STATE OF ILLINOIS)
)SS.
COUNTY OF MC HENRY)

Before the Illinois Workers' Compensation Commission

PEARL MAC LACHLAN,

Petitioner,

vs.

NO: 15 WC 2577
18IWCC0568

CONSOLIDATED SCHOOL DIST. #158,

Respondent.

ORDER

The Commission on its own Motion recalls the Decision and Opinion on Review of the Illinois Workers' Compensation Commission dated September 19, 2018 pursuant to Section 19(f) of the Act due to a clerical error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated September 19, 2018 is hereby recalled and a Corrected Decision and Opinion on Review is hereby issued simultaneously. The parties should return their original decision to Commissioner Michael J. Brennan.

Dated: SEP 28 2018

Commissioner Michael J. Brennan

09-28-18
MJB/pm
052

STATE OF ILLINOIS)
) SS.
COUNTY OF MC HENRY)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PEARL MAC LACHLAN,

Petitioner,

vs.

NO: 15 WC 2577
18IWCC0568

CONSOLIDATED SCHOOL DIST. #158,

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 accident, notice, causal connection, medical expenses, temporary total disability (TTD), permanent partial disability (PPD), and any other issues presented by the transcript, 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.

So that the record is clear, and there is no mistake as to the intentions or actions of the Commission, we have considered the record in its entirety. We have reviewed the facts of the matter, both from a legal and a medical/legal perspective. The Commission has considered all the testimony, exhibits, pleadings, and arguments submitted by the parties. Our Supreme Court has long held that it is the Commission's province "to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *City of Springfield v. Indus. Comm'n*, 291 Ill. App. 3d 734, 740 (4th Dist. 1997) (citing *Kirkwood v. Indus. Comm'n*, 84 Ill. 2d 14, 20 (1981)).

The Commission affirms the Arbitrator's findings that Petitioner sustained a work-related accident on October 28, 2014, and that Petitioner provided proper notice to Respondent in accordance with the Act. Petitioner, a 73-year-old bus assistant for special needs students, alleged

injury to her left shoulder, left wrist, and left knee on October 28, 2014, when she tripped on wheelchair straps inside the bus. (T.10-12). Petitioner testified that she fell on the left side of her body, and added, "I was trying to reach with my left hand to get a seat, but I couldn't reach them. It was too quick. I just fell." (T.12-13).

The Commission further affirms the Arbitrator's finding that Petitioner's left knee condition was causally related to the accident. However, the Commission finds no causal connection between the October 28, 2014 accident and Petitioner's current condition of ill-being as it relates to her left shoulder and left wrist; the Commission, therefore, reverses the Arbitrator's Decision in this regard.

The Commission notes that Petitioner reported to the Centegra Occupational Medicine facility on the date of accident, October 28, 2014. Petitioner's complaints on that date, as well as the doctor's examination, x-ray findings, and treatment recommendations only pertained to Petitioner's left knee and left foot. The Centegra record was silent as to Petitioner's left shoulder and left wrist. Petitioner followed-up with Centegra on October 31, 2014 and November 7, 2014; the progress notes were again silent as to any complaints related to the left shoulder and left wrist. (PX1, Deposition Exhibit 2; PX5; RX1).

The Commission further notes that Petitioner had previously injured her left arm on August 9, 2014. Petitioner testified that she had been at her daughter's house and had fallen from a bed. (T.18-19; PX1, Deposition Exhibit 2). Petitioner sought emergency room treatment at Presence St. Mary Hospital. The emergency room record indicated that Petitioner fell while getting into bed, and she injured her left wrist. Petitioner completed an x-ray of the left wrist on August 10, 2014; the impression demonstrated an old healed fracture of the distal left radial metaphysis, but no acute fracture, subluxation, or dislocation. There was mild soft tissue swelling of the left wrist. (PX1, Deposition Exhibit 2). Petitioner followed-up with her primary care physician, Dr. Patricia Merlo, on August 15, 2014; Dr. Merlo's medical record noted the August 2014 accident, and that "pt was at daughters house when she fell forward onto outreached hands." (PX1, Deposition Exhibit 2; PX4; PX7, pgs. 6-7; RX2). Dr. Merlo diagnosed Petitioner with a wrist strain, and prescribed anti-inflammatory medication. She also stated that Petitioner may need an MRI of the wrist to evaluate for an occult fracture. (PX1, Deposition Exhibit 2; PX4; PX7, pgs. 6-7; RX2).

In addition to the prior injury to Petitioner's left arm, and the delayed reporting of complaints to said arm after the October 28, 2014 accident, the Commission also finds that the medical records from Petitioner's main treating physicians, Dr. Merlo, and orthopedic surgeon, Dr. Joshua Alpert, contained considerable inconsistencies.

Dr. Merlo's progress note, dated October 27, 2014 [the day before the work-related accident], indicated that Petitioner was there for a six-month follow-up after lab work; under "Assessments," "pain in limb" was noted. Dr. Merlo further detailed "pt having persist pain in left arm following accid[ent] at work. referred to Midwest Bone and Joint." On page 3 of Dr. Merlo's October 27, 2014 progress note, she added an addendum dated January 14, 2016: "pt called 10-29-14 stating she fell at work 10-28-14 and injured her knee. Although 'Pain in limb' is entered to this 10-27-14 note, this pain did not occur until after her work related accident on 10-28-14." (PX1, Deposition Exhibit 2; PX4; RX2). Dr. Merlo testified at her deposition that she had simply entered

Petitioner's complaints of left arm pain on the wrong progress note. (PX7, pg. 13).

The Commission does not find Dr. Merlo's testimony convincing or sufficient to resolve the discrepancy in the medical record. By Dr. Merlo's explanation, she had obtained the information regarding Petitioner's "pain in limb" and left arm complaints from a telephone call she received from Petitioner on October 29, 2014. Dr. Merlo's medical records contained a note specific to the telephone encounter of October 29, 2014; nowhere in that record did it indicate any injury or complaints to the left arm. The note only referenced Petitioner's injury to her knee. (PX1, Deposition Exhibit 2; PX4; RX2). The Commission doubts the integrity of Dr. Merlo's medical records.

Petitioner next treated at Midwest Bone and Joint with Dr. Alpert; her first appointment with Dr. Alpert was on December 8, 2014. (T.17; PX1, pg. 9; PX2). Dr. Alpert's December 8, 2014 office visit note is the first time the left wrist is mentioned in the arbitration record. Dr. Alpert noted that Petitioner had injured her left wrist when she fell onto her outstretched hand; there is no mention of a work accident. His medical records also contained issues relative to dates. Dr. Alpert had reported the injury date as August 9, 2014, and not October 28, 2014. Dr. Alpert's notes from December 8, 2014 through January 21, 2015 indicated that the injury date was August 9, 2014. (PX1, Deposition Exhibit 3; PX2). Dr. Alpert testified at his deposition that this was an error. (PX1, pg. 43). However, during his testimony, Dr. Alpert contradicted himself and stated that Petitioner attributed her current left wrist pain to the August 2014 fall because she could not recall any mechanism of injury for the left wrist other than that fall. Dr. Alpert further appears to rely on the August 2014 date of injury because he ordered an MRI for the left wrist on December 8, 2014, indicating, "it has been 4 months since she fell, she has significant pain, and she cannot lift objects." (PX1, pgs. 15-16; PX1, Deposition Exhibit 3; PX2).

The Commission notes that at the time Dr. Alpert began treating Petitioner, he did not have or did not review any medical records related to the August 2014 accident; thus, the Commission finds that Dr. Alpert relied exclusively on Petitioner's oral history of injury during the appointments. (PX1, pgs. 32-33). In fact, Dr. Alpert confirmed that the first time Petitioner told him about the October 2014 accident was in January 2015. (PX1, pg. 47). Dr. Alpert stated that Petitioner later requested that he amend the medical records. (PX1, pg. 34).

The first time Petitioner's left shoulder complaints appear in the record was during the December 17, 2014 office visit with Dr. Alpert; Dr. Alpert stated that this was the first time Petitioner told him about her left shoulder. Again, the left shoulder complaints is simply attributed to a "fall"; there is no mention of any work accident. (PX1, pg. 16; 19; PX1, Deposition Exhibit 3; PX2).

During cross-examination, when asked about the lack of complaints related to other body parts during Petitioner's first visit on December 8, 2014, Dr. Alpert explained, "She may have told me about other things and I would have said to her I'm only seeing you for the left wrist today. That's all I can see you for." (PX1, pg. 44). Dr. Alpert also explained: "[M]y office policy is we only see one body part at a time so that makes this a little bit more difficult when you talk about multiple body parts. We only see and evaluate one body part at a time." (PX1, pg. 44).

The Commission finds Dr. Alpert's testimony similarly unconvincing and insufficient to resolve the discrepancies in his medical records. While the Commission takes no issue with Dr. Alpert's policy of treating one body part at a time, the Commission finds concerning that the description of how Petitioner injured her left wrist and left shoulder only states that it occurred during a fall, and the injury date is listed as August 9, 2014. The Commission also finds significant that according to Dr. Alpert, Petitioner herself attributed her left wrist complaints to the August 2014 fall. Dr. Alpert then proceeded to order an MRI of the left wrist based on that August 2014 date, noting on December 8, 2014, that it had been four months since Petitioner fell and she was having significant pain.

The Commission further finds the opinions of Respondent's Section 12 examiner, Dr. Nikhil Verma, more persuasive than the opinions of Dr. Alpert. Dr. Verma noted Petitioner's previous injury to her left arm in August 2014, when she fell "onto an outstretched hand at her daughter's house." (RX4, pgs. 10-11). Dr. Verma opined that the impact from the fall could have caused injury to Petitioner's left wrist and left shoulder. (RX4, pgs. 12-13). Dr. Alpert similarly testified at his deposition that a fall onto an outstretched hand would cause trauma to the shoulder. (PX1, pg. 35; 46).

Dr. Verma stated that he had reviewed Dr. Alpert's medical records and found significant that Petitioner's left wrist and left shoulders complaints were initially related to the August 2014 fall. (RX4, pgs. 15-16). He too noted that the first time Dr. Alpert's medical records attributed Petitioner's left wrist and left shoulder complaints to the October 28, 2014 accident, was in January 2015. (RX4, pg. 16).

Dr. Verma testified that he had reviewed the MRI of the left shoulder, dated January 7, 2015, and noted a small anterior rotator cuff tear with trace subacromial fluid. (PX1, Deposition Exhibit 3; PX2; RX4, pgs. 11-12; RX4, Deposition Exhibit 2). Dr. Verma opined that Petitioner's left shoulder was not related to the October 28, 2014 accident. The basis for Dr. Verma's opinion was Petitioner's "[p]rior history of trauma, the absence of any acute finding with regard to the shoulder, including complaint of shoulder pain, and the fact that at 74 many patients have rotator cuff tears in the absence of trauma." (RX4, pg. 20). Dr. Alpert had agreed during his deposition that the onset of left shoulder symptoms could be attributed to wear and tear over time. (PX1, pg. 51). Dr. Verma also noted that the delay in reporting the left shoulder complaints was inconsistent with an acute or traumatic rotator cuff tear. (RX4, pg. 20).

Respondent had also sent Petitioner to orthopedic surgeon, Dr. Mark Cohen, for a Section 12 examination of her left wrist; he evaluated Petitioner on November 11, 2015. Dr. Cohen testified that Petitioner had reported to him an injury to her left wrist after a fall on October 28, 2014. He was also aware that Petitioner had previously injured her left wrist in another fall in August 2014. Examination of the left wrist was normal with no significant findings. Dr. Cohen stated that at some point Petitioner "suffered what appears to be a nondisplaced fracture of her wrist that, by the time I had seen her, healed fully, with no evidence of clinical sequelae." Dr. Cohen could not causally relate Petitioner's left wrist condition to the October 28, 2014 accident. "I simply don't have any documentation of any wrist injury in and around the date of the trauma. I have no documentation of a wrist injury that occurred in October from subsequent orthopedic notes from December." (RX5).

On the contrary, Dr. Alpert believed that Petitioner's left shoulder rotator cuff tear and left wrist conditions were causally related to the October 28, 2014 accident. (PX1, pg. 26; 29-30). The basis of Dr. Alpert's opinion included Petitioner's history, her physical exam findings, and the fact that she had no pre-existing left shoulder complaints. (PX1, pg. 29). Dr. Alpert stated that Petitioner's fall in August 2014 did not change his opinion relative to causation for the left shoulder because Petitioner had no complaints pertaining to the left shoulder until she had the October 28, 2014 accident. (PX1, pgs. 29-30). As to Petitioner's left wrist, Dr. Alpert opined that the October 28, 2014 fall caused a non-displaced fracture. (PX1, pg. 30). The basis for his opinion was that the MRI completed in mid-December [December 12, 2014] demonstrated "a fracture that occurred more recently within six weeks," and therefore unrelated to any event in August 2014. (PX1, pgs. 15-16; 30-31; PX1, Deposition Exhibit 3; PX2; PX3).

Taking into consideration the record as a whole, the Commission is not persuaded by Dr. Alpert's opinions. The Commission's Decision must be supported by the record and not based on mere speculation or conjecture. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 215 (2003). The Commission finds serious discrepancy as to which accident caused Petitioner's left arm problems. There is no evidence as to whether Petitioner's left wrist healed following the August 2014 injury, and Dr. Alpert's testimony relative to the timeframe of the wrist fracture is perplexing as up until January 2015, after the December 12, 2014 MRI, Dr. Alpert was relating Petitioner's left wrist condition to the August 2014 accident at her daughter's house.

The Commission further finds Dr. Alpert's testimony that Petitioner had no pre-existing left shoulder complaints to be inadequate. According to the record, Petitioner in fact had no left shoulder complaints whatsoever until December 17, 2014, and even then, Dr. Alpert's medical records do not attribute the left shoulder complaints to a work-related injury.

Based on the evidence in its totality and as illustrated above, the Commission finds that Petitioner failed to establish that her left shoulder and left wrist conditions were causally related to the October 28, 2014 work-related accident.

As the Commission does not find that Petitioner's left shoulder and left wrist conditions are causally related to the October 28, 2014 accident, the Commission further finds that Petitioner is not entitled to medical, TTD, or PPD benefits as it relates to the left shoulder and left wrist.

Specifically, the Commission modifies the Arbitrator's award of medical bills to include only those charges related to Petitioner's left knee, and as contained in Petitioner's Exhibit 6. This includes the Centegra medical bills totaling $732.58, and Dr. Alpert's charges for dates of service January 28, 2015 [$323.00] and March 30, 2015 [$218.00].

The Commission further vacates the Arbitrator's award of TTD. Petitioner claims that she is entitled to TTD from December 8, 2015 through August 22, 2016. The Commission notes that Petitioner's alleged time off work was either not supported by the medical records, or was unrelated to Petitioner's left knee condition. In other words, part of the alleged TTD period was due to Petitioner's treatment for her left shoulder and left wrist, which the Commission does not find to be causally related to the October 28, 2014 accident.

As to PPD, the Commission affirms the Arbitrator's award of 2% loss of use of the left leg, vacates the Arbitrator's award of 12.5% loss of use of the person as a whole for the left shoulder, and further vacates the award of 5% loss of use of the left hand.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed December 5, 2017, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $220.00 per week for a period of 4.3 weeks, as provided in Section 8(e) of the Act, for the reason that the injuries sustained caused the 2% loss of use of the left leg. The Arbitrator's award of 12.5% loss of use of the person as a whole for the left shoulder, and 5% loss of use of the left hand is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable and necessary medical services as related to the left knee totaling $1,273.58, and as contained in Petitioner's Exhibit 6 as provided in Sections 8(a) and 8.2 of the Act. The Arbitrator's award of medical charges related to the left shoulder and left wrist are hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given a credit of $83,871.47 in medical bills paid through its group medical plan for which credit may be allowed under Section 8(j) of the Act.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all other 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 the Circuit Court.

DATED: SEP 28 2018

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

MJB/pm
O: 08-28-18
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

MacLACHLAN, PEARL
Employee/Petitioner

Case# 15WC002577

CONSOLIDATED SCHOOL DIST #158
Employer/Respondent

18IWCC0568

On 12/5/2017, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 1.45% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

2333 WOODRUFF JOHNSON & EVANS
DEXTER J EVANS
4234 MERIDIAN PKWY SUITE 134
AURORA, IL 60504

2461 NYHAN BAMBRICK KINZIE & LOWRY
MICAELA M CASSIDY
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

18IWCC0568

STATE OF ILLINOIS)
)SS.
COUNTY OF MCHENRY)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(c)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
CORRECTED

PEARL MACLACHLAN
Employee/Petitioner

v.

CONSOLIDATED SCHOOL DIST. #158
Employer/Respondent

Case # 15 WC 02577

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **Woodstock, Illinois**, on **September 8, 2017**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **October 28, 2014**, 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 **$17,511.00**; the average weekly wage was **$336.75**.

On the date of accident, Petitioner was **73** years of age, *single* with dependent children.

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

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

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit of **$84,393.18** under Section 8(j) of the Act. Respondent shall keep Petitioner safe and harmless from any and all claims or liabilities that may be made against her.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $224.50/week for 37 weeks, commencing December 8, 2015 through August 22, 2016, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $220.00/week for 77.05 weeks because the injury sustained caused 12.5% loss of use the person as a whole (62.5 weeks), as provided in Section 8(d)2 of the Act; 5% loss of use the left hand (10.25 weeks) and 2% loss of use the left leg (4.3 weeks), as provided in Section 8(e) of the Act.

Respondent shall pay reasonable/necessary medical services pursuant to the medical fee schedule in the amount of $140,226.58 (Balance: $60.00) as provided in Sections 8(a) and 8.2 of the Act.

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

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

Signature of Arbitrator

11/4/17
Date

ICArbDec p. 2

DEC 5 - 2017

FINDINGS OF FACT:

It is stipulated that on October 28, 2014, Petitioner, age 73 at the time, suffered a work-related injury while working for Respondent. Petitioner worked as a school bus assistant for special needs children. Her job duties include tying down wheelchairs for the special needs students on the bus. Petitioner testified that on the day of her work accident, she went to push a red button on the back of the bus and tripped over a wheelchair strap, landing onto her left side. Petitioner stated that she initially felt dazed, but then noticed pain all over her body. At that time, the most significant pain was in her left knee. Petitioner stated the bus driver assisted in getting her up. She proceeded to her supervisor, Laura Hooper, to report the incident and was sent to Centegra.

Petitioner went to Centegra Occupational Health that day. (Pet. Ex. 5) Although she recalls telling Centegra that her body hurt all over, the main focus that day was for her left knee and ankle. The history noted was that she fell off of the tie downs and injured both knees. An x-ray of Petitioner's left knee was negative and she was diagnosed with a left knee contusion. She was provided with a sleeve for her knee and taken off work until October 30, 2014. (Pet. Ex. 5) Petitioner stated she went home after the appointment. She was in a lot of pain and had trouble sleeping that night.

The following day, on October 29, 2014, Petitioner called her primary care physician, Dr. Patricia Merlo. She reported falling the previous day and suffering injuries to her left knee and left upper extremity. (Pet. Ex. 4, Pet. Ex. 7, pp.13, 19-20) Petitioner had seen Dr. Merlo on the day before her injury, October 27, 2014, for her 6-month labs. (Pet. Ex. 4). In the note from that encounter, it was indicated that Petitioner had "persistent pain in left arm following an accident at work" and that she was being referred to Midwest Bone and Joint Institute. The note was electronically signed on November 3, 2014, several days after the original appointment and also after Petitioner had called Dr. Merlo to report the work injury. Dr. Merlo wrote an addendum to her October 27th note. This was to clarify that reference to Petitioner's work injury and pain in her left upper extremity in that the note was actually taken from a telephone encounter the day after the October 28, 2014 work injury. (Pet. Ex. 4; Pet. Ex. 7, Merlo Ex. 1)

On October 31, 2014, Petitioner returned to Centegra Occupational Health. She was released to return to work with regard to her left knee contusion and left ankle sprain. She was advised to alternate ice and heat for bruising to the left knee. Petitioner returned to Centegra on November 7, 2014 with complaints of intractable pain in the left knee. Centegra referred Petitioner to "orthopedics". (Pet. Ex. 5, Resp. Ex 1)

On December 8, 2014, Petitioner was seen by Dr. Joshua Alpert of Midwest Bone & Joint Institute in regard to her left wrist. At her first appointment with Dr. Alpert, Petitioner reported having had a prior fall onto her left hand on August 9, 2014. (Pet. Ex. 2) Petitioner testified that this happened as she was carrying linens and fell. Petitioner complained only of left wrist pain at the time and testified that she did not injure her left shoulder during the incident. The records reflect that Petitioner was seen at Presence St. Mary's Hospital the following day on August 10, 2014 at which time an x-ray was taken that was negative. (Resp. Ex. 3) She was diagnosed with a left wrist contusion/sprain and given a splint. (Resp. Ex. 3). She made no complaints in regard to her left shoulder. She was seen one final time for follow up with Dr. Merlo on August 15, 2014 and reported that her wrist was feeling better. (Pet. Ex. 4) Petitioner testified that she sought no further treatment following the August 9th fall. Petitioner stated that from August 16, 2014 up until her work injury on October 28, 2014, she worked her regular job duties as a school bus assistant. She reported that she felt fine over those two (2) months and had no further problems with her left wrist.

At the December 8, 2014 appointment, Dr. Alpert ordered X-rays of the left wrist and diagnosed left wrist sprain and possible nondisplaced fracture. The doctor provided her with a carpal tunnel wrist splint for comfort. Dr. Alpert also recommended a left wrist MRI noting that four (4) months had passed since her fall, and she still had significant pain and trouble lifting objects. (Pet. Ex. 2) The MRI when performed revealed a non-displaced fracture of the distal radius.

