STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VERONICA RAMIREZ,
Petitioner,

vs.

MILLENNIUM KNICKERBOCKER HOTEL
Respondent.

No. 15WC 1818
18IWCC0727

ORDER

This matter comes before the Commission on Respondent's 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 November 30, 2018, is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner L. Elizabeth Coppoletti.

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

L. Elizabeth Coppoletti

DATED: DEC 18 2018
LEC/jrc
043

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

VERONICA RAMIREZ,

Petitioner,

vs.

NO: 15 WC 1818
18IWCC 0727

MILLENNIUM KNICKERBOCKER HOTEL,

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 causation and permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator concluded Petitioner sustained 17.5% loss of use of the right leg. The Commission agrees with the permanence determination but believes a more detailed explanation of the weight placed upon factors (ii), (iii), and (v) is necessary to satisfy the requirements of Section 8.1b. *820 ILCS 305/8.1b(b)* (West 2014); *Corn Belt Energy Corp. v. Illinois Workers' Compensation Commission*, 2016 IL App (3d) 150311WC, ¶ 52, 56 N.E.3d 1101.

Section 8.1b(b)(ii) – occupation of the injured employee

Petitioner was a housekeeper/room attendant on the date of accident. Following her injury, Petitioner returned to that position but shortly thereafter transferred to laundry attendant. The crux of the dispute as to the significance of this fact is whether, as Petitioner asserts, she sought the transfer because of her knee complaints. Respondent argues Petitioner's credibility on why she requested the transfer was impeached by Rosa Monrel. The Commission finds Respondent's

reliance on Ms. Monrel's testimony is misplaced. Ms. Monrel was asked if Petitioner told her why she wanted the transfer, and Ms. Monrel recalled Petitioner said it would help her with taking her daughter to school. T. 61. On cross-examination, however, Ms. Monrel testified she did not remember the specific conversation and conceded she does not have a very clear memory of it at all. T. 66-67. Moreover, Petitioner testified in rebuttal and specifically denied telling Ms. Monrel the transfer was so she could take her daughter to school, and stated to the contrary, the later start time was problematic for her. Given Ms. Monrel's admittedly poor recollection of her conversation with Petitioner, the Commission finds Ms. Monrel's testimony is not persuasive.

Respondent further contends there is no evidence Petitioner could not return to her employment as a room attendant then notes, "by the petitioner's own admission, the laundry attendant position required more upper-body work than leg work." *Respondent's Statement of Exceptions*, p. 9. The upper-body focus of the laundry attendant position is a curious fact for Respondent to highlight given that it is consistent with Petitioner's transfer being predicated on easing the workload on her knee. As to the assertion there is no evidence of an inability to return to the room attendant position, the Commission finds this argument is incompatible with Dr. Westin's April 14, 2015 note. We first note Dr. Westin documented Petitioner's resumption of room attendant duties aggravated her knee: "I tried returning her to housekeeping and she did 2 days with 8 rooms a day. They then had her work full duty but it made her knee sore and even her back a little sore. An opportunity in the laundry department opened up that she took. She states the laundry job is not bothering her knee so much." PX1. The Commission further emphasizes Dr. Westin's discharge note reads, "She will do her regular activity in the laundry assignment." PX1. This is clear evidence of Petitioner's inability to return to her pre-injury room attendant position, and the Commission finds this weighs heavily in favor of increased permanence.

Section 8.1b(b)(iii) – age of the employee at the time of the injury

Petitioner was 46 years old on the date of accident. The Commission observes Petitioner is still relatively young, has many work-years ahead of her, and will therefore have to deal with the effects of her injury for a longer period of time. The Commission finds these facts weigh in favor of increased permanence.

Section 8.1b(b)(v) – evidence of disability corroborated by treating medical records

After her injury, Petitioner underwent arthroscopic surgery followed by post-operative physical therapy. On April 14, 2015, Dr. Westin memorialized Petitioner's resumption of room attendant duties resulted in increased pain; documenting Petitioner had persistent soreness but full range of motion and no effusion or crepitus, Dr. Westin provided a pain medication refill and released Petitioner to work in the laundry department. PX1.

Petitioner continues to work for Respondent in the laundry department. This is a full-time position; she works eight hours per day, five days per week. Petitioner testified her knee swells and is painful every day at work; by the half-way point of her shift, her knee is starting to swell and bother her. T. 28. The doctor recommended she take Ibuprofen for the pain, and she takes that once or twice a day. T. 29. She also uses Icy Hot twice a day. T. 29. She explained she does not have to use ibuprofen or Icy Hot on days she is not working. T. 30. The Commission finds this

factor indicative of increased permanence.

The Commission finds Petitioner sustained a 17.5% loss of use of the right leg pursuant to Section 8(e)12.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 11, 2017, as modified above, is hereby affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $531.92 per week for a period of 12 6/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall have credit of $6,838.90 for TTD benefits paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $478.73 per week for a period of 37.625 weeks, as provided in §8(e)12 of the Act, for the reason that the injuries sustained caused the 17.5% loss of use of the right leg.

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 $18,200.00. 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: DEC 18 2018

LEC

O: 10.24.18

43

L. Elizabeth Coppoletti

Charles J. DeVriendt

Joshua D. Luskin

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RAMIREZ, VERONICA
Employee/Petitioner

Case# 15WC001818

MILLENIUM KNICKERBOCKER HOTEL
Employer/Respondent

18IWCC0727

On 10/11/2017, 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 1.22% 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:

0233 DePAOLO ZADEIKIS & GORE
MARK A DePAOLO
309 W WASHINGTON ST SUITE 550
CHICAGO, IL 60606

1296 CHILTON YAMBERT PORTER LLP
DANIEL T CROWE
303 W MADISON ST SUITE 2300
CHICAGO, IL 60606

18IWCC0727

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

Case # 15WC 01818

Veronica Ramirez
Employee/Petitioner

v.

Millenium Knickerbocker Hotel
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brian T. Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **6/27/2017**. 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 _____

18IWCC0727

FINDINGS

On **9/15/2014**, 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 $**41,489.76**; the average weekly wage was $**797.88**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **1** 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 is entitled to a credit of $**6,838.90** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**6,838.90**.

ORDER

Respondent shall pay Petitioner TTD benefits of $**531.92**/week for **12-6/7** weeks, for a period commencing on **11/19/2014** through **2/16/2015**, in accordance with Section 8(b) of the Act.

Respondent shall be given a credit in the amount of $**6,838.90** for TTD benefits paid to Petitioner.

Respondent shall pay Petitioner permanent partial disability benefits of $**478.73**/week for **37.63** weeks, because the injuries sustained caused a **17.5%** loss of use of the right leg, as provided in Section 8(e)12 of the Act.

Respondent shall pay benefits that have accrued since **4/14/2015**, and shall pay the remainder, if any, in weekly payments.

