

STATE OF ILLINOIS) BEFORE THE ILLINOIS WORKERS' COMPENSATION
) SS COMMISSION
COUNTY OF COOK)

William Krutul,

Petitioner,

vs.

Nos. 06 WC 34802
06 WC 34803

DBM/Cotton JV,

Respondent.

ORDER

This matter comes before the Commission on the Commission's motion for a rule to show cause why Petitioner's petition for review should not be dismissed for failure to timely file an authenticated transcript of arbitration. The matter came for hearing before Commissioner Stephen Mathis. Both parties appeared, and a record was made. The Commission having been advised of the facts and law, finds and orders as follows:

Petitioner's applications for adjustment of claim allege that Petitioner sustained accidental work-related injuries on July 11, 2006, and July 31, 2006. The matter ultimately proceeded to arbitration hearing on January 18, 2017. On April 20, 2017, the Arbitrator issued a decision in the matter, finding that Petitioner had reached maximum medical improvement on November 13, 2006, and his current conditions of ill-being were not causally connected to the undisputed accidents. The Arbitrator awarded temporary total disability and medical benefits through November 13, 2006, subject to credit for the benefits paid. Further, the Arbitrator awarded permanent partial disability benefits representing a 5 percent loss of use of the right arm and 5 percent disability to the person as a whole.

On May 4, 2017, Petitioner *pro se* timely filed a petition for review of the Arbitrator's decision.

On June 1, 2017, Petitioner filed a motion to dismiss his attorney and a motion under section 20 of the Workers' Compensation Act (the Act) to proceed as a poor person. On June 14, 2017, Petitioner's attorney, Margaret Lundahl, filed a motion to withdraw. On June 22, 2017, one of Petitioner's prior attorneys, the firm of Goldberg, Weisman & Cairo, renewed its motion

for attorney fees and costs. Subsequently, Petitioner filed a number of motions indicating, among other things, that he wished to conduct discovery and retry his case.

On August 23, 2017, Commissioner Michael Brennan held a hearing on behalf of Commissioner Mathis. Commissioner Brennan allowed Attorney Lundahl to withdraw. Further, Commissioner Brennan entered and continued to disposition Goldberg, Weisman & Cairo's motion for attorney fees and costs. Petitioner then testified in support of his section 20 petition to proceed as a poor person.

Commissioner Brennan indicated he would grant the section 20 petition and explained Petitioner's next step on review: "We have what's called a return date on review. When the court reporter generates a transcript, *** you will get a notice that the transcript is ready to be picked up and that you will have a date certain by which you have to authenticate, meaning sign the transcript and have [Respondent's] counsel sign the transcript and present it to the Commission. ¶ If you don't do that, you're at peril. Your review can be dismissed." Petitioner responded that he understood. Commissioner Brennan continued: "So when you get that notice in the mail, you have to take action and pick up the transcript and contact [Respondent's] counsel and meet with him so that the two of you can sign off on that record. And then you have to present it here at the Commission at the counter out front, which is over here, with the signed document that says the parties stipulate to the correctness of the record. Okay? ¶ If you fail to do that, you're at peril. Your review could be dismissed."

The matter was set for a follow-up hearing date on November 8, 2017, to authenticate the transcript in front of a Commissioner. Petitioner's pending motions and subpoenas were continued to that date. However, Petitioner continued to bring up his motions, subpoenas and grievances. Commissioner Brennan reiterated that the parties needed to obtain and review the arbitration transcript. Further, Commissioner Brennan directed Petitioner to review the Act and the Rules Governing Practice Before the Workers' Compensation Commission, stressing their importance in moving forward and further stressing the prohibition against the introduction of new evidence on review. Commissioner Brennan stated: "I want you to understand that your rights on appeal are very limited, and I want you to understand that you have to work with the transcript that is going to be prepared. I want you to understand that your ability to bring in a wealth of other information may be very limited." Commissioner Brennan reiterated: "Focus on the transcript." In conclusion, Commissioner Brennan yet again reiterated: "[U]nderstand that if you don't file that record timely, if you ignore any notice that you get from the Commission, there's always great peril attached to it."

On September 6, 2017, Commissioner Brennan issued an order granting Petitioner's section 20 petition to proceed as a poor person.

On October 4, 2017, the court reporter completed the transcript, and on October 5, 2017, the Commission issued a notice of return date on review, requiring an authenticated transcript to be filed on or before December 1, 2017.

On November 8, 2017, the parties and Attorney Lundahl appeared before Commissioner Joshua Luskin sitting in Commissioner Mathis's stead. Respondent's counsel advised the

Commission that the transcript had been prepared and paid for by the State of Illinois pursuant to section 20. Respondent's counsel also authenticated the transcript. Commissioner Luskin explained to Petitioner the significance of authentication, and Petitioner signed the authentication page. Commissioner Luskin then advised: "Whether or not the transcript is properly filed, Mr. Krutul, that's something you will need to address." Seeing that Petitioner was preoccupied with his subpoenas, Commissioner Luskin noted the prohibition against the introduction of new evidence on review. Commissioner Luskin also noted that Petitioner was repeatedly bringing up issues outside the Commission's jurisdiction. Commissioner Luskin entered and continued to disposition Attorney Lundahl's petition for attorney fees and costs, and denied or dismissed three of Petitioner's motions on form, substantive and jurisdictional grounds. Petitioner continued to be preoccupied that the various documents admitted into evidence during the arbitration hearing had been altered. Also, Petitioner anticipated needing "a continuance on the Review and, also going over the transcript, I'm in a position right now to where I'm going to need a continuance on that so I have my bearings straight so I can do my production for Review in a positive way to save my own self."

On November 15, 2017, Petitioner e-mailed to Commissioner Mathis a request for a 120-day extension to file his brief on review. Commissioner Mathis set the matter for hearing on December 13, 2017.

On December 11, 2017, the Commission issued a notice of the Commission's own motion for a rule to show cause why Petitioner's petition for review should not be dismissed for failure to timely file an authenticated transcript of arbitration, which was due on December 1, 2017.

On December 13, 2017, the parties appeared before Commissioner Mathis to address the issues of authentication and filing of the transcript and an extension of time to file Petitioner's brief on review. Commissioner Mathis noted that Petitioner had already authenticated the transcript and needed to only file the transcript with the Commission. Respondent's counsel argued the Commission had lost jurisdiction because Petitioner failed to perfect his review on or before December 1, 2017. Petitioner responded that medical and psychological problems had prevented him from timely filing the transcript. Petitioner continued to be preoccupied with his subpoenas and concerns over the documents admitted into evidence during the arbitration hearing, as well as issues outside the Commission's jurisdiction. Commissioner Mathis reiterated that all Petitioner needed to do was file the transcript at the front desk, giving him an extension until December 22, 2017. Further, assuming Petitioner were to perfect his review, Commissioner Mathis gave Petitioner until March 21, 2018, to file his brief. Commissioner Mathis advised Petitioner that he would dismiss the review if the transcript was not filed by December 22, 2017.

The Commission's mainframe database shows that Petitioner failed to file an authenticated transcript on or before December 22, 2017. The Commission therefore must dismiss Petitioner's petition for review on jurisdictional grounds. See Ingrassia Interior Elements v. Workers' Compensation Comm'n, 2012 IL App (2d) 110670WC. All other issues are moot.

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06 WC 34803

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IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's petition for review is dismissed.

No bond is required for removal of this cause to the Circuit Court. 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:
d-1/25/2018
SM/sk
44

JAN 31 2018



Stephen Mathis



David L. Gore



Deborah Simpson

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION
COMMISSION

Gilberto Ramirez,

Petitioner,

vs.

No. 13 WC 04698

Temco Contracting,

Respondent.

ORDER

This matter comes before the Commission on a "Motion for Resolution of Attorney Fees" filed by the law firm of Dworkin and Maciariello, with proper notice given. During a hearing on the motion, Dworkin and Maciariello advised the Commission that the Arbitrator has already held a hearing and issued a decision on January 12 [*sic*], 2017. Dworkin and Maciariello timely filed a petition for review, raising the sole issue of "Resolution of Attorney's Fees." However, the Commission never set a return date on review, and "[n]o transcript was ever prepared." Dworkin and Maciariello "filed this motion in order to request that we set a return date on review in order to have the Commission review the decision of the Arbitrator." For the reasons that follow, the Commission dismisses the petition for review and the "Motion for Resolution of Attorney Fees."

On November 10, 2016, the Arbitrator approved a settlement contract, which provided for \$20,000.00 for attorney fees. On November 10 and November 17, 2016, the Arbitrator held a hearing on apportioning the attorney fees between Petitioner's current counsel, Dworkin and Maciariello, and Petitioner's former attorneys: Baum, Ruffolo & Marzal; the Romaker Law Firm; and Collison Law Offices. On January 10, 2017, the Arbitrator filed a decision apportioning the attorney fees as follows: 12.5 percent to Dworkin and Maciariello; 15 percent to Baum, Ruffolo & Marzal; 17.5 percent to the Romaker Law Firm; and 55 percent to Collison Law Offices.

On January 13, 2017, Dworkin and Maciariello timely filed a petition for review of the Arbitrator's decision. On November 13, 2017, Dworkin and Maciariello filed a "Motion for Resolution of Attorney Fees."

On December 13, 2017, Commissioner Stephen Mathis held a hearing with all four law firms present. As noted, Dworkin and Maciariello stated the firm “filed this motion in order to request that we set a return date on review in order to have the Commission review the decision of the Arbitrator.” The Romaker Law Firm and Collison Law Offices argued that Dworkin and Maciariello failed to file the transcript and perfect its appeal. Baum, Ruffolo & Marzal concurred, adding that Dworkin and Maciariello failed to exercise due diligence. Dworkin and Maciariello responded that the Commission never set a return date on review. Dworkin and Maciariello mentioned calling the Commission two months earlier and requesting a notice of return date on review. However, “[t]o this day, that hasn’t been sent out.” Dworkin and Maciariello therefore filed the “Motion for Resolution of Attorney Fees” “as a way of just kind of moving things forward.” Dworkin and Maciariello affirmed: “[T]he relief that we’re asking for today, is to set the return date on review.” Dworkin and Maciariello acknowledged the relief the firm seeks is not stated in its motion, which is “a motion to adjudicate.”