Petitioner was next seen by Dr. Alpert on December 17, 2014. In addition to left wrist complaints, Dr. Alpert noted Petitioner also reported significant left shoulder pain that also may have occurred from the fall. (Pet. Ex. 2) Petitioner testified that the fall she was referring to was the work-related fall of October 28, 2014. Dr. Alpert testified that the reason why the injury date field still said "8/9/14" (the date of the fall at her daughter's house) was because the computer system just repopulates the injury date from the note before. (Pet. Ex. 1, p.43) Due to the fracture, Dr. Alpert placed Petitioner's wrist in a short arm cast. In regard to her shoulder, Dr. Alpert recommended a new evaluation and possible MRI. (Pet. Ex. 2) Dr. Alpert testified that Petitioner may have made complaints about her left shoulder at her initial appointment, but that he only sees patients for one body part at a time. (Pet. Ex. 1, p.44) Petitioner testified that her focus was on whichever body part was giving her the most problems at the time. On the day of the accident, it was her knee. Then it was her wrist. Once the other two were under control, Petitioner's focus was the pain she had in her left shoulder.

Petitioner's left shoulder was examined by Dr. Alpert on December 24, 2014. Dr. Alpert noted Petitioner reported that the pain in her shoulder began 1 month ago and that she could not recall an injury other than the fall which caused her distal radius fracture. She had no formal treatment to the shoulder thus far. She reported that reaching across her body and overhead caused pain in her upper arm. She also reported being unable to sleep on her left shoulder. A physical examination revealed that Petitioner had pain and weakness in her left shoulder and experienced pain during range of motion testing. Dr. Alpert diagnosed a possible rotator cuff tear. Due to the significant pain and weakness he also prescribed an MRI. (Pet. Ex. 2) Petitioner testified that the fall she was referring to was the fall of October 28, 2014 on the school bus. As for why she said 1 month ago, Petitioner testified that was an estimate.

Petitioner returned to Dr. Alpert on January 12, 2015 regarding the left shoulder. The doctor's record show "[s]he had a work-related injury that occurred in October where she broke her left wrist and injured her left shoulder." The doctor also noted Petitioner had been complaining of significant knee pain and swelling. Dr. Alpert further noted the prescribed MRI had been completed and demonstrated a small full-thickness rotator cuff tear. Dr. Alpert assessed "73-year old female with a left shoulder work-related injury on October of 2014 consistent with a small full thickness rotator cuff tear." Dr. Alpert recommended conservative treatment which included physical therapy and a cortisone injection. The doctor also noted x-rays were taken of the left wrist which did not show any evidence of significant displacement or pathology. (Pet. Ex. 2)

On January 21, 2015, Petitioner returned to Dr. Alpert and received a cortisone injection to the left shoulder. Dr. Alpert referred her for physical therapy to the left shoulder and wrist. He also noted that he was going to see Petitioner in a week regarding the left knee. (Pet. Ex. 2)

On January 28, 2015, Petitioner saw Dr. Alpert for follow up on her left knee. Her physical examination was normal and Dr. Alpert diagnosed Petitioner with exacerbation of her preexisting arthritis. The office note from that date contained a typographical error which said Petitioner also had "non work-related" injuries to her left shoulder and left wrist. Dr. Alpert clarified the error in both a subsequent note (on August 24, 2015) as well as at his deposition. (Pet. Ex. 1, pp.25, 50, 57; Pet. Ex. 2) Petitioner saw Dr. Alpert again on March 30, 2015 in which she reported her main complaint to be with respect to her left shoulder. Dr. Alpert recommended that she continue with physical therapy. Dr. Alpert also noted that if therapy and the injection did not alleviate Petitioner's symptoms, she would be a candidate for a left shoulder arthroscopy, subacromial decompression,

and rotator cuff repair with AC joint resection. Dr. Alpert administered another cortisone injection into Petitioner's left shoulder on May 11, 2015. (Pet. Ex. 2)

At her August 25, 2015 appointment with Dr. Alpert, Petitioner reported that she continued to have significant pain in her left shoulder. She noted that any pain that had been alleviated by the cortisone injection had completely come back. A physical exam revealed a significant amount of weakness in Petitioner's left shoulder. Dr. Alpert determined that Petitioner had failed conservative treatment which had included use of anti-inflammatories, cortisone injections, and physical therapy. He recommended surgery. (Pet. Ex. 2) Petitioner had pre-op testing at Sherman Hospital on November 30, 2015 and surgery on December 8, 2015. The post-operative diagnosis was left shoulder rotator cuff tear, left shoulder osteoarthritis, left shoulder Type 2 superior labral tear, and left shoulder subacromial bursitis of the hooked acromion. Dr. Alpert performed a left shoulder arthroscopic rotator cuff repair, subacromial decompression with acromioplasty, distal clavicle resection, biceps tenotomy with extensive debridement of the superior labrum, and open subpectoral biceps tenodesis. (Pet. Ex. 3) Following surgery, Petitioner's arm was placed in a sling. Petitioner was off work following surgery.

Petitioner had post-operative complications. She suffered a left lower extremity deep vein thrombosis which culminated in bilateral pulmonary emboli. This required a hospitalization at Sherman Hospital from December 10, 2015 through December 16, 2015. (Pet. Ex. 3) Petitioner testified that, due to the complications from her surgery, she is required to be on blood thinning medication for the foreseeable future.

Petitioner's first post-operative appointment with Dr. Alpert was on December 21, 2015. At that time, Dr. Alpert wanted to keep her left arm in a sling and started Petitioner on home therapy. On January 25, 2016, Petitioner reported that she still had some weakness with rotator cuff testing. Dr. Alpert ordered therapy to continue with both active and passive range of motion activities. On March 7, 2016, Petitioner reported that she was doing well. At that time, Dr. Alpert increased her therapy to include strengthening activities. (Pet. Ex. 2)

On May 9, 2016, Petitioner reported that she still had a bit of soreness in her left shoulder. However, she no longer exhibited weakness with rotator cuff testing. She did have a positive impingement sign. Dr. Alpert administered a cortisone injection. When Petitioner returned to his office on July 11, 2016, she reported minimal weakness on testing. Petitioner saw Dr. Alpert for the last time on August 22, 2016. She reported that she was much better and had virtually all of her strength back. Dr. Alpert released Petitioner from treatment and returned her to work without restriction. (Pet. Ex. 2)

Petitioner testified that she still has problems with her left shoulder. She has difficulty in doing the following because of pain:

- Vacuuming;
- Holding a hair dryer;
- Reaching overhead more than ¾ of the way;
- Putting a necklace on;
- Scrubbing floors;

With respect to Petitioner's left knee, it is clear from the record that she had prior surgery on said knee. Petitioner testified that, since the work injury aggravated her knee, it locks up occasionally when walking.

Dr. Joshua Alpert – Petitioner's treating orthopaedic surgeon

Dr. Alpert diagnosed Petitioner with a left rotator cuff tear as a result of the work injury. He performed a left shoulder arthroscopy, subacromial decompression, and distal clavicle excision with biceps tendinosis on

Petitioner on December 8, 2015. (Pet. Ex. 1, p.26) Dr. Alpert indicated that Petitioner's fall onto her outstretched hand on the school bus was a mechanism that would have caused the rotator cuff tear. (Pet. Ex. 1, p. 26) Dr. Alpert opined that the October 28, 2014 work accident caused the rotator cuff tear in Petitioner's left shoulder and need for surgery. The basis of his opinion was the history of injury, the physical exam findings, and the fact that Petitioner had no preexisting left shoulder complaints. The doctor stated the fact that Petitioner also had a fall on August 9, 2014 did not change his opinion because there were absolutely no complaints of left shoulder pain following the August 9th fall. Dr. Alpert added the fact that she did not immediately report left shoulder pain was not relevant as that pain was likely masked by the other injuries she had as a result of the work injury, i.e. her left knee and wrist. (Pet. Ex. 1, pp. 29-30)

As for the left wrist, Dr. Alpert opined that the non-displaced fracture was caused by the October 28, 2014 work injury and not the August 9, 2014 fall. His basis for that opinion was that the MRI from December showed a fracture and, since it had been 4 months since the August fall, if Petitioner had suffered a fracture in August, it would have healed by December. Additionally, the MRI showed a fracture which was more consistent with one that occurred more recently, within 6 weeks. As for the left knee, Dr. Alpert diagnosed Petitioner with a contusion and aggravation of preexisting arthritis. (Pet. Ex. 1, pp. 30-31)

Dr. Alpert testified that he made a typographical error in one of his notes in which he referred to the left shoulder, wrist, and knee as "non-work-related." (Pet. Ex. 1, p. 25) As for why the initial medical notes kept referencing the August 9, 2014 fall as the injury date, Dr. Alpert indicated that the date repopulates every visit unless he changes it. (Pet. Ex. 1, p. 43) He mistakenly did not change it until the January 28, 2015 note. (Pet. Ex. 1, p. 47) As for the initial focus on the wrist, Dr. Alpert testified that Petitioner may have mentioned issues with her shoulder at the initial appointment, but he only sees a patient for one body part at a time and the initial visits were for the wrist. (Pet. Ex. 1, p. 44)

Dr. Patricia Merlo – Petitioner's primary care physician

Dr. Merlo saw Petitioner on August 15, 2014 in regard to the left wrist injury she had suffered at her daughter's home on August 9, 2014. (Pet. Ex. 7, pp. 6-7) Her examination of Petitioner's wrist at that time revealed no swelling, no warmth, limited range of motion and black and blue marks. She diagnosed Petitioner with a left wrist sprain and recommended a possible MRI if Petitioner's symptoms did not improve. (Pet. Ex. 7, p. 8) Dr. Merlo confirmed Petitioner had no left shoulder complaints at the August 15th appointment. (Pet. Ex. 7, p. 15) An examination of both the left shoulder and left elbow revealed full range of motion and no treatment to same was recommended. (Pet. Ex. 7, pp. 8-9)

Dr. Merlo saw Petitioner on October 27, 2014 for her 6-month labs. Petitioner underwent no physical examination at that appointment and there was no examination of Petitioner's left upper extremity. Regarding item 6 of the "Assessments" section of the note, there was a notation of persistent pain in the left arm from a work accident with a referral to an orthopedic doctor. (Pet. Ex. 7, pp. 10-11) Dr. Merlo wrote an addendum which clarified that the notation of pain in Petitioner's left arm was not information gleaned from the October 27, 2014 visit. (Pet. Ex. 7, p. 13; also see Addendums attached as exhibits to Dr. Merlo's deposition) The reason for the discrepancy was clarified by Dr. Merlo as follows:

> I saw the patient on October 27th. Later on in the day, the way we record our notes with our electronic medical records is I manually enter all the information from that office visit on my own keyboard. I don't dictate. So I had entered in all the information up to but excluding Number 6, "pain in the limb" when I had finished seeing her, and I hadn't locked the progress note yet until I could go back and review anything.

(Pet Ex. 7, p. 12)

I usually lock the progress note and then it can't be reopened. I usually lock that one or two days later as I wait for all studies to come back as a general statement. However, in that time period, on the 29th, the patient called me saying that she was in a work accident and that she had pain because of it. Unfortunately, I included that diagnosis then with the October 27th note instead of creating something at that time of her phone call.

So the entry from the Number 6, "pain in the limb," did not occur when I was talking to her October 27. I added that one in prior to locking the progress note.

(Pet. Ex. 7, 13)

Dr. Merlo did not electronically sign and lock the note until November 3, 2014. The reason for the second addendum was because she had accidentally put the wrong year of the appointments down in the first addendum. (Pet. Ex. 7, pp. 13-15)

Dr. Nikhil Verma – Respondent's left shoulder and left knee IME

Petitioner was seen by Dr. Verma for an independent medical examination at the request of Respondent on November 11, 2015. The doctor testified that Petitioner gave a verbal history of having sustained a left wrist, left shoulder and left knee injury when she fell on the school bus on October 28, 2014. Dr. Verma reviewed records from Dr. Merlo, Presence St. Mary's Hospital, Centegra Occupational Health Center and Dr. Alpert as part of his evaluation. He testified that Petitioner's history to him was inconsistent with the treating medical records. (Resp. Ex. 4, pp. 7-8) Dr. Verma testified that the mechanism of Petitioner's fall onto her outstretched left arm/hand in August 2014 may have also caused trauma to the left shoulder. (Resp. Ex. 4, pp.12-13) Dr. Verma testified that the records from Centegra on the date of the work injury failed to indicate any trauma to the left upper extremity, and that the only diagnostic testing was to the left knee. Likewise, the record of Petitioner's call to Dr. Merlo on October 29, 2014 mentions only a left knee injury. In addition, the records from Petitioner's first visit to Dr. Alpert on December 8, 2014 fail to mention the work injury on October 28, 2014 or any trauma to the left knee or foot. Those records include a history of a left wrist trauma on August 9, 2014 after a fall onto her outstretched hand. (Resp. Ex. 4, pp. 14-15)

Dr. Verma diagnosed Petitioner with a left shoulder rotator cuff tear and preexisting osteoarthritis. (Resp. Ex. 4, 19:22-24). While Dr. Verma testified that he believed that Petitioner had suffered a left knee contusion as a result of the work injury, he did not find the left shoulder to be related. The main basis for Dr. Verma's opinion was the absence of acute findings, shoulder complaints contemporaneous with the work accident, and the fact that she was 74 years old. (Resp. Ex. 4, p. 20) Due to the left knee diagnosis of "contusion", Dr. Verma assessed a 0% impairment rating. (Resp. Ex. 4, p.22) On cross-examination, Dr. Verma testified that if there was some documentation of pain in Petitioner's left upper extremity within a day of the work accident, it could change his opinion. (Resp. Ex. 4, p. 24) The doctor further indicated that if there was a referral to see an orthopedic surgeon for her left upper extremity in the same time frame, that would be information that could change his opinion. (Resp. Ex. 4, p. 29)

Dr. Mark Cohen – Respondent's left wrist IME

Petitioner was also seen for a second independent medical examination at the request of Respondent with Dr. Cohen on November 11, 2015. This examination was specific to Petitioner's left wrist. Dr. Cohen diagnosed Petitioner with a non-displaced fracture of her left wrist. (Resp. Ex. 5, 9:15-22). During the IME, Petitioner reported to Dr. Cohen that she injured her left wrist as a result of a fall on the school bus on October 28, 2014. (Resp. Ex. 5, pp. 10-11) Dr. Cohen reviewed records from Presence St. Mary's Hospital regarding

Petitioner's left wrist injury on August 9, 2014. He stated there was evidence on X-rays taken in his office on November 11, 2015 that Petitioner sustained a non-displaced fracture to her left wrist in the past, which had healed. (Resp. Ex. 5, p. 9) Dr. Cohen indicated that based on his review of the records, he did not believe any of the records documented a left wrist injury or trauma on October 28, 2014. He felt the records indicate that the work injury involved the left knee and foot. (Resp. Ex. 5, pp.11-12). Dr. Cohen stated that he was at a loss as to how to attribute the left wrist injury to the October 28, 2014 work injury without any documentation of a wrist injury near that date. (Resp. Ex. 5, p.12) Dr. Cohen testified that Petitioner had reached maximum medical improvement with regard to her left wrist, and would see no contraindication to her performing full duties regarding her left wrist. (Resp. Ex. 5, pp. 13, 19)

On cross-examination, Dr. Cohen conceded that following the August 9, 2014 fall at her daughter's home, Petitioner was diagnosed with a contusion at the emergency room and a sprain by Dr. Merlo. Dr. Cohen admitted to not having personally looked at the x-ray of Petitioner's left wrist taken at the ER. (Resp. Ex. 5, pp. 21-22) Dr. Cohen's provided that the "only real evidence that we have that a true fracture occurred here is from a magnetic resonance scan that was taken, I believe, in December [2014]. All we know is there was a fracture to the wrist that occurred before December." He agreed that the work accident in which Petitioner fell onto her outstretched hand was a mechanism which could have caused the wrist fracture. (Resp. Ex. 5, p. 24) He had no opinion as to which fall caused Petitioner's wrist fracture, stating, "I'm not a detective." (Resp. Ex. 5, p. 25) Dr. Cohen stated that his opinions were based on the information that Petitioner complained of left upper extremity pain as a result of a work accident on the day before her actual work accident. He also provided that his opinion could change if the information was actually provided after the October 28th work injury. (Resp. Ex. 5, p. 31)

With respect to F.) Is Petitioner's current conditions of ill-being causally related to the injury, the Arbitrator finds as follows:

Left shoulder

With regard to Petitioner's left shoulder, the Arbitrator finds that Petitioner's current condition of ill-being is related to the October 28, 2014 work accident. Significant to this conclusion is the fact that Petitioner had no injury or treatment to her left shoulder prior to the work accident. While Petitioner had a prior fall onto her left hand on August 9, 2014, there is no evidence that Petitioner sustained any type of injury to her shoulder at that time. On the contrary, all of the evidence reflects that the only injury Petitioner sustained was a wrist contusion/sprain.

While the Arbitrator notes that there were some inconsistencies found in the medical records, these inconsistencies can be attributed to the way in which Dr. Alpert and Dr. Merlo handled imputation of their medical notes. Dr. Merlo credibly testified with specificity as to how there came to be a notation of left upper extremity pain from a work injury in the note from the day before Petitioner's work injury. Dr. Merlo simply had not had a chance to lock the note and added information gleaned from a subsequent telephone call in which Petitioner reported her work injury. Likewise, Dr. Alpert credibly testified that the reason why the date of injury in his treatment notes reflected August 9, 2014 is because the date repopulates unless it is changed by the doctor and he forgot to change it. These discrepancies do not take away from the fact that there was no evidence presented of any prior or subsequent injury to Petitioner's left shoulder.

The Arbitrator also finds Petitioner credible is testifying that the reason she did not immediately report her left shoulder pain until her second visit with Dr. Alpert was because she was initially focused on the pain in her left knee and wrist. Additionally, it should be noted that Dr. Alpert testified that Petitioner may have mentioned her left shoulder at the first visit but that he only treats one body part at a time. At that time, he was

treating Petitioner for her left wrist fracture. Dr. Alpert also testified that it was not uncommon for pain in one body part (i.e. left shoulder) to be masked by more significant pain in another (i.e. left wrist/knee).

The Arbitrator is persuaded by the testimony of Dr. Alpert regarding causation for Petitioner's left shoulder injury and subsequent surgery. First, Dr. Alpert was Petitioner's treating surgeon and based his opinion on a complete understanding of the medical history, mechanism of injury, and physical exam findings. On the contrary, Dr. Verma was not aware that Petitioner had called her primary care physician, Dr. Merlo, on the day after the work injury to report not only injury to her left knee, but also to her left upper extremity. Indeed, this is obvious based on Dr. Verma's IME report in which he indicates "there is no documentation of left arm injury in a temporal fashion to her work related fall." (Resp. Ex. 4, IME report, Page 5 of 6). Additionally, he mentioned that there is a "significant discrepancy in the medical record as to whether this left shoulder pain resulted from the work injury of October 28, 2014 or the prior home injury of August 10, 2014." (Resp. Ex. 4, IME report, Page 5 of 6). However, on cross examination, Dr. Verma conceded that Petitioner made no complaints of left shoulder pain when she was seen at the emergency room following the August 9th fall. Likewise, he acknowledged that Petitioner had no treatment or reports of left shoulder pain prior to the October 28, 2014 work accident. (Resp. Ex. 4, p. 23) He agreed that the only injury Petitioner was diagnosed with following the August 9th fall was a wrist contusion/sprain. (Resp. Ex. 4, p. 23) When asked if his opinion could change if there was some documentation of left upper extremity pain within a day of the October 28, 2014 work accident, Dr. Verma testified that it could. (Resp. Ex. 4, p. 24)

The Arbitrator notes that there is such documentation. Dr. Merlo testified that the notation regarding left upper extremity pain from a work injury was taken from information she received when she spoke with Petitioner on the day after he work injury. Because she had not locked the note on the computer, she simply just added it as another diagnosis. The Arbitrator notes that it is clear that Dr. Verma was under the incorrect impression that Petitioner had complained of left upper extremity pain on the day prior to the accident based on the following exchange on cross-examination:

> Q. I guess what I'm getting at is people can certainly have an injury and then not initially report it but then the next day could report it, true?
>
> A. They could, but it is also true that she reported pain the day prior, so that doesn't necessarily equate that it is related to.
>
> Q. Now, if those – if that record was in error, that could certainly change your opinion on that, correct?
>
> A. Look, any information that's different could change an opinion one way or the other, but based on what you are telling me, I can't give you an answer that would change it.

(Resp. Ex. 4, p. 40) The Arbitrator relies on Dr. Alpert's testimony. The Arbitrator is not persuaded by the opinion of Dr. Verma as it is clear Dr. Verma's opinions were based on incomplete medical information and history.

The Arbitrator also notes that Petitioner suffered post-operative complications of left lower extremity deep vein thrombosis and bilateral pulmonary embolism which required an extended hospital stay. The Arbitrator finds this causally related to the work accident as a natural sequela of the left shoulder surgery. There was no evidence presented that Petitioner had a deep vein thrombosis or pulmonary embolism which pre-dated the left shoulder surgery.

Left wrist

The Arbitrator finds that a causal relationship exists between Petitioner's current left wrist condition of ill-being and the accident sustained on October 28, 2014. While it is true Petitioner had a prior fall on August 9, 2014 in which she injured her left wrist, she was merely diagnosed with a contusion and sprain. Although Dr. Merlo mentioned that an MRI could be considered if Petitioner's symptoms did not improve, it is clear her symptoms did improve as she sought no other treatment and continued to work unabated for Respondent from the middle of August until her work injury at the end of October.

The Arbitrator gives more weight to the testimony of Dr. Alpert on causation than that of Respondent's IME, Dr. Cohen. Dr. Cohen could not opine which fall caused the wrist injury. Additionally, like Dr. Verma, he was not aware of the discrepancy with Dr. Merlo's notes. As such, he was basing any opinions on an incomplete picture. On the other hand, Dr. Alpert gave a credible opinion as to why he believed Petitioner suffered the wrist fracture as a result of the October 28, 2014 work accident as opposed to the August 9th fall at home. First, Petitioner did not need additional treatment after the August 15, 2014 follow up with Dr. Merlo. More importantly, Dr. Alpert noted that the December 2014 MRI revealed a current fracture of Petitioner's left wrist. He testified that had the fracture occurred in August, it would have more likely than not have been healed at the time of the December MRI.