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

10/9/2017
Date

OCT 11 2017

18IWCC0727

FINDINGS OF FACT

The petitioner was 46 years of age on the date of the accident, 9/15/14. She was employed as a housekeeper/room attendant by the respondent. Her duties included making beds, changing linens, vacuuming, and cleaning the tubs and showers. (Testimony of Petitioner)

On 9/15/14, the petitioner was finishing a room. She was in the process of getting down on her knees to look under the bed. She placed her hand on the bed and as she was kneeling down, her hand slipped off the bed which caused her right knee to strike the floor. In the process, she twisted the knee inward. (Testimony of Petitioner)

Over the next two days, the petitioner testified, she felt very bad, especially on the night of the accident. She could not move her right knee. It was very swollen. The petitioner testified that she went to the occupational clinic and told them what had happened. They gave her a knee brace and told her to return to light-duty work. (Testimony of Petitioner)

The records reflect that the petitioner was initially seen by Charles A. Cavallo, M.D., of Occupational Health Center of Illinois on 9/17/14. At that time, Dr. Cavallo apparently conducted a physical and diagnosed her with "Sprain Of Unspecified Site Of Knee And Leg." He dispensed prescription medication and instructed her to follow up in two days. He allowed her to return to work at modified duty. (Px #1, Record of Occupational Health Center)

The petitioner returned to Dr. Cavallo on 9/19/14. At that time, Dr. Cavallo apparently conducted a physical and diagnosed her with "Sprain Of Unspecified Site Of Knee And Leg." He allowed her to return to work at modified duty. He instructed her to follow up in four days. (Px #1, Record of Occupational Health Center)

The petitioner testified that when she went to the occupational clinic on 9/19/14, the doctor said she needed to get an MRI. He returned her to light-duty work with a knee brace. (Testimony of Petitioner)

The petitioner testified that on 10/5/14, she had MR images of her right knee taken, and then returned to the occupational clinic. On 10/6/14, she was told that they were going to send her to another kind of doctor. She saw Dr. Craig Westin on 10/21/14. (Testimony of Petitioner)

The first documented history of accident was made on 10/21/14. The handwritten history states the following: "Housekeeping Fell on flexed (R) Knee (+) pain next day swelling that night (-) prior." (Px #1, Record of Occupational Health Center)

The 10/21/14 record of orthopedic surgeon Craig Westin, M.D., confirms the handwritten history and indicates that pain in the knee is present both medially and laterally. She notices an occasional "jolt" while walking. She has symptoms most days. The MRI showed a tear of the posterior horn of the medial meniscus. The lateral meniscus is intact. The lateral patella showed low-grade chondromalacia. He further noted that the petitioner has not seen significant improvement in the last month. Dr. Westin opined that an arthroscopy is indicated. (Px #1, Record of Occupational Health Center)

The petitioner underwent the surgery at the Weiss Memorial Hospital on 11/19/14; the operating physician was Dr. Westin. Dr. Westin's pre-operative diagnosis was right knee torn medial meniscus. His post-operative diagnoses are as follow:

- Right knee torn medial meniscus;
- Hypertrophic medial synovial plica;
- Grade III chondrosis of proximal trochlea.

Dr. Westin performed the following procedures:

- Right knee arthroscopy, partial medial meniscectomy;
- Excision of medial synovial plica;
- Chondral shave debridement of proximal trochlea.

The petitioner followed up with Dr. Westin on 11/25/14. Dr. Westin prescribed physical therapy and instructed the petitioner to use a thermal compression device. (Px #2, Il. Bone & Joint; Weiss Hospital, Dr. Westin)

The petitioner attended physical therapy through February of 2015.

On 2/16/15, at the request of the respondent, the petitioner presented to orthopedic surgeon Nikhil Verma, M.D., of Midwest Orthopaedics at Rush, for a Section 12 exam. Dr. Verma reviewed all of the petitioner's medical records relative to the treatment she received for her right knee and x-rays of the knee. Dr. Verma performed a physical examination which he stated was normal and symmetric to her left knee. The petitioner reported tenderness on palpation. Dr. Verma stated that the x-rays were normal. (Rx #1)

Dr. Verma stated that the occurrence of 9/15/14, and the mechanism the petitioner described, caused the meniscal tear. Dr. Verma stated that the petitioner *did have a pre-existing condition of patellofemoral chondromalacia*, which, he opined, was contributing to the petitioner's current reported subjective complaints. Dr. Verma also stated that the *petitioner's weight was a mild factor in terms of her "slow recovery and persistent symptoms."* (Rx #1 emphasis added)

Dr. Verma stated that as of 2/16/15, the petitioner should continue the use of inflammatory medications, including Naprosyn, for four weeks, and continue work conditioning three times per week for four weeks. (Rx #1)

Dr. Verma opined that Petitioner should be able to return to work, full duty, in four weeks. He opined that the treatment that was rendered to the petitioner was reasonable and necessary and *causally related to the occurrence of 9/15/14*. Dr. Verma opined that the petitioner could return to work with restrictions, for four weeks, and then full duty. He opined that the petitioner would have no permanent limitations to her right leg based on the injury and medical procedures performed. (Rx #1, emphasis added)

On 3/3/15, the petitioner was seen by Dr. Westin. Dr. Westin noted that the petitioner was doing better; and she was still using Naprosyn. She *requested* a release to return to work, full duty. Dr. Westin's physical examination revealed trace effusion, no medial tibiofemoral pain, and mild medial patellofemoral tenderness. Dr. Westin instructed the petitioner to maintain her home exercise program. (Px #2, Record of 3/13/15, emphasis added)

The petitioner was last seen by Dr. Westin on 4/14/15. Dr. Westin released the petitioner from his care and released her to return to work, full duty. On physical examination, the petitioner had no effusion. She reported some soreness above the patella in the quadriceps tendon area. There was no crepitus and she had a full range of motion of the right knee. Dr. Westin instructed the petitioner to maintain the home exercise program despite the fact that "she does not appear too motivated to do home exercise." On this date, the petitioner told Dr. Westin that she intended to request a transfer from being a room attendant to the laundry room. Dr. Westin placed no restrictions on the petitioner's return to work. Dr. Westin's records do indicate "[s]he will do her regular activity in the laundry assignment." (Px #2, Medical record of 4/14/15)

The petitioner testified that when she returned to work her right knee was feeling "very bad." She testified that she requested the transfer to the laundry room because it was an easier job with greater use of her arms.

The petitioner testified that, presently, as she works in the laundry department for the respondent, she notices that her right knee swells up every day and hurts a lot. She notices that the knee begins to swell about 1:00 p.m. each workday. On her workdays, she takes 1-2 Ibuprofen a day for her knee pain, and applies ice twice a day to the knee. (Testimony of Petitioner)

The petitioner has not returned to Dr. Westin for treatment since 4/14/15 and has not sought any treatment from any other physicians for complaints with respect to her right knee since that date.