The Commission finds that Dworkin and Maciariello has failed to exercise due diligence on review and its petition for review should be dismissed. See *Contreras v. Industrial Comm’n*, 306 Ill. App. 3d 1071 (1999). The Commission therefore needs not decide the impact of our failure to set a return date on review, insofar as it pertains to perfecting the review.¹ Lastly, the Commission dismisses the “Motion for Resolution of Attorney Fees,” as the issue has already been adjudicated by the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that Dworkin and Maciariello’s petition for review is dismissed.

IT IS FURTHER ORDERED BY THE COMMISSION that the “Motion for Resolution of Attorney Fees” is dismissed.

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

JAN 31 2019

DATED:
SM/sk
44



Stephen Mathis



David L. Gore



Deborah Simpson

¹ The Commission notes there is nothing in the record to explain why the transcript has not been prepared.

08 INC 105
18 IWCC 14
Page 1

STATE OF ILLINOIS) BEFORE THE ILLINOIS WORKERS' COMPENSATION
) SS COMMISSION
COUNTY OF COOK)

Illinois Workers' Compensation Commission
Insurance Compliance Division,
Petitioner,

vs.

NOS. 08 INC 105
18 IWCC14

Adam Purol, Individually & as President of
A&E Roofing and A&E Roofing,
Respondent.

ORDER OF RECALL UNDER SECTION 19(F)


This matter comes before the Commission on its own motion to correct a clerical error in the Decision and Opinion on Review of the Commission filed January 5, 2018, *sua sponte*. After reviewing the Decision on Review, the Commission recalls the Decision for the purpose of correcting the clerical error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated January 5, 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: **JAN 29 2018**

DLS/rm
46



Deborah L. Simpson

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ILLINOIS WORKERS' COMPENSATION COMMISSION
INSURANCE COMPLIANCE DIVISION,

Petitioner,

vs.

NO. 08 INC 105
18 IWCC 14

ADAM PUROL, INDIVIDUALLY & AS PRESIDENT OF
A & E ROOFING and A & E ROOFING,

Respondents.

**CORRECTED DECISION AND OPINION ON
COMPLAINT FOR INSURANCE NON-COMPLIANCE**

This matter comes before the Commission on an action by the Illinois Workers' Compensation Commission Insurance Compliance Division. A hearing was held in Chicago before Commissioner Simpson on August 29, 2017. Petitioner was represented by the Office of the Illinois Attorney General and Respondent was appeared *pro se* with the benefit of an interpreter. Mr. Purol was allowed to represent himself but as a non-attorney he could not represent A & E Roofing. A record was taken.

Findings of Fact & Conclusions of Law

1. Don Johnson testified he has been Lead Investigator for the Illinois Workers' Compensation Commission Insurance Compliance unit for about 9 years, investigating whether businesses carry workers' compensation insurance. In his investigations, Mr. Johnson uses numerous tools, including data from the National Council on Compensation Insurance ("NCCI"). He has used that resource hundreds of times in his job.
2. Mr. Johnson also testified he was assigned to investigate the circumstances of a claim filed by Jan Duda against A & E Roofing, which is owned by Respondent Purol. The date of that accident was March 17, 2007. The Illinois Injured Workers' Benefit Fund paid \$65,352.52 on that claim. The total award was actually \$233,500.00.

3. In his investigation, the witness obtained a certification from the Workers' Compensation Self-Insurance Division indicating neither A & E Roofing nor Mr. Purol was a registered self-insured entity at the time of Mr. Duda's accident. Mr. Johnson then inquired about insurance coverage through NCCI. Mr. Johnson determined that Respondents had workers' compensation insurance from September 18, 2004 to September 18, 2005 and then purchased insurance effective from March 21, 2010 to March 21, 2011. However, that policy was cancelled on the day it was to become effective. Respondents also did not have workers' compensation insurance from September 19, 2006 through March 20, 2007. Respondents' insurance was also cancelled on September 18, 2005 for non-payment of premium. In addition, as of July 30, 2014, "Mr. Purol was claiming carpentry class of employees with the construction of residential dwelling not exceeding three-stories in height." The premium for that standard policy was \$730.00 annually.
4. Mr. Johnson's office sent Mr. Purol a notice of non-compliance dated May 21, 2008. There was also notice for Mr. Purol to attend an informal insurance non-compliance hearing. No settlement was reached at the informal hearing.
5. On cross examination by Mr. Purol through the interpreter, Mr. Johnson was asked whether he knew one is required to have two types of insurance in order to obtain a roofing contractor license in the State of Illinois. Mr. Johnson testified he did not know of insurance requirements for roofing contractors other than the requirement that they have workers' compensation insurance.
6. Mr. Purol testified in a narrative manner through the interpreter. He has worked as a contractor for 32 years and as a licensed roofing contractor for 30 years. He never had any problems until the alleged work accident. He acknowledged "that there have been some issues of nonpayment" but that was due to his insurance carrier, Omega not providing proper notice that payment was due. He tried to work within the law and believed he "has always done honest work."
7. On cross examination, Mr. Purol agreed that he was experienced in roofing and was a businessman. He did not have proof about Omega not providing proper notice, because there was a fire at his home in 2009. He inquired about obtaining information but learned that Omega was out of business. He also acknowledged that at the time of Mr. Duda's accident he did not have workers' compensation insurance, but he thought he had insurance at the time. He knew that roofers needed such insurance. Roofers also need liability insurance.
8. Mr. Purol also testified that Mr. Duda worked for him on some jobs for about two years prior to his accident, but he also did other side jobs. Mr. Purol taught him how to pull off and install shingles. He checked Mr. Duda's work to make sure the work was done correctly.
9. Petitioner submitted into evidence documentation verifying the testimony of Mr. Johnson.

The Commission finds that Petitioner proved that Respondent Adam Purol, individually and as President of A & E Roofing, knowingly and intentionally operated his business without workers' compensation insurance, as required by the Act. Mr. Purol admitted that he knew he needed workers' compensation insurance and that he did not have such insurance when his employee, Jan Duda, sustained a work-related accident and serious injuries therefrom. It appears that Mr. Purol intentionally manipulated the system by obtaining workers' compensation insurance simply to renew his license and then cancelled it the same day. By circumventing the workers' compensation insurance for several years, Mr. Purol obtained an unfair competitive advantage against other roofing companies that complied with the law. Mr. Purol's lack of insurance resulted in substantial liability for the State of Illinois Injured Workers' Benefit Fund, reduction of benefits to other recipients of awards paid by the Fund, and the substantial likelihood that Mr. Duda will never be fully compensated for his accident and injuries.

The Commission notes that Petitioner's business was roofing, a business involved in construction/remodeling/demolition, which are categories the Act delineates as "extra hazardous" for which workers' compensation insurance is "automatically" mandated. 820 ILCS 305/3. This is not a situation in which the respondent was operating a service-oriented business such as an accounting firm *etc.*, in which one would not necessarily expect a multitude of injuries and the need for such insurance may not be as obvious. The Act provides for a fine of up to \$500 a day for not having required insurance. Because Respondent intentionally and knowingly failed to maintain workers' compensation insurance for many years, because he apparently flagrantly manipulated the process to maintain his license, because he operated for years with a competitive advantage in the profession by operating without incurring the expense of insurance, because of the inherently dangerous nature of his business, and because Mr. Purol's failure to maintain insurance, resulted in substantial harm to his prior employee, the Fund, and the other recipients of benefits from the Fund, the Commission finds no reason to assess less than the fine specified in the Act.

The Commission finds that Petitioner proved that Respondent intentionally and knowingly operated without the required workers' compensation insurance for 1,279 days, from September 19, 2006 through March 20, 2011. Pursuant to Section 4(d) of the Act, the Commission imposes a fine of \$639,500.00. In addition, the Fund seeks reimbursement of \$65,353.52 it paid pursuant to the award to Mr. Duda for the injuries he sustained while employed by Respondent and A & E Roofing under 07 WC 13540/13 I.W.C.C. 552. The Act provides that "the Commission shall have the right to obtain reimbursement from the employer for compensation obligations paid by the Injured Workers' Benefit Fund." 805 ILCS 305/4(d). Therefore, the Fund is entitled to an order of reimbursement.

IT IS THEREFORE ORDERED BY THE COMMISSION Petitioner's request for fines is hereby granted.

IT IS FURTHER ORDERED BY THE COMMISSION, that Respondent, Adam Purol, individually and as President of A & E Roofing and A & E Roofing as a separate entity, pay to the Commission \$639,500.00 for knowingly and intentionally failing to maintain workers' compensation insurance for 1,279 days, pursuant to §4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION, that Respondent, Adam Purol, individually and as President of A & E Roofing and A & E Roofing as a separate entity, reimburse to the Injured Workers' Benefit Fund \$65,353.52 it paid pursuant to the award to Mr. Duda under 07 WC 13540/13 I.W.C.C. 552 for the injuries he sustained while employed by Respondent and A & E Roofing.

Bond for the removal of this cause to the Circuit Court by Respondents is hereby fixed at the sum of \$75,000.00. The party commencing the proceeding for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

DATED: JAN 29 2018



Deborah L. Simpson



David L. Gore



Stephen J. Mathis

DLS/dw
O-12/14/17
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13WC 35612
17 IWCC 778
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STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Bonnie F. Holland,

Petitioner,

vs.

NO: 13 WC 35612
17 IWCC 778

Murray Developmental Center,

Respondent.

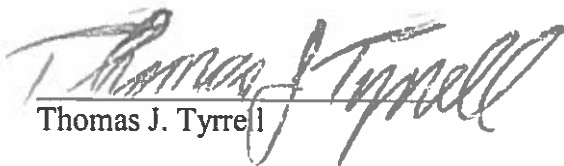
ORDER OF RECALL UNDER SECTION 19(f)

A Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Decision of the Commission dated December 4, 2017, having been filed by Respondent herein. Upon consideration of said Petition, the Commission is of the Opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision on Review dated December 4, 2017, is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein.

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

DATED: **JAN 18 2018**
TJT:yl
51


Thomas J. Tyrrell

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Bonnie F. Holland,
Petitioner,

vs.