Left knee

The Arbitrator finds Petitioner's current left knee condition of ill-being is causally related to the work injury. This is supported by the medical records from the date of her injury as well as the testimony of Dr. Alpert and Respondent's IME, Dr. Verma. Dr. Verma diagnosed Petitioner with a left knee contusion. Dr. Alpert diagnosed her with a contusion and aggravation of her preexisting arthritis.

With respect to J.) whether the medical services provided to Petitioner were reasonable and necessary, and whether Respondent paid all appropriate reasonable and necessary medical costs, the Arbitrator finds as follows:

The Arbitrator adopts his findings of fact and conclusions of law contained above with respect to the issue of causal connection and incorporates them by reference herein.

Petitioner's Exhibit No. 6 reflects medical charges in the amount of $140,226.58 which were necessitated as a result of the work accident. Having already found for Petitioner on the issue of causation, the Arbitrator finds that all medical services provided to Petitioner were reasonable and necessary and further orders Respondent to pay the fee schedule amount of those bills. The Arbitrator also finds that Respondent has already paid $84,393.18 towards medical. The Arbitrator notes that Petitioner's Exhibit No. 6 reflects a balance of $60.00 in outstanding medical bills to be paid pursuant to the fee schedule.

With respect to K.) what temporary benefits (TTD) are in dispute, the Arbitrator finds as follows:

The Arbitrator adopts his findings of fact and conclusions of law contained above with respect to the issue of causal connection and incorporates them by reference herein.

Following surgery, Dr. Alpert had Petitioner off work until he fully released her on August 22, 2016. Having already found for Petitioner on the issue of causation, the Arbitrator orders that Respondent pay Petitioner temporary total disability benefits for 37 weeks which encompasses the day of surgery (December 8, 2015) until the day she was released back to work (August 22, 2016).

With regard to L.) what is the nature and extent of the injury, the Arbitrator finds as follows:

In determining the level of permanent partial disability for injuries incurred on or after September 1, 2011, the Commission shall base its determination on the following factors: (i) the reported level of impairment pursuant to the most current edition of the AMA's "Guides to the Evaluation of Permanent Impairment"; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; (v) evidence of disability corroborated by the treating medical records. (820 ILCS 305/8.1b)

No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order. (820 ILCS 305/8.1b)

Pursuant to Section 8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability, for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment.

(b) Also, the Commission shall base its determination on the following factors:

(i) The reported level of impairment;
(ii) The occupation of the injured employee;
(iii) The age of the employee at the time of injury;
(iv) The employee's future earning capacity; and
(v) Evidence of disability corroborated by medical records.

With regard to subsection (i) of §8.1b(b), with regard to the left shoulder and wrist, the Arbitrator notes neither party offered an AMA impairment rating by any physician. The Arbitrator therefore gives no weight to this factor. With regard to the left knee, Respondent's IME Dr. Verma gave a 0% impairment rating. The Arbitrator gives significant weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes Petitioner worked with special needs children on a school bus. Most of her work deals with moving/lifting wheelchairs and tying them down. Ultimately, she was released to full duty for all her claimed conditions of ill-being. The Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 73 years old at the time of her accident. Because Petitioner is in the seventh decade of her life, she will live with his disability for a much shorter period than an younger individual. The Arbitrator therefore gives lesser weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner testified that she continues to work for Respondent in her same capacity. It does not appear that her injury affected her earning capacity. As such, the Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the last treatment notes from August 22, 2016 show Petitioner had full passive and

active range of motion. The doctor noted she had excellent strength testing and she was neurologically intact. Petitioner testified she continues to experience pain on a regular basis resulting from her left shoulder injury. Petitioner discussed the limitations she has because of pain while performing household chores and personal grooming. Additionally, Petitioner suffered post-operative complications of deep vein thrombosis with pulmonary embolism. As a result, she is required to take blood-thinning medication for the foreseeable future. Significant weight is placed on this factor. With regard to her left wrist, the medical records reflect that Petitioner suffered a fracture of her wrist and when last examined by Dr. Alpert for her wrist, she was still having some pain. When examined by Dr. Cohen for a Section 12 examination, Petitioner reported occasional aching about her left wrist. According to Dr. Cohen, her examination of the left wrist and hand were essentially within normal limits. Significant weight is placed on this factor. With respect to the left knee, Petitioner testified that her knee will lock up on occasion while walking. However, the Arbitrator notes that Petitioner has also had prior surgery and preexisting arthritis in her knee. Based on the above, lesser weight is placed on this factor.

With respect to the left shoulder (and deep vein thrombosis/pulmonary embolism), the Arbitrator concludes Petitioner sustained a 12.5% loss of use of the person. With regard to the left wrist, the Arbitrator concludes Petitioner sustained a 5% loss of us of the left hand. Finally, for the left knee, the Arbitrator finds that Petitioner sustained a 2% loss of use of the left leg.

14WC027207
18IWCC0532

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

Vivian Wires,

Petitioner,

vs. NO. 14WC027207
18IWCC0532

Illinois Department of Human Services,

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 and Opinion on Review dated August 27, 2018 has 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 and Opinion on Review dated August 27, 2018 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 and Opinion on Review shall be issued simultaneously with this Order.

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

DATED: SEP 2 8 2018
SM/sj
44

Stephen J. Mathis

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VIVIAN WIRES,

Petitioner,

vs.

NO: 14 WC 027207
18IWCC0532

ILLINOIS DEPARTMENT OF HUMAN SERVICES,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and proper notice given, the Commission after considering the issues of accident, notice, medical expenses, causal connection, temporary total disability, and permanent partial disability, and being advised of the facts and law, reverses the Decision of the Arbitrator and awards compensation as stated below.

Petitioner was a 25 year caseworker with the State of Illinois Department of Human Services. Petitioner testified that she worked 42.5 hours per week with a one hour lunch and two 15 minute breaks per day. Her responsibilities included assisting individuals with medical benefits, cash benefits, SNAP benefits / food stamps and assisting families with the Temporary Assistance to Needy Families program. The parties stipulated to Petitioner's average weekly wage was $1, 337.76.

Petitioner testified that 90% of her work day is comprised of computer and mouse work to complete and navigate forms. She stated that for 20 years her workstation was not comfortable and required that she "rest her hands on the desk". In late April 2014 Petitioner developed symptoms of carpal tunnel syndrome in her right hand. Around that time Petitioner testified that she was moved to a new desk and provided a keyboard that was easier on her upper extremities.

The Arbitrator denied accident based upon his analysis of Petitioner's testimony and the request of Respondent. The Commission finds that many of the opinions of Dr. Williams are not supported by the undisputed testimony of Petitioner regarding her working conditions and the amount of time spent daily typing and operating a mouse at her computer over many years. Additionally, Petitioner's description of sustained right hand and wrist activities is consistent with Respondent's Job Description which was entered into evidence. The CMS Demands of the Job requires use of hands for fine manipulation e.g. typing, for four to six hours per day. Petitioner notified her supervisor on May 19, 2014. Petitioner completed a Worker's Compensation Employee's Notice of Injury on June 2, 2014.

Petitioner testified that she was initially diagnosed with carpal tunnel syndrome in her right hand by Dr. Dedes about April 24, 2014, after noticing increasing symptoms of pain in her right elbow down to her wrist with tingling and numbness. An EMG and nerve conduction test was performed on May 16, 2014 which revealed right chronic moderate median nerve entrapment at the right wrist i.e. carpal tunnel syndrome.

Petitioner later obtained medical care from Dr. Anthony Biggs, an occupational medicine specialist at Quincy Medical Group, on referral from Dr. Dedes, on August 7, 2014. Dr. Biggs stated in his note that "... history, symptoms and exam consistent with carpal tunnel syndrome due to chronic median nerve compression neuropathy and likely secondary to occupational activity. Therefore this is a compensable cumulative work injury."

On February 13, 2015 Petitioner underwent a right open carpal tunnel release surgery performed by Dr. Crickard. Petitioner returned to work three days following surgery and did not miss any time from her employment as a caseworker. (In the Request for Hearing form, Petitioner did not claim any temporary total disability benefits).Dr. Crickard charted in his progress notes on June 30, 2015 that he felt Petitioner's work and repetitive typing as a caseworker could aggravate or exacerbate her symptoms. The Arbitrator discounted Dr. Crickard's opinion, questioning what Dr. Crickard understood about the exact nature of Petitioner's job duties. The Commission gives significant weight to the opinion of Petitioner's treating physician who performed her surgery.

Additionally, Petitioner underwent a Section 12 examination on November 10, 2015 with Dr. David Brown M.D., an orthopedic specialist who opined, based upon Petitioner's job description that her work activities were a "potential exacerbating factor to her diagnosed right carpal tunnel syndrome." The Commission finds that Petitioner met her burden of proof on the issues of accident and causal connection. Petitioner sustained a repetitive trauma injury which manifested on April 24, 2014.

Petitioner testified that all medical bills were paid by the State's insurance with the exception of $1, 947.88 in outstanding bills. Dr. David Brown's examination of Petitioner

revealed that she was at maximum medical improvement and was able to continue work without restrictions. Petitioner testified that she no longer experiences numbness or tingling and that her right upper extremity is painful "every now and then".

With regard to subsection (i) of Section 8.1(b) of the Act, the Commission notes that the record contains an impairment rating of 1% of the right hand as determined by Dr. David Brown, M.D., pursuant to the 6th Edition AMA Guides to the Evaluation of Permanent Impairment. The Commission notes that this level of impairment does not necessarily equate to permanent partial disability under the Workers' Compensation Act, but instead is a factor to be considered in making such a disability evaluation.

Subsection (ii) of Section 8.1 (b) of the Act references the occupation of the employee. The Commission notes that Petitioner was employed as a case worker at the time of the accident and that she was able to return to her prior employment in her prior capacity and remains so employed at the time of hearing. Because Petitioner has been able to return to work full duty and did not testify to any significant pain, problems or limitations due to the accident, the Commission gives lesser weight to this factor.

With regard to subsection (iii) of Section 8.1(b) of the Act, the Commission notes that Petitioner was 49 years of age at the time of the accident. Petitioner testified that she does not have any limitations in her work because of this accident. She does have pain "every now and then" which she treats with Tylenol, and that she occasionally uses her brace when doing heavy work. The Commission gives greater weight to this factor.

Concerning subsection (iv) of Section 8.1(b) of the Act, the Commission notes that Petitioner sustained no difference in earning capacity. Because Petitioner has no difference in earning capacity, the Commission gives lesser weight to this factor.

The Commission notes with regard to subsection (v) of Section 8.1(b) of the Act, evidence of disability corroborated by the treating medical records, that Petitioner expressed no complaints of residual numbness, tingling or other than occasional mild pain following her recovery from the right carpal tunnel release. Because Petitioner has minimal ongoing complaints after treatment, the Commission gives lesser weight to this factor.

Based on the above factors, and the record taken as a whole, the Commission finds that Petitioner sustained permanent partial disability to the extent of 7.5% loss of use of the right hand.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 18, 2018 is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,947.88 in outstanding medical bills pursuant to Sections 8(a) and 8.2 of the Act, subject to the prohibition against balance billing. Respondent is entitled to a credit for the medical bills the group health insurance carrier paid on Petitioner's behalf on account of said accidental injuries, provided to the extent Respondent claims credit under Section 8(j) of the Act, Respondent shall hold Petitioner harmless from any claims by the providers or the group health insurance carrier.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $721.66 per week for a period of 14.25 weeks, as provided in Section 8(e) of the Act, for the reason that the injuries sustained caused the permanent disability to the extent of 7.5% loss of use of Petitioner's right hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner interest under Section 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 injuries.

Pursuant to Section 19(f)(1) of the Act, there shall be no right of appeal as the State of Illinois is Respondent in this matter.

DATED: SEP 2 8 2018
o-7/12/18
SM/msb
44

Stephen Mathis

David Gore

DISSENT

I respectfully dissent from the Decision of the majority. I would have affirmed and adopted the well-reasoned opinion of the Arbitrator who found that Petitioner did not sustain her burden of proving that her current condition of right-sided carpal tunnel syndrome was caused by her work activities.

Petitioner was a case worker for Respondent. She alleged repetitive keyboarding and using a computer mouse as the only bases for arguing her carpal tunnel syndrome is causally related to her work activities. As the Arbitrator pointed out, the maximum Petitioner could have been engaged in keyboarding and/or mousing was six hours a day. Respondent's Section 12 medical

examiner, Dr. Williams, opined that the type of activities Petitioner performed in her work did not involve the sufficient repetition, duration, or intensity to be a causative factor for developing carpal tunnel syndrome.

In addition, Dr. Williams had Petitioner demonstrate the manner in which she performed her keyboarding and mousing activities. He noted that her typing position did not put undue strain on, or cause extensive flexion of, her wrist. Dr. Williams had a better understanding of the exact nature of Petitioner's work activities than Petitioner's treating doctor and Section 12 medical examiner, neither of whom actually observed the manner in which she performed her work activities. Therefore, in my opinion, the Arbitrator was justified in finding the causation opinion of Dr. Williams persuasive and relying on it. In addition, also in my opinion, the Arbitrator was justified in relying on the Commission decision of *Rosich v State of Illinois, Department of Human Services*, 16 I.W.C.C. 779. There, the claimant had the same job, case worker, as the Petitioner here. In *Rosich*, the Commission found that the claimant's work activities were not a causal factor in her developing carpal tunnel syndrome. The Commission in *Rosich* based its decision on the causation opinion of the same Dr. Williams who testified here.

Based on the persuasive opinions of Dr. Williams, I would have affirmed the Decision of the Arbitrator who found that Petitioner did not sustain her burden of proving an accident or a causal connection between her work activities and her condition of ill-being of right-sided carpal tunnel syndrome and denied compensation. For these reasons, I respectfully dissent.

Deborah L. Simpson

Deborah Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

WIRES, VIVIAN
Employee/Petitioner

Case# **14WC027207**

ILLINOIS DEPARTMENT OF HUMAN SERVICES
Employer/Respondent

18IWCC0532

On 1/18/2018, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 1.60% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0293 KATZ FRIEDMAN EAGLE & ET AL
PHILIP A BARECK
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602-2983

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

4138 ASSISTANT ATTORNEY GENERAL
WARREN A WILKE
500 S SECOND ST
SPRINGFIELD, IL 62704

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

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

JAN 18 2018

RONALD A.RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

18IWCC0532

STATE OF ILLINOIS)
)SS.
COUNTY OF Adams)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Vivian Wires
Employee/Petitioner

v.

Illinois Department of Human Services
Employer/Respondent

Case # **14** WC **027207**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Quincy**, on **December 6, 2017**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **April 24, 2014**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident **N/A** given to Respondent.

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

In the year preceding the injury, Petitioner earned **$69,564.00**; the average weekly wage was **$1337.76**.

On the date of accident, Petitioner was **49** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of **$0.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$0.00**.

ORDER

Based upon the attached findings of fact and conclusions of law, the Arbitrator finds that Petitioner has failed to prove an accident arising out of her employment which was causally related to her condition of ill being. Based upon these findings, Petitioner's claim for benefits is denied.

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

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

Signature of Arbitrator

1/12/2018
Date

JAN 18 2018

The Arbitrator hereby makes the following findings of fact and conclusions of law regarding the disputed issues of accident and causation:

In a claim involving repetitive trauma, the issues of accident and causally are closely intertwined. One must prove that their work was causally related to their injury. Medical testimony is critical to the Arbitrator in making the determinations.

Petitioner claims to have suffered carpal tunnel syndrome in her right hand because of her repetitive work duties.

In the instant matter, Petitioner has supplied the medical opinion of Dr. Anthony Biggs, the orthopedic surgeon to whom the Petitioner was referred for treatment of her condition. At his initial examination on August 7, 2014, Dr. Biggs was given a history from the Petitioner. He understood that her job involved primarily entering data and completing applications on a computer. This is consistent with the Petitioner's trial testimony. He also was told that she might have to type up to 50 minutes non-stop each hour of work. This history is not supported by the testimony at trial.

In an average day, Petitioner worked with four program screens. (T. 66). Each time Petitioner changed screens she had to use the mouse. (T. 65). Each program had various pages which she used the mouse to access. (T. 62). Each page had various boxes which she had to frequently navigate and interchangeably use the keyboard and mouse. (T. 61-62). Each box from each page will have sub-boxes which would have to be accessed by the mouse and keyboard interchangeably. (T. 80-81). On direct, Petitioner testified that the totality of her mouse work was between one and two hours per day. (T. 23). Petitioner worked eight hours and thirty minutes per day. However, Petitioner had a one hour lunch and two fifteen minute breaks; meaning, that Petitioner's job duties accounted for seven hours of her work day. Furthermore, although Petitioner worked seven hours a day, her medical records indicate that the absolute maximum time she spent using her computer was six hours per day. (PX 2).

In short, the above testimony refutes Dr. Biggs' belief that the Petitioner typed up to 50 minutes non-stop during each hour of work. In fact, the job involved intermittent typing and mouse use. As such, Dr. Biggs' opinions on causation are not persuasive.

The second medical opinion on the issue came from Dr. David Brown, an orthopedic surgeon to whom the Petitioner was referred by his attorney for an examination on November 10, 2015. (RX 2, P. Dep x 4) Before discussing Dr. Brown's conclusions, an issue was raised at arbitration which needs discussion. For some reason, the report from Dr. Brown was not offered as a separate exhibit at trial. The Petitioner did however offer it into evidence without objection during the deposition of Dr. James Williams. (RX 2 at 77) Respondent at trial objected to the use of the report on the issue of causation on the grounds of hearsay. It argued that the report was only used during the deposition so that Dr. Williams could give credibility to the AMA rating which Dr. Brown included in his report. Initially, at trial, the Arbitrator agreed with the Respondent. However, after now reading the deposition, the Arbitrator believes that the Respondent waived his right to object or limit the use of the report by not objecting during the deposition.

With that said, the Arbitrator does not find Dr. Brown's causation opinions persuasive for similar reasons to those addressed above concerning Dr. Biggs. Dr. Brown assumed that the Petitioner worked with "her hands on the keyboard five to six hours a day." (Id, P. Dep x 4) While it is possible that her hands could have been on or near the keyboard for that time period, the evidence does not support the conclusion that she was keyboarding during that time. Again, her job duties were varied and her keyboarding was not continuous.

Petitioner also cited the opinion of Dr. Crickard, the surgeon who performed the carpal tunnel release, in support of causation. In his office note of June 30, 2015, Dr. Crickard indicates that he discussed causation with the Petitioner. It appears that they discussed the Petitioner's job duties as well as the fact that medical data went both ways on the issue. Dr. Crickard then wrote that he felt her work and repetitive typing as a caseworker could aggravate or exacerbate her symptoms. (PX 2) The entire note from the doctor concerning causation consists of four lines. The Arbitrator is left to guess at what the doctor understood as to the exact nature of the Petitioner's job duties. As such, the opinion is given little weight.

Respondent has offered the opinion of Dr. James Williams who opined that Petitioner's job duties were of insufficient frequency, intensity, and duration such as to have caused Petitioner's condition of ill-being. Dr. Williams focused not solely on the activity of typing, but the position of her extremities while typing, which he found to not be causative in the development of carpal tunnel. Petitioner, as she did at trial, demonstrated her typing position for Dr. Williams. Moreover, Dr. Williams' opinion was not predicated solely on the angle at which Petitioner typed but whether Petitioner sustained that angle for a sufficient duration such as to be causative. Dr. Williams found Petitioner's work activities to be too intermittent, in that Petitioner was constantly switching between different work duties, such as the totality of her job duties were not causative.

First, Dr. Williams opined it was not the activities of mousing and typing per se that cause carpal tunnel syndrome, but the position of the extremities while performing those activities. Dr. Williams further opined that the improper position must occur for sufficient sustained periods of the day over the course of several years. (T. 77-79). Dr. Williams opined that typing at in a 45 degree flexed position for four to five sustained hours per day combined with one hour of sustained mouse work per day while resting one's wrist on the edge of the table over a period of 20 years would cause sufficient extrinsic pressure in the carpal tunnel over a sufficient duration that would potentially contribute to the development or aggravation of carpal tunnel syndrome. (RX 2 pg. 75-79, 81-85)(RX 2, RX4).

Petitioner's trial testimony does not indicate that her claim rises to Dr. Williams' causative standard. Petitioner demonstrated her typing position to Dr. Williams during her examination. He testified that her wrists were not particularly extended or flexed, and that her wrists were not resting on the edge of the table. (Id at 32) Petitioner demonstrated her typing at trial on two occasions. The Arbitrator observed that her demonstrations changed. Thus, said demonstrations are not particularly helpful to the Arbitrator in making his determinations.

More importantly, as Dr. Williams said several times, the typing needed to be of a continuous nature in order for it to be causative. He said that continuous typing for more than six hours, like that done by someone doing a transcription, would provide a risk. (Id at 31) If that person's wrists were in a poor position ergonomically, then the time require might decrease. (Id at 32) However, it was important to the doctor that the typing and wrist positions were sustained. (Id at 78-79)

Petitioner did neither typed nor moused in a sustained or constant manner. Petitioner specifically testified the typing with her right hand was constantly interrupted by the need to do mouse work, and that the totality of this interruptions amounted to between one and two hours of mouse work per day. (T. 23). Petitioner stated that each time she used the mouse, she spent between five and ten seconds using the mouse, meaning her mouse-work was intermittent and brief. While this does not account for all the other duties that would interrupt Petitioner's typing, the evidence and testimony clearly demonstrates that neither Petitioner's typing nor her mouse-work were sustained, constant, and uninterrupted.