On cross-examination, the petitioner testified that when Dr. Westin discharged her, he did not say that she could return to a job that was less demanding than housekeeping. She has not seen Dr. Westin since 4/14/15. She has not received treatment for her right knee since 4/14/15. Since her release from care, she has worked consistently and has worked overtime hours, which she did before the accident. With regard to the "Internal Position Application," the petitioner testified that she asked someone what to write and she wrote that down on this application. The form is written in English. The petitioner knows a little bit of English. The petitioner testified that since 3/15 when she returned to work, she has not missed work due to her right knee, but has called off when she did not feel well. (Testimony of Petitioner)

The petitioner's post-occurrence wage statement, which sets forth her wages and hours from 3/2/15 through 6/5/17, shows that she consistently worked 5 to 6 days per week during that period. This statement or spreadsheet demonstrates that she worked at least 40 hours per week and often worked overtime hours; one time she worked as many as 31 overtime hours in one week. Ms. Janice Crane laid the foundation for the admission of such spreadsheet. (Rx #2, Veronica Ramirez Wage Statement, Ms. Crane's Testimony)

The respondent introduced into evidence the "Internal Position Application." The petitioner completed this application in order to transfer into the laundry room. The petitioner testified that she completed and signed the document, Respondent's Exhibit 3. Under the heading "Please list work experience related to position applying for and attach resume'," the petitioner wrote: "I like to work in the laundry washing, drying and folding towels, + duvets, changing chemical when needed. I enjoy working at a fast pace." Under the heading "Reason for Applying," the petitioner wrote: "It's an opportunity for me to try something different. I know I can get the work done." (Rx #3, Internal Position Application)

The Arbitrator notes that the petitioner did not write on the application that she was requesting this transfer due to problems with her right knee.

The respondent called Ms. Rosa Monreal as a witness. Ms. Monreal is, and was at all relevant times, the head of housekeeping for the respondent. When the petitioner requested the transfer, she was interviewed by Ms. Monreal. Ms. Monreal testified that when the petitioner requested the transfer, she stated that she wanted the position in the laundry room so that she could take her daughter to school before work. Ms. Monreal explained that as a housekeeper,the petitioner would have to start work at 8:00 a.m. However, as the laundry room attendant, she would not have to start work until 11 a.m. Ms. Monreal testified that the petitioner did not state, at any time during the interview, that she wanted the transfer because of the condition of her right knee. However, on cross-examination, Ms. Monreal had little, if any, actual recollection of the conversation. (Ms. Monreal's Testimony)

In rebuttal, the petitioner testified that on a day when she was cleaning the lobby, she saw a sign that said the respondent was looking for a laundry attendant. The petitioner asked for a transfer to the position of laundry attendant. Regarding such transfer, the petitioner did have a conversation with Ms. Monreal in Ms. Monreal's office. The petitioner denied that she mentioned her daughter's schedule as a reason for seeking such transfer. She told Ms. Monreal that she wanted to work as a laundry attendant because it is easier on her knee. When she cleans rooms, it is difficult to bend down. The petitioner further testified that she told Dr. Westin that she was moving from room attendant to laundry attendant. Dr. Westin told her that such a move was fine, and that if it was easier for her, that was good. On cross-examination, the petitioner testified that she did not ask for a note from Dr. Westin in which she would be released to the position of laundry attendant. Dr. Westin gave her a note in which he released her to her previous job. On 9/15/14, the petitioner's daughter was 16 years old and went to Phoenix Military School. (Petitioner's Testimony)

CONCLUSIONS OF LAW

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

The Arbitrator finds that the Petitioner's current condition of ill-being of her right leg is causally related to her accident of 9/15/14. In so finding, the Arbitrator relies upon the petitioner's testimony regarding the circumstances and onset of symptoms, the medical records that show she sought medical attention two days later, and the opinion by Dr. Verma that the petitioner's right knee condition was caused by the work accident. (Rx #1)

K. **WHAT TEMPORARY BENEFITS ARE IN DISPUTE? TTD**

The parties have stipulated to Petitioner's lost time. Based upon the findings under causation, which are referred to, and incorporated by reference herein, the Arbitrator finds that Petitioner was temporarily and totally disabled for a period of 12-6/7 weeks, that is, from 11/19/14 to 2/16/15. The respondent is entitled to a credit in the amount of $6,838.90 for TTD benefits paid to the petitioner.

L. **WHAT IS THE NATURE AND EXTENT OF THE INJURY?**

Pursuant to Section 8.1b of the Act, for accidental injuries that occur on or after September 1, 2011, the following criteria are to be used in the determination of permanent partial disability:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The 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. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors: (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.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals the petitioner was employed as a housekeeper/room attendant at the time of accident, and is currently employed as a laundry attendant for the respondent. The Arbitrator gives moderate weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that the Petitioner was 46 years old at the time of the accident. The Arbitrator gives moderate weight to this factor.

With regard to subsection (iv) of §8.1b(b), the Petitioner's future earnings capacity, the Arbitrator notes the record reveals that, post-accident, the petitioner has worked a fair number of overtime hours. However, the petitioner testified on cross that she worked overtime hours before the accident. Ms. Crane testified that as a laundry attendant, the petitioner can earn additional pay due to the biohazards of such work. Yet, Respondent's Exhibit #2 does not indicate additional biohazard pay. Therefore, the Arbitrator concludes that no quantifiable evidence was presented to indicate that the Petitioner's future earning capacity was affected by this accidental injury. The Arbitrator 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 following:

At Dr. Westin's last appointment with the petitioner on 4/14/15, he wrote the following:

"Followup right knee medial meniscectomy 4 months postop. I tried returning her to housekeeping and she did 2 days with 8 rooms a day. They then had her work full duty but it made her knee sore and even her back a little sore. An opportunity in the laundry department opened up that she took. She states the laundry job is not bothering her knee so much.

On exam, the knee has no effusion. She describes some soreness above the patella in the quadriceps tendon area. No medial tibiofemoral tenderness. There is no crepitus of the knee. Range of motion is full.

IMPRESSION: Right knee medial meniscectomy.

She does not appear too motivated to do home exercises. I again reviewed this with her along with the help of Karina. I showed her how to do some core strengthening and hamstring stretching especially in view of her mid low back pain, right at the level of the tattoo in the midline with no spinous process tenderness. Leg raise is negative, so I am not concerned about neurologic symptoms. At this point, I will release her from

care. She will do her regular activity in the laundry assignment. Continue independent exercises to (sic) at least a month. Naproxen, refilled, p.r.n., Discharged from care. Follow up if problems occur. (Px #1, Record of Occupational Health Center)

Determination of permanent partial disability ("PPD") is not simply a calculation, but an evaluation of the five factors. The Arbitrator has carefully considered all five factors. By applying §8.1b and by considering the relevance and weight of all five factors, the Arbitrator finds that as a result of the 9/15/14 accident, the petitioner has sustained a permanent loss of use of her right leg to the extent of 17.5%, pursuant to Section 8(e) of the Act.