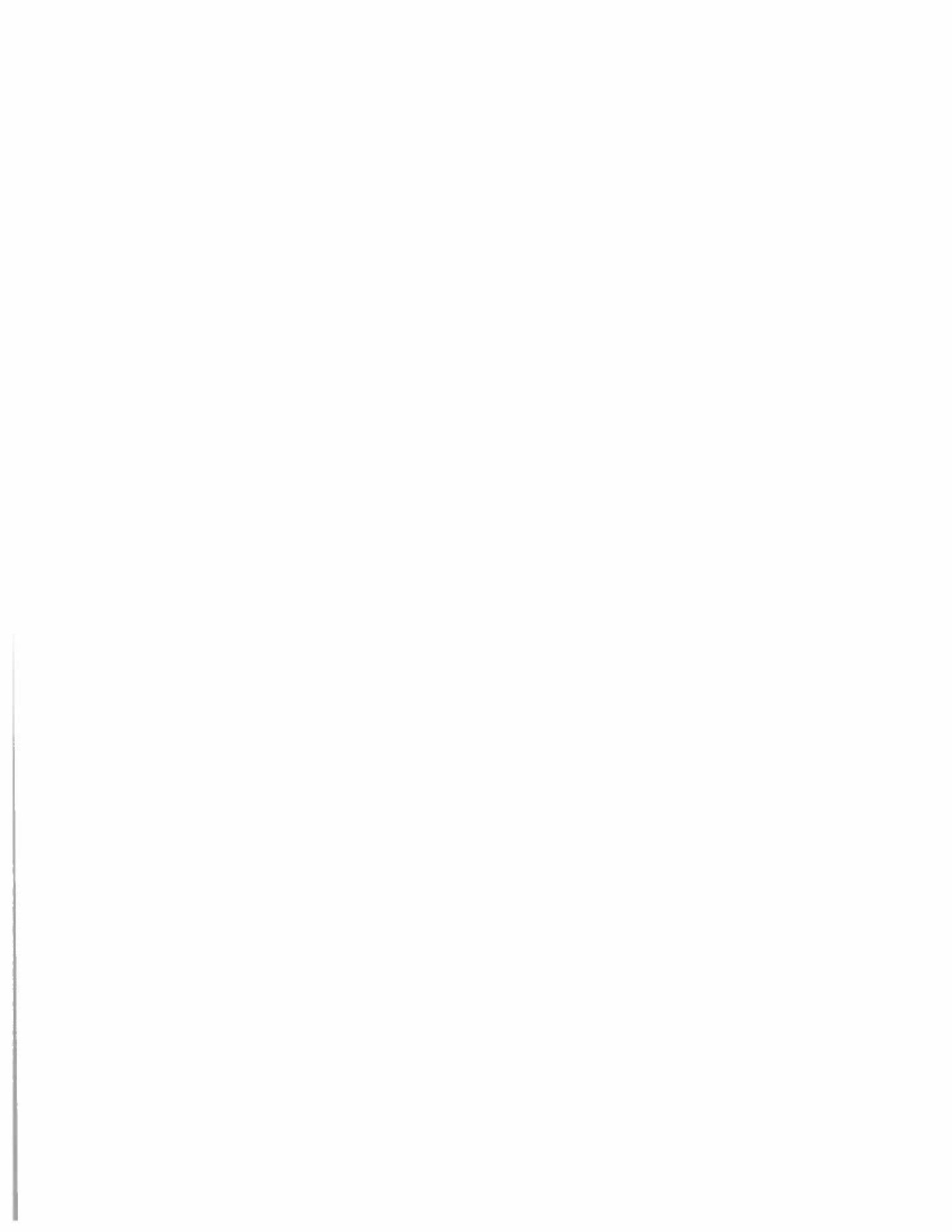
NO: 13 WC 35612
17 IWCC 778

Murray Developmental Center,
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of wages, causal connection, TTD, medical expenses and prospective medical treatment, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Comm'n, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

“In a workers' compensation case, the claimant has the burden of establishing his or her average weekly wage.” S&C Elec. Co. v. Ill. Workers' Comp. Comm'n, 42 N.E.3d 69, 397 Ill. Dec. 443 (1st Dist. 2015), citing Kawa v. Ill. Workers' Comp. Comm'n, 2013 IL App. (1st) 120469, 991 N.E.2d 430. “The determination of an employee's average weekly wage is a question of fact for the Commission, which will not be disturbed on review unless it is against the manifest weight of the evidence.” Id. Although overtime wages are generally excluded from the calculation of an employee's compensation, an exception exists where the overtime hours are consistent and required by the employer. 820 ILCS 305/10 (West 2010); Airborne Express v. Ill. Workers' Comp. Comm'n, 372 Ill.App.3d 549, 554, 865 N.E.2d 979, 983, 310 Ill.Dec. 259 (2007).



The Commission finds that Petitioner failed to prove that claimed overtime should be included in the calculation of her average weekly wage. More to the point, the Commission finds that Petitioner failed to prove by a preponderance of the credible evidence that the alleged overtime worked was both consistent and required by the employer. In support of this holding, the Commission notes that Petitioner submitted no evidence to support her self-serving claim that roughly 50% of the overtime hours she worked were mandated by her employer. Indeed, when presented with a copy of her wage statement for the year preceding the accident, Petitioner was unable identify which hours were mandatory and which were voluntary. Furthermore, there is absolutely no evidence to show that Petitioner worked a set number of overtime hours per week. Instead, Petitioner was forced to speculate as to the breakdown of her overtime hours. The Commission finds this insufficient proof that said overtime wages should be included in the calculation of Petitioner's average weekly wage and hereby strikes their inclusion in the determination of wages.

Therefore, the Commission finds that Petitioner's average weekly wage, excluding overtime, was equal to \$817.54. This is based on the wage records which show Petitioner earned \$34,336.67 between the pay periods ending 3/31/12 and 3/15/13 (RX1) as well as Petitioner's testimony and the attendance records which show she worked a total of 42 weeks and parts thereof during the year preceding the accident. (T.36-37; RX10).

The Commission also notes that in calculating the period of TTD benefits, the Arbitrator mistakenly found that the total number of weeks was equal to 9-6/7 weeks. The Commission hereby corrects the Arbitrator's decision to find that Petitioner was temporarily totally disabled from 6/14/13 through 8/4/13 (7-3/7 weeks) and from 4/29/14 through 5/13/14 (2-1/7 weeks), for a period total of 9-4/7 weeks.

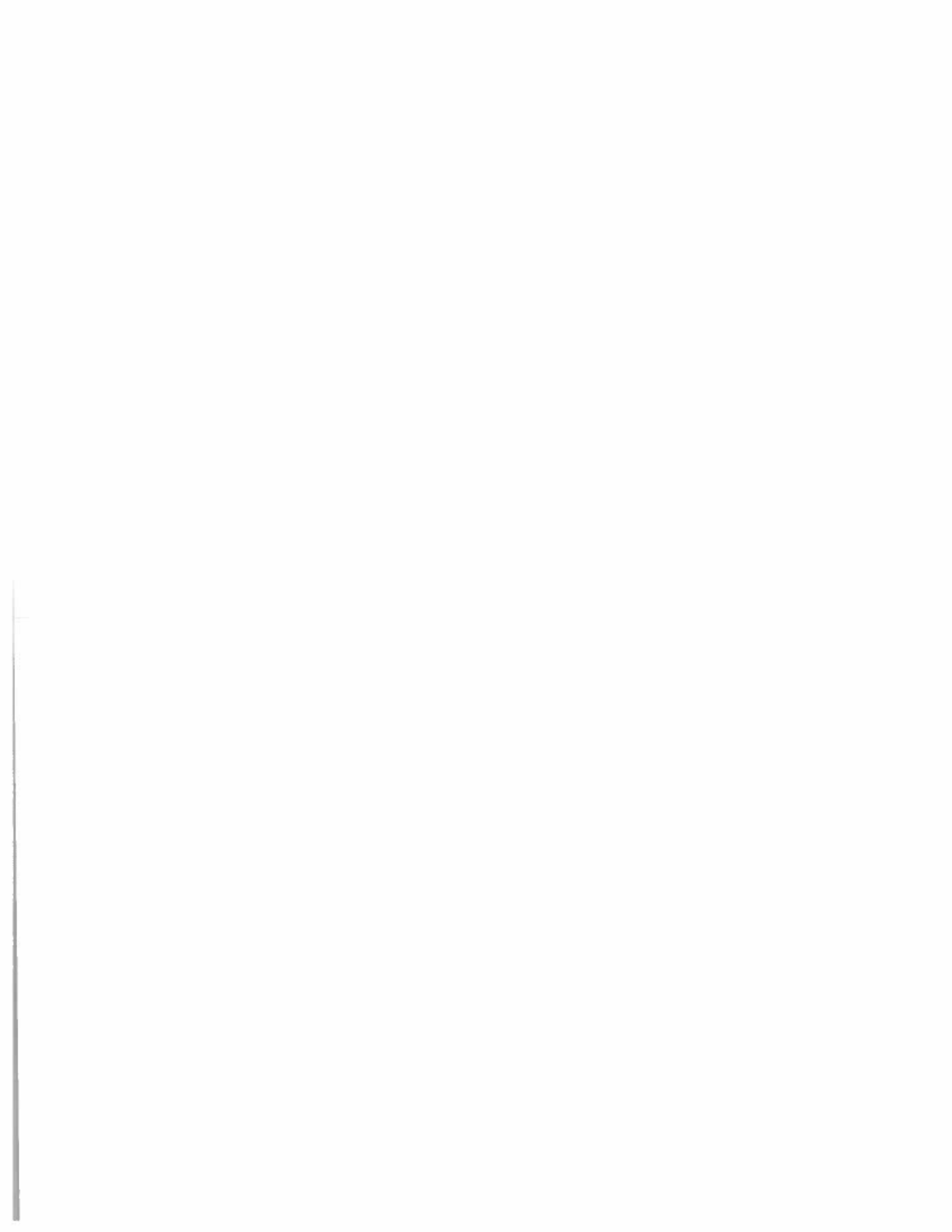
All else otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision dated 5/13/16 is affirmed with changes as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$545.03 per week for a period of 9-4/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$28,980.60 for necessary medical expenses, as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for prospective medical services in the form of treatment recommended by Dr. Bonutti, as provided in §8(a) of the Act.