Petitioner's wrists were not always on the edge of her desk. Dr. Williams found that whether a person rests their on the edge of a table or desk while typing to be a significant factor in assessing whether one's carpal tunnel syndrome could be attributed to their positioning while typing. (RX 2 pg. 32, 76, 83-84)(RX 2, RX 4). The trial record indicates that edge of Petitioner's keyboard was 5 inches from the edge of her desk. Petitioner's typing position never once showed Petitioner as having her wrists on the edge of her desk. The location of Petitioner's wrists while mousing, in relation to the edge of the desk, was never demonstrated with certainty at trial.

The Arbitrator finds Dr. Williams' opinions on causation to be persuasive. He demonstrated a thorough understanding of the Petitioner's actual job duties and he based his opinions on current scientific data. He also explained that the data is constantly evolving. (Id at 86) On cross-examination, Petitioner's attorney properly asked the doctor to explain how he could opine that typing could be causative now while testifying previously that it was not. Respondent has argued that the line of questioning was improper but the Arbitrator disagrees. The doctor was shown decisions of the Commission in which he gave different testimony concerning typing and carpal tunnel. Dr. Williams agreed that he gave such testimony. He then explained that his opinions had changed based upon ongoing medical studies. The line of questioning was proper and relevant on the issue of the doctor's credibility. However, the doctor was given a chance to explain his current opinions, and the Arbitrator believes his testimony to have been credible.

Finally, the Arbitrator finds persuasive the Commission decision in the case of Rosich v. State of Illinois, Department of Human Services, 16 IWCC 779 (2016). The petitioner in Rosich had the same job as the Petitioner herein. Her job duties were very similar. Her orthopedic surgeon testified that her carpal tunnel could have been work related, but the Commission felt his testimony was based upon facts not shown at trial. Specifically, they found that her keyboarding was not continuous in nature nor done to the extent per day that she had provided in her history. They gave greater weight to the opinions of the same Dr. Williams who testified in this case. He opined that the keyboarding and computer use was not of a continuous nature.

Based on the forgoing, and having considered the totality of the evidence submitted at trial, the Arbitrator finds that the Petitioner has failed to prove an accident arising out of her employment causally related to her right carpal tunnel. . Due to these findings all other disputes are rendered moot, and Petitioner's claim is denied.

17WC07694
18IWCC0552

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jamie Cahue,
Petitioner,

vs.

Menasha Packing,
Respondent.

No. 17WC 07694
18IWCC0552

ORDER

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

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision dated September 7, 2018, 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: SEP 18 2018

DLG/mw
045

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jamie Cahue,

Petitioner,

vs.

NO: 17 WC07694
18IWCC0552

Menasha Packing,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, medical, prospective medical, notice and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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 February 13, 2018, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $65,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: SEP 18 2018
o083018
DLG/mw
045

David L. Gore

Deborah Simpson

Stephen Mathis

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

CAHUE, JAIME
Employee/Petitioner

Case# **14WC034638**

17WC007694

MENASHA PACKAGING
Employer/Respondent

18IWCC0552

On 2/13/2018, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 1.65% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0815 ACEVES & PEREZ
EMILIANO PEREZ JR
1931 N MILWAUKEE AVE
CHICAGO, IL 60647

0734 HEYL ROYSTER VOELKER & ALLEN
BRAD A ANTONACCI
120 W STATE ST PO BOX 1288
ROCKFORD, IL 61105

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jaime Cahue
Employee/Petitioner

v.

Menasha Packaging
Employer/Respondent

Case # 14 WC 34638

Consolidated cases: 17 WC 7694

18IWCC0552

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **01/12/18**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **03/26/2014**, 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.

For the reasons set forth in the attached decision, the Arbitrator finds a causal connection between Petitioner's undisputed accident of March 26, 2014 and his current post-operative right shoulder condition of ill-being. The Arbitrator also finds that Petitioner established causation as to the need for the permanent restrictions imposed by Dr. Tonino. The Arbitrator further finds that Petitioner established causation as to left arm and cervical spine symptoms that warranted imaging and evaluation.

In the year preceding the injury, Petitioner earned **$56,345.12**; the average weekly wage was **$1,083.56**.

On the date of accident, Petitioner was **33** years of age, ***married*** with **4** dependent children.

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

The parties agree Respondent paid Petitioner $28,090.71 in benefits, including a $5,326.88 permanency advance, prior to the hearing of January 12, 2018. Arb Exh 1. RX 9 and 9(a).

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $722.37/week during the following four intervals: December 2, 2014 through January 8, 2015; February 19, 2015 through May 18, 2015; July 20, 2015 through February 7, 2016; and June 27, 2016 through September 22, 2016. Respondent is entitled to credit for the temporary total disability benefits it paid prior to the hearing, per the parties' agreement. Arb Exh 1.

Respondent shall pay the reasonable and necessary medical expenses of Loyola University Medical Center/Dr. Tonino in PX 2(a), subject to the fee schedule and with Respondent receiving credit for the payments it has made per RX 10. Respondent shall pay the $3,500.00 bill of Oak Brook X-ray and Imaging in PX 8(a), subject to the fee schedule.

For the reasons set forth in the attached decision, the Arbitrator finds that Respondent is liable for Section 19(l) penalties in the maximum statutory amount of $10,000.00.

The Arbitrator addresses prospective care in the decision in 17 WC 7694.

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.

18IWCC0552

Molly C Mason

Signature of Arbitrator

2/9/18
Date

ICArbDec19(b)

FEB 13 2018

Jaime Cahue v. Menasha Packaging
14 WC 34638 and 17 WC 7649 (consolidated)

Summary of Disputed Issues in Both Cases

In 14 WC 34638, the parties agree Petitioner sustained an accident while working as a machine operator for Respondent on March 26, 2014. Petitioner underwent two right shoulder surgeries, in 2014 and 2015, following this accident. He declined to undergo a third surgery (a biceps tenodesis) recommended by Dr. Tonino. The doctor released him to work, subject to several permanent restrictions, on December 19, 2016, following a valid functional capacity evaluation performed at a facility of Respondent's selection.

Petitioner asserts that, at various points during his right shoulder treatment, Respondent gave him tasks that were outside the restrictions imposed by Dr. Tonino. He further asserts he overused his non-dominant left arm while performing those tasks. Respondent disputes these assertions. Petitioner further claims he injured his left shoulder at work on March 10, 2017. This injury is the subject of the second claim, 17 WC 7649.

In 14 WC 34638, the disputed issues include causal connection, medical expenses, temporary total disability during three intervals, penalties/fees, prospective care and underpayment of temporary total disability benefits. In 17 WC 7649, the disputed issues include accident, notice, medical expenses, temporary total disability, penalties/fees and prospective care in the form of left shoulder surgery.

Arbitrator's Findings of Fact Relative to Both Cases

Petitioner, age 37, testified he began working as a machine operator for Respondent three years before his undisputed accident of March 26, 2014. Respondent produces customized paper and corrugated products. T. 17-18.

Petitioner testified his job involved operating one half of a machine that was 15 feet long. He had to insert metrics plates and cutting dies in the machine during set-ups to produce products of specific dimensions. A metrics plate is 59 x 42 inches in size and weighs about 450 pounds. T. 19. He also had to use tools, including wrenches and screwdrivers, to set paper size. T. 18-20.

Petitioner testified that, prior to his accident of March 26, 2014, he removed a 450-pound metrics plate from his machine so that he could remove debris from the machine and clean the plate in preparation for the next job. The plate moves along a track that has wheels on both sides. As he attempted to push the plate back into the machine, it fell off the track on the right. At that point, his left hand was on top of the plate and his right hand was underneath it. As the plate tipped, it began to tug his right arm down. T. 21-22. His helper, who was three feet away, and a supervisor came over and attempted to hold the plate up so that Petitioner could extricate his right hand. After Petitioner freed his hand, the plate fell to the floor. Petitioner testified it took a forklift to lift the plate back up. T. 21-25.

Petitioner testified he felt a pop and stinging in his right shoulder when the plate fell to the side. T. 24-25. He immediately reported the injury to Tony, a supervisor. Tony took photographs and escorted Petitioner to an office. Tony then telephoned Dan, an individual Petitioner described as a "therapy guy from Wisconsin" who came to Respondent's facility twice weekly to assess workers. T. 26.

Per instructions received from Dan, Tony told Petitioner to apply ice and Icy Hot to his shoulder and take Tylenol. T. 27-28. Petitioner testified he reported to work during the two weeks following the accident but did not actually perform any tasks. He merely sat in an office, applying ice to his shoulder and taking Advil for pain. T. 29.

Petitioner testified he first sought formal care on April 7, 2014, when he saw Dr. Rodriguez, his primary care physician. Dr. Rodriguez recorded a history of the work accident and noted a complaint of 6/10 right shoulder pain. After performing an examination, he prescribed a right shoulder MRI, with and without contrast, along with a Medrol Dosepak and Norco. PX 1, pp. 3-5. He released Petitioner to work. PX 1, p. 1. T. 29-30.

The MRI, performed without contrast on May 6, 2014, showed no significant effusion, mildly tendonopathic supraspinatus and infraspinatus tendons, without evidence of tearing, and minimal low grade chondromalacia along the anterior margin of the glenoid. PX 1, p. 18.

Petitioner returned to Dr. Rodriguez on May 16, 2014. The doctor again noted a complaint of right shoulder pain. Petitioner testified the doctor recommended he see a specialist. T. 30-31.

Petitioner testified that, during this time period, he was performing various light duty tasks, including sweeping, for Respondent. T. 31.

Petitioner returned to Dr. Rodriguez on August 4, 2014, with the doctor noting a complaint of 5/10 right shoulder pain. On right shoulder examination, the doctor noted a decreased range of motion, tenderness and spasm. PX 1, p. 23. He recommended an orthopedic referral and released Petitioner "to work on a 12-hour shift." PX 1, p. 30.

Petitioner saw Dr. Tonino, an orthopedic surgeon, on September 8, 2014. T. 31. Petitioner initially testified he referred himself to Dr. Tonino. He went on to state that the referral actually came from Dr. Rodriguez. He told Dr. Rodriguez he wanted to see someone at Loyola, which was close to his home, with the doctor suggesting Dr. Tonino. T. 31-32.

Dr. Tonino documented the work accident in his note of September 8, 2014. He noted that a 400-pound plate "yanked [the] right shoulder down." PX 2, p. 11. He described the May 6, 2014 MRI images as "degraded" due to motion. After examining Petitioner and obtaining X-rays, he tentatively diagnosed a labral tear, based on Petitioner's complaints and the mechanism of injury. He prescribed an MR arthrogram. He allowed Petitioner to continue normal work, indicating Petitioner "seems to be doing pretty well with that." PX 2, pp. 4-6.

On September 29, 2014, Dr. Tonino noted ongoing right shoulder complaints. He interpreted the MR arthrogram as showing a tear at the base of the anterior/inferior segment of the glenoid labrum. He recommended arthroscopic surgery. PX 2, p. 20. Petitioner testified that Dr. Tonino took him off work (T. 33) but the doctor's note reflects he released Petitioner to full duty. PX 2, p. 25.

Petitioner returned to Dr. Tonino on November 3, 2014. The doctor noted a complaint of numbness and tingling extending up to the cervical spine and numbness going down the arm to the hand. After noting that Petitioner was scheduled to undergo right shoulder surgery on December 2nd, he referred Petitioner to "Dorothy" for a cervical spine work-up. T. 34. He released Petitioner to light duty with no lifting over 20 pounds. PX 2, pp. 28, 32.

Petitioner saw Dorota Pietrowski, an advanced practice nurse affiliated with Dr. Tonino, on November 4, 2014. Pietrowski documented a history of the work accident. She described Petitioner's symptoms as 50% right shoulder/arm and 50% neck. She indicated Petitioner denied left-sided symptoms. She recommended a cervical spine MRI. She noted that Petitioner "remains off of work" but released him to work. PX 2, pp. 37-39.

The cervical spine MRI, performed without contrast on November 4, 2014, showed mild multi-level degenerative changes without significant central canal or foraminal stenosis. PX 2, pp. 41-42.

On November 19, 2014, Pietrowski reviewed the cervical spine MRI results with Petitioner and suggested he undergo cervical spine therapy after the upcoming right shoulder surgery. She imposed no restrictions relative to the cervical spine. PX 2, pp. 45, 50.

Petitioner testified he did not undergo any cervical spine care at that time. T. 35.

Dr. Tonino operated on Petitioner's right shoulder on December 2, 2014, at Loyola. T. 35. In his operative report, he documented a partial tear of the rotator cuff and a "very complex superior labral tear." He described the biceps tendon as normal. PX 2, pp. 56-57.

On December 8, 2014, Respondent's carrier issued a check in the amount of $739.87 representing temporary total disability benefits from December 2, 2014 (the date of surgery) through December 8, 2014. The carrier continued issuing weekly checks thereafter through January 11, 2015. RX 9.

On January 8, 2015, Dr. Tonino prescribed therapy and released Petitioner to work with no use of the right arm. PX 2, p. 289.

Petitioner testified he began undergoing therapy at Industrial Rehab Allies, a facility selected by workers' compensation. T. 36.

Petitioner further testified that Respondent did not respect Dr. Tonino's restriction that he avoid using his right arm. Instead, Respondent assigned him to dust down pipes and sweep the entire facility, including stacks of skids, using a 3-foot industrial broom. T. 36-37.

Petitioner continued to see Dr. Tonino postoperatively. On February 19, 2015, the doctor noted ongoing right shoulder complaints along with some left shoulder symptoms. He noted the following:

> "With respect to work, apparently they are making him do pretty heavy work with one hand. I am afraid he is going to hurt his other shoulder."

Dr. Tonino administered a right subacromial injection. He directed Petitioner to increase his therapy visits from two to three times per week. He took Petitioner off work "until they can provide more reasonable one-handed work for him." PX 2, p. 313. T. 38.

Respondent's carrier issued weekly checks, each in the amount of $739.87, from February 19, 2015 through March 11, 2015. RX 9.

On March 18, 2015, Respondent's carrier issued a check in the amount of $739.87, representing weekly benefits from March 12 through March 18, 2015, but put a "stop" on this check the same day. RX 9.

On March 19, 2015, Dr. Toninio noted that Petitioner reported minimal improvement from the subacromial injection. He administered an intra-articular injection and directed Petitioner to continue therapy three times per week. He directed Petitioner to remain off work, again noting a lack of reasonable work using one arm. PX 2, p. 328.

Petitioner testified that neither injection provided relief. T. 38-39.

At Respondent's request, Dr. Giannoulias, an orthopedic surgeon, examined Petitioner on April 21, 2015. The doctor's report (RX 1) sets forth a consistent history of the work accident and subsequent labral repair. The doctor noted a history of a left hand fracture.

On right shoulder examination, the doctor noted well-healed arthroscopic incisions, a substantial amount of pain over the acromioclavicular joint with palpation anteriorly and superiorly, pain with cross-arm adduction, popping with elevation past 140 degrees, limited rotation and no pain over the biceps tendon.

The doctor indicated he reviewed a job description and Form 45 in addition to numerous medical records.

The doctor found a causal relationship between the work accident and the labral tear. He further found that Petitioner likely had pre-existing acromioclavicular joint degeneration that was aggravated by the accident. He characterized the treatment to date as reasonable and necessary. He recommended an acromioclavicular injection. While he acknowledged some stiffness of the shoulder, he did not view Petitioner as having a "true frozen shoulder." He believed the stiffness would resolve with four more weeks of therapy. He projected that Petitioner would reach maximum medical improvement within a month or two. He found Petitioner capable of working so long as he avoided all overhead work and any lifting, pushing or pulling over 10 pounds. He did not find Petitioner capable of resuming his machine operator duties. He found no evidence of symptom magnification. RX 1.

On April 21, 2015, Respondent's carrier issued a check in the amount of $739.89 paying Petitioner, retroactively, from March 12 through March 18, 2015. RX 9.

On April 27, 2015, Dr. Tonino noted that Petitioner experienced only transient improvement following the intra-articular injection. He viewed Petitioner as having "some early adhesive capsulitis and possibly some internal derangement." He prescribed an MR arthrogram and kept Petitioner off work. PX 2, pp. 333-334. T. 39-40.

On May 6, 2015, Respondent's carrier issued a check in the amount of $739.87 representing temporary total disability benefits from April 30, 2015 through May 6, 2015. RX 9.

On June 26, 2015, Respondent's carrier issued a check in the amount of $1,268.35 representing temporary total disability benefits from May 7 through May 18, 2015. Respondent did not resume the payment of benefits until mid-September 2015. RX 9.

Petitioner returned to Dr. Tonino on July 6, 2015. T. 40. On re-examination, the doctor noted elevation to 120 degrees on the right, versus 160 on the left, and external rotation to 45 degrees on the right, versus 60 on the left. He noted a delay in obtaining approval for the previously prescribed MR arthrogram. He also noted that Petitioner had experienced an exacerbation since resuming work following a "second opinion." [He did not indicate exactly when Petitioner resumed working]. He recommended that Petitioner perform home exercises pending the MR arthrogram. PX 2, p. 350.

On July 20, 2015, Dr. Tonino interpreted the MR arthrogram as showing a possible recurrent labral tear versus post-operative changes. He recommended revision surgery, noting that Petitioner had "failed conservative treatment." He took Petitioner off work pending the surgery, noting: "we tried sending him back with restrictions but the employer does not accommodate and respect restrictions." PX 2, p. 358. PX 9, Exhibit 3. T. 40-41.

Respondent's examiner, Dr. Giannoulias, issued a supplemental report on August 5, 2015, after reviewing the MR arthrogram and Dr. Tonino's recent records. He interpreted the MR arthrogram as showing that the labrum "has not healed." He again attributed the labral injury to the work accident. Based on Petitioner's current symptoms of numbness and instability, he found a revision arthroscopy and Bankart repair to be appropriate. He anticipated that Petitioner would reach maximum medical improvement six months following this surgery. He recommended that Petitioner be restricted to "light sedentary" work with no lifting over 10 pounds and no overhead activity. RX 2.

On September 15, 2015, Respondent's counsel sent Petitioner's counsel a letter enclosing his appearance and a motion to dismiss. Respondent's counsel indicated it was his understanding that the payment of temporary total disability benefits would resume as of the following day, assuming Petitioner proceeded with the scheduled surgery. PX 9, Exhibit 4.

Dr. Tonino operated again on September 16, 2015, performing a revision labral repair and capsulorrhaphy of the right shoulder. In his operative report, he indicated that it appeared as if Petitioner "had a persistent labral tear which had not healed." He removed two slightly loose sutures and repaired the tear with a revision procedure using four sutures anteriorly to posteriorly. He described the rotator cuff as intact and the biceps tendon as normal. PX 2, pp. 372-373. T. 41.

On September 22, 2015, Respondent's carrier issued a check in the amount of $739.87 representing temporary total disability benefits from September 16 through September 22, 2015. Respondent continued the payment of benefits each week thereafter through October 20, 2015, at which point there was a gap until April 2016. RX 9.

On October 1, 2015, Dr. Tonino noted some complaints of right arm pain. He directed Petitioner to keep his arm in a sling for two weeks and then start therapy twice weekly. He also directed Petitioner to remain off work. He indicated he anticipated keeping Petitioner off work "for a significant time due to a history of the employer not following restrictions on his return to work last time." PX 2, p. 464. PX 9, Exhibit 6.

On October 7, 2015, Respondent's counsel sent Petitioner's counsel an E-mail stating: "we have nothing from you to support your request for any current benefits. Please send if you have anything." PX 9, Exhibit 8.

On October 12, 2015, Respondent's counsel sent Petitioner's counsel another E-mail, stating:

> "Because you are disallowing nurse case management, we need your express authority to contact the treating physician to discuss the modified work duties that we have available.
>
> If we do not receive your express authority by Wednesday, October 7, 2015, TTD benefits will be suspended on Monday, October 19, 2015."

PX 9, Exhibit 7. RX 22.

Petitioner testified he did not begin therapy as directed due to lack of approval. Workers' compensation wanted him to have therapy at Industrial Rehab Allies in Schaumburg but he wanted to go to ATI, which was closer to his home. T. 42.

On November 12, 2015, Dr. Tonino described Petitioner as doing "pretty well" but noted he had not yet started therapy due to "some sort of misunderstanding." He directed Petitioner to remain off work, begin therapy twice weekly and return in six to eight weeks, at which point he planned to address "updated work restrictions." PX 2, p. 474. PX 9, Exhibit 8.

On November 16, 2015, Petitioner's counsel sent "the most recent disability note" (presumably Dr. Tonino's note of the previous day) to Respondent's counsel via E-mail. Respondent's counsel sent the following response later the same day: " . . . look forward to litigating this one with you. He could be working but for your obstructions to modified duty." PX 9, p. 18.

On November 17, 2015, Respondent's counsel sent Petitioner's counsel a letter, via facsimile, advising him that Respondent "has one-handed work available" from 7 AM to 3 PM, Monday through Friday, at Petitioner's "normal hourly rate." Respondent's counsel asked for confirmation that Petitioner would resume working as of November 19th. RX 6. The following day, Respondent's counsel faxed another letter to Petitioner's counsel, acknowledging receipt of Dr. Tonino's restrictions and asking counsel to "advise Dr. Tonino that one-handed work is available," beginning November 19th. RX 6, 23.

Petitioner underwent an initial physical therapy evaluation at Loyola on November 30, 2015. On December 4, 2015, the therapist noted a complaint of "throbbing pain in the anterior shoulder today at rest." He also noted that Petitioner was using an ice pack at home. At the next session, on December 7, 2015, he noted that Petitioner reported moderate pain with elevation of the right shoulder. PX 2, p. 499. At the next two sessions, he noted that Petitioner reported "popping" and sharp pain in the shoulder with elevation. PX 2, p. 501.

On December 30, 2015, Respondent's counsel faxed another letter to Petitioner's counsel, indicating that Petitioner's 19(b) petition was "dismissed" on December 17th. He reiterated the offer of one-handed duty and asked why Petitioner required rescheduling of a Section 12 re-examination from December 22, 2015. RX 6.