Brian T. Cronin

Arbitrator

10-9-2017

Date

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

☐ 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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

FERDINAZE HAJRULLAHU,

Petitioner,

vs.

NO: 03 WC 34786
18 IWCC 0621

CDW,

Respondent.

ORDER

This matter came before Commissioner Charles J. DeVriendt pursuant to Petitioner's "Motion to Correct a Clerical Error Pursuant to Section 19(f)" filed November 30, 2018;

And the Respondent, having advised the Commission of the clerical error regarding the proper permanent partial disability rate based on an average weekly wage rate of $465.90;

The Commission is of the opinion that the Commission's Corrected Decision and Opinion on Review dated November 14, 2018 should be recalled due to a clerical error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission's Corrected Decision and Opinion on Review dated November 14, 2018, is hereby recalled and a Second Corrected Decision and Opinion on Review is issued simultaneously. The parties should return their original Corrected Decision to Commissioner Charles J. DeVriendt.

DATED: DEC 13 2018
CJD/dmm
r: 113018
49

Charles J. DeVriendt

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

☐ 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 down	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

FERDINAZE HAJRULLAHU,
Petitioner,

vs.

NO: 03 WC 34786
18 IWCC 0621

CDW,
Respondent.

SECOND CORRECTED DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Respondent and Petitioner herein and notice provided to all parties, the Commission after considering the issues of causation, temporary total disability benefits, temporary partial disability benefits, permanent disability benefits, medical expenses, and penalties and fees, 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.

Temporary Partial Disability Benefits

The Commission vacates the award for temporary partial disability benefits. The Illinois Workers' Compensation Act did not allow for such benefits until it was amended by P.A. 94-277 which reflects the amendatory changes apply to accidents occurring on or after February 1, 2006. As Petitioner's work accident occurred on May 28, 2003, she was not eligible for temporary partial disability benefits.

Permanent Disability Benefits

The Commission vacates the award of permanent total disability benefits pursuant to Section 8(f) of the Act and finds Petitioner is entitled to an award of 60% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act.

Both Petitioner and Respondent retained vocational experts, Mr. Edward J. Rascati and Ms. Sharon Babat, respectively. Each provided testimony via evidence deposition. The Commission affords greater weight to the opinions offered by Ms. Sharon Babat, Respondent's vocational expert.

On March 30, 2016, Mr. Rascati testified he is a certified rehabilitation counselor. PX7,

p. 5. Mr. Rascati testified he met with Petitioner on May 19, 2015 and conducted an interview regarding Petitioner's prior educational and vocational history. Mr. Rascati noted Petitioner immigrated to the United States in 1999 and speaks Albanian. PX7, p. 8. Upon arrival in the United States, Petitioner attended three months of ESL classes (English as a second language), but he had no knowledge of any education beyond her high school diploma received in Albania. *Id.* Regarding Petitioner's vocational background, Mr. Rascati understood Petitioner to be a bookkeeper in Albania and upon her arrival in the United States, she obtained employment through Respondent as a picker-packer. PX7, p. 9. Based upon this information, in part, Mr. Rascati determined no stable labor market existed. PX7, p.10. Mr. Rascati testified Petitioner possessed limited transferable skills, and even if placement services were considered, Petitioner would require significant assistance. PX7, p.11.

On cross-examination, Mr. Rascati testified he was unaware of Petitioner's two-year post-high school education. PX7, p. 28. Mr. Rascati did not utilize any independent testing regarding Petitioner's computer skills nor relative to her math and language capabilities. PX7, p. 30. Mr. Rascati acknowledged individual employers might consider a high school diploma from another country. PX7, p. 34.

On July 7, 2016, Ms. Babat testified she is a certified rehabilitation counselor. RX5, p.6. Ms. Babat testified she met with Petitioner on May 21, 2015 and conducted an interview regarding Petitioner's prior educational and vocational history. Ms. Babat testified she was able to communicate with Petitioner in English. RX5, p. 8. Ms. Babat noted Petitioner's basic computer skills in that Petitioner was able to use e-mail, Facebook, and Skype. RX5, p. 12-13. Petitioner also reported she is able to read and write in English, but her primary language is Albanian. RX5, p. 13. Ms. Babat testified Petitioner completed high school in Albania with a three-month course to improve her English skills upon arrival in the United States. RX5, p. 14. In reviewing certain records, Ms. Babat indicated Petitioner obtained two years of post-high school/college education. *Id.* Ms. Babat testified Petitioner reported her vocational history to include her job with Respondent as well as a bookkeeper in Albania from 1984 to 1999. Based on this information, in part, Ms. Babat opined a stable labor market existed and identified some available positions. RX5, p. 20. Ms. Babat testified a labor market survey was subsequently conducted which provided a sampling of possible jobs. RX5, p. 26-27.

On cross-examination, Ms. Babat testified no job placement services were provided to Petitioner. RX5, p. 31. Ms. Babat testified she did not provide the labor market survey to Petitioner. RX5, p. 32. Ms. Babat explained the labor market survey identified 12 jobs which were available and for which Petitioner qualified. RX5, p. 33.

As previously stated, the Commission affords greater weight to the opinions of Ms. Babat over those of Mr. Rascati. Ms. Babat possessed a better understanding of Petitioner's prior educational history as well as vocational history in making her determination that Petitioner has transferable skills affording her access to a stable labor market. Certainly, Petitioner testified she contacted the 12 employers identified in the labor market survey without success, but in contacting the employers, Petitioner testified her attempts only consisted of making phone calls. T. 89-90. She never requested any assistance from her own vocational counselor. *Id.* Further, Ms. Babat testified the labor market survey was not exhaustive but merely representative, and

Petitioner could anticipate obtaining employment at her pre-injury wage rate. RX5, p. 27.

The Commission finds Petitioner's injury precluded her from returning to her usual and customary occupation, but such injury does not result in an impairment of her earning capacity. As such, the Commission awards 60% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act.

Penalties and Fees

The Commission affirms the arbitrator's denial of penalties pursuant to Sections 19(l) and (k) and fees pursuant to Section 16 of the Act. "The employer has the burden of justifying the delay, and the employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified." *Jacobo v. Illinois Workers' Compensation Commission*, 2011 IL App (3d) 100807WC, ¶ 19.