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

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury, excluding those amounts paid subsequent to the close of proofs, as discussed in the body of this decision; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

DATED: **JAN 18 2018**

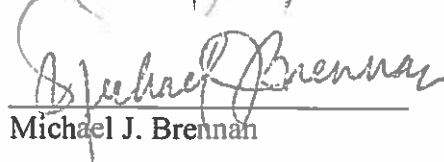
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TJT/pmo

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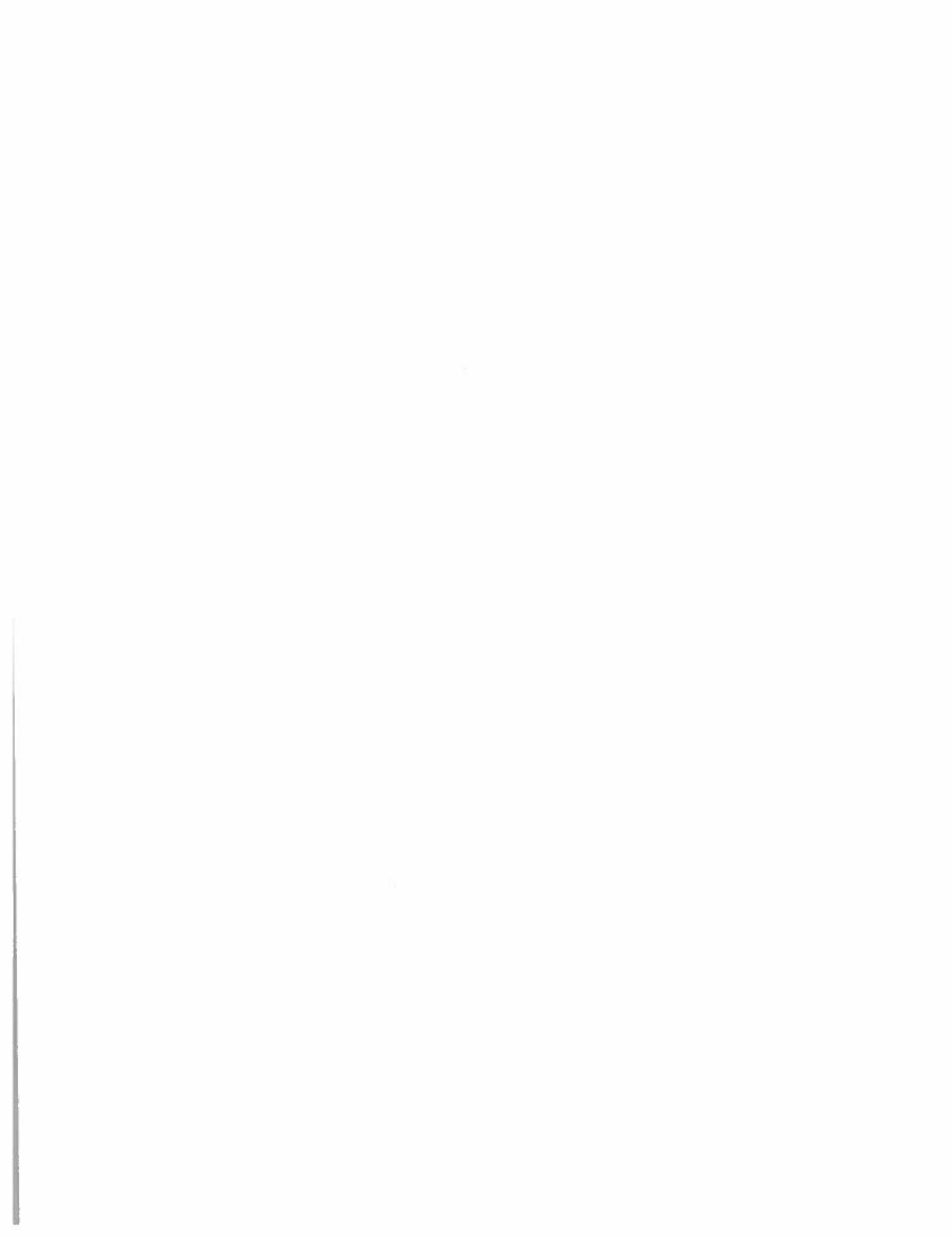
Thomas J. Tyrell



Michael J. Brennan



Kevin W. Lamborn



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

HOLLAND, BONNIE

Employee/Petitioner

Case# 13WC035612

WARREN G MURRAY DEVELOPMENTAL
CENTER

Employer/Respondent

17IWCC0778

On 5/13/2016, 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 0.38% 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:

0384 NELSON & NELSON
NATHAN C LANTER
420 N HIGH ST
BELLEVILLE, IL 62220

0558 ASSISTANT ATTORNEY GENERAL
FARRAH L HAGAN
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

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

1745 DEPT OF HUMAN SERVICES
BUREAU OF RISK MANAGEMENT
PO BOX 19208
SPRINGFIELD, IL 62794-9208

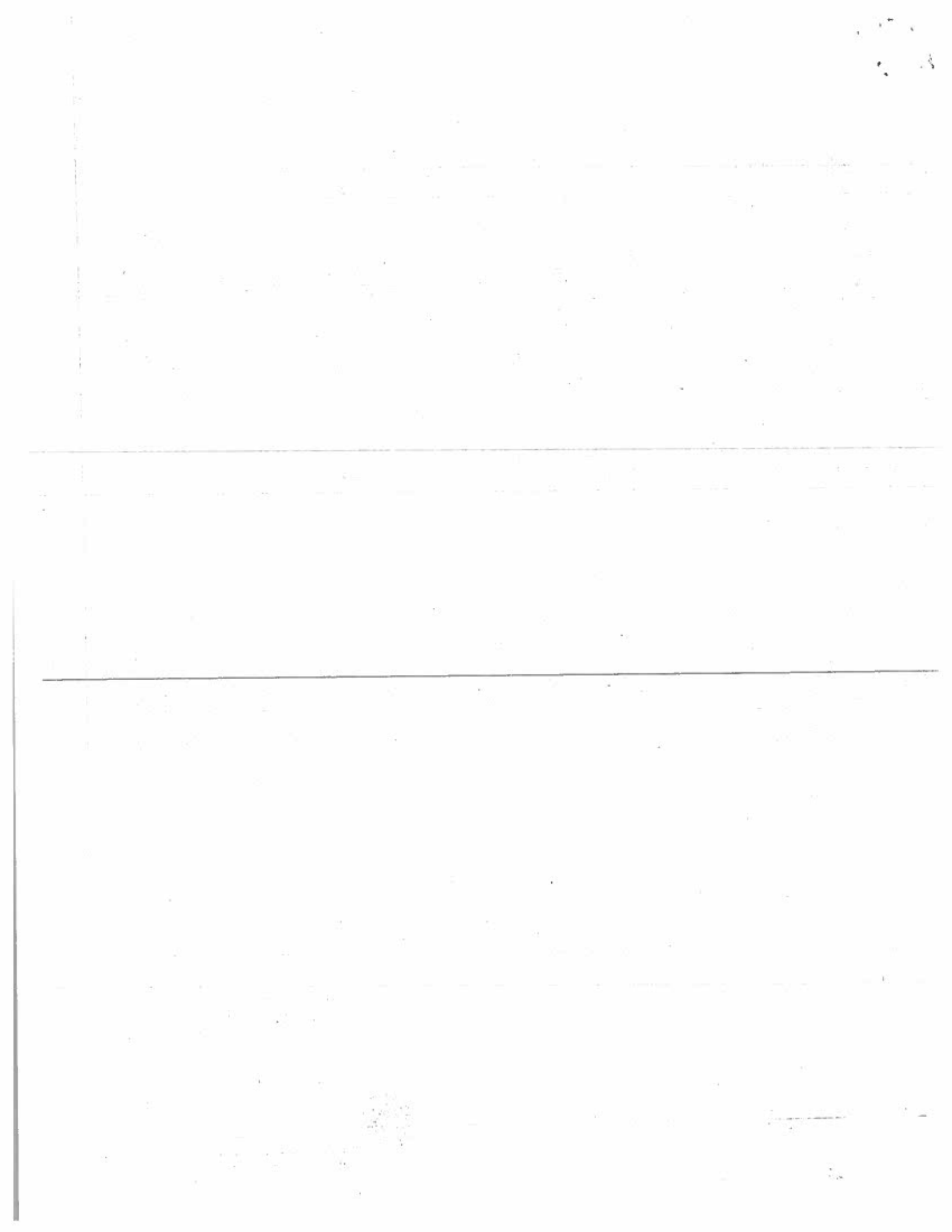
0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

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

MAY 13 2016



Ronald A. Harris
RONALD A. HARRIS, Acting Secretary
Illinois Workers' Compensation Commission



17 IWCC0778

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Bonnie F. Holland
Employee/Petitioner

Case # 13 WC 035612

v.

Consolidated cases: N/A

Warren G. Murray Developmental Center
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Nowak**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **06/04/15**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

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FINDINGS

On the date of accident, 03/18/13, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned \$38,271.10, in the 43 weeks actually worked; the average weekly wage was \$890.01.

On the date of accident, Petitioner was 47 years of age, *single* with 1 dependent children.

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

Respondent is entitled to a credit for all TTD benefits paid. Respondent is entitled to a credit under Section 8(j) of the Act. Respondent is entitled to a credit for all medical bills paid.

ORDER

Respondent shall pay reasonable and necessary medical services of \$28,980.60, as set forth in Petitioner's Exhibit 5, 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 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 also authorize and pay for prospective medical services as recommended by Dr. Bonutti pursuant to Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of \$593.35/week for 9 6/7 weeks, commencing 6/14/13 through 8/4/13 (7 4/7 weeks), and 4/29/14 through 5/13/14 (2 2/7 weeks), as provided in Section 8(b) of the Act.

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

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

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



Signature of Arbitrator

5/2/16
Date

FINDINGS OF FACT

On the date of hearing Petitioner was 49 years old, married, and had one dependent child. She worked for the Respondent for 22 years. In March 2013 Petitioner was a Mental Health Tech II. Her job involved taking care of mentally handicapped individuals, making sure they didn't harm themselves or others, and helping them with their daily routines (feeding, grooming, bathing, etc.). Prior to 03/18/13 Petitioner had no left knee symptoms, complaints of pain or discomfort. She had not received any treatment or been under any restrictions with regard to her left knee before 03/18/13.

On 3/18/13 an aggressive individual pulled Petitioner to the ground by her hair causing Petitioner's left knee to hit the concrete floor. She felt a sharp burning pain go through her knee. The pain was 10/10. The knee was red and swollen. Petitioner had never felt left knee pain like this before. She told her supervisor and Tech III, Jim Woods, about her injury. Petitioner completed a written report of injury.

On 04/01/13 Petitioner sought treatment at the Work Safety Institute. She was prescribed Celebrex, referred to Dr. Jeff McIntosh and allowed to return to light duty work. X-rays showed mild degenerative changes in the medial joint complex.