At Respondent's request, Dr. Giannoulias re-examined Petitioner on January 5, 2016. In his report, the doctor noted that Petitioner was still complaining of right arm pain and numbness, despite

the recent revision surgery. On re-examination, he noted some supraspinatus atrophy, elevation to about 150 degrees, external rotation to about 50 degrees and some pain with abduction and external rotation. The doctor reiterated his causation finding and recommended four more weeks of therapy. He anticipated that Petitioner would reach maximum medical improvement six to eight months after the revision surgery. He found Petitioner capable of full-time light duty with temporary restrictions of no lifting, pushing or pulling over 10 pounds. He indicated that permanent restrictions were "dependent upon course of healing and response to further therapy." While he described Petitioner as magnifying some of his symptoms with end range of motion, he did not find this inappropriate "for having started physical therapy only six weeks ago." RX 3.

Petitioner returned to Dr. Tonino on January 21, 2016 (T. 42-43), with the doctor noting the therapist's observations. The doctor indicated that external rotation was still limited to 30 degrees but that Petitioner otherwise appeared to be doing well. He also indicated that Petitioner "has had no injuries after surgery." He directed Petitioner to remain off work and continue therapy. PX 2, pp. 508-509.

On January 26, 2016, Respondent's counsel forwarded Dr. Giannoulias' January 18, 2016 report to Petitioner's counsel via facsimile and indicated that Respondent could accommodate the restrictions recommended by Dr. Giannoulias. Counsel also indicated that one-handed work was "still available," referencing prior offers of such work on November 17 and 18, 2015 and December 30, 2015. RX 6.

On January 29, 2016, Amanda Faust, Respondent's human resources manager, wrote to Petitioner indicating that Respondent had work available within the restrictions recommended by Dr. Giannoulias and directing Petitioner to report to work on February 8, 2016. Faust informed Petitioner that, if he failed to report on said date, Respondent would begin counting his absences as occurrences against its attendance policy. RX 7. Respondent's counsel forwarded a copy of Faust's letter to Petitioner's counsel the same day and asked for permission to contact Dr. Tonino for the sole purpose of asking him whether Petitioner could perform modified or one-handed work. RX 8.

Under cross-examination, Petitioner testified he returned to work in February 2016. T. 83.

On March 10, 2016, Dr. Tonino that Petitioner was still experiencing popping in the shoulder when lifting. He again noted limited external rotation. He indicated Petitioner "will continue with work restrictions for his right arm." He directed Petitioner to continue therapy. PX 2, p. 511.

Petitioner acknowledged asking Dr. Tonino to release him to full duty on March 10, 2016. He made this request because he was not receiving benefits. T. 43. He did not, however, actually resume full duty. Respondent "had [him] showing another operator how to operate the machine." T. 46.

Petitioner saw Laura Thometz, PA-C, at Loyola on April 1, 2016. Thometz noted that Petitioner was performing light duty and complained of increased right shoulder pain with lifting as well as numbness and tingling in the entire right arm during the preceding three weeks. She also noted that Petitioner denied neck pain or any acute injury to the shoulder. On examination, she noted tenderness over the right acromioclavicular joint and right anterior shoulder and pain with Jobe's and O'Brien's testing. She directed Petitioner to continue his home exercises and see Dr. Tonino. She continued the previous restriction of no right arm usage. PX 2, p. 516.

Petitioner saw Dr. Tonino on April 4, 2016, and complained of popping in the right shoulder and difficulty elevating beyond 120 degrees. The doctor also noted that Petitioner complained of numbness and tingling in the right arm with right-sided lateral neck pain. He released Petitioner to work with no lifting over 10 pounds and no overhead or repetitive usage of the right arm. PX 2, p. 517. T. 44.

Petitioner testified that, after he presented the April 4, 2016 restrictions to Respondent, he was assigned to the task of removing a 2-inch layer of glue from a piece of steel pipe that was 9 feet long. He had done this job in the past and knew it required the use of both hands. He told human resources he could not perform this job. Respondent assigned other work to him. T. 46-47.

On April 7, 2016, Respondent issued a check in the amount of $5,324.04 representing disputed temporary total disability benefits from October 21, 2015 through December 20, 2015. RX 9.

At the next visit, on April 21, 2016, Dr. Tonino noted persistent complaints. He recommended another MR arthrogram and released Petitioner to work with no right arm usage. PX 2, p. 518. T. 48.

Petitioner testified that Respondent then assigned him to "unstacking and restacking skids." This involved sorting through and moving stacks of misprinted boxes and bundles of "E-Flu" paper. Petitioner described the "E-Flu" paper as a "top of the line," heavy paper. He testified that 25 sheets of this paper can weigh up to 30 pounds, "including the glue." Each "E-Flu" bundle contained 25 sheets. He had to transfer the boxes and "E-Flu" bundles from skids to a table and from the table to skids. The table was about 3 feet high. He used only his left hand and arm to move the bundles, cut the string around each bundle and sort through the boxes and paper. T. 49-50. This job lasted three months. He finished three to five skids per day, with each skid containing 24 to 25 bundles. T. 50.

The repeat right shoulder MR arthrogram, performed on May 10, 2016, showed contrast insinuation into the inferior labrum, "consistent with a tear," as well as tendinosis of the intra-articular biceps tendon, extension of contrast between the infraspinatus and supraspinatus tendons and mild acromioclavicular joint osteoarthritis. PX 2, pp. 512-513. T. 51.

On May 16, 2016, Dr. Tonino interpreted the MR arthrogram as likely showing post-operative changes rather than anything new. He noted that most of Petitioner's pain was "anteriorly near the biceps tendon." He prescribed additional therapy along with a Medrol Dosepak. He continued the previous restriction of no right arm usage. PX 2, p. 519.

On June 27, 2016, Dr. Tonino noted complaints of pain in both shoulders. He noted that, while Petitioner had been directed to avoid using his right arm, he was "doing work with both arms . . . but using primarily his left shoulder." On examination, he noted tenderness over the bicipital groove bilaterally, elevation to 120 degrees bilaterally and normal rotator cuff strength bilaterally. He took Petitioner off work pending a functional capacity evaluation. PX 2, pp. 520-521. Petitioner testified that Dr. Tonino prescribed this evaluation after he declined to undergo a third right shoulder surgery. T. 51.

Petitioner underwent a functional capacity evaluation at Industrial Rehab Allies on July 8, 2016. Petitioner testified that Respondent's carrier set up this evaluation. T. 52. The evaluator, Steve Adamkiewicz, M.S. [hereafter "Adamkiewicz"], rated the evaluation as valid. He found that Petitioner "demonstrated work tolerance at the light-medium physical demand level" and that his BOBST operator job was rated at a medium physical demand level. He referenced both Petitioner's description of his job duties and a job analysis provided by Triune Health Group rating the BOBST job at the medium physical

demand level "due to the occasional need to lift a 35-40 lb. cutting die and frequent feeding of handfuls of sheets into the hopper weighing 25 to 30 pounds." PX 6, p. 7. He suggested that Petitioner undergo work conditioning to increase his tolerance. He noted that Petitioner reported "experiencing left shoulder pain since working light duty" and complained of constant right proximal biceps pain. PX 6. At the hearing, Respondent offered into evidence a report from Rachel K. Viel, MS, PT [hereafter "Viel"] dated October 11, 2016, in which Viel concluded she could not determine whether the functional capacity evaluation results were truly valid, "due to the limitations of validity testing." RX 16.

On August 4, 2016, Dr. Tonino noted the results of the functional capacity evaluation. He also noted that Petitioner was still experiencing left shoulder pain. He recommended work conditioning. He directed Petitioner to remain off work and return in six weeks. T. 52. PX 2, p. 522. T. 52. In her report of October 11, 2016, Viel concluded that it was reasonable for Petitioner to undergo work conditioning for two to four weeks, with the goal of improving his frequent material handling tolerances. RX 16.

Based on records and correspondence in PX 6, it appears Petitioner began attending work conditioning at Industrial Rehab Allies in Lombard on August 16, 2016 but began cancelling sessions as of August 22nd "because he did not have any gas money." Adamklewicz wrote to Dr. Tonino on September 16, 2016, indicating that, with the encouragement of the workers' compensation carrier, Petitioner had started attending sessions at a different facility closer to home but began experiencing left upper extremity shooting pains after two sessions. Adamklewicz advised Dr. Tonino that Petitioner was scheduled to undergo a spinal evaluation. Adamklewicz also noted, correctly, that Petitioner had not received any workers' compensation benefits "for months."

Records in PX 7 reflect Petitioner began a course of work conditioning at ATI Physical Therapy on August 29, 2016. On September 6, 2016, Christopher Sullivan, ATC, reported to Dr. Tonino that Petitioner began the program at a light physical demand level and was "starting to feel increased pain in his other [i.e., left] shoulder with activity." Sullivan also noted that Petitioner's machine operator job was considered a medium physical demand level job, with occasional lifting of 50 pounds, based on the Dictionary of Occupational Titles.

On September 9, 2016, Petitioner saw Laura Thometz, PA-C, Dr. Tonino's assistant. T. 53. Thometz noted that Petitioner had started work conditioning at "RARA" but had switched to ATI, which was closer to him. She indicated this was "progressing well until yesterday," at which point Petitioner "woke up with his entire left arm . . . cold and numb." She noted that Petitioner felt he "may have overdone it in work conditioning." On left upper extremity examination, she noted pain with impingement maneuvers and rotator cuff testing. She directed Petitioner to hold off with work conditioning until he could be evaluated by a spine specialist. PX 2, pp. 523-524.

On September 12, 2016, Sullivan reported that Petitioner reported having increased pain with "lift and carry" exercises and was complaining of increased numbness in his left forearm and "the same pain in his right arm." PX 7, pp. 1-2.

On September 14, 2016, Petitioner returned to Dorota Pietrowski, RN, MSN, at Loyola. She noted that Petitioner reported developing radiating left arm symptoms on September 7th. She also noted that Petitioner had been undergoing work conditioning but denied any specific accident or injury. On examination, she noted numbness in the left forearm. She diagnosed cervicalgia with possible left arm radiculopathy. After reviewing the 2014 cervical spine MRI, and noting that Petitioner's symptoms were right-sided at that time, she recommended a new cervical spine MRI. PX 2, p. 525.

On September 22, 2016, Dr. Tonino noted that Petitioner developed left arm symptoms while participating in work conditioning and was still experiencing right shoulder symptoms. He also noted the cervical spine MRI recommendation. He released Petitioner to work with no lifting over 10 pounds and no overhead or repetitive use of the right arm. PX 2, p. 532.

At Respondent's request, Dr. Giannoulias examined Petitioner a third time on October 18, 2016. In his report, he noted ongoing right shoulder and arm symptoms. On right shoulder re-examination, he noted no pain to palpation of the acromioclavicular joint, no crepitation, elevation to about 160 degrees, external rotation to 40 degrees, internal rotation to the upper buttock, 4+/5 strength, no instability and pain with end range of motion. He noted no abnormalities on left shoulder examination.

Dr. Giannoulias indicated he reviewed additional records from Dr. Tonino, the functional capacity evaluation report, a description of a BOBST operator job and a video "of the quality position [Petitioner] more recently was working in." He found the activities in the video "not consistent with causing an overuse injury of the upper extremities." With respect to the right shoulder, he diagnosed post-operative capsulitis from the labral repair and a healed labral tear. He did not diagnose any left shoulder condition, based on his negative examination. He did not link Petitioner's left shoulder complaints to either the work accident or the duties shown on the video. He related only the right shoulder treatment to the accident but characterized all of the treatment as reasonable and necessary. He did not believe Petitioner required more care for either shoulder. He described Petitioner's prognosis as fair. He recommended that Petitioner resume full-time work subject to the permanent light to medium restrictions established by the functional capacity evaluation. Based on the video, he believed Petitioner could perform work duties in Respondent's quality division. He did not believe Petitioner could resume his original machine operator job. RX 4.

On October 24, 2016, Dr. Tonino noted complaints of left-sided neck pain radiating to the left shoulder, right shoulder pain and right arm numbness. He noted no gross neurological abnormalities on examination. He indicated Petitioner still needed to see a cervical spine specialist. He continued the previous restrictions. PX 2, p. 533.

The cervical spine MRI, performed without contrast on November 8, 2016, showed mild spondylitic changes "without gross disc protrusion, spinal stenosis or foraminal stenosis at any cervical level." PX 8, pp. 1-2.

On November 28, 2016, Dr. Tonino noted that Petitioner had undergone the cervical spine MRI but had not yet seen a cervical spine specialist. After noting persistent cervical spine complaints, he again recommended a cervical spine consultation. PX 2, p. 535.

Petitioner testified he underwent a left shoulder MRI at Dr. Tonino's recommendation on December 9, 2016. T. 54.

On December 19, 2016, Dr. Tonino noted ongoing bilateral shoulder complaints. He recommended only conservative care for the left shoulder, based on the MRI and degree of symptoms. He found Petitioner to be at maximum medical improvement with respect to his right shoulder. He imposed permanent restrictions of no lifting over 10 pounds and no overhead or repetitive use of the right arm. PX 2, p. 536. T. 54-55.

Petitioner testified he presented the permanent restrictions to Respondent after December 19, 2016. He further testified Respondent did not honor these restrictions. He was assigned to the task of putting various tubes into designated slots that were overhead. The tubes were made of paper. They were 6 to 8 feet long. Each weighed "maybe two to three pounds tops." T. 56. Petitioner testified he had to use an 8-foot ladder to access the slots. He had to move the ladder back and forth all day long to get to the correct slots. T. 56-57. He also had to stack and restack skids, as he had done in the past. T. 57.

Petitioner testified he returned to Dr. Tonino on January 30, 2017. The doctor administered a right shoulder injection and modified his restrictions to no lifting over 5 pounds and no repetitive or overhead use of the right arm. T. 58.

Petitioner testified that Respondent did not honor Dr. Tonino's modified restrictions. Respondent again assigned him to stacking and restacking skids. T. 59.

Petitioner testified that, prior to his claimed accident of March 10, 2017, he was assigned to the task of breaking down flaps of "E-flu" paper. He testified he had to work under time pressure because the customer needed the paper as soon as possible. He had "eight units" of skids to work on, with each skid holding up to 7200 pieces. T. 59. For three days, he worked alone at a table that was 3 feet high. He had to grab the paper, place it on the table, stabilize it with his right hand and press down with the palm of his left hand, using the edge of the table to break the flaps. There were about eight flaps on each side of the paper. He had to press "as hard as [he] could," using his body weight, to break the flaps evenly. T. 61, 63. After doing this for three days, "working as quickly as possible," he was given two helpers "for the second unit." He testified the helpers were not able to break the flaps using their hands and body weight. They had to use screwdrivers and hammers. T. 62. He was not able to use any tools because he would have had to use them with his dominant right hand and the work would have exceeded his restrictions. T. 63.

Petitioner testified that, on March 10, 2017, he was working alone again, on the third unit, performing the same task. As he pushed down on a flap, using his left palm, he felt a pop and stinging sensation in his left shoulder. T. 64. He tried to resume working but was not able to do so. T. 64. He went to the office and reported his injury to three people: John Beyers, a supervisor, "Phil," the quality control superintendent and "another lead person" whose name he was not sure of. T. 66. Beyers completed an accident report the same day. T. 65. Beyers gave Petitioner four ice packs to apply to his left shoulder. Petitioner testified he did not perform any additional work that day. T. 65-66.

Petitioner returned to Dr. Tonino on March 13, 2017. T. 66. The doctor noted that, on March 10th, Petitioner "had another injury to his left shoulder when he was moving some materials and felt a pop and immediate stinging in his left shoulder." He also noted that Petitioner "took Vicodin with no improvement." On examination, the doctor noted elevation to about 120 degrees bilaterally, some pain with rotator cuff testing and some pain with resisted testing of the left biceps. He suspected a left labral tear. He recommended an MR arthrogram of the left shoulder and took Petitioner off work. He informed Petitioner he might require left shoulder surgery. PX 2, p. 538. T. 66-67.

The MR arthrogram, performed on April 4, 2017, showed a supraspinatus tendon tear with an articular-sided tear extending into the intrasubstance delamination and a full-thickness tear extending from the intrasubstance tear to the bursal surface. The radiologist noted no biceps or labral abnormalities. PX 2, pp. 550-551.

On April 10, 2017, Dr. Tonino noted ongoing left shoulder symptoms. He reviewed the MR arthrogram with Petitioner and recommended surgery, indicating Petitioner might need a biceps tenodesis as well as a rotator cuff repair "based on what he had in his right shoulder." PX 2, p. 553. PX 9, Exhibit 9. T. 67.

On June 8, 2017, Dr. Tonino noted that Petitioner remained symptomatic and had not received approval for the recommended left shoulder surgery. On re-examination, he noted pain with resisted palmar abduction with rotator cuff testing. He directed Petitioner to remain off work pending surgery. PX 2, p. 554.

At Respondent's request, Dr. Giannoulias examined Petitioner a fourth time on July 11, 2017. In his report, he indicated that Petitioner described feeling a pop and injuring his left shoulder on March 10, 2017, while tearing a box apart. He also indicated that Petitioner denied having any left shoulder problems prior to that incident. He reviewed the left shoulder MRI images, the Form 45 concerning the left shoulder injury and Dr. Tonino's recent records.

On left shoulder examination, Dr. Giannoulias noted crepitation with abduction and internal rotation, pain with resisted elevation, weakness at 4-/5 and positive Neer's and Lachman's.

Dr. Giannoulias diagnosed Petitioner as having a full-thickness left rotator cuff tear. He attributed this injury to the work accident of March 10, 2017, noting that "no other injury occurred from either the medical records or the examinee's history." He described the tear as acute, based on the MRI images. He characterized the treatment to date as reasonable and necessary. He agreed with Dr. Tonino's recommendation of a left rotator cuff repair. He found Petitioner capable of working so long as he avoided lifting, pushing or pulling more than 5 pounds or performing any overhead work with his left shoulder. He attributed the need for these restrictions to the March 10, 2017 accident. RX 5.

On July 11, 2017, Dr. Tonino noted ongoing left shoulder symptoms. He indicated he was awaiting authorization of the previously recommended surgery. PX 2, p. 555.

On July 28, 2017, Dr. Giannoulias issued a supplemental report, after reviewing surveillance video footage obtained on April 20 and 22, 2017 and certain Facebook photographs. He indicated that the video merely showed Petitioner walking. To him, "it did not appear that [Petitioner] was doing anything substantial outside of his restrictions with his left shoulder." He stated that the opinions he expressed in his last report were unchanged. RX 5.

Petitioner's counsel filed a 19(b) petition and petition for penalties and fees on August 28, 2017. PX 9.

On August 31, 2017, Dr. Tonino noted [apparently incorrectly] that surgery had "finally been approved." He reiterated that there might be biceps as well as rotator cuff involvement. PX 2, p. 556.

Petitioner testified he wants to undergo the left shoulder surgery recommended by Dr. Tonino. He has received no temporary total disability benefits since the March 10, 2017 accident. He has not undergone any conservative care, such as therapy, for his left shoulder. T. 68-69.

On September 26, 2017, Dr. Giannoulias issued a supplemental report, after reviewing Dr. Tonino's most recent records, the left shoulder MR arthrogram and surveillance videos from April and May 2017. Dr. Giannoulias agreed with Dr. Tonino that the left shoulder MR arthogram showed a full-thickness rotator cuff tear. He also agreed with Dr. Tonino's recommendation of a left rotator cuff repair. He indicated the videos added nothing to his opinions since they showed no engagement of the left shoulder. He changed his previous causation opinion based on what he perceived as a "discrepancy in regards to the history." Specifically, he concluded that, because Petitioner had told him at the last examination that he had no left shoulder pain before the March 10, 2017 accident, and because the records showed otherwise, the left rotator cuff pathology was "a manifestation of a pre-existing condition." He indicated that, "regardless of causation," Petitioner required no restrictions with respect to the left shoulder. RX 25.

On September 27, 2017, Respondent issued a check in the amount of $5,326.88. This check represents a permanency advance. RX 9(a).

Respondent filed a response to Petitioner's penalties and fees petition on October 10, 2017. RX 27.

Under cross-examination, Petitioner acknowledged injuring his left hand on January 16, 2005, while working for Flying Food Fare. A cart fell onto his hand. He required surgery and has six screws in the palm of his left hand. He did not injure any other body parts. T. 69.

Petitioner acknowledged working between his March 26, 2014 accident and his December 2014 right shoulder surgery. T. 70. Following the surgery, he returned to work in January 2015, after Dr. Tonino released him to work with no use of the right arm. T. 71. At that point, he worked in Respondent's quality department. When he returned to Dr. Tonino on February 19, 2015, he told the doctor Respondent was making him perform heavy work. T. 71. The doctor took him off work. The doctor told him to avoid any activities involving significant use of his arms. He followed this advice in the spring and summer of 2015. [At this point in the hearing, Petitioner was shown a portion of surveillance video obtained by Respondent on July 4, 2015. This portion shows Petitioner washing a vehicle. A 20-second segment shows Petitioner using his left hand to scrub a wheel and his right hand to lean against the vehicle. Another segment shows the reverse. T. 75-76. At another point, he uses his left arm to reach overhead to clean the top of the vehicle. He also climbs up on the vehicle to use his right arm to reach out from shoulder level. At another point, he carries a bucket which he testified contained only soap and no water. T. 78. Later in the video, he reaches overhead to use a pressure washer and uses both arms to wipe down the vehicle. T. 78-79.]

Petitioner testified he was not subject to any restrictions with respect to his left arm as of 2015. T. 80.

Petitioner testified he returned to light duty in May 2015. He acknowledged he never asked Dr. Tonino whether he could perform one-handed work. T. 81. He kept advising the doctor that Respondent was not accommodating his restrictions. T. 81.

Petitioner testified he typically travels to Mexico at the end of each year, for the holidays. He did not have to change the date of a Section 12 re-examination due to this travel. It was Respondent that kept changing the schedule of the appointment. T. 83.