Petitioner underwent an extensive course of medical treatment for both her lumbar and cervical spine, the particulars of which are fully outlined in the Arbitrator's decision. Germane to the present issue, on January 13, 2004 on the referral of Dr. Vidovic, Petitioner was evaluated by Dr. Gleason who reviewed an MRI which demonstrated degenerative disc disease. Dr. Gleason recommended conservative care including over-the-counter medication and a home exercise program as well as a referral to a pain center. PX13. Thereafter on April 14, 2004 again on the referral of Dr. Vidovic, Petitioner was evaluated by Dr. Lazar who concurred with the recommendation of continued conservative treatment including physical therapy but disagreed with the recommendation of injections for pain management. On April 28, 2006, Dr. Lazar re-evaluated Petitioner and found a normal neurological examination and felt Petitioner's problems stemmed from arthritis. PX14.

On May 9, 2007, Dr. Triester evaluated Petitioner at the request of her attorney. Dr. Triester found Petitioner exhibited multiple Waddell findings and diagnosed a lumbar strain which morphed into "chronic pain syndrome." Dr. Triester stated "She has psychiatric/psychological aberrations in that she perceives numerous pain producing problems, yet there is simply no rational objective medical explanation for the severity of her many complaints. Unfortunately, in patients who develop such a 'chronic pain syndrome' the administration of injections (such as epidural steroids) and the use numerous medications serves to further re-enforce the pain syndrome rather than alleviate it." PX18. On November 3, 2008, Petitioner was evaluated by Dr. Goldberg at the request of Respondent. Dr. Goldberg diagnosed degenerative disc disease with lumbar radiculitis caused by Petitioner's injury and recommended an FCE. RX2.

The Respondent acted reasonably and provided an adequate justification for its delay in payment of compensation when it relied on the medical opinions of Drs. Gleason, Lazar and Triester. Certainly, Dr. Goldberg, Respondent's examining expert physician found Petitioner's accident aggravated her underlying degenerative condition which lead to the need for treatment, but Dr. Triester, Petitioner's examining expert physician found the contrary and recommended no additional medical treatment beyond psychological/psychiatric treatment which Petitioner declined to pursue. An expert physician employed by either Petitioner or Respondent is not their agent. *Taylor v. Kohli*, 162 Ill. 2d 91, 642 N.E.2d 467 (1994). Binding a party to its examining

physician's opinion is simply not supported by the law. *Kraft General Foods v. Industrial Commission*, 287 Ill. App. 3d 526, 678 N.E.2d 1250 (1997). Therefore, despite Dr. Goldberg's opinion, Respondent was reasonably justified in relying on the differing opinions offered by Drs. Gleason, Lazar, and Triester in its delay of payment of compensation. As the Commission finds Respondent's delay in payment was reasonable, it follows Section 19(l) and (k) penalties and Section 16 attorneys' fees are not applicable.

The Commission, therefore, affirms and adopts the Arbitrator regarding causation, temporary total disability, medical expenses, and the denial of penalties and fees, but modifies the Arbitrator's award of odd-lot permanent total disability to a 60% loss of person as a whole. The Commission further vacates the award of temporary partial disability.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $310.60 per week for a period of 492 2/7 weeks (May 29, 2003 through July 20, 2003; October 7, 2003 through November 2, 2003; December 19, 2003 through January 9, 2005; August 23, 2005 through September 22, 2005; February 21, 2006 through May 14, 2006; July 17, 2006 through July 31, 2006; September 25, 2006 through October 22, 2006; and November 6, 2006 through June 23, 2014), that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $279.54 per week for a period of 300 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 60% loss of person as a whole

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $91,478.05 for medical expenses under §8(a) of the Act, subject to the fee schedule in §8.2 of the Act.

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

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

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

DATED: DEC 13 2018

Charles J. DeVriendt

Joshua D. Luskin

L. Elizabeth Coppoletti

CJD/dmm
O: 082918
49

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HAJRULLAHU, FERDINAZE
Employee/Petitioner

Case# **03WC034786**
04WC039980

CDW
Employer/Respondent

18IWCC0621

On 2/27/2017, 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 0.67% 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:

4788 HETHERINGTON KARPEL BOBBER
PETER C BOBBER
120 N LASALLE ST SUITE 2810
CHICAGO, IL 60601

2542 BRYCE DOWNEY & LENKOV LLC
EDWARD JORDAN
200 N LASALLE ST SUITE 2700
CHICAGO, IL 60601

STATE OF ILLINOIS)SS.
COUNTY OF Lake)

18IWCC0621

☐ 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

Ferdinaze Hajrullahu
Employee/Petitioner

v.

CDW
Employer/Respondent

Case # **03** WC **34788**

Consolidated cases: **04WC39980, et al**

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 **Chicago, Illinois** on **12/13/2016 and 12/22/2016**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 **Vocational Rehabiliation and Two-Doctor Rule**

FINDINGS 18IWCC0621

On **05/28/2003**, 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 **$24,226.80**; the average weekly wage was **$465.90**.

On the date of accident, Petitioner was **41** years of age, ***married*** with **2** 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 **$4,561.38** for TTD, **$664.60** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$5,226.07**.

Respondent is entitled to a credit of **$8,182.51** under Section 8(j) of the Act. 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.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **$310.60**/week for **492-2/7ths** weeks, for periods indicated in the attached Addendum, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent and total disability benefits of **$376.66**/week for life, commencing **June 12, 2014**, as provided in Section 8(f) of the Act.

Respondent shall pay Petitioner temporary partial disability benefits of **$155.30**/week for **64-1/7ths** weeks, for periods indicated in the attached Addendum, as provided in Section 8(a) of the Act.

Respondent shall pay reasonable and necessary medical services of **$91,478.05**, as provided in Sections 8(a) and 8.2 of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in Section 8(g) 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

2/24/17
Date

FINDINGS OF FACT:

Petitioner was born on March 14, 1962 and was 41 years old on May 28, 2003. She was born in Kosovo and came to the United State in 1999 as a war refugee. She has been married for 34 years and obtained her U.S. citizenship in 2005.

Petitioner testified that she did not obtain any education in the United States and the highest level of education she completed in Kosovo was high school. After high school, she attended some college classes focusing on preschool education. She did not obtain a certificate or degree as a result of those classes. Petitioner provided that her native language is Albanian. She is able to speak and understand some English although her reading and writing English skills are weak.

Petitioner testified that prior to working for Respondent, she worked in Kosovo as a payroll clerk which involved keeping track of employee's hours and wages. Petitioner stated that she did not utilize a computer to perform this work and instead performed same manually. She held this clerical job from 1981 through 1999.

Petitioner testified that she commenced employment with Respondent on December 6, 1999. She found the job with the assistance of a humanitarian organization that helped bring her and her children to the Chicago area. This organization also assisted with paying her rent, utilities and providing her family food. With regard to the job at CDW, the organization drove Petitioner and others in a van to Respondent's facility where she was hired. She also received assistance filling out the application for the job.