On 04/04/14 Petitioner saw Dr. McIntosh. He took a history consistent with Petitioner's testimony. Physical exam found swelling and diffuse tenderness to palpation in the patellofemoral joint and the medial and lateral joint compartments. His assessment was a contusion and possible internal derangement. He recommended a MRI and kept her on light duty.

On 04/08/13 Petitioner underwent a left knee MRI. On 04/18/13 she returned to Dr. McIntosh who believed the MRI showed evidence of chondromalacia, medial meniscus tear, and a small popliteal cyst. He noted she was not much better, so he aspirated the knee, administered a corticosteroid injection, prescribed physical therapy three times a week for two weeks, continued her anti-inflammatory medication, and kept her on light duty.

On 05/09/13 Petitioner returned to Dr. McIntosh. He noted she had failed to improve. Petitioner rated her pain 9/10 and had to stop physical therapy due to increasing discomfort. He noted the knee was swollen. She walked with a limp and was having significant pain in the medial joint line and pain with patellofemoral compression. He recommended arthroscopic evaluation and kept her on light duty.

On 06/14/13 Dr. McIntosh performed arthroscopic surgery. His post-operative diagnosis was a fairly significant chondral injury to the medial femoral condyle, medial tibial plateau, and a small lateral meniscus tear. There was no mention of advance arthritis.

On 06/18/13 Petitioner returned to Dr. McIntosh. He told her to start physical therapy. He kept her off work. On 07/11/13 Petitioner returned to Dr. McIntosh. He noted she was still having some swelling and pain. He aspirated the knee and administered another injection. He continued her on anti-inflammatories and analgesic medication. He kept her off work.

On 08/01/13 Petitioner returned to Dr. McIntosh. He noted she was making progress in therapy but was still having some discomfort and pain with prolonged walking. He allowed her to return to work light duty.

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On 08/23/13 Petitioner returned to Dr. McIntosh. He believed she was making good progress. She was anxious to return to full duty. He refilled her analgesic and anti-inflammatory medication. He allowed her to return to work full duty.

On 10/03/13 Petitioner returned to Dr. McIntosh. He noted she was still having a fair amount of discomfort especially in the medial joint line, which was the same area where she had a lot of pathology according to the x-rays and MRI. He encouraged her to lose weight by trying a combination of exercise, medication, and dietary changes. He administered another injection to help relieve her discomfort. He refilled her medication and prescribed a knee brace. He kept her working full duty.

On 11/14/13 Petitioner returned to Dr. McIntosh. He noted she continued to have a fair amount of pain in the medial joint line, difficulty walking, and stiffness. On physical exam he found swelling and tenderness in the medial joint. X-rays showed progression of the degenerative changes in the medial joint compartment. He administered a corticosteroid injection. He continued anti-inflammatory medication, encouraged weight loss and continued exercise.

On 02/13/14 Petitioner returned to Dr. McIntosh. On physical exam he found swelling, tenderness to patellofemoral compression, and some pain on range of motion. He believed that she was at MMI. He told her use the brace if she needed it. He thought she may continue to have difficulty with her knee due to arthritis.

Petitioner testified the arthroscopic surgery provided "a little bit" of relief. Before the surgery her left knee pain was 9-10/10, she couldn't bend the knee, and she had to keep it elevated a lot. After the surgery, her left knee pain was 5-6/10.

~~On 03/25/14 Petitioner sought treatment at Bonutti Orthopedic Clinic in Effingham, Illinois. She was examined by Nickolas Williams, PA-C, who took a history consistent with Petitioner's testimony about the March 2013 work incident and the surgery performed by Dr. McIntosh and subsequent treatment. He noted Petitioner had stabbing and throbbing left knee pain, aggravated by walking and standing, and the knee would lock and swell. Petitioner rated the pain at 8/10. On physical exam, he noted significant tenderness anywhere the knee was palpated but more so on the medial side, lateral side down the distal tibia, and proximal on her femur. X-rays showed near complete loss of the medial joint line with mild subchondral sclerosis and moderate patellofemoral disease more so off the medial facet. He was concerned about a medial femoral condyle osteochondral defect that was noted during arthroscopy, so he recommended Petitioner get a second left knee MRI and to return to discuss her treatment options.~~

On 04/04/14 Petitioner underwent the second left knee MRI. The impression was degenerative joint disease in all 3 compartments, especially the medial compartment. There was a slight prominence of joint fluid and no definite meniscal or ligamentous tear suggested. He did not keep Petitioner off work.

On 04/15/14 Petitioner returned to the Bonutti Orthopedic Clinic. Her left knee pain was 10/10. Mr. Williams noted the radiologist's MRI results but, upon his own interpretation of the MRI, believed there was a small area of the medial tibial plateau in addition of the medial femoral condyle consistent with an osteochondral defect. He believed she would not benefit or would have little relief from another arthroscopy because of the defect in the medial femoral condyle and patellofemoral disease. He recommended a left total

knee replacement as the only way to get her back to working. He returned her to work with restrictions of limited walking with her left leg.

On 04/26/14 an aggressive individual grabbed her around her neck, took her to the floor, and her left knee hit the floor. Petitioner testified the March 2012 injury was the more severe when compared to the April 2014 event.

On 04/29/14 Petitioner returned to the Bonutti Orthopedic Clinic for a recheck of her left knee. Mr. Williams noted she reinjured the knee at work on 04/26/14 when she an aggressive individual took her to the floor. Petitioner was unable to bear weight on the knee because it feels like it is going to give out and is incredibly painful. He noted these symptoms were basically the same for which she had been seen previously at the clinic. Physical exam noted marked tenderness on the medial and lateral joint lines. X-rays showed complete loss of the medial joint line and subchondral sclerosis and advanced patellofemoral disease. Mr. Williams kept Petitioner off work until 05/13/14. He again recommended a left total knee replacement.

Petitioner testified she underwent bypass surgery on 05/20/14. Petitioner has since lost 105 pounds. Her left knee pain has not improved after losing that weight.

On 09/30/14 Dr. Peter Bonutti examined Petitioner. He took a history consistent with Petitioner's testimony and medical records. He noted she was experiencing significant pain and discomfort, as well as grating and grinding. On physical exam he noted her left knee had decreased ROM and significant patellofemoral crepitus. X-rays showed advanced medial compartment degenerative changes bilaterally with moderate patellofemoral disease bilaterally. Dr. Bonutti reviewed the 04/14/14 left knee MRI as showing evidence of patellofemoral plus medial compartment degenerative changes with edema in the medial compartment and extruded meniscus. He noted Petitioner failed history of conservative care. He believed her remaining options were more anti-inflammatories, injections, and bracing or a left total knee replacement.

Petitioner testified In October 2014 she began working as Mental Health Tech III. This is a more supervisory position than a Mental Health Tech II but her job duties include those of a Tech II when another Tech III is in charge.

Petitioner is currently working full duty. She is not taking any medication for her left knee. The level of left knee pain is 8-9/10. She has trouble walking short distances and standing on her feet for long periods of time. Going up steps causes the knee to hurt a lot. At work, if there's an individual on the floor, she can't get down on the floor to help because of left knee tenderness. The knee is painful at night. In bed, she has to position her left knee in a certain way. She cannot lie on her left side because the knee throbs. She further testified that since 03/18/13 her left knee has not been completely free from pain and discomfort. She's not had any significant pain or symptoms in her right knee. She wants to have the left total knee replacement.

The deposition testimony of Dr. Bonutti was admitted into evidence. He opined the trauma of Petitioner falling onto her left knee could aggravate the underlying pre-existing osteoarthritis and had been was minimally or asymptomatic prior to March 18, 2013. (PX 6, p. 15) He opined Petitioner's work injuries were a cause for the need for treatment he recommended, including the total knee replacement. (PX 6, p. 16) He also believed the arthroscopic surgery contributed to the progressive degenerative joint disease because the condition of Petitioner's left knee was worse after the surgery when compared to before the surgery. (PX 6, p. 16) He

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testified Petitioner had not yet reached MMI. (PX 6, p. 17) He reviewed Dr. McIntosh's operative report. (PX 6, p. 19) He noted the reported stated there was a lateral meniscus tear and medial femoral condyle injury consistent with a direct blow to the knee. (PX 6, p. 19-20) He also noted the operative report did not describe advanced arthritis. (PX 6, p. 20) This allowed him to conclude the arthroscopic surgery was meant to treat traumatic injuries to Petitioner's left knee. (PX 6, p. 20) Dr. Bonnuti also reviewed the first MRI of 04/08/13. (PX 6, p. 47) He noted that MRI said she had mild chondromalacia or very early arthritis. (PX 6, p. 47) When the 04/08/13 MRI was compared to the 04/14/14 MRI, he noted there was marked progression of Petitioner's left knee degenerative joint disease, bone edema, and effusion. (PX 6, p. 47-48) He opined this meant Petitioner had rapid progression of the left knee arthritis since the 04/08/13 MRI. (PX 6, p. 48) He opined a cause of Petitioner's rapid progression of arthritis was the accident of 3/18/13 and/or the arthroscopic surgery. (PX 6, p. 48, 50) He opined the degenerative condition of Petitioner's left knee had clearly become much worse since the arthroscopic surgery. (PX 6, p. 50) Dr. Bonnuti testified that a heavy person falling directly on her knee can accelerate degenerative joint disease. (PX 6, p. 39)

Dr. Richard Lehman examined Petitioner pursuant to Section 12 of the Act. Dr. Richard Lehman testified by way of deposition as well. Dr. Lehman examined Petitioner on 07/01/14. His diagnosis was significant degenerative arthritis. (RX 7, p. 7) He didn't believe there was a causal connection between the condition of Petitioner's left knee and the March 2013 work-related incident. (RX 7, p. 7) He didn't believe Petitioner had suffered any injury except a contusion. (RX 7, p. 8) He opined the mechanism of injury was not a mechanism that stresses the intra-articular structures in the knee and it only bruised her knee. (RX 7, p. 8) He didn't believe there was a causal connection between the 2013 incident and the surgery performed by Dr. McIntosh. (RX 7, p. 9) He didn't believe a recommendation for a total knee replacement was appropriate for Petitioner and would not be related to her work injury. (RX 7, p. 12) He didn't believe the underlying degenerative arthritic condition of Petitioner's knee was caused or aggravated by the March 2013 work accident. (RX 7, p. 13) He provided an AMA impairment rating of zero, however Dr. Lehman is not certified perform such ratings. (RX 7, p. 14, 18) He admitted that there was no evidence indicating Petitioner experienced any left knee pain, had any trouble fully performing her job duties, or received any left knee treatment before the March 2013 incident. (RX 7, p. 17-18)

Petitioner testified that in the 52 weeks prior to 03/18/13 she was paid \$22.36 per hour, was scheduled to work 37.5 hours per week. She indicated she worked a significant amount of overtime, and 50% of the overtime was mandated. Petitioner testified that she missed approximately two months from work, from middle December 2012 through middle February 2013 because she was held off work due to stress. The evidence in the record indicates she was off from work from 12/15/12 through 2/15/13 (9 weeks)). Respondent introduced into evidence Petitioner's wage statement for the 52 weeks before 03/18/13. (RX 1) It confirmed her hourly rate was \$22.36. Petitioner's straight time earnings during this period were \$34,336.67. It indicated Petitioner did work overtime in each pay period except for the pay periods ending in 10/15/12, when she was on vacation, and the periods corresponding to the time missed from mid-December, 2012 through mid-February, 2013. (RX 1) Respondent introduced Petitioner's attendance and overtime record for the year preceding 03/18/13. (RX 10) It indicated the total number of overtime hours worked were 351 hours 55 minutes. It also confirmed that Petitioner did not work for two periods of time: approximately two weeks in October 2012 and from 12/15/12 through 02/15/13.