Petitioner was not sure whether Respondent offered him light duty in January 2016. He did return to work in February 2016. T. 83. At that point, he was assigned to stacking and restacking in the quality department. He also had to go around the facility to check on broken glass, paint quality, etc. T. 84. Respondent told him he could work at his own pace while stacking and restacking but sometimes the customer needed the order as soon as possible, which meant he "had to work faster." T. 84. Respondent did not advise him to stop working if he experienced symptoms. To the contrary, Respondent told him to keep working, saying "you still have one good left arm." T. 84. Some of the light duty he performed consisted of walking around the facility, checking on tooling and measuring tapes with a ruler. T. 85. He agreed this work was not strenuous. T. 86. He also opened a cabinet to check to see whether chemicals and tools were tagged. This was also not strenuous. T. 87. With respect to the stacking and restacking, there was never a time when he simply monitored other workers performing this activity. He was always physically involved in this work. He was able to do this work one-handed. The dusting and cleaning he performed took place "maybe two times a week." He used his left hand to do this work. It would take the entire shift because there are a lot of pipes in the facility. T. 88. With respect to the "breaking flaps" job, Respondent did not tell him he could stop whenever he felt the need to. The job had to be done as quickly as possible. T. 90-91. The ladder he used while putting tubes in slots had wheels. T. 92. He spent most of his light duty time sitting, waiting for assignments. He would ask his supervisor for work. T. 92. During each shift, he was allowed to take a 20-minute lunch break, two 10-minute breaks and one 5-minute break, per union rules. T. 93.

At this point in the hearing, Respondent's counsel showed various job-related videos. Petitioner does not appear in these videos. Petitioner testified that Image 3752 shows the sorting area where he performed stacking and restacking. The bundles he worked on were composed of "mixed sheets," i.e., pieces of paper of different sizes. He could not always flip each sheet. He could do some of the work one-handed, but it depended on the size of the sheet he was dealing with. T. 100. Petitioner testified that Image 1629 shows a worker breaking down flaps. Petitioner testified the video makes the job look easy because the worker is breaking flaps on paper that was not nicked. In contrast, he worked on paper that was nicked, meaning it had been cut into to prevent jamming. He agreed it would not take much force to break flaps on paper that was not nicked. T. 104. He attributes his March 10, 2017 accident to working on paper with "heavy nicking." T. 105. Image 1631 shows a full sheet of tabbed paper. Petitioner testified it is not easier to break flaps or tabs on one sheet at a time. It is actually easier to work on several sheets at a time. If you just take one sheet and try to bend the flaps, "the whole edge" bends in. T. 105-106.

After looking at RX 19, consisting of two forms charting the tasks he performed during two weeks in September and October 2016, Petitioner agreed the tasks were not strenuous. T. 112.

Petitioner acknowledged telling Dr. Giannoulias in September 2017 that he did not have left shoulder symptoms before the March 10, 2017 accident. It was his understanding, based on a letter he received, that the doctor had received all of the information he needed. T. 113. His left shoulder symptoms began in 2015. He saw Dr. Tonino for his left arm in September 2016 and denied any specific accident. T. 113-114. After the March 10, 2017 accident, he felt a pop and stinging in his left shoulder. He was not able to work after the accident. He went home and took a Vicodin. Later that night, his wife threw him a surprise birthday party. T. 115. He identified one of the photographs in RX 20 (page 2) as a photograph of him holding his baby daughter. This photograph was taken late at night on March 10, 2017. His wife was behind him, holding his daughter up. T. 116.

Petitioner testified he has not worked since March 2017. He has not looked for work elsewhere because he is supposed to be employed by Respondent. T. 117. During the times he performed light duty for Respondent, he would sometimes ask to stop due to symptoms. He was not always allowed to stop. Sometimes the customer needed the product and he had to keep working. T. 117-118.

Petitioner testified he has had no right shoulder treatment since December 2016. T. 118.

On redirect, Petitioner testified that Respondent changed the date of a Section 12 re-examination to a day when he was already scheduled to be off for vacation. T. 118. He notified human resources of this since, if he did not take the vacation day as scheduled, he would lose his pay for that day. T. 119. Phil was the only person who gave him light duty assignments. T. 119. During down time, when he was between assignments, he would repeatedly ask Phil and Barbara, Phil's assistant, for work. T. 120. He did not decline any assignments other than the glue removal assignment. T. 121. The party his wife threw for him took place on the night of March 10, 2017. At that time, his daughter was one year old and weighed about ten pounds. He carried her that night for no more than ten to fifteen seconds. He did not lift anything else that night. T. 121-123.

Under re-cross, Petitioner testified the ladder shown in the photographs marked as RX 26, A through E, is not the ladder he used. The ladder he used was eight feet tall. It had wheels. T. 123-124.

Barb Quiroz testified on behalf of Respondent. Quiroz testified she has worked for Respondent for almost ten years. She handles "hard cards," or orders, and customer complaints. She also keeps track of production die cut. T. 128-129.

Quiroz testified she knows Petitioner. She oversaw the light duty work Petitioner performed between 2015 and 2017. T. 129. She gave assignments to Petitioner 90% of the time. T. 131. She and Petitioner worked from 7 AM to 3 PM. Her cubicle was about ten steps away from the desk where Petitioner worked. She could see Petitioner sitting at his desk because the walls of her cubicle were not high. T. 131. Between 2015 and 2017, Petitioner's light duty tasks varied. He put "hard cards" in order, oversaw track numbers, took "low tags" to the office and made lists of workers who performed certain tasks. He also performed audits once a day. This involved walking around while carrying a clipboard and writing serial numbers. He also checked the pH levels once a month. This involved holding a small cup and opening a cabinet door. The audits and pH checks were not strenuous. T. 135. Petitioner also performed sorting. When customers returned paper products that were defective, he separated those products into stacks. The heaviest item he might have handled while sorting was a three-shelf Frito display box that maybe weighed two pounds. T. 136. Once monthly, Petitioner might have been given a rag and told to dust down surfaces, including railings. T. 137. This was not strenuous. Quiroz had no recollection of Petitioner using an industrial mop or broom. T. 138. Petitioner also used a knife to cut bands and peeled shrink wrap off bundles. This was not strenuous. Petitioner also broke flaps on craft boxes. There were two flaps on each side of these boxes. If the "nicks" on the boxes did not break through, you would break the flaps manually. The flaps were not big. No one used tools to break them because, nine times out of ten, that would have caused damage to the box. T. 139-140. Petitioner was told to use his own judgment as to how many to break at one time. Petitioner knew his limitations. "We didn't go out there and watch him the whole time." T. 140. She told him to work at his own pace and take breaks as needed. He was not required to meet any quotas or work at a set pace. T. 142.

Quiroz testified Petitioner spent about an hour or two each day clearing up used Mylar sheets. This involved going to the centers where Mylar was used, rolling a cart to the label room and sliding

tubes into racks. Petitioner was not required to work overhead while doing these tasks. Wheeled ladders were available to him. Pushing one of these ladders was like pushing an empty stroller. Quiroz testified that the photographs marked as RX 26, A through E, show Mylars on racks and a 2-step ladder. T. 145-146.

Quiroz testified that Petitioner spent most of his light duty time in an office, where he used his cell phone or simply "chilled." T. 147.

Quiroz testified she was familiar with Petitioner's restrictions. Petitioner was never asked to exceed those restrictions. The job videos accurately show the light duty tasks Petitioner performed. If Petitioner complained of symptoms, he was not told he had to keep working. Petitioner did not turn down assignments. T. 148.

Under cross-examination, Quiroz testified that Phil Sopicki is Respondent's quality control manager. Sopicki is her boss. Sopicki assigned tasks to Petitioner in her absence. T. 150-151. An upper manager, Mark Welk, is the person who gave her the job of overseeing Petitioner's light duty. When Petitioner performed sorting, he went through boxes to check for defective products. The boxes were bundled ten percent of the time. They were on skids that were 48 inches tall or lower. She has performed sorting but is not sure of the weight of the heaviest bundle. While Petitioner was on light duty, he both observed and performed stacking. T. 153. Petitioner was a good employee. He was helpful to her. He took on all tasks that were assigned to him. Petitioner's assignments emanated from the quality control department but he traveled to other areas to perform those assignments. T. 154.

Quiroz testified she is not familiar with Respondent's "temporary transitional work schedule." She identified the two documents in RX 19 as forms that light duty employees completed and turned in. Phil would sign off on these forms. She could not recall signing off on them. T. 155-156.

On redirect, Quiroz testified that, if an order was banded, it was necessary to cut the band off before removing defective products. She described the bands as "real thin" and made of plastic. T. 158. There were "nine stacks of tens" in each layer. T. 159. Petitioner used his own judgment as to how much weight to lift at any one time. T. 159, 161. Petitioner did not lift anything that weighed more than 5 pounds. T. 161. One box could weigh one pound. No tasks in the quality department involved steel pipes. T. 161.

Emilio Diaz also testified on behalf of Respondent. Diaz testified that Respondent makes corrugated paper and boxes as well as "litho displays." T. 165. He has been Respondent's area manager for two or three years. He oversees, automotons, gluers and safety-related issues. Before that, he was a maintenance manager. That job involved repairing and maintaining the machines and facility. T. 164.

Diaz testified he knows Petitioner. T. 165. Petitioner used to work as a "Bobst" operator for Respondent. He and Petitioner did not work in the same department. T. 166. He (Diaz) used to operate a "Bobst" machine. The job involved setting up jobs and dies according to customers' specifications and running product through the machine. A forklift operator brought materials to the "Bobst" operator. T. 166-167.

Diaz testified he has previously seen RX 28, an analysis of the "Bobst" operator job. T. 168. The job functions and machinery and tools listed on the first page of RX 2 are accurate. The physical demand levels listed on the second page are "pretty much" accurate but some of the percentages are off. T. 169.

A "Bobst" operator spends 1 to 10%, not 30%, of his time kneeling. The 60% assembly percentage is "too high." An operator has to assemble a box only once for each job. The statement as to the heaviest weight lifted, i.e., 25 to 30 pounds, is accurate. The die cast weight range, i.e., 15 to 50 pounds, is also accurate. However, there are two types of "Bobst" machines: small and large. Some of the lifting-related statements on the last page are not accurate. It is not accurate to say an operator never lifts anything weighing less than 10 pounds because "some orders are really small." It could be accurate to say an operator spends 3 to 4 hours per day lifting between 25 and 50 pounds. The carrying-related information, i.e., that an operator spends 1 to 2 hours per day carrying 25 to 50 pounds is "very close" in terms of accuracy.

Diaz had no recollection of Petitioner being assigned to scrape glue off of a pipe around April 2016. Glue is used in the automaton department and with the "posting gluers." T. 173. Diaz testified he took over the automaton department in early 2016. He does not recall Petitioner being there. He mainly works from 7 AM to 3 PM but sometimes works overtime. T. 173-174.

Under cross-examination, Diaz testified he did not create RX 28. He first saw this document a week before the hearing. RX 28 is "very close" to but not the same as the document that is used at Respondent's plant. T. 175. He does not know the weight of a flat bed plate. The plate is on a wheeled track. T. 176-177. It was not directly his job to assign tasks to Petitioner. T. 177.

As noted above, Respondent offered into evidence Petitioner's "temporary transitional work schedule" for the weeks of September 26, 2016 and October 24, 2016. The schedule for the week of September 26th bears Petitioner's notes, initials and signature. The schedule for the week of October 24th also bears the initials of Phil Sopicki. On one day, September 27, 2016, Petitioner was off work due to having to go to court. On the remaining nine workdays, Petitioner indicated he performed various tasks, including checking linear tape, cleaning up a "hold" area, unstocking and restocking skids, putting "hard cards" away, discarding old "mylars" and marking print plates. Petitioner did not describe the precise physical demands of these tasks on the forms. RX 19.

Arbitrator's Credibility Assessment Relative to Both Cases

Petitioner came across as a hard-working individual. The Arbitrator finds credible his testimony that some of the work Respondent directed him to perform was beyond his restrictions. Respondent's witness, Barbara Quiroz, conceded that Petitioner received approximately 10% of his assignments from her boss, Phil Sopicki. Sopicki did not testify. Quiroz also conceded it was Sopicki who signed off on Petitioner's "temporary transitional work schedules" (RX 19). She further acknowledged that Petitioner performed some of his assigned duties outside of the quality control department where she was based. She described Petitioner as a good employee who was helpful to her.

It is the detailed nature of Petitioner's testimony about his assignments that the Arbitrator finds compelling. For example, Petitioner took issue with the portion of Respondent's job video (RX 18, Image 1629) that purportedly showed the "flap" job. He testified the activity looked "easy" on the video because the flaps were not "nicked." The flaps he broke down were "nicked" and the material was heavier. He described a specific three-day interval during which he worked alone, breaking down flaps quickly because of a "time crunch" with the underlying order. Quiroz indicated Petitioner was always allowed to work at his own pace but that testimony is in conflict with Petitioner's testimony that, after the first three days, during which he worked on 7200 pieces, Respondent assigned two people to help him. Those two people ended up having to use hammers or screwdrivers to break down the flaps. T.

62-63. Petitioner could not work in this fashion due to his one-handed restriction. Petitioner's description of the "tubes" job was also detailed and persuasive. While the tubes were not at all heavy, as Petitioner readily conceded, they were 6 to 8 feet long and had to be placed in specific slots. Petitioner testified the slots were above shoulder level. It makes sense to the Arbitrator that Petitioner could have taxed his left arm while working off of a ladder to guide each tube into the correct slot. It also makes sense that Petitioner could have taxed both arms while moving and unbundling sheets of "E-Flu" paper. Neither of Respondent's witnesses contradicted Petitioner's testimony as to the special qualities and weight of this paper.

On only one occasion did Respondent's examiner note any symptom magnification. He described that magnification as "insignificant," given that Petitioner had recently undergone surgery.

Petitioner's testimony concerning his March 10, 2017 accident was also detailed and credible. He testified he provided three supervisors of the accident the same day it occurred. He identified two of these supervisors by name. Neither of them appeared at the hearing. Additionally, the history Dr. Tonino recorded on March 13, 2017 is consistent with Petitioner's account of the accident.

Respondent contends Petitioner was not forthright with Dr. Giannoulias with respect to the timing of the onset of his left shoulder symptoms. In support of this contention, Respondent points to the doctor's re-examination report of July 11, 2017, in which he indicated that Petitioner denied having any left shoulder pain prior to the March 10, 2017 accident. When Petitioner was asked about this at the hearing, he indicated he believed Dr. Giannoulias had reviewed all of his records, since he had already seen the doctor several times. The Arbitrator notes that, when Dr. Giannoulias re-examined Petitioner in October 2016, he was clearly aware that Petitioner's shoulder symptoms were now bilateral. In fact, he specifically addressed causation vis-à-vis the left shoulder. It makes no sense to the Arbitrator that Petitioner would have denied having left shoulder pain before the March 10, 2017 accident when the doctor had already addressed his left shoulder complaints months earlier. The Arbitrator finds the doctor's final opinions of September 26, 2017 (RX 25) persuasive only to the extent that she agrees Petitioner had left shoulder complaints before the March 10, 2017 accident. The Arbitrator attributes these complaints to overuse, secondary to the restrictions relating to the right shoulder, and work conditioning. See further below. Dr. Giannoulias lost credibility, from the Arbitrator's perspective, when he opined, in his final report, that Petitioner requires no left shoulder restrictions despite needing a left rotator cuff repair. RX 25.

Arbitrator's Conclusions of Law in 14 WC 34638

Did Petitioner establish causal connection?

The Arbitrator finds that the undisputed accident of March 26, 2014 resulted in a right shoulder condition that required surgery and revision surgery. The Arbitrator further finds that Petitioner also established causation as to the need for a third surgery, i.e., a right biceps tenodesis, as recommended by Dr. Tonino. Petitioner declined to undergo this surgery, not unreasonably. The Arbitrator further finds that Petitioner established causation as to the need for the permanent restrictions that Dr. Tonino imposed following the valid functional capacity evaluation. Respondent's examiner agreed with the need for permanent restrictions. The Arbitrator assigns no weight to the evaluation-related opinions rendered by Rachel Viel. Viel criticized the evaluator for allegedly failing to use a "legitimate testing method" to determine validity. RX 16. The Arbitrator finds this criticism ironic, given that the evaluation was performed at a facility of Respondent's selection. The Arbitrator assigns some weight to

Diaz's testimony as to the demands of a Bobst operator job but notes the following: 1) Diaz took issue with some aspects of the job description; 2) Diaz conceded there are two types of Bobst machines, i.e., small and large; and 3) it is clear to the Arbitrator, based on Petitioner's credible testimony as to the mechanism of the March 26, 2014 accident, that in the event a plate "derailed," a Bobst operator would have to quickly deal with a weight ten times as heavy as 40 pounds. The job description is deficient in that it does not contemplate the type of situation Petitioner encountered on March 26, 2014.

In rendering the above causation-related opinions, the Arbitrator relies on Petitioner's credible testimony as to the mechanism of injury, Petitioner's credible denial of any prior right shoulder problems, the medical records and the causation-related opinions voiced by Dr. Tonino and Dr. Giannoulias.

The Arbitrator also finds that Petitioner established causation as to some left shoulder and neck complaints that first surfaced in 2015. The Arbitrator attributes these complaints to overuse resulting from the various restrictions Dr. Tonino imposed with respect to Petitioner's use of his dominant right arm. The Arbitrator recognizes that Dr. Giannoulias did not believe Petitioner's quality department tasks could have caused left-sided symptoms. Dr. Giannoulias based this opinion on job videos that Petitioner took issue with.

The Arbitrator further finds that the work conditioning Petitioner underwent in the fall of 2016 led to left arm and neck complaints that required treatment and imaging. In so finding, the Arbitrator relies on the work conditioning records and the notes of Laura Thometz, PA-C, Dorota Pietrowski and Dr. Tonino. Petitioner would not have required work conditioning but for his undisputed right shoulder injury. Respondent's examiner, Dr. Giannoulias, never opined that the work conditioning was unnecessary. Viel conceded it was reasonable for Petitioner to undergo work conditioning for two to four weeks.

Is Petitioner entitled to temporary total disability benefits?

In 14 WC 34638, Petitioner seeks three intervals of temporary total disability: September 29, 2014 through January 8, 2015, February 19, 2015 through March 10, 2016 and June 27, 2016 through December 19, 2016. Respondent disputed this claim at the hearing. Arb Exh 1. The parties agree Respondent paid certain temporary total disability benefits. Those payments are recorded in RX 9.

The Arbitrator notes that, with the exception of RX 19, an exhibit that covers only two one-week periods of employment, neither party offered into evidence any wage or employment records showing the dates Petitioner worked. Such records would have been very helpful. As it is, the Arbitrator is left with Petitioner's testimony, which was sometimes vague or conflicting as to the various dates he resumed working, and the medical records.

With respect to the first claimed interval, the Arbitrator finds Petitioner was temporarily totally disabled from December 2, 2014 (the date of the first right shoulder surgery) through January 8, 2015, a period of 5 3/7 weeks. Under cross-examination, Petitioner acknowledged that, after the March 26, 2014 accident, he continued working for Respondent until his surgery. Respondent is entitled to credit for the benefits it paid (at the rate of $739.87 per week) from December 2, 2014 through January 11, 2015. There was an overpayment during this period.

With respect to the second claimed interval, the Arbitrator finds Petitioner was temporarily totally disabled from February 19, 2015 through May 18, 2015 and again from July 20, 2015 (the date Dr. Tonino took Petitioner off work pending revision surgery) through February 7, 2016. Respondent contends that Petitioner could have performed restricted work after July 20, 2015 but, in the Arbitrator's view, Dr. Tonino had a valid basis for taking Petitioner off work as of that date, given his examination findings and suspicion of a recurrent labral tear. The Arbitrator declines to award benefits from May 19, 2015 through July 19, 2015, as requested by Petitioner, because Petitioner failed to prove he was off work during this period. There is no evidence Petitioner saw Dr. Tonino between April 27, 2015 and July 6, 2015. On July 6, 2015, Dr. Tonino noted that Petitioner had resumed working following a "second opinion," presumably referring to Dr. Giannoulias's re-examination of April 2015. Respondent paid temporary total disability benefits through May 18, 2015.

With respect to the third claimed interval, the Arbitrator finds Petitioner was temporarily totally disabled from June 27, 2016 (the date Dr. Tonino directed him to stay off work while undergoing work conditioning) through September 22, 2016 (the date Dr. Tonino released him to restricted duty). Respondent paid no temporary total disability benefits during this period. RX 9. The Arbitrator finds it reasonable for Dr. Tonino to have kept Petitioner off work while engaging in work conditioning. Dr. Giannoulias and Vial agreed with the need for work conditioning. Petitioner encountered two legitimate problems while attempting to pursue work conditioning: 1) he changed facilities due to ATI being closer to his house; and 2) he began experiencing left arm and neck problems after switching to ATI, which prompted Dr. Tonino to place the regimen on hold and order various consultations and tests.

Is Petitioner entitled to reasonable and necessary medical expenses?

In 14 WC 34638, Petitioner claims various unpaid medical bills. Arb Exh 1. PX 2(a). PX 8(a).

Petitioner offered into evidence a large collection of bills from Loyola University Medical Center. PX 2(a). These bills relate to treatment provided between September 8, 2014 and December 19, 2016. Many of the bills show $0 balances. Some, including bills for therapy and imaging performed in 2016, show balances. Respondent asserts Petitioner "is not entitled to any allegedly unpaid medical bills." Respondent offered into evidence a lengthy print-out of the medical payments it made in this case. RX 10. Petitioner raised no objection to RX 10. Petitioner's counsel made no effort to specify which of the many Loyola bills remain unpaid and Respondent's counsel made no effort to coordinate his client's payments with the claimed bills.

The Arbitrator has previously found that Petitioner established causation as to a right shoulder condition that required surgery and as to left shoulder and cervical spine complaints that required imaging and work-up. The Arbitrator further finds that the care underlying the bills in PX 2(a) was reasonable and necessary. In none of his many reports did Respondent's examiner opine that Petitioner's care was unreasonable or excessive.