Respondent is a company which provides computers and accessories to its customers. Petitioner provided that she worked as a picker/packer which required her to pick various parts of an order from the warehouse; scan them; pack them into boxes; and then move the completed boxes/orders to a conveyor. She indicated that her job would require lifting up to 70 pounds with individual parts weighting 10-25 pounds. She also had to lift and maneuver empty wooden pallets that weighed "at least 50 pounds."

Petitioner sustained an undisputed accident on May 28, 2003. Petitioner testified that she was performing her regular work when she injured her low back attempting to pull a component from a warehouse shelf. Petitioner stated that she had climbed the shelf framing to reach a part deep on a shelf when she noted sudden pain in her low back while lifting the part and attempting to descend the shelving to the floor.

Petitioner first sought medical treatment for her injuries the following day, May 29, 2003. Then, she saw Dr. Vidovic, her primary care physician at Ravenswood Medical Professional Group. Dr. Vidovic noted Petitioner complained of severe low back pain that started at work when she was lifting heavy packages. Upon examination, Dr. Vidovic noted Petitioner was in significant distress due to back pain which radiated into her left lower extremity. Dr. Vidovic took Petitioner off work and treated the condition conservatively with medication. (Pet. Ex. 8)

On June 5, 2003, Petitioner retuned to the Ravenswood Medical Professional Group where she saw Dr. Powell. Petitioner complained of low back pain with radiation down the left leg. Dr. Powell diagnosed sciatica, prescribed medication, and referred Petitioner to Dr. Abraham of the same medical group. (Pet. Ex. 8)

On June 6, 2003, Petitioner completed a Safety Incident Report. The incident report states that Petitioner experienced back pain after lifting heavy boxes "...up and down the different levels of the picking module." (Resp. Ex. 12)

Dr. Abraham first saw Petitioner on June 17, 2003 at which time he noted a consistent history of accident. Petitioner reported shooting pain from the low back radiating down the left leg. Upon examination, Dr. Abraham recorded positive straight leg raising regarding the left leg. X-rays of the lumbar spine showed no gross pathology. Petitioner was diagnosed with lumbar disc disease and left sciatica. The doctor also ordered a lumbar MRI (Pet. Ex. 8) which when completed on June 18, 2003, showed some facet arthropathy at L5-S1, without disc herniation, central spinal or neuroforaminal stenosis. (Pet. Ex. 8)

Petitioner returned to Dr. Abraham on July 8, 2003. Dr. Abraham noted Petitioner had a set-back with continual with left leg pain. Petitioner also reported that the pain would awaken her at night. Dr. Abraham assessed low back pain acute herniation; L4-L5, L5-S1 disc degeneration. The doctor felt Petitioner could return to work on July 21, 2003 and her pain medications were continued. (Pet. Ex. 8)

Petitioner saw Dr. Vidovic on July 15, 2003 and wanted to return to work. Dr. Vidovic released Petitioner to return to work with restrictions. (Pet. Ex. 8) Petitioner returned to light duty work on July 21, 2003.

Following her return to work, Petitioner returned to Drs. Vidovic and Abraham on August 26, 2003. Petitioner reported that her back pain was unbearable. She also reported that working an eight hour shift exacerbated the pain which started in her low back and radiated into the left leg. Dr. Abraham noted that Petitioner would sleep on the floor due to the pain. Dr. Abraham limited Petitioner to avoid lifting over 25 pounds. The doctor also recommended lumbar epidural steroid injections. (Pet. Ex. 8)

Consistent with Dr. Abraham's referral, Petitioner presented to Dr. Rifai of the Pain Management Center at Advocate – IMMC on September 16, 2003. Dr. Rifai noted a consistent history of the May 28, 2003 work injury. Objectively, he noted positive straight leg raising on the left at 30 degrees as well as decreased strength in the left leg. Dr. Rifai diagnosed lumbar radiculopathy and recommended a series of lumbar epidural steroid injections the first of which he administered that day. (P. Ex. 10, p.1).

Petitioner testified that on September 26, 2003, she was filling a "big order" at work when she noticed her back hurting. Petitioner stated that she spoke to her supervisor, Rudy, and requested permission to go home. She indicated that her request was denied and she continued working. Petitioner stated that her pain continued to increase and she requested an ambulance to take her to the emergency room. Petitioner stated, "...the pain was becoming worse...I couldn't stay any longer. I couldn't handle it any longer."

Petitioner was transported to Condell Medical Center. Records submitted show that her chief complaint was back pain that started at work four months ago on May 28, 2003 while lifting. Also noted was that the recent injury occurred while lifting at work. The "reason for the visit" further show she "complained of back X four months receiving cortisone injections." Petitioner was discharged with a diagnosis of chronic low back pain and instructed to follow up with her physician. (Pet. Ex. 11)

Petitioner followed up with Dr. Vidovic on September 29, 2003. Dr. Vidovic noted Petitioner had been doing well since the September 16 injection until her back pain returned on September 26th when she worked a 13 hour shift. Dr. Vidovic returned Petitioner to modified work effective September 30, 2003 with no more than 8 hours of work per day. (Pet. Ex. 8)

Dr. Vidovic took Petitioner off work on October 7, 2003, (P. Ex. 8) She underwent a second lumbar ESI with Dr. Rifai on October 10, 2003. (Pet. Ex. 10) Thereafter, Dr. Vidovic returned Petitioner to part-time work, four hours a day, effective November 3, 2003 for four weeks. (Pet. Ex. 8) Petitioner testified that she returned to part-time work on November 4, 2003.

Petitioner returned to Dr. Vidovic on December 2, 2003. Petitioner reported that she was doing better on Celebrex. The doctor noted that Petitioner wanted to return to an eight hour shift. (Pet. Ex. 8)

Petitioner testified that on December 18, 2003, she was working packing boxes and getting boxes onto a conveyor belt when she experienced further low back pain and as well as neck pain. Petitioner stated that she informed a supervisor named "Scott" of her back and neck pain. She completed work and returned to Dr. Vidovic the following day.