Petitioner testified she received extended benefits from the Respondent from 06/14/13 to 08/04/13.

CONCLUSIONS

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

Petitioner has the burden of proving that her injuries are work related and not the result of a normal degenerative process. *Gilster Mary Lee Corp. v. Industrial Comm'n*, 326 Ill. App. 3d 177, 182, 759 N.E.2d 979, 983 (2001). She has to prove that there was some causal relationship between her employment and her conditions of ill-being. *Absolute Cleaning/SVML v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 469, 949 N.E.2d 1158, 1165 (2011). She is not, however, required to prove that the conditions of employment were the sole or principle cause of her injury. *Brady v. Louis Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548, 578 N.E.2d 921, 924 (1991). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64, 442 N.E.2d 908, 911 (1982). Although a claimant's arthritic knee condition was preexisting, it is self-evident that "employers take their employees as they find them." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672 (2003).

The Arbitrator finds the testimony of Petitioner with regard to the acute injury and progression of her symptoms to be credible. Petitioner also testified credibly about having no prior left knee symptoms, no prior left knee treatment, and no prior left knee restrictions. She testified that since the undisputed accident on 03/18/13 her left knee has never been pain free.

Dr. Bonutti opined the combination of the acute traumatic injury and the subsequent arthroscopic surgery was a cause of the rapid progression of degenerative arthritis in Petitioner's left knee. He indicated that the progression is apparent when comparing the 04/08/13 MRI with that of 04/14/14. Dr. Lehman didn't believe there was a causal connection between the 2013 incident and the surgery performed by Dr. McIntosh. He didn't believe a recommendation for a total knee replacement was appropriate for Petitioner and would not be related to her work injury. (RX 7, p. 12) He didn't believe the underlying degenerative arthritic condition of Petitioner's knee was caused or aggravated by the March 2013 work accident.

The Arbitrator finds the testimony and opinions of Dr. Bonutti more persuasive than those of Dr. Lehman. Further, the Arbitrator finds it significant that Petitioner had not experienced any left knee pain, had no trouble fully performing her job duties, and had not received any left knee treatment before the March 2013 incident. In addition, the dramatic progression of the degenerative changes in Petitioner's knee is objectively demonstrated in the two MRIs.

Based upon the foregoing and the record taken as a whole, the Arbitrator finds Petitioner has met her burden of establishing that her current condition of ill-being is causally related to the undisputed accident.

Issue (G): What were Petitioner's earnings?

Petitioner was paid \$22.36 per hour. During the 52 weeks prior to 03/18/13 Petitioner earned \$34,336.67 in straight time earnings. She also worked a total of 351 hours 55 minutes of overtime. Petitioner worked overtime in each pay period except for the pay periods ending on 10/15/12, when she was on vacation,

and the periods corresponding to the time missed from mid-December, 2012 through mid-February, 2013. Petitioner testified approximately 50% the overtime was mandatory. Her testimony in this regard was unrefuted. Therefore, the Arbitrator finds the Petitioner's earnings in the year preceding the accident were:

\$34,336.67	(straight time earnings)
+ 3,934.43	(overtime earnings at the straight time rate (351.917 hours x 50% x 22.36/hour))
\$38,271.10	(includable earnings)

The Arbitrator further finds that in the 52 weeks prior to 03/18/13 Petitioner worked 43 weeks or parts thereof. (52 weeks minus the 9 weeks Petitioner missed due to unrelated illness from 12/15/12 through 2/15/13.

Based upon the foregoing and the record taken as a whole, the Arbitrator finds Petitioner's average weekly wage is \$890.01. (\$38,271.10, includable earnings, divided by 43 weeks or parts thereof worked).

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Issue (K): Is Petitioner entitled to any prospective medical care?

The Arbitrator finds the medical care provided to Petitioner thus far has been both reasonable and necessary. The medical expenses corresponding thereto, as set forth in Petitioner's exhibit 5, are both reasonable and necessary as well.

Dr. Bonutti opined that as a result of the work injury and subsequent surgery Petitioner is in need of a total knee replacement. Petitioner has undergone extensive and ultimately unsuccessful conservative care and arthroscopic surgery. Having found Dr. Bonutti to be the more persuasive expert, the Arbitrator concludes Petitioner is entitled to prospective medical care as recommended by Dr. Bonutti, including a left total knee replacement and all concurrent and subsequent related treatment.

Respondent shall pay reasonable and necessary medical services of \$28,980.60, as set forth in Petitioner's Exhibit 5, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall also authorize and pay for prospective medical services as recommended by Dr. Bonutti pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall receive a credit for all medical bills previously paid.

Issue (L): What temporary benefits are in dispute?

The Arbitrator concludes Petitioner is entitled to TTD from 06/14/13 to 08/04/13 and from 04/29/14 to 05/13/14 as her treating physicians kept Petitioner off work. However, the parties agreed that no TTD was owed because Petitioner received extended benefits from the Respondent during these periods of time for which credit is allowed under Section 8(j) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LOLA HASSELBRING,

Petitioner,

vs.

NO: 95 WC 006929

SAM'S CLUB,

Respondent.

ORDER ON REMAND

An Order was entered on January 24, 2017, by Judge Carl Anthony Walker of the Circuit Court of Cook County, Illinois, remanding the matter back to the Illinois Workers' Compensation Commission ("Commission") to address the Commission's failure to rule on the Motion to Reopen 19(h) Proofs Petitioner filed with the Commission on December 9, 2015. The Commission takes notice that its Order, filed on April 13, 2016, did not address Petitioner's Motion to Reopen 19(h) Proofs. Pursuant to the Court's Order, the Commission considers Petitioner's Motion to Reopen 19(h) Proofs.

Petitioner's claim dates back to June 13, 1994, when she sustained an injury to her lumbar spine as a result of lifting cases of soda while working for Respondent as a check-put supervisor. As result of this injury, Petitioner underwent a hemilaminectomy and discectomy at the L5-S1 level on July 14, 1994; a discectomy, hemilaminectomy, and decompression on January 11, 1996; and a decompressive laminectomy, disc removal, decompression, and bilateral posterior lateral fusion on an unspecified date. She resumed working for Respondent on October 13, 1999, but as a store greeter. On July 11, 2005, she had a spinal cord stimulator implanted and

a revision procedure performed on January 31, 2007. Petitioner was working as a greeter at the time of her arbitration hearing on October 14, 2008.

The Commission finds Petitioner cites no authority that confers upon the Commission jurisdiction to reopen proofs. Petitioner's cites Redelmann v. Claire Sprayway, Inc., 874 N.E.2d 230, (1st Dist 2007), to advance her argument that proofs, at the court's discretion, can be reopened. In so doing, however, Petitioner failed to differentiate that she is asking the Commission to reopen proof whereas the claimant in *Redelmann* had filed a motion for reconsideration of that court's decision. The Illinois Administrative Procedure Act provides for motions for reconsideration. 5 ILCS 100/10-50 (2017). The Commission declines to interpret the Illinois Administrative Procedure Act to find "reconsideration" and "reopen" to be synonymous. Notwithstanding the Commission's declination, even if the Commission was to entertain Petitioner's Motion to Reopen 19(h) proofs as a Motion for Reconsideration, the Commission would find against Petitioner.

The court in Redelmann found the "purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence which was not available at the time of the hearing . . ." Redelmann, 874 N.E. 2d at 245. The evidence Petitioner seeks to have admitted is Petitioner's treatment records with her pulmonologist, Dr. Buccattelo, and the additional testimony from Petitioner herself.

Petitioner's pleading does not indicate which, if any, of her treatment records written by Dr. Buccattelo existed at the time of the 19(h) hearing before Commissioner Lamborn on August 21, 2014, but, for whatever reason, were unavailable at the time of the hearing, or why, if they existed prior to that date, were they not tendered into evidence. August 21, 2014, represents a clear line of demarcation. The admission of those treatment records that were created after that date would obviously be precluded under Redelmann. Those treatment records that existed prior to that date have not been argued to be either "newly discovered" or "not available at the time of the hearing." The only known evidence, per Petitioner's pleading, that could be construed as "newly discovered" and "not available at the time of the hearing" is the claimed opinion of Dr. Buccattelo that Petitioner's decreased pulmonary function was caused by her back pain. That opinion, according to Petitioner, was expressed to her in October 2015, more than a year after proofs were closed. Redelmann requires the evidence to be "newly discovered," not new evidence. Petitioner's pleading implies the former.

Petitioner's pleading to allow for her to provide additional oral testimony is without merit. She seeks to offer testimony that her back pain worsens when her breathing worsens. She did not make any such claim when she was before Commissioner Lamborn on August 21, 2014. If this relationship existed as of August 21, 2014, Petitioner was remiss for failing to state so at that time.

As stated above, the Commission believes it has not been empowered by the Act to reopen proofs as it cannot find any such provision to do so under either the Illinois Workers' Compensation Act or the Illinois Administrative Procedure Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Motion to Reopen 19(h) Proofs is denied.