The Arbitrator awards Petitioner the bills in PX 2(a), subject to the fee schedule and with Respondent receiving credit for the payments reflected in RX 10.

Petitioner also claims a $3,500.00 bill from Oak Brook X-ray and Imaging. This bill relates to the cervical spine MRI of November 8, 2016 (PX 8(a)). It does not appear on Respondent's payment print-out. As noted above, the Arbitrator has previously found that Petitioner established causation as to

cervical spine symptoms that warranted imaging and evaluation. The Arbitrator awards Petitioner the Oak Brook X-ray and Imaging bill in the amount of $3,500.00, subject to the fee schedule.

Is Petitioner entitled to prospective care?

Petitioner placed prospective care at issue in this case but, as of the hearing, the only pending treatment was left shoulder surgery recommended by Drs. Tonino and Giannoulias. See the Arbitrator's prospective care award in 17 WC 7694, below.

Is Respondent liable for penalties and fees?

In 14 WC 34638, Petitioner seeks penalties and fees on both temporary total disability benefits and medical expenses. With respect to the former, the Arbitrator notes that when Respondent paid Petitioner benefits, it paid them at the rate of $739.87 per week. RX 9. At the hearing, the parties stipulated to an average weekly wage of $1,083.56 in both cases. Arb Exh 1-2. This wage gives rise to a slightly lower temporary total disability rate of $722.37. The Arbitrator has considered this, along with the total payments reflected in RX 9 and RX 9(a), the underlying disputes and the uncertainty as to some of the dates Petitioner was off work, in evaluating Respondent's liability for penalties and fees. The Arbitrator again notes she was not provided with time cards or payroll records. While an employer bears the burden of showing it acted in an objectively reasonable manner in disputing the payment of temporary total disability benefits, once penalties and fees are placed at issue, the claimant has the initial burden of proving when he was off work due to his injury.

The Arbitrator finds that Respondent is liable for Section 19(l) penalties in the amount of $5,070.00 (169 days x $30/day) based on its late payment of temporary total disability benefits covering the post-operative period October 21, 2015 through December 20, 2015. Respondent did not issue these benefits until April 7, 2016. RX 9. There was a delay of 169 days between October 21, 2015 and April 7, 2016. Section 19(l) penalties are in the nature of a mandatory late fee. Oliver v. IWCC, 2015 IL App (1st) 143836WC.

The Arbitrator further finds that Respondent is liable for additional Section 19(l) penalties in the amount of $4,930.00 (the balance of the statutory $10,000 maximum) based on its failure to pay any temporary total disability benefits for the period June 27, 2016 through September 22, 2016 prior to the hearing of January 12, 2018.

The Arbitrator declines to award penalties and fees on the awarded medical bills because Petitioner offered no evidence of a "written demand for payment" of any of these bills, as required by Section 19(l). Petitioner's penalties/fees petition simply sets forth a generic demand for payment of medical expenses. PX 9.

Arbitrator's Conclusions of Law in 17 WC 7649

Did Petitioner sustain an accident on March 10, 2017 arising out of and in the course of his employment? Did Petitioner provide timely notice of said accident?

The Arbitrator, having considered Petitioner's credible and unrebutted testimony along with Dr. Tonino's note of March 13, 2017 and the Facebook photographs (RX 20) offered by Respondent, finds that Petitioner sustained an accident on March 10, 2017 arising out of and in the course of his

employment. Petitioner testified the accident occurred while he was on Respondent's premises, performing a work-related task (i.e., removing flaps from paper products). The two witnesses who testified for Respondent did not refute Petitioner's account of the accident.

The Arbitrator further finds that Petitioner provided timely notice of the accident. Petitioner credibly testified he notified three supervisors/managers of the accident the same day it occurred. He further testified that one of these individuals completed an accident report. That testimony is buttressed by Dr. Giannoulias's reference to a Form 45 "that did confirm an injury on March 10, 2017." RX 5. None of the three individuals Petitioner identified appeared at the hearing.

In finding accident and timely notice, the Arbitrator has considered the Facebook photographs offered by Respondent. These photographs show Petitioner at his surprise birthday party on the night of March 10, 2017. One shows Petitioner holding his one-year-old daughter but he is holding her on the right side of his body. It appears to the Arbitrator he is using his left hand/arm only for support. Petitioner testified the photograph was taken after he took a Vicodin that provided pain relief. He also testified he carried his daughter for only 10 to 15 seconds and did not lift anything else that night. The photograph does not undermine Petitioner's credible account of the accident.

Did Petitioner establish a causal connection between the March 10, 2017 accident and the need for the left shoulder surgery recommended by both Dr. Tonino and Respondent's examiner?

The Arbitrator finds that the accident of March 10, 2017 was a cause of Petitioner's current left shoulder condition of ill-being and contributed to the need for the left rotator cuff repair recommended by both Dr. Tonino and Dr. Giannoulias, Respondent's examiner. In so finding, the Arbitrator relies on the following: 1) Petitioner's credible testimony as to the mechanics of the accident; 2) Petitioner's credible testimony that he experienced a pop and a stinging sensation in his left shoulder after the accident; 3) the history that Dr. Tonino recorded on March 13, 2017; 4) the results of the December 2016 left shoulder MRI and April 2017 left shoulder MR arthrogram; and 5) Dr. Giannoulias's original opinion that the accident caused the full-thickness left rotator cuff tear demonstrated on the MR arthrogram. RX 5.

The Arbitrator recognizes that Petitioner experienced left shoulder symptoms at various times prior to March 10, 2017. The earliest mention of such symptoms was in February 2015. Left-sided symptoms are also documented in the 2016 work conditioning records. The Arbitrator also recognizes that Dr. Giannoulias did not link those symptoms to Petitioner's quality department job activities when he re-examined Petitioner in October 2016. The Arbitrator notes Dr. Giannoulias based this opinion, at least in part, on job videos which Petitioner described as inaccurate, in terms of the specific tasks he performed and the materials he used.

In short, the Arbitrator views Petitioner's current left shoulder condition as multi-factorial, with pre-accident work duties, work conditioning and the March 10, 2017 accident contributing to the condition. In Illinois, it has long been held that an accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor. Sisbro, Inc. v. Industrial Commission, 207 Ill.2d 193, 205 (2003).

Is Petitioner entitled to temporary total disability benefits?

In 17 WC 7694, Petitioner claims he was temporarily totally disabled from March 13, 2017 through the hearing of January 12, 2018. Respondent disputes this claim based on its accident and causation defenses. The Arbitrator has previously found that Petitioner established accident and causation. There is no dispute that Petitioner has a left rotator cuff tear and requires surgery. In his report of July 28, 2017, Respondent's examiner, Dr. Giannoulias agreed with Dr. Tonino's surgical recommendation but found Petitioner capable of very light duty with no lifting, pushing or pulling over 5 pounds and no overhead work using the left shoulder. RX 5. In his supplemental report, issued the same day, he indicated his opinions remained unchanged after reviewing surveillance videos from April 2017 (RX 12) and the March 10, 2017 Facebook photograph. RX 5. In his final report, issued September 26, 2017, he again found Petitioner to be a surgical candidate. The Arbitrator views Petitioner's causally related left shoulder condition as unstable. Interstate Scaffolding v. IWCC, 236 Ill.2d 132 (2010). The Arbitrator finds it reasonable for Dr. Tonino to have kept Petitioner off work since March 13, 2017, in light of the previous significant right shoulder problems, the permanent restrictions relative to the right shoulder and the need for left shoulder surgery. The Arbitrator gives no weight to Dr. Giannoulias's opinion that Petitioner requires no restrictions relative to his left shoulder even though he needs a left rotator cuff repair.

Is Petitioner entitled to reasonable and necessary medical expenses?

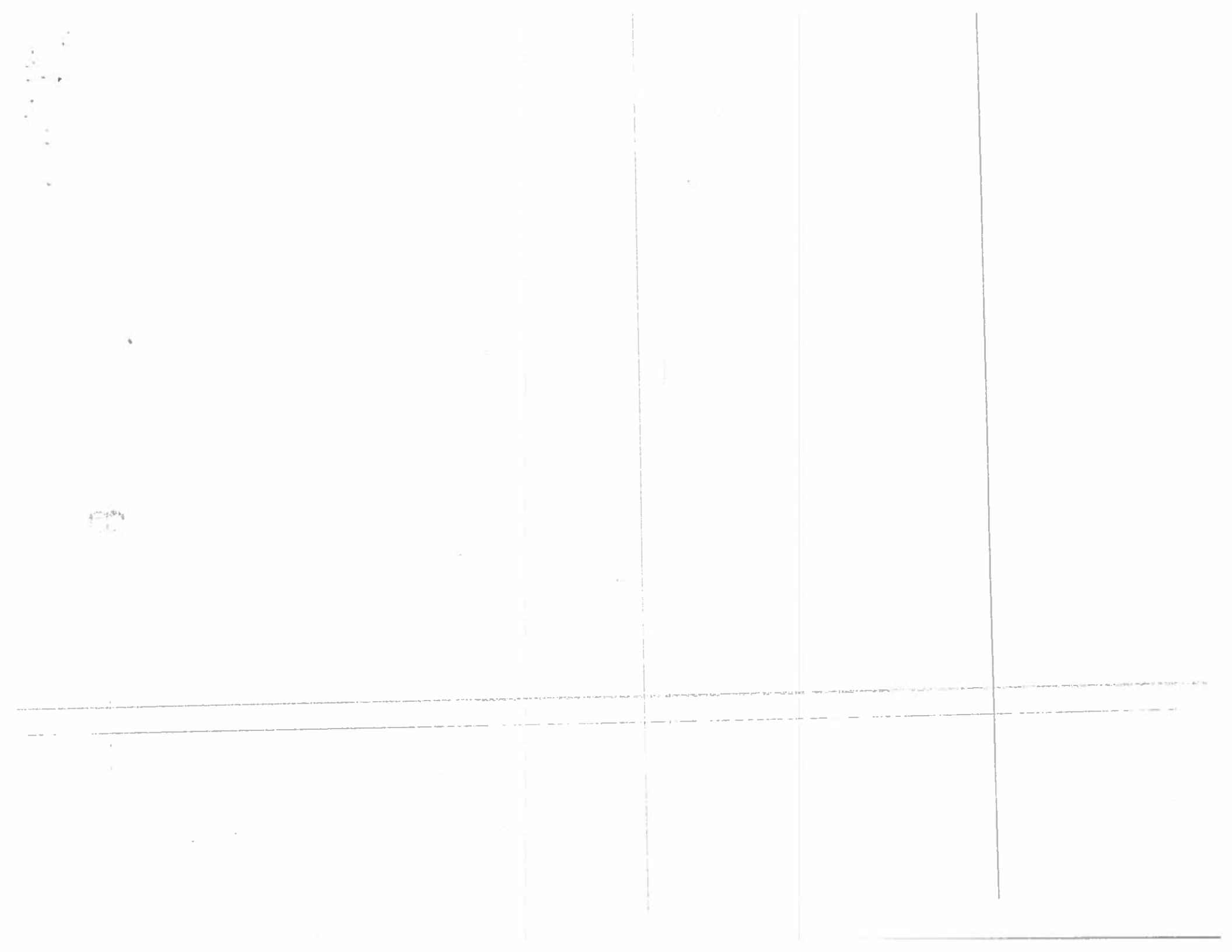
On the Request for Hearing form in 17 WC 7694 (Arb Exh 2), Petitioner indicated he was claiming bills in PX 2(a) [Loyola] and PX 8(a) [Oak Brook X-ray and Imaging]. These bills do not include charges for treatment rendered after the March 10, 2017 accident. The Arbitrator has previously awarded the bills in 14 WC 34638 [see above].

Is Petitioner entitled to prospective care?

The Arbitrator has previously found in Petitioner's favor on the issues of accident and causation. Drs. Tonino and Giannoulias agree that Petitioner has a left rotator cuff tear and requires surgery. The Arbitrator awards prospective care in the form of left shoulder surgery.

Is Respondent liable for penalties and fees?

The Arbitrator declines to award penalties and fees in 17 WC 7694. The Arbitrator does not view Respondent's accident and causation defenses as objectively unreasonable under all of the existing circumstances. Petitioner was working alone at the time of the March 10, 2017 accident, by his own admission. Moreover, Respondent had some basis, i.e., Quiroz and the "flaps" video/image, for questioning whether the task Petitioner was performing at the time of the accident could have given rise to the injury. The Arbitrator accepts Petitioner's account (i.e., that the video is inaccurate in that he was working with heavy, "E-Flu" paper and hurrying to meet a customer's demands) but is unable to find that Respondent acted vexatiously in relying on Quiroz and the video.



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Christopher Brennan
Petitioner,

vs.

NO: 16 WC 11666
18IWCC0436

City of Harvey
Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

This matter comes before the Commission on Respondent's motion to correct a clerical error in the Decision and Opinion on Review of the Commission filed October 23, 2017. 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 dated July 16, 2018, is hereby vacated and recalled pursuant to Section 19(f) for a clerical error contained therein.

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

DATED: SEP 18 2018
DLG/mw
045

David L. Gore

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
X add PPD pay out language	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Christopher Brennan,

Petitioner,

vs.

NO: 16 WC 11666
18IWCC0436

City of Harvey,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission herein affirms and adopts the Arbitrator's finding as to all issues. The Commission modifies only to add boilerplate language as to payment of the PPD award. ("Respondent shall pay the PPD accrued from April 9, 2016 to May 17, 2018 and shall pay the remainder of the award, if any, in weekly payments").

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 23, 2017 is hereby, otherwise, affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $721.66 per week for a period of 150 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the 30% loss of Petitioner's person as a whole. Respondent

18IWCC0436

shall pay the PPD accrued from April 9, 2016 to May 17, 2018 and shall pay the remainder of the award, if any, in weekly payments.

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

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

DATED: SEP 18 2018
o-5/17/18
DLG/jsf
045

David Gore

Stephen Mathis

Deborah Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BRENNAN, CHRIS
Employee/Petitioner

Case# **16WC011666**

CITY OF HARVEY
Employer/Respondent

18IWCC0436

On 10/23/2017, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 1.24% 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:

4262 ROMANEK & ROMANEK
DARON ROMANEK
ONE N LASALLE ST SUITE 425
CHICAGO, IL 60602

1295 SMITH AMUNDSEN LLC
GAIL A GALANTE
3815 E MAIN ST SUITE A-1
ST CHARLES, IL 60174

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

CHRIS BRENNAN
Employee/Petitioner

v.

CITY OF HARVEY
Employer/Respondent

Case # 16 WC 11666

Consolidated cases: ____

18IWCC0436

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 **MARIA S. BOCANEGRA**, Arbitrator of the Commission, in the city of **CHICAGO**, on **July 19, 2017**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

18IWCC0436

FINDINGS

On **June 30, 2014,** Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$69,209.40**; the average weekly wage was **$1,330.95**.

On the date of accident, Petitioner was **37** years of age, ***married*** with **1** dependent children.

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

Respondent shall be given a credit of **$25,731.99** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$25,731.99**. By stipulation, Respondent shall be given a credit for payments made pursuant to PEDA from 07/01/14 through 09/18/15. Respondent is entitled to a credit of **$4,121.44** under Section 8(j) of the Act for medical benefits paid.

ORDER

Respondent shall pay reasonable and necessary medical services of **$697.17**, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for any and all 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.

By stipulation, Petitioner received temporary total disability benefits of **$887.31/week** for **29 weeks**, commencing **9/19/15** through **4/8/16**, as provided in Section 8(b) of the Act. Respondent shall be given a credit of **$25,731.99** for temporary total disability benefits that have been paid. Respondent shall further be given a credit for payments made pursuant to PEDA from 07/01/14 through 09/18/15.

Respondent shall pay Petitioner permanent partial disability benefits of **$721.66/week** for **150** weeks, because the injuries sustained caused the **30%** loss of the person as a whole, as provided in Section 8(d)(2) of the Act

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

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

Signature of Arbitrator

10-23-17
Date

OCT 23 2017

18IWCC0436

FINDINGS OF FACT

Christopher Brennan ("Petitioner") testified that he worked for the City of Harvey ("Respondent") on June 30, 2014 as a lieutenant in the fire department. Petitioner began his employment with Respondent on November 15, 2005.

Petitioner testified that on June 30, 2014 he responded to a call and had been picking up from a structure fire when a tree limb came loose during a windstorm and struck Petitioner in the back of the head. The branch knocked the helmet from Petitioner's head and Petitioner fell to the ground on his knees. Petitioner did not lose consciousness, did not have any cuts and did not bleed as a result of being struck in the back of the head by this branch.

After being struck by this branch and falling to his knees, Petitioner put his helmet back on and finished off his work at the fire site. Petitioner continued to work after this incident when he responded to other calls for assistance, such as typical emergency responses for things like downed power lines.

On 6/30/14, Petitioner received medical attention at Ingalls Immediate Occupational Health in Flossmoor. The doctor at Ingalls Occupational Health discharged Petitioner that same day and allowed Petitioner to return to full duty without accommodation. Petitioner returned to work and his neck felt stiff and sore. A report was made that same date. Rx1.

Petitioner's shift ended on 7/1/14 at 7:00 a.m. and Petitioner testified that he left the firehouse around 7:30 a.m. Petitioner took Advil because of neck pain. On 7/1/14, Petitioner also saw doctors at Ingalls, who treated Petitioner for head contusion following being hit by a tree in the head at work. Rx2. He was diagnosed with a head injury and released to full duty work. Following this visit, Petitioner said he had a headache and a new onset of right shoulder pain. That same afternoon, Petitioner ran some errands with his wife and during that time Petitioner felt dizziness, electric shooting pain in his head and nausea. He later presented to Loyola's university clinic from home with complaints of acute onset of headache and shoulder pain. Px1, Rx3. Petitioner related his work accident, treatment and symptoms. Assessment was head injury. Petitioner went to the Loyola Immediate Care Center and had x-rays taken of his right shoulder and neck, along with a head CT scan. The doctor at Loyola took Petitioner off work from 7/1/14 and allowed him to return to work on 7/5/14. Px1.

On 7/8/14, Petitioner saw his primary doctor, Dr. Gregory Ozark at Loyola University Medical Center. Dr. Ozark took Petitioner off work until Petitioner felt headache-free for one week and diagnosed Petitioner with post-concussive syndrome. Px1. On 7/14/14, Petitioner returned to Dr. Ozark reporting ongoing headaches but he had slept good and felt a lot better. Petitioner was continued off work until Petitioner felt headache-free for one week. On 7/28/14, Petitioner returned to see Dr. Ozark and seemed to be getting better and then after a six (6) hour car trip and an attempt to exercise, Petitioner's headaches returned. Dr. Ozark prescribed Amitriptyline for headaches and referred Petitioner to a neurologist at Loyola University Medical Center.

On 8/17/14, Petitioner saw Dr. Holdridge, neurologist, at Loyola University Medical Center. Petitioner reported feeling a dull, achy sensation every day in his head, along with slight, intermittent nausea and exertion with being on his feet for more than a couple of hours. Petitioner felt it was chronic. Petitioner was referred for physical therapy for vestibular rehabilitation.

On 8/19/14, Petitioner began vestibular rehabilitation at Loyola University Medical Center. Therapy involved a general warm-up, balancing and strengthening exercises and neck or spine mobilization.

On 8/21/14, Petitioner's physical therapist reported that Petitioner had a constant headache that increased with activity and that his neck felt stiff, tight and tender. Petitioner explained that he had an increase in headache pain after walking in the zoo with his family for two hours.

On 9/19/14, Dr. Holdridge noted Petitioner's headaches had remained the same but Petitioner developed severe neck pain about three weeks prior during physical therapy and that neck pain has been constant since. Petitioner had numbness in both hands that came on sporadically. Petitioner continued to have dizziness.

Petitioner explained that he had constant, daily headaches that worsened with loud noises or bending. Petitioner also discussed with Dr. Holdridge that while at a recent wedding he had difficulty reading and focusing words and text. Thereafter, Petitioner's headache worsened throughout the day. Petitioner said he had never experienced an episode like this prior to the work accident. On 9/19/14, MRI of the neck showed mild, multi-level spondylosis without spinal cord compromise.

On 10/17/14, Petitioner returned to Dr. Holdridge and reported he continued to get dizzy after balance training during physical therapy. Dr. Holdridge also noted that chaotic noise and position remained very aggravating to Petitioner. Petitioner related that he skipped activities with his son because he felt that an increased heart rate for any consistent period of time caused him problems. Petitioner did report that his neck felt much better.

On 11/14/14, Petitioner returned to see Dr. Holdridge and reported he had begun to have periods during the day when he did not have headaches. However, noise and physical therapy exacerbated pain. Petitioner continued to have dizziness, especially after physical therapy and cognitive fatigue.

On 1/23/15, Petitioner saw Dr. Matthew McCoyd and said his main issue had become nightmares and he never had this problem the accident. On 1/23/15, Dr. Holdridge noted that Petitioner continued to have light-headedness, especially when Petitioner stood up quickly or during physical therapy and continued to have difficulty with balance, especially with his eyes closed and when he stood on one leg. Around this time, Petitioner went to see his niece in an ice show and for three days after the ice show the intensity of Petitioner's headaches increased due to noise. Petitioner said during this time, he continued to experience light-headedness, especially when Petitioner stood up quickly or during physical therapy.

On 3/26/15, Petitioner saw Dr. Jeffrey Kramer for an examination at the request of Respondent. Rx4. Dr. Kramer diagnosed Petitioner with post-concussion syndrome with chronic post-concussion headache and vestibular impairment. The doctor further found that the etiology of Petitioner's current condition was related to his work accident. Dr. Kramer found subjective complaints were supported by objective findings. Dr. Kramer concluded that Petitioner had yet to reach maximum medical improvement and that Petitioner would benefit from a change in his medications. Dr. Kramer determined that Petitioner could work sedentary duty, could not work on heights, could do desk work or light maintenance work but bending over or lifting above shoulder level should be limited to fifteen pounds.

