that were handed down to him from the truck while Petitioner stood on the ground level. He carried a sandbag in each arm and after about ten minutes he had taken ten to twelve sandbags when he began to feel weakness in his shoulders and arms, particularly as he was lowering the sandbags. Petitioner testified that the barricades weighed between forty to fifty pounds and the sandbags typically weighed between thirty to sixty pounds, but weighed more because they were wet on this day. He finished his shift that day but continued to feel weakness and fatigue throughout the rest of his work day. Petitioner testified that when he returned home from work on November 15, 2018, he attempted to shower when he couldn't raise his arms up to wash his head. He testified that he had no issues like that previously and that he took Ibuprofen and iced that night. The following morning, his arms felt stiff.

He reported what happened to him the next day. This was confirmed by Breann Walker, the IDOT Workers Compensation Coordinator who testified on behalf of the Respondent that she was familiar with Petitioner's claim and that Petitioner called the appropriate "800" number on November 16, 2018 to report his claim. She testified that Petitioner filled out the Work Comp packet when he first presented for medical treatment on December 14, 2018. Walker confirmed that Petitioner was placed at light duty from December 14, 2018 until December 28, 2018 when Respondent could no longer accommodate Petitioner's work restrictions.

When Petitioner returned to work on November 16, 2018, he performed lighter duties including sweeping, cleaning bathrooms, taking out garbage that month between the work accident and his first treatment date on December 14, 2018. Petitioner testified that he sought treatment because he contacted headquarters regarding his issues and was told to seek treatment.

On December 14, 2018, Petitioner went to Physicians Immediate Care. PX2. The record notes that Petitioner had weakness in both shoulders. He was diagnosed with a left shoulder sprain, placed on work restrictions, and the record noted "strongly suspect rotator cuff pathology." He continued to follow up with this medical provider and was given a left shoulder injection. An MRI of his left shoulder was performed on January 4, 2019 revealing: (1) complete tears of the supraspinatus and infraspinatus tendons with retraction of the fibers to the glenoid process region with resulting cephalad subluxation of the humerus and resulting marked narrowing of the acromial humeral space; (2) partial tear and/or fraying of the cephalad fibers of the subscapularis tendon; (3) fraying of the posterior glenoid labrum; and (4) moderately large joint effusion and/or hemorrhage as described. Petitioner continued his follow up with this provider and also underwent physical therapy. He was eventually referred to an orthopedic specialist.

On January 22, 2019, Petitioner saw Dr. Michele Glasgow at Midwest Orthopaedic Institute with mild pain at rest with increased pain of activity with the left shoulder and low level of pain with the right shoulder. PX3. Dr. Glasgow reviewed the MRI and diagnosed Petitioner with a massive left shoulder rotator cuff tear, and also likely rotator cuff tearing on the right. Dr. Glasgow noted that Petitioner had a very heavy job and recommended surgical repair of the left rotator cuff, with the right shoulder to be evaluated at a later date.

On March 14, 2019, Petitioner underwent an independent medical evaluation at the request of Respondent by Dr. Stephen Weiss. RX4. Dr. Weiss diagnosed Petitioner with a pre-existing full thickness retracted

Michael Setters v. IL Dept. of Transportation, 19WC006611**Attachment to Arbitration Decision****Page 2 of 3**

supraspinatus and infraspinatus tears with a partial subscapularis tear and rotator cuff arthropathy on the left shoulder; and a probable pre-existing supraspinatus and infraspinatus tear of the right shoulder. Dr. Weiss opined that Petitioner sustained a temporary exacerbation of the pre-existing left shoulder condition and found no evidence that any fresh tears occurred at the time of work accident. Dr. Weiss found all treatment to be reasonable and necessary, and found that Petitioner required surgery for his left shoulder. Dr. Weiss placed Petitioner on work restrictions, although he opined unrelated to the work accident. Dr. Weiss testified via evidence deposition on April 1, 2020 and his testimony was consistent with his reports and his opinions that Petitioner's shoulder conditions were not work-related as they pre-existed his work accident. Dr. Weiss testified that his opinions were based on his reliance of Wisconsin's definition of a permanent aggravation versus a temporary aggravation.

On May 1, 2019, Petitioner underwent a left shoulder arthroscopy, debridement, subacromial decompression, coplane clavicle, biceps tenodesis, and massive rotator cuff repair by Dr. Glasgow at Northwestern. PX5. After the surgery, Petitioner continued to follow up with Dr. Glasgow. On July 13, 2019, Dr. Glasgow authored a narrative report in which she opined that Petitioner's left shoulder disability "was at the very least contributed to by the repeated overhead lifting required in the course of his job." Dr. Glasgow further indicated that Petitioner was not cleared to use his left shoulder for activity at that time and would be unable to return to any tasks requiring lifting with his left arm until at least six months from surgery. Petitioner underwent physical therapy at KSB Amboy for his left shoulder. PX4.