On December 19, 2003, Dr. Vidovic recorded that Petitioner presented with worsening back pain with neck pain for a week. Dr. Vidovic ordered a cervical MRI; referred Petitioner to Dr. Gleason; and took Petitioner off work. (Pet. Ex. 8)

Petitioner underwent the prescribed cervical MRI on December 20, 2003. The study revealed disc bulging, with protrusions and disc degeneration at C3 through C7. (Pet. Ex. 12)

Petitioner presented to Dr. Gleason on December 23, 2003 with complaints of low back pain as well as tingling and numbness into the left first and second toes. Dr. Gleason noted that her symptoms had been present since May 2003, when she felt pain after removing a 40 pound box from a shelf. Dr. Gleason also noted Petitioner had cervical and left arm complaints which she originally stated "...started 1 month ago and then tried to say it was part of a work injury." In addition to performing an examination, Dr. Gleason reviewed the June 2003 lumbar MRI which he felt demonstrated degenerative disc disease L3-4-5 greater than L5-S1 as well as facet arthropathy at L5-S1. Dr. Gleason diagnosed left lumbar radicular syndrome. He recommended a MRI of the pelvis, an EMG/NCV study and physical therapy. (Pet. Ex. 13)

Petitioner underwent the prescribed EMG/NCV on December 29, 2003. Same was determined to be a normal study. Specifically, it was noted there was insufficient evidence for a left S1 radiculopathy and there was no electrical evidence for a peripheral neuropathy. (Pet. Ex. 9)

Petitioner commenced physical therapy at Swedish Covenant Hospital January 8, 2004 and continued through January 16, 2004. (Pet. Ex. 9)

Petitioner returned to Dr. Gleason on January 13, 2004 at which time he recommended continued use of medications, a home exercise program and a chronic pain management program. (Pet. Ex. 13)

Based on Dr. Vidvovic's referral on February 17, 2004, (Pet. Ex. 8) Petitioner returned to Dr. Rifai on February 23, 2004. Dr. Rifai noted Petitioner complained of cervical neck pain with numbness in the left 3rd and 5th digit. Petitioner also reported that the previous two injections provided no relief. Dr. Riai assessed cervical disc disease and lumbar and cervical radiculopathy. Dr. Rifai ordered Flexeril and administered a cervical epidural injection. (Pet. Ex. 10)

Pursuant to a neurosurgical consult referral by Dr. Vidovic, Petitioner was seen by Dr. Sheldon Lazar on April 14, 2004. The doctor recorded Petitioner complained of continual low back and left leg radicular pain after injuring herself at work the year prior while reaching for an object. She also reported that earlier in 2004, while working, she developed pain in her neck and upper extremities. Dr. Lazar opined that Petitioner did not have a surgical problem in her neck or lumbar spine. He recommended conservative management with physical therapy and exercise. The doctor also recommended against any further injections in either her cervical or lumbar region. Instead, he felt Petitioner should be treated with non-steroidal, anti-inflammatory drugs and mild analgesics. (Pet. Ex. 14) Thereafter, Petitioner underwent further physical therapy from April 27, 2004 through May 21, 2004. (Pet. Ex. 9)

At Petitioner's attorney's request, she underwent a Section 12 examination with Dr. Charles Slack on September 2, 2004. Dr. Slack recorded a history that Petitioner developed low back and bilateral leg pain while trying to lift a heavy box from a high upper shelf on May 28, 2003. He noted that Petitioner returned to work on July 21, 2003 and continued to work until September 26, 2003 when she developed increased low back, neck and arm pain. Dr. Slack noted that Petitioner continued working, but had been off work since December 18, 2003 when she had increasing low back and neck pain. Dr. Slack diagnosed Petitioner with persistent lumbar radiculopathy on the left with an apparent aggravation of underlying degenerative disk disease. Dr. Slack indicated that because of the exacerbation of back and leg symptoms after the September 26, 2003 incident at work, Petitioner should undergo a new lumbar MRI to determine if there had been a progression of the degenerative disc disease. He stated that if no significant changes were noted, then Petitioner would be a candidate for pain management care. Lastly, Dr. Slack opined that Petitioner was disabled from work at that time. (Pet. Ex. 15)

Dr. Vidovic returned Petitioner to work effective January 13, 2005 with limitations including no lifting over 20 pounds, no shift greater than 8 hours and two fifteen minute breaks during a shift for rest. On February 8, 2005, Dr. Vidovic noted Petitioner had significant back pain with the eight hour shift. The doctor limited Petitioner's work to 4 hours per shift and referred her to Dr. Schuette for possible further injections. (Pet. Ex. 8)

Petitioner presented to Dr. Schuette on February 14, 2005. After an examination and reviewing the previous diagnostic studies, Dr. Schuette assessed Petitioner with chronic low back pain, now accompanied by diffuse pain syndrome. The doctor recommending that she take Neurontin and Dolobid and hold off on further injections. (Pet. Ex. 16) During the March 9, 2005 follow-up visit, Dr. Schuette proceeded with a lumbar epidural steroid injection. On March 23, 2005, Dr. Schuette noted improvement with the radiating pain following the initial injection. He administered a second injection and noted that Petitioner's neck pain was predominantly the result of muscular spasm and strain. He noted same was likely referred pain from the back. (Pet. Ex. 16)

Petitioner returned to Dr. Schuette on May 4, 2005. Petitioner reported that her back pain had gotten worse. The pain radiated into the left leg and she had a return of numbness and tingling. Dr. Schuette stated that clearly Petitioner had recurrent problems with her back. Dr. Schuette administered a third injection that day and recommended further therapy as well as strengthening and exercise. (Pet. Ex. 16)

Records submitted show Dr. Schuette kept Petitioner off work from March 9, 2005 through March 10, 2005; March 23, 2005 through March 24, 2005; and May 4, 2005 through May 8, 2005. (Pet. Ex. 16)

Petitioner testified that on August 22, 2005 she was packing and scanning boxes when she experienced increased back pain while at work. Petitioner stated that she did not report the August 22nd occurrence to anyone at Respondent nor did she fill out any documentation regarding an August 22, 2005 accident.

Petitioner returned to Dr. Vidovic on August 23, 2005. Petitioner reported increased pain again in the low back after reinjuring the back at work the previous day. Dr. Vidovic ordered 6 therapy sessions (Pet. Ex. 8) which Petitioner underwent at Swedish Covenant Hospital. (Pet. Ex. 9) Dr. Vidovic returned Petitioner to 4 hour per day work effective on September 26, 2005. On October 26, 2005, Dr. Vidovic took Petitioner off work completely until October 31, 2005. (Pet Ex. 8)

Petitioner testified that she returned to restricted work for Respondent. Petitioner testified that she continued working her 4 hour shifts performing scanning of small parts, approximately 4000 per shift. Petitioner indicated that in December 2005 she began experiencing pain in her left hand. Petitioner stated that advised a supervisor but she couldn't remember who she spoke to.