Petitioner testified that during the week before 3/27/15, Petitioner had family in from Wisconsin for a day and he took his family to the Art Institute and socialized with them and the activities of that day wore Petitioner out and Petitioner felt as if he had been beaten by a baseball bat. Petitioner said he could not bend forward or pick things up from the ground without exacerbating his symptoms. Px1. Petitioner said he had no such problems

before the work accident. Petitioner was eventually prescribed Topamax to help control nightmares but Petitioner eventually discontinued this due to tingling.

On 5/8/15, Dr. Holdridge noted that Petitioner's head pain had not changed and continued to be located occipitally, bilaterally and radiated forward. Petitioner's headaches continued at the same daily pain level and more severe headaches continued to be triggered by noise and positional changes.

Dr. Holdridge noted Petitioner had not had any physical therapy since it was discontinued or terminated. Eventually, on 5/12/15, Petitioner resumed therapy after it was approved. Eventually, Dr. Holdridge changed Petitioner's medication to Bystolic. Px1. Bystolic had no effect on Petitioner's headaches. Petitioner testified he felt that the combination of Effexor and Amitriptyline helped reduce his nightmares and make them less frequent but Effexor did not eliminate Petitioner's nightmares. In June 2015, Petitioner informed Dr. Holdridge that when his headaches arrived, they came faster and stayed longer. Petitioner also noted that physical therapy helped him but at a slow rate. Petitioner reported that his headaches continued to intensify since the Elavil dosage had been decreased.

On 9/4/15, Petitioner testified that when he saw Dr. McCoyd, he had switched from Amitriptyline to Protriptyline and this worsened Petitioner's headaches. Petitioner stopped taking Bystolic because Bystolic made Petitioner overly dizzy with standing. There continued to be a positional nature to Petitioner's headaches because Petitioner's headaches worsened when Petitioner bent forward.

On 9/25/15, Petitioner saw Dr. Arthur Itkin, neurologist, at the request of Respondent. Rx5, Rx7. Impression was very mild concussion and subsequent sequalae of posttraumatic head injury due to the work accident. he felt Petitioner's complaints were entirely subjective but that is was not unusual in the case of post-concussive syndrome. The doctor felt most of Petitioner's disability related to his exertional headaches. He did not believe Petitioner was at MMI and that he would continue to improve in post concussive symptoms as he had with vestibulopathy.

On 10/26/15, Petitioner returned to Dr. McCoyd and complained of severe headaches, with noise still a significant contributor. The doctor summarized a normal neurologic exam. Diagnosis was post-concussion syndrome. The doctor found Petitioner compliant with all treatment to date but doubted whether any additional treatment would provide any benefit. On 11/4/15, Loyola psychiatric evaluation described extensive pre-existing history of depression and alcohol abuse disorder prior to the head injury. Px1, Px3. Diagnosis was PTSD, major mood disorder, anxiety (mild, recurrent) and sleep-wake disorder.

On 2/12/16, Petitioner returned to Dr. McCoyd, who noted ongoing headaches that remained throbbing and sharp. Dr. McCoyd prescribed a Medrol dose pack. Dr. McCoyd noted that Petitioner has headaches more than fifteen times a month without relief from abortive or prophylactic therapy. Dr. McCoyd felt Petitioner may benefit from Botox for his chronic migraine headaches. The doctor felt Petitioner's symptoms would be chronic in nature and did not anticipate any significant improvement.

On 3/12/16, Dr. Itkin issued an addendum opinion at the request of Respondent. Rx6. Dr. Itkin agreed with Dr. McCoyd that Petitioner had not exhausted all available options and agreed that Petitioner might benefit from Depakote or Botox therapy for chronic headaches. Petitioner testified that he currently uses Depakote but that Botox was not authorized. Dr. Itkin opined that Petitioner reached MMI and improved completely as it related to his work-related injury. Dr. Itkin felt that Petitioner could be suffering from chronic migraines; and, potentially, Petitioner could have a psychological component, including, but not limited to, conversion disorder

and even malingering. Dr. Itkin did not have an opinion as to whether conversion disorder or malingering are contributing to Petitioner's subjective complaints. Dr. Itkin concluded that from a neurologic standpoint Petitioner's return to work as a fireman would be unrestricted as it related to his work accident.

On 3/28/16, the pension board sent Petitioner to Dr. Norman Kohn, a neurologist, for an examination. Px2. Dr. Kohn concluded that Petitioner's symptoms and clinical findings had been consistent with persistent post-concussion syndrome with headache. The doctor further noted that although Petitioner's headache syndrome had no specific correlated physical findings or objective tests, Dr. Kohn pointed out that Petitioner "...had abnormal vestibular tests, however, which represent an objective and reproducible measure of injury to the vestibular system. While this does not by itself imply headache, it indicates the severity of [Petitioner's] head injury." Dr. Kohn opined that Petitioner's condition has no associated specific objective physical findings, it is not possible in this examination to rule out symptom magnification or malingering. However, Dr. Kohn found no basis for inferring either of those. The doctor concluded that Petitioner's headache symptoms were the result of the workplace injury and he could not find other contributing causes. Dr. Kohn agreed with Dr. Itkin and Dr. Kramer that Petitioner's persistent post-concussion syndrome with headache prevented Petitioner from working as a firefighter. The doctor expected Petitioner's condition to be permanent and Dr. Kohn did not identify any treatment that could reasonably be help Petitioner return to his pre-injury job.

On 4/5/16, the pension board sent Petitioner for an examination with Dr. Timothy McGonagle. Px3. Dr. McGonagle discussed a discrepancy between Petitioner's signed statement as to whether Petitioner's helmet was knocked forward or off at the time of the accident compared to subsequent histories given. Dr. McGonagle believed that Petitioner suffered a mild, traumatic brain injury/concussion. Dr. McGonagle noted that Petitioner had a brief post-trauma period largely asymptomatic, followed by the onset of concussion symptoms several hours later. Dr. McGonagle found this scenario slightly unusual but certainly acceptable. Dr. McGonagle felt that Petitioner's set of symptoms (mild headache, light sensitivity and sleep dysfunction) should last for three (3) to ten (10) days and then resolve. Dr. McGonagle concluded that mild head trauma occurring to one with pre-existing significant problems with depression and alcoholism making him statistically more at risk for developing prolonged post-concussion symptom complex. The doctor did not believe Petitioner could return to his regular job duties and that he was "disabled."

On 6/1/16, the pension board sent Petitioner for the third and final exam to Dr. Lawrence Robbins. Px4. The doctor noted Petitioners history of accident and that he had headache and dizziness with posttraumatic chronic daily headache, nausea and sonophobia. The doctor noted Petitioner had been diagnosed with post dramatic or post concussive syndrome with daily headaches. At the time of the examination, Petitioner noted that dizziness and headaches were somewhat improved. At that present time, Petitioner continued with headaches approximately 3 to 4 out of 10 with the same triggers increasing such headaches. The doctor noted Petitioner had been sober for three years. He noted Petitioners prior history of depression with past suicidal ideation and question of mild bipolar spectrum. The doctor felt Petitioner was very honest and forthright with no signs or symptoms of malingering or embellishing. The doctor believed Petitioner was legitimately having posttraumatic daily headaches and migraines with dizziness. He did not believe it if you could return to job as a firefighter. The doctor believed that Petitioner's condition would continue into the future but he could not say that it was permanent. Condition was caused by the work accident. The doctor believes Petitioners pre-existing conditions would be a tendency toward headaches and depression. The doctor believes that the work accident pushed his nervous system over into chronic headaches and dizziness. The doctor recommended further treatment with His neurologist and consideration of Other medications and treatments.

On 1/23/17, Petitioner saw Dr. McCoyd for the final time. Petitioner told Dr. McCoyd on January 23, 2017 that he continued to have chronic migraine headaches for more than fifteen days a month, with some of these

headaches lasting more than four (4) hours a day. He continued to recommend Botox. He opined Petitioner's symptoms were chronic in nature. Petitioner testified that he has not seen a doctor since he last saw Dr. McCoyd on 1/23/17.

Today, Petitioner believes he has lost his career because he no longer works as a firefighter and currently Petitioner is an assistant scoutmaster with his son's Boy Scout troop and Petitioner does volunteer work with non-releasable birds of prey. Petitioner presently talks to people once a week about hawks and owls for a little while. Petitioner thinks he had a non-diagnosed concussion in his mid-twenties that he recovered from. Petitioner had occasional sinus headaches before June 30, 2014. Petitioner did not suffer a head injury since June 30, 2014.

Regarding nightmares, Petitioner testified that his nightmares were and continue to be brutal. Petitioner thrashes in his sleep and moans. During these nightmares, Petitioner has woken up screaming more than once. On one occasion during the middle of the night, Petitioner punched his wife in the back and this caused Petitioner to get up and go to sleep on the couch. Petitioner's nightmares began sometime during November, 2014 and his nightmares regularly disturbed his sleep and woke Petitioner up 3-4 times a night.

Regarding his condition at the time of trial, Petitioner stated that he sleeps more poorly than he did prior to his injury. Even during nights that are nightmare-free, Petitioner still wakes up two to three times a night a couple of days a week and then Petitioner struggles to get back to sleep. During the nights when Petitioner has nightmares, Petitioner might sleep two hours during those nights. Petitioner had no trouble sleeping prior to June 30, 2014.

Petitioner testified he can no longer provide physical training and cross-training for first responders and firefighters as he did prior to June 30, 2014 because of the positional and exertional nature of those activities. Petitioner's work in teaching and training firefighters involved the hands-on teaching of situational awareness training and stress inoculation training. Petitioner has been unable to teach any firefighters since June 30, 2014 because Petitioner said he is incapable of taking part in these activities, stating that he cannot get into the positions and be hands-on with his students. Petitioner said he had no difficulty regularly engaging in these teaching activities before June 30, 2014.

Petitioner testified that today he keeps a very open schedule due to his post-concussion syndrome because Petitioner must accept the fact that at any given point in time he will need to take a nap because he cannot keep engaging in activities. When Petitioner takes a nap, he lays down in his bedroom with the lights off, the curtains drawn, the fan going and Petitioner covers his face with a pillow for two hours.
When Petitioner attends events with a large group of people, Petitioner wears earplugs in an attempt to avoid the triggering event of the noise from a large group of people causing a headache.

Today, Petitioner has headaches three to four days a week, with the worst headaches being two to four hours in duration. As of the time of trial, Petitioner said he had not had a headache-free day since his work accident occurred. Petitioner explained that the difference between his headaches and migraine headaches is that Petitioner's migraine headaches require Petitioner to put life on pause and to lay down and cover his head, while Petitioner's headaches are just a constant presence. The shortest duration for Petitioner's migraine headaches can be one hour to ninety minutes. Petitioner's regular headaches do not go away.

Petitioner did some blogging and writing about firefighting before June 30, 2014. Since Petitioner's June 30, 2014 injury he has attempted to write both fiction and non-fiction, but Petitioner has a desktop of half-started things. Petitioner explained that he has a desktop of half-started things because Petitioner as Petitioner believes

he struggles to get anything done. Petitioner spends a lot of time staring out of his window or napping. Petitioner testified that he does hike today to avoid weight gain but when he hikes he can break as needed.

CONCLUSIONS OF LAW

Arbitrator's Credibility Assessment

The Arbitrator had an opportunity to observe Petitioner's demeanor at trial and to listen to his testimony. The Arbitrator finds that Petitioner was credible insofar as he was very candid and knowledgeable in explaining the circumstances surrounding his accident. Further, Petitioner was highly credible and articulate in his testimony regarding his medical treatment and stated level of disability and/or functional limitations he notices.

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

The Arbitrator incorporates the foregoing findings of fact and conclusions of law as though fully set forth herein. The Arbitrator concludes that Petitioner has proven by a preponderance of the evidence that his current condition of ill-being is causally related to his undisputed work accident. In so finding, the Arbitrator has considered Petitioner's credible and unrebutted testimony, along with all of the medical records and evidence.

Dr. Timothy McGonagle opined that Petitioner suffered a mild traumatic brain injury/concussion due to the work accident and that his concussion related symptoms occurred due to the head trauma, but are persistent due to the underlying depression and anxiety. Dr. Norman Kohn opined that Petitioner's headache symptoms were caused by the workplace injury. Dr. Kohn did not identify any significant additional contributing causes. In this regard, the Arbitrator notes that it is well-settled that so long as the work accident is causative factor in a claimant's condition of ill-being, causation may be found. as applied here, Petitioner has proven that the work accident was a causative factor in the development of his post-concussive syndrome, chronic headache and vestibulopathy.

Dr. Lawrence Robbins opined that the onset of Petitioner's disabling condition occurred following the work accident. Respondent's first Section 12 examiner, Dr. Jeffrey Kramer opined that Petitioner had post-concussion syndrome with chronic post-concussion headache and vestibular impairment and that the etiology of that condition was the work accident. Rx4.

Respondent's second Section 12 examiner, Dr. Arthur Itkin, opined that he could be suffering with chronic migraines and the potential cause of Petitioner's chronic migraines could have a psychological component including, but not limited to, conversion disorder and even malingering. Rx6. Dr. Itkin concluded that Petitioner's subjective complaints and thus his present medical condition were not directly related objectively to the work accident.

The Arbitrator adopts the opinions of Drs. McGonagle, Kohn, Robbins and Kramer in this matter as credible and more persuasive. The Arbitrator recognizes that disability as it relates to Petitioner's claim for pension benefits is different than the disability standard under the Act, the Arbitrator is entitled to weigh and rely on these doctors' opinions insofar as they provide medical opinions as to the cause(s) and etiology of Petitioner's condition and symptoms. In finding the opinions of Dr. Itkin unpersuasive and therefore entitled to less weight, the Arbitrator makes the following findings. Dr. Itkin did not review Dr. Kramer's report and was the only doctor to find the possibility of malingering. Further, the doctor's opinion that Petitioner's condition could have a psychological component to it does not adequately address or explain whether the work accident played a role

in Petitioner's condition. In light of the foregoing, the Arbitrator concludes that Petitioner's current condition of ill-being is causally related to his work accident.

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

The Arbitrator incorporates the findings of fact and conclusions of law as though fully set forth herein and relies on same in concluding that Petitioner has proven by a preponderance of the evidence that the medical services that were provided to Petitioner were reasonable and necessary and further that Respondent has not yet paid all appropriate charges.

The Arbitrator has reviewed Petitioner's Exhibit No. 5 (Bills from Loyola University Medical Center) and Petitioner's Exhibit No. 6 (Exhibit setting forth which entities paid Loyola University Medical Center). The Arbitrator notes the outstanding balances and that the charges are related to reasonable and otherwise necessary care and treatment for Petitioner's related condition.

The Arbitrator has reviewed Petitioner's Exhibit No. 7 (Bills from Loyola University Physician Foundation) and Petitioner's Exhibit No. 8 (Exhibit setting forth which entities paid Loyola University Physician Foundation). The Arbitrator notes the outstanding balances and that the charges are related to reasonable and otherwise necessary care and treatment for Petitioner's related condition. These dates of service include: March 27, 2015, May 8, 2015, June 19, 2015, September 4, 2015, October 26, 2015, February 12, 2016 and May 10, 2016.

These bills submitted and alleged as unpaid by Petitioner correspond to the related dates of medical treatment discussed, *supra*. Having found in favor of Petitioner on the foregoing issues, the Arbitrator concludes that Respondent shall pay Loyola University Medical Center **$40.05** for reasonable and necessary medical services and Loyola University Physician Foundation **$657.12** for reasonable and necessary services, as provided in Sections 8(a) and 8.2 of the Act. This finding does not mean that Respondent is to pay again any of the aforementioned bills that Respondent has paid since the hearing date of this case, July 19, 2017. 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.

ISSUE (L) What is the nature and extent of the injury?

The Arbitrator incorporates the findings of fact and conclusions of law as though fully set forth herein and relies on same in addressing the nature and extent of Petitioner's causally related injuries. When Petitioner last saw Dr. McCoyd on 1/23/17, Dr. McCoyd noted that it may be reasonable to assume Petitioner's current symptoms, based on their duration and intractable nature, will be chronic in nature and the plan was to continue to treat symptoms. Px1. Petitioner has not returned since but continues to obtain medication through Dr. McCoyd.

Dr. Norman Kohn stated on 5/13/16 that Petitioner has a permanent condition and Dr. Kohn could not identify treatment that could reasonably be expected to return Petitioner to work as a firefighter. Of note, Botox injection treatment was not approved. Petitioner has not treated with Dr. McCoyd or any other doctor or sought any additional treatment since 1/23/17 and Petitioner's current condition has stabilized and plateaued; therefore, Petitioner's claim for disability, if any, is ripe for adjudication.

In determining permanent partial disability, Section 8.1(b) provides that permanent partial disability shall be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a); (ii) the

occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

Regarding (i), the Arbitrator notes that the parties did not submit an American Medical Association (AMA) impairment rating; therefore, in light of the foregoing, the Arbitrator assigns no weight to the AMA impairment rating.

Regarding (ii), Petitioner's unrebutted testimony is that he is no longer working as a firefighter and he has lost his career as a firefighter because Petitioner's post-concussion syndrome symptoms of headaches, migraine headaches and dizziness will not allow Petitioner to perform the duties of a firefighter. Dr. Kohn did not expect Petitioner to return to work as a firefighter. Px2. Dr. McGonagle concluded that Petitioner suffers from a disabling condition that prevents him from performing the full and unrestricted duties of a firefighter. Px3. Dr. Robbins stated that Petitioner's severe problems with headaches and dizziness would preclude Petitioner from performing full and unrestricted firefighting duties. Px4. The Arbitrator finds that the weight of the evidence shows that Petitioenr cannot return to work as a firefighter and therefore, assigns more weight to this factor.

Regarding (iii), Petitioner's age at the time of the injury was 37 years. The Arbitrator finds that this factor may increase Petitioner's level of permanent partial disability because he may live with the effects of his post-concussion syndrome longer due to a longer work-life expectancy. The Arbitrator assigns more weight to this factor.

Regarding (iv), or future earning capacity, the evidence shows that Petitioner can no longer work as a firefighter and he cannot teach or train firefighters because Petitioner cannot get in any positions to demonstrate and this will not allow Petitioner to be hands-on with his students. Since Petitioner has lost his career and can no longer work as a firefighter, there is evidence that Petitioner's future earning capacity has been and will be impaired. The Arbitrator assigns more weight to this factor.

Regarding (v), evidence of disability corroborated by the treating medical records, the Arbitrator weighs this factor in favor of Petitioner. Petitioner's uncontroverted testimony was detailed and credible regarding his disability relative to Petitioner's post-concussion syndrome. Petitioner explained how his headaches and migraine headaches have severely limited his abilities to move and to move with exertion. Petitioner also explained how he alters his life because certain things, such as noise, will trigger headache events that will force Petitioner to nap with immediacy. The Arbitrator finds Petitioner's reporting of his symptoms to be consistent with Petitioner's final visit with Dr. McCoyd, who described Petitioner's symptoms as intractable and chronic in their nature.

Considering all of the factors pursuant to Section 8.1(b) in conjunction with Section 8(d)(2), the Arbitrator concludes that the work accident caused injury to Petitioner resulting in permanent partial disability of **30%** of a man as a whole as a loss of trade under Section 8(d)(2). Respondent shall pay Petitioner permanent partial disability benefits of **$721.66/week** for **150 weeks**, because the injuries sustained caused **30%** loss of the person as a whole, as provided in Section 8(d)(2) of the Act.

Signature of Arbitrator

10-23-17
Date

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jamie Cahue,
Petitioner,

vs.

Menasha Packing,
Respondent.

No. 17WC 07694
18IWCC 0522

ORDER

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

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision dated September 7, 2018, 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: SEP 18 2018

DLG/mw
045

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jamie Cahue,

Petitioner,

vs.

NO: 17 WC07694
18IWCC0522

Menasha Packing,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, medical, prospective medical, notice and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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 February 13, 2018, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $65,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

SEP 18 2018

DATED:
o083018
DLG/mw
045

David L. Gore

Deborah Simpson

Stephen Mathis

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

CAHUE, JAIME
Employee/Petitioner

Case# **17WC007694**

14WC034638

MENASHA PACKAGING
Employer/Respondent

18IWCC0522

On 2/13/2018, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 1.65% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0815 ACEVES & PEREZ
EMILIANO PEREZ JR
1931 N MILWAUKEE AVE
CHICAGO, IL 60647

1408 HEYL ROYSTER VOELKER & ALLEN
BRAD A ANTONACCI
120 W STATE ST PO BOX 1288
ROCKFORD, IL 61105

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jaime Cahue
Employee/Petitioner

v.

Menasha Packaging
Employer/Respondent

Case # 17 WC 7694

Consolidated cases: 14 WC 34638

18IWCC0522

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **01/12/18**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

18IWCC0522

FINDINGS

On the date of accident, **03/10/2017**, 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.

For the reasons set forth in the attached decision, the Arbitrator finds that the accident of March 10, 2017 was a cause of Petitioner's current left shoulder condition and contributed to the need for the left rotator cuff repair recommended by Drs. Tonino and Giannoulias.

In the year preceding the injury, Petitioner earned **$56,345.12**; the average weekly wage was **$1,083.56**.

On the date of accident, Petitioner was **36** years of age, ***married*** with **4** dependent children.

The bills claimed by Petitioner (i.e., the various Loyola bills in PX 2(a) and the cervical spine MRI bill in PX 8(a)) relate to treatment rendered before the March 10, 2017 accident. See the decision in the companion case, 14 WC 34638, for the Arbitrator's medical award.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $722.37/week from March 13, 2017 (the date Dr. Tonino took Petitioner off work) through the hearing of January 12, 2018, a period of 43 5/7 weeks, as provided in Section 8(b) of the Act.

Respondent shall authorize and pay for the left shoulder surgery recommended by Drs. Tonino and Giannoulias.

For the reasons set forth in the attached decision, the Arbitrator declines to find Respondent liable for penalties and fees in this case.

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.

18IWCC0522

Molly C Mason

Signature of Arbitrator

Date 2/9/18

ICArbDec19(b)

FEB 13 2018