On September 20, 2019, Petitioner underwent the MRI of his right shoulder that revealed: (1) complete full-thickness tear supraspinatus and infraspinatus tendons; (2) moderately severe subscapularis tendinosis; (3) mild to moderate long head bicipital tenosynovitis; and (4) moderately severe acromioclavicular degenerative change. Dr. Glasgow noted that the right shoulder injury was associated with the work accident and the right shoulder treatment was delayed due to the left shoulder being significantly injured and requiring surgery.

On November 6, 2019, Petitioner underwent the right shoulder arthroscopy, debridement, subacromial decompression, biceps tenodesis, double speedbridge massive rotator cuff repair performed by Dr. Glasgow at Northwestern. PX5. Petitioner continued to follow up with Dr. Glasgow post surgery and attended physical therapy at KSB Amboy. PX4. He was ultimately released to return to work full duty on August 17, 2020. Dr. Glasgow placed Petitioner at maximum medical improvement on November 9, 2020. Dr. Glasgow testified via evidence deposition on February 21, 2020 and opined that Petitioner's shoulder conditions were related to his November 15, 2018 work injury, in particular, his repetitive heavy lifting.

Petitioner testified that Respondent was unable to accommodate his restrictions as of December 27, 2018 as he needed to have the ability to drive a snowplow. He did not return to work for Respondent until August 17, 2020 and did not work for any other employer during that time. He is currently able to perform his job for Respondent, but has to approach it differently for both shoulders, i.e., drag one tree branch instead of two, and he still has difficulty performing above shoulder work since the work accident. Petitioner testified that he still has difficulty sleeping and his shoulders become fatigued from performing household chores such as raking or carrying groceries. He takes Ibuprofen when the shoulder symptoms flare up, and he avoids golfing and bicycling as a result of his shoulder injuries. Petitioner confirmed that he did receive some TTD payments while he was off work and that some of his medical expenses were paid through his group health insurance.

CONCLUSIONS OF LAW

1. Regarding the issue of causation, the Arbitrator finds that the Petitioner has met his burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's unrebutted testimony and the medical evidence from Petitioner's various medical providers that show Petitioner sustained injuries to both shoulders following his undisputed November 15, 2018 work accident. The Arbitrator finds persuasive the opinions Petitioner's treating surgeon Dr. Glasgow on this issue: that Petitioner's bilateral shoulder conditions are causally related to the heavy, repetitive nature of Petitioner's work. Although Respondent disputes this issue primarily on the opinions of their IME Dr. Weiss, the Arbitrator notes that Dr. Weiss found Petitioner sustained a temporary aggravation of a pre-existing condition based on Wisconsin's definition of a permanent aggravation versus a temporary aggravation – a factor that gives his opinion lesser weight as this case hinges on Illinois law. Accordingly, the Arbitrator concludes that the Petitioner's bilateral shoulder conditions are causally connected to his November 15, 2018 work accident.
2. With regard to the issue of medical expenses, the Arbitrator finds that the Petitioner's medical expenses related to his shoulder conditions have been reasonable and necessary in addressing his work-related conditions. As such, the Arbitrator awards the Petitioner the medical expenses set forth in Petitioner's Exhibits, subject to the Fee Schedule. As some of these bills may have been paid either by Respondent directly or by Petitioner's group insurance carrier, any co-payments made by Petitioner are awarded by the Arbitrator and payment of any outstanding, related bills shall be paid by Respondent directly to the medical providers. Respondent shall be given a credit for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims by any providers for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.
3. Regarding the issue of TTD, the Arbitrator finds that the Petitioner was temporarily totally disabled from December 17, 2018 through August 17, 2020. In support of this finding, the Arbitrator relies on the testimony of both Petitioner and Ms. Walker, and the Petitioner's medical evidence. The medical evidence shows that the Petitioner's treating physicians either completely took Petitioner off work or gave him work restrictions which Respondent did not or could not accommodate during this time period. Accordingly, the Arbitrator awards Petitioner TTD for the time period indicated above. Respondent shall receive a credit for any TTD it has already paid.
4. Regarding the issue of the nature and extent of the Petitioner's injuries, the Arbitrator applies the factors set forth in Section 8.1b of the Act and notes the following: (i) no impairment rating was submitted into evidence and the Arbitrator gives no weight to this factor; (ii) Petitioner was a highway maintainer and was ultimately released to return to work without restrictions following this accident - a factor to which the Arbitrator gives significant weight; (iii) Petitioner was 56 years old at the time of injury - a factor to which the Arbitrator gives some weight; (iv) there was no evidence of future earnings due to this injury, and the Arbitrator gives no weight to this factor; (v) there was evidence of disability which show that the Petitioner sustained an injury to both shoulders resulting in a rotator cuff tears, for which Petitioner received surgical intervention and physical therapy, and from which Petitioner still experiences discomfort with everyday activities that require Petitioner to take over the counter medication and limit some of his activities - the Arbitrator gives great weight to this factor. Based on the factors above, the Arbitrator concludes the injuries sustained by Petitioner caused a 25% loss of use of the person as a result of the November 15, 2018 work incident.