As there was no award of compensation herein, no bond is set by the Commission. 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: **DEC 21 2017**
KWL/mav
42



KEVIN W. LAMBORN



THOMAS J. TYRRELL



MICHAEL J. BRENNAN

STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS'
COMPENSATION COMMISSION

Mark Komar)
 Petitioner,)
)
vs.)
)
The Heartland Construction)
 Respondent.)

No. 13 WC 08232
17IWCC0833

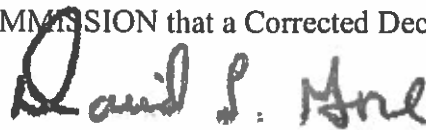
ORDER

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 the Arbitration Decision had incorrect spelling of Petitioner's last name.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision dated December 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: **JAN 9 - 2018**

January 9, 2018

13WC08232
17IWCC0833
Page1

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mark Komar,

Petitioner,

vs.

NO: 13 WC 08232
17IWCC0833

The Heartland Construction,

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 medical and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 9, 2017, is hereby affirmed and adopted.

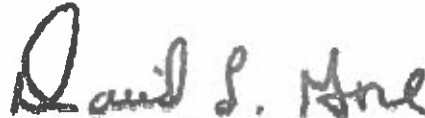
IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written 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: JAN 9 - 2018
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David L. Gore



Deborah Simpson



Stephen Mathis

14 WC 20820
17IWCC774
Page 1

STATE OF ILLINOIS) BEFORE THE ILLINOIS WORKERS' COMPENSATION
) SS COMMISSION
COUNTY OF JEFFERSON)

Robert Koehler,
Petitioner,

vs.

NOS. 14 WC 20820
17 IWCC 774

State of Illinois – Vienna CC,
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 December 1, 2017, having been filed by Respondent 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 December 1, 2017, 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: **JAN 5 - 2018**
DLS/rm
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Deborah L. Simpson

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERISON)

<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

ROBERT KOEHLER,

Petitioner,

vs.

14 WC 20820
17 IWCC 774

STATE OF ILLINOIS – VIENNA CC,

Respondent.

CORRECTED DECISION AND OPINION ON 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 Mt. Vernon on July 11, 2017 before Commissioner Simpson. The parties were represented by counsel and a record was taken.

Findings of Fact & Conclusions of Law

1. Petitioner testified that his claim was adjudicated on January 17, 2016. The only issue at the time was the nature and extent of his right-shoulder injury. Petitioner is right-handed. He had no subsequent injuries to his shoulder. Nevertheless, he continued to have difficulties and his shoulder "continued to get worse." He had fatigue in the shoulder with activity and had difficulty doing many things, including anything overhead.
2. His primary care physician took an MRI and Petitioner went to see Dr. Mall. He performed surgery on January 26, 2017. Petitioner was placed at maximum medical improvement the day prior to the hearing. He was taken off work on September 27, 2016 and returned to work on May 26, 2017. He received non-occupational disability during that period. Both the surgery and subsequent physical therapy helped his condition. Nevertheless, he still had reduced range of motion, fatigue, soreness, and weakness; he can do not "near as much as what" he could and can't do prolonged overhead activities. He takes a prescription anti-inflammatory and Ibuprofen. He is a corrections officer and there are no permanent light duty jobs. After 90 days "you're off work."

3. On cross examination, Petitioner testified his condition worsened after his second surgery, but it was better now after the third surgery. He went to his primary care physician after the prior arbitration and she referred him to Dr. Mall. He treated with Dr. Paletta after the arbitration decision was issued. His shoulder got worse in the time between the hearing and when he saw Dr. Paletta. He did not hunt ducks that year, or last year, but planned on hunting this year, if his shoulder is better.
4. On redirect examination, Petitioner testified Dr. Paletta placed him at maximum medical improvement in October 2015 and released him from treatment but the February 15, 2016 note indicates he came to the office with recurrence of shoulder pain.
5. The arbitration decision was issued on February 8, 2016. The heading of the decision specifies it deals with "Nature and Extent Only." The Arbitrator awarded Petitioner 65 weeks of permanent partial disability benefits representing loss of 13% of the person-as-a-whole. The decision indicates that Petitioner suffered a previous right-shoulder injury in 2011 or 2012, which was treated conservatively. He returned to work at full duty and received a settlement.
6. The accident involved an altercation with an inmate. Petitioner heard a pop and felt immediate pain in his right shoulder. On November 18, 2014, Dr. Paletta performed extensive debridement of the subacromial bursa and open distal clavicle excision. He continued to have pain, and on April 17, 2015, Dr. Paletta performed arthroscopy with extensive debridement and excision of the heterotopic ossification of the AC joint, revision of the distal clavicle excision, and further debridement of the subacromial bursa.
7. The medical records reveal that on February 15, 2016, Petitioner presented to Dr. Paletta for continued follow up for his right shoulder. He was last seen in October. At that time, he was doing relatively well, with good motion and strength, and only mild residual discomfort. He was declared at maximum medical improvement and discharged from treatment at that time. He now returned with recurrence of right shoulder pain with no intervening trauma or injury; "it just got gradually worse." It now hurt more than it did before the second surgery. He was unable to pull back his bow for hunting.
8. After his examination, Dr. Paletta opined that all of the limitations regarding his range of motion and strength were due to "pain inhibition." He had recurrent pain and some "vague neurologic symptoms," but there was no evidence of adhesive capsulitis. He recommended an MRI and EMG to rule out cervical radiculopathy. He restricted Petitioner to five-pounds lifting with no overhead reaching/work.
9. An MRI showed supraspinatus tendinosis with a significant partial or full thickness tear of the tendon, and previous resection of the lateral clavicle. The rest of the rotator cuff was intact, there was no glenoid tear, and the biceps tendon was normal.

10. On March 21, 2016, Petitioner presented to Dr. Phillips for an EMG/NCV on referral from Dr. Paletta. Petitioner reported he was doing well after his second surgery but dull/aching pain in the right shoulder returned. In November of 2015, he had “new onset of intermittent global right hand numbness and more persistent numbness and a longitudinal rectangular distribution from the middle of his right trapezius down the anterior and posterior midlines of his arms and then transversely only across the lateral epicondyle.”
11. Dr. Phillips’ examination appears to have been normal, except it is noted that Petitioner’s “numbness is exacerbated by palpitation over the anterior shoulder/bone.” In summary, Dr. Phillips indicated that “despite the symptoms reported, the study is not impressive for active cervical radiculopathy, brachial plexopathy, suprascapular or distal entrapment neuropathy.”
12. On July 25, 2016, Petitioner presented to Dr. Mall apparently on referral from his lawyer. He reported persistent right shoulder pain since an “inmate-related accident” despite two surgeries. After his examination, Dr. Mall diagnosed AC joint anterior-posterior instability and biceps tendonitis. He administered an injection, recommended shoulder reconstruction surgery, and restricted Petitioner’s work activities. He opined Petitioner’s condition was caused by the accident.
13. On January 26, 2017, Dr. Mall performed reconstruction of the coracoclavicular ligament, open AC joint reconstruction, subacromial decompression/acromioplasty, limited debridement of the superior labrum/glenohumeral joint, and open biceps tenodesis, for AC joint instability and biceps tendonitis.
14. On May 23, 2017, Dr. Mall noted that Petitioner was doing quite well and was making significant improvement in physical therapy. Dr. Mall indicated Petitioner had some inflammation in his shoulder from a recent fall. He prescribed Medrol Dosepak and Mobic. On July 20, 2017, Dr. Mall released Petitioner from treatment at maximum medical improvement and released him to work at full duty.
15. Dr. Mall testified by deposition on June 12, 2017 that he is a board-certified orthopedic surgeon and independent medical examiner. He first saw Petitioner on July 25, 2016. He had had two surgeries on his right shoulder and was having persistent pain in the top of his shoulder. He had not gotten full resolution of his symptoms since the inmate-related injury on May 28, 2014.
16. On examination, Petitioner had symptoms consistent with biceps tendonitis. Dr. Mall believed most of Petitioner’s pain seemed to be emanating from the AC joint in the biceps. He injected the area to allow a better examination of the shoulder. Dr. Mall confirmed that he also had anterior-posterior joint instability. That instability did not show up in the x-rays. He believed that Petitioner’s joint instability and tendonitis were related to his initial work accident.

17. Dr. Mall also testified that Petitioner came to him for a second opinion because he wanted to return to work at full duty and was not where he wanted to be in terms of recovery. After the injection confirmed that the AC joint was the source of the pain, Dr. Mall recommended shoulder reconstruction surgery and biceps tenodesis. He last saw Petitioner on May 23, 2017, about four months post-surgery and he was making very good progress in physical therapy. He still felt weak and wanted to build up his strength. Dr. Mall noted that the type of front-to-back instability Petitioner had would not show up on an MRI.
18. During surgery, Dr. Mall noted there was a substantial amount of synovitis around the biceps tendon. Normally, the biceps tendon is difficult to see during arthroscopy. However, in this instance, he was able to pull the tendon out of its groove during the tenodesis. Therefore, he was able to get a better look at the tendon.
19. On the issue of AC joint instability, Dr. Mall noted the complicated nature of shoulder resection surgery. Surgeon's generally aim at taking off a centimeter of the distal clavicle, but patients' anatomy is all different. Sometimes if the resection is not absolutely correct, the surgery could result in instability. In addition, after repair of the AC joint capsule, "if that doesn't heal completely or it stretches out a little bit, that can lead to some instability as well." "It's just that it happens fairly infrequently, but it happens, and it's based on basically patient anatomy in terms of whether or not that can occur." Petitioner developed the instability after the surgeries and the persistent anterior shoulder pain was caused by the biceps tendon.
20. On cross examination, Dr. Mall explained that an MRI is static, "so you're not really seeing instability necessarily." Sometimes you can detect structural issues that can lead to instability, but you cannot assess stability. He thought Petitioner would be able to return to work at full duty soon because his rotator cuff looked quite good; that's the game-changer. If he had three rotator cuff surgeries, Dr. Mall would not think he could ever return to work at full duty. Dr. Mall noted that he was pretty certain that the recent fall he noted on May 23rd, was post-surgery while he was in the sling. He thought Petitioner hit the shoulder in the incident. Petitioner was concerned about the stability, but the stability and the bicep looked fine. Therefore, Dr. Mall didn't think the accident undid any of the surgical repairs.
21. In responding to Dr. Nogalski's (Respondent's Section 12 medical examiner) report, Dr. Mall agreed that it would have been reasonable for Dr. Paletta to look at the biceps tendon in his surgeries. However, most of the tendon that is in the groove is "where it's in that sort of really inflammatory area, you would never be able to pull completely into the joint;" "it's too far down." In explaining his causation opinion, Dr. Mall noted that the first two "surgeries that were performed were to address the AC joint, and this was the same issue [he] was addressing on the third surgery." Dr. Mall did not believe it was unusual to get a second opinion. He often sends patients for second opinions when the patient is not progressing like he would like.

22. On redirect examination, Dr. Mall testified that he was not sure that he reviewed telephone notes in which Dr. Paletta was seeking a second opinion. However, often the doctors within his practice refer patients to each other for evaluations.
23. Dr. Nogalski testified by deposition on May 15, 2017 that he is a board-certified orthopedic surgeon and currently performed four to eight surgeries a week. He predominantly treats shoulders and knees. Respondent asked him to perform an examination on Petitioner's shoulder. His examination was limited because Petitioner declined to remove his sling and shirt.
24. Dr. Nogalski noted that Petitioner had two arthroscopic debridements with Dr. Paletta. He then had ongoing pain and subsequently, Dr. Mall performed third surgery to treat AC joint instability. Dr. Nogalski had not been able to review Dr. Mall's operative report at the time of his examination, but saw it immediately prior to the deposition. He opined that the work accident which required the first two surgeries did not cause the need for Dr. Mall's third surgery. He explained that the information he reviewed about the two previous surgeries indicated Petitioner had a stable AC joint. In addition, there was no indication of any biceps tendon issues in the previous treatment notes. Therefore, the conditions for which Dr. Mall treated Petitioner were documented as normal in the operative reports. He believed Petitioner's prognosis was good and he should be able to perform his normal work activities.
25. On cross examination, Dr. Nogalski agreed that Dr. Mall's statements "appears to provide reasonable indications" for the shoulder reconstruction. Dr. Nogalski was not given a copy of the previous arbitration decision. He was not aware of any traumatic injury Petitioner had between his return to work and his examination. He disagreed with the premise that while the third shoulder surgery was related to the original injury, the biceps injury may not be.
26. Dr. Nogalski also opined that anything after Dr. Paletta released him was not caused by the work-accident. He attributed Petitioner's complaints to postoperative pain issues without any specific instability. He noted that in an operative report, Dr. Paletta indicated the clavicle was stable. The previous records do not support the premise that Petitioner had continuing pain and symptoms after Dr. Paletta's surgery. He reviewed the February 15, 2016 note of Dr. Paletta, at which time he ordered an MRI and EMG. He thought that was reasonable despite the lapse between when he released Petitioner and when Petitioner returned. He believed those tests were related to the work accident.

Petitioner argues he proved that his current condition of ill-being, and the treatment he received from Dr. Mall, was necessitated by the work-related accident. He stresses that Petitioner continued to complain of pain after his second surgery and on February 15, 2016, Dr. Paletta indicated Petitioner returned for "recurrence" of shoulder pain and not for "new" shoulder pain. In addition, he argues the testimony of Dr. Mall was more persuasive than Dr. Nogalski.

Respondent argues “it stretches credulity Petitioner could have been doing so well in October of 2015 when released by Dr. Paletta on October 30th, when it was noted he was doing quite well and had outstanding motion and within a week of a decision seek treatment for the very same shoulder.” It also stresses that Dr. Nogalski testified credibly that Petitioner’s third surgery was not causally related to the accident. It asks the Commission to deny all additional benefits.

Initially, the Commission notes that the parties both refer to treatment prior to the arbitration hearing. However, none of those records were submitted at the review hearing. In looking at the records that have been submitted, Dr. Nogalski seemed to rely mostly on the records of Dr. Paletta in that he never noted instability and his operative reports did not indicate there were any problems with the biceps tendon. However, Dr. Mall testified that the instability he found could have been caused by the prior surgeries needed to correct the initial injury and the biceps tendon is not always exposed for observation unless surgery is actually performed on it. Therefore, even assuming that Dr. Nogalski’s recitation of Dr. Paletta’s records is absolutely correct, that does not really rebut the opinions of Dr. Mall. On the issue of whether Petitioner’s current condition and the need for the third surgery was causally related to the initial accident, the Commission finds the testimony of Dr. Mall more persuasive than that of Dr. Nogalski.

Based on our determination that Petitioner’s current condition was still causally related to the initial work accident, the Commission finds that Petitioner is entitled to be awarded medical expenses incurred, temporary total disability benefits for the period he was off work for medical treatment, and an additional permanent partial disability. Petitioner demonstrated he was off work between September 26, 2016 to May 26, 2017 for a total of 34 $\frac{5}{7}$ weeks. On the issue of additional permanent partial disability, the Commission notes that Petitioner was able to return to his previous occupation of correctional officer, the occupation of correctional officer involves substantial physical activity, he has shown no loss of earning potential, and his current complaints were relatively minor. Petitioner testified he still had reduced range of motion, fatigue, soreness, and weakness; he can do not “near as much as what” he could, and can’t do prolonged overhead activities. He takes a prescription anti-inflammatory and Ibuprofen. In addition, although he had not yet been able to bow-hunt, he hoped to that year if his shoulder improved. In looking at the entire record before us, the Commission finds an additional award of 5% of the person-as-a-whole is appropriate in this case.

IT IS THEREFORE ORDERED BY THE COMMISSION, that Petitioner’s Petition for relief pursuant to §19(h)/8(a) of the Act is granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$883.33 per week for a total of 34 $\frac{5}{7}$ weeks, that being the additional period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$721.66 per week for a period of 25 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the additional loss of 5% of the person-as-a-whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical expenses identified in Petitioner's Exhibit 4, under §8(a) of the Act pursuant to the applicable medical fee schedule.

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

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

DATED: **JAN 5 - 2018**

Deborah L. Simpson

Deborah L. Simpson

David L. Gore

David L. Gore

Stephen J. Mathis

Stephen J. Mathis

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15 WC 36028
17IWCC846
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STATE OF ILLINOIS) BEFORE THE ILLINOIS WORKERS' COMPENSATION
) SS COMMISSION
COUNTY OF COOK)

Thomas McDonald,
Petitioner,

vs.

NOS. 15 WC 36028
17 IWCC 846

Zurich North America,
Respondent.

ORDER OF RECALL UNDER SECTION 19(F)

This matter comes before the Commission on its own motion to correct a clerical error in the Decision and Opinion on Review of the Commission filed December 29, 2017 *sua sponte*. After reviewing the Decision on Review, the Commission recalls the Decision for the purposes of correcting the clerical error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated December 29, 2017, 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: **JAN 9 - 2018**

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Deborah L. Simpson

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

THOMAS McDONALD,

Petitioner,

vs.

NO: 15 WC 36028

ZURICH NORTH AMERICA,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

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

Petitioner was employed as a Regional Sales Director for Respondent. On December 10, 2014, he sustained a compensable accident while traveling on business on Respondent's behalf. Petitioner sustained an injury to his left foot that was later diagnosed as an Achilles tendon tear. On January 20, 2015, Petitioner had surgery to repair the Achilles tendon tear. The Commission agrees with the determination of the Arbitrator on the issues of causal connection, notice, and medical expenses. Accordingly, the Commission affirms and adopts those portions of the Decision of the Arbitrator.

The Arbitrator awarded Petitioner 41.75 weeks of permanent partial disability benefits representing loss of the use of 25% of the left foot. In so doing, the Arbitrator applied the five statutory factors in determining permanent partial disability. The Arbitrator correctly gave no weight to an AMA guides impairment rating because none was submitted. He also gave "little weight" to the fact that Petitioner was able to continue working in his current position. He gave "some weight" to Petitioner's age (58) which meant he would have to live with the condition for several years. The Arbitrator gave "no weight" to the injury's effect on Petitioner's earning potential because no evidence of earning capacity was submitted. Finally, the Arbitrator gave the "most weight" to the corroborating evidence of disability in the record.

Regarding the evidence of disability in the record, Petitioner testified that currently, his ankle was stiff with reduced range of motion. He has real difficulty going down stairs and has to hold onto the rail. He is in the same condition as he was when he was released by the doctor. His leg was “certainly atrophied; it’s almost four centimeters less than” his right calf, and strength in the left is about 60% of the right. His gait is guarded and he has to be aware of every change in surface. He still gets pain in his foot on occasion. Every morning he had pain/stiffness for about 30 minutes after he awakens.

The rest of the record has rather sparse information on the extent of Petitioner’s permanent disability. Three months after the surgery, his surgeon, Dr. Vora noted that Petitioner had been very compliant and was doing well. He could increase activity and wean off the boot. He gave Petitioner a script for formal physical therapy. Petitioner had 15 physical therapy sessions over the course of two months, after which he was discharged from physical therapy. On July 15, 2015, Dr. Vora noted that Petitioner was doing better and was happier. He still had stiffness but did “not notice the limp.” Dr. Vora recommended a strengthening program and transition to a home exercise program. He would see Petitioner again in a year, or sooner if necessary.

The Commission finds that the Arbitrator did not correctly apply all of the statutory factors in determining permanent partial disability. In particular, the Commission takes exception to the Arbitrator giving “no weight” to Petitioner’s future earning capacity because no such evidence was submitted, and his giving “little weight” to his ability to return to work in his previous job as a Regional Sales Manager.

The Commission notes that Petitioner had a non-physical, executive-type job, he was able to return to that job, and he had no difficulty performing that job. These factors constitute competent evidence that the injury did not diminish his future earning capacity. Therefore, the Commission finds that the Arbitrator’s giving no weight to that factor erroneous. In looking at the entire record before us and in assessing the statutory factors, the Commission finds that a permanent partial disability award of loss of 20% of the use of the left foot is appropriate in this case and modifies the Decision of the Arbitrator accordingly.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$735.37 per week for a period of 33.4 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of the use of 20% of the left foot.

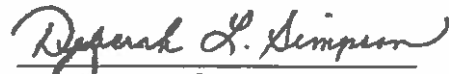
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$4,684.55 for his out-of-pocket medical expenses under §8(a) of the Act pursuant to the applicable medical fee schedule.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$25,000.00. The party commencing the proceeding for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

DATED: JAN 9 - 2018



Deborah L. Simpson



David L. Gore



Stephen J. Mathis

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