Petitioner presented to Dr. Vidovic on December 5, 2005 with pain in her left wrist, thumb and index finger. Dr. Vidovic noted that Petitioner had been at work scanning four hours daily with her left hand. Dr. Vidovic assessed carpal tunnel syndrome, recommended a wrist brace and released Petitioner to work 4 hours per day in a sitting position. (Pet. Ex. 8)

Petitioner continued treating with Dr. Vidovic for persistent low back pain into 2006. Dr. Vidovic ordered more physical therapy, (Pet. Ex. 8) which Petitioner underwent from March 14, 2006 through March 27, 2006. (Pet. Ex. 9) Dr. Vidovic kept Petitioner off work effective February 21, 2006. (Pet. Ex. 8)

Consistent with Dr. Vidovic referral, Petitioner returned to Dr. Lazar on March 17, 2006. Dr. Lazar recorded that two weeks prior, she developed severe pain in her back and could barely move. Dr. Lazar indicated Petitioner probably had a large disc protrusion or spinal stenosis causing nerve root compression on the left primarily involving the L5 nerve root. The doctor ordered a repeat lumbar MRI and prescribed medication (Pet. Ex. 14)

Petitioner underwent the MRI on March 24, 2006. The scan revealed slight to moderate bulging from L3-4 and L4-5. There was minimal bulging from L2-L3 and L5-S1 as well as degenerative changes from L3-4, L4-5 and L5-S1. (Pet. Ex. 12)

Dr. Lazar saw Petitioner again on April 28, 2006. Dr. Lazar noted the recent MRI revealed diffuse, mild degenerative changes without any significant nerve root or cauda equina compression at any level. He recorded that the left sciatica was gone and her neurological examination was completely within normal limits. Dr. Lazar indicated that Petitioner had problems throughout her skeleton and her problems were primarily arthritis which could be helped after a thorough evaluation. Dr. Lazar felt a referral to a rheumatologist would be helpful. (Pet. Ex. 14)

Dr. Vidovic returned Petitioner to 4 hour shifts as of May 14, 2006. (Pet. Ex. 8)

Petitioner testified that she was involved in a non-worked related motor vehicle collision on July 11, 2006. Petitioner presented to the emergency room at Condell Medical Center with complaints of neck, back and hip pain. Hospital records show she was primarily treated for neck and hip pains. She was discharged that day with a diagnosis of acute multiple contusions. (Resp. No.2 Ex. 2)

Petitioner saw Dr. Wu in Dr. Vidovic's absence the following day. Dr. Wu noted Petitioner was complaining of nausea, dizziness, vomiting and neck pain. A head CT scan was ordered. No lumbar pain was noted. (Pet. Ex. 8) Petitioner presented to Dr Vidovic on July 19, 2006. The doctor diagnosed her with cervical strain post motor vehicle accident. She also took Petitioner off work from July 17, 2006 through July 31, 2003. (Pet. Ex. 8) Petitioner testified that her cervical and lumbar conditions did not change as a result of the car accident.

On September 25, 2006, Petitioner returned to Dr. Vidovic. Records show she complained of "pain all over." The doctor also noted that her left hand was swollen and red. Petitioner was taken off work at that time. Petitioner remained off until Dr. Vidovic released her to return to work as of October 9, 2006. (Pet Ex. 8)

At her attorney's request, Petitioner underwent a Section 12 examination with Dr. Daniel Nagle, on October 31, 2006, for complaints of left hand pain. Although the doctor could not provide a definite diagnosis, Dr. Nagle believed Petitioner suffered from double crush syndrome. He believed the compression of the proximal nerve roots had rendered the distal extension of those nerve roots more susceptible to compression and the effects of repetitive activities. Dr. Nagle also noted that Petitioner presented with irritation of median and

ulnar nerves in the left upper extremity. She also had findings suggestive of cervical radiculopathy. He recommended an EMG/NCV study. (Pet. Ex. 17)

On November 8, 2006, Dr. Vidovic took Petitioner off work until further notice and ordered a cervical MRI. (Pet. Ex. 8)

Respondent placed Petitioner on an approved leave of absence commencing November 6, 2006. (Pet. Ex. 28).

Petitioner underwent the prescribed cervical MRI on November 10, 2006. The study revealed multilevel disc and facet degeneration with areas of stenosis and spinal cord deformity. (Pet. Ex. 12)

Dr. Vidovic referred Petitioner to Dr. Simikin for evaluation and a cervical EMG/NCV. Dr. Simikin administered the testing on January 17, 2007 and his findings revealed "no clear electrodiagnostic evidence of cervical radiculopathy or peripheral neuropathy. (Pet. Ex. 8)

At her attorney's request, Petitioner underwent a Section 12 examination with Dr. Michael Treister on April 26, 2007. In his report dated May 9, 2007, Dr. Treister noted that Petitioner sustained a low back injury resulting in lower back and left lower extremity pain on May 28, 2003 and had been diagnosed with a lumbar spine strain in the presence of degenerative disc disease at L4-L5 and L5-S1 and developed cervical spine pain in late 2003. Dr. Triester also noted that in July 2006 Petitioner was in a motor vehicle accident that caused some neck pain. Dr. Triester noted that none of Petitioner's MRIs or EMGs documented any disc herniation or rational basis for Petitioner's radicular complaints. Upon examination, Dr. Triester found many Waddell findings. He opined that Petitioner's lumbar strain morphed into chronic pain syndrome. He indicated she had psychiatric/psychological aberrations in that she perceives numerous pain producing problems, yet there were no rational objective medical explanation for the severity of her many complaints. Dr. Treister stated that while she may indeed experience pain, the extent of her complaints far exceed what the pathology might reasonably be expected to generate. He added that any more injections, medications, or physical therapy would only reinforce her perception of disease and disability. Lastly, the doctor indicated that Petitioner was severely disabled from the current medical problem, "chronic pain syndrome," and that even with excellent psychological and psychiatric care, it could take many years to put her on the road to recovery. (Pet. Ex. 18)

Petitioner continued to follow with Dr. Vidovic through 2007. Petitioner last saw the doctor on November 7, 2007 at which time she returned Petitioner to four hour shifts from November 12, 2007 until further notice. (Pet. Ex. 8)

Respondent terminated Petitioner's employment effective November 6, 2007. (Pet. Ex. 28) Petitioner testified that with the termination of her employment, she lost her health insurance coverage and was unable to obtain medical care. Petitioner also indicated that she received no workers' compensation benefits following said termination.

At Respondent's request, Petitioner underwent a Section 12 examination with Dr. Edward Goldberg on November 3, 2008. Dr. Goldberg opined Petitioner had some degenerative disk disease of the cervical spine. The doctor explained that because Petitioner's cervical complaints did not occur until December 2003, same was not related to work. With respect to Petitioner's lumbar condition, the doctor opined Petitioner had some degenerative disk disease with lumbar radiculopathy. He felt that her lumbar condition of ill-being was related to the May 28, 2003 work accident. He also noted that because Petitioner did not offer another injury of December 2003, September 2003, August 2005 or December 2005, he did not believe any of Petitioner's conditions of ill-being was related to those accident dates. Further, he opined that there was no additional injury caused by the July 11, 2006 motor vehicle accident. Dr. Goldberg opined that Petitioner had chronic behavior.

He did not believe she was a surgical candidate nor would he offer any further injections. The doctor added that the only additional treatment would be due to the May 28, 2003 accident. Lastly, he indicated Petitioner could work 8 hours per day lifting no more than 20 pounds. (Pet. Ex. 19)

Petitioner testified that in 2009 she obtained health insurance through her husband's group carrier, Union Health Service. Dr. Jovanovich became her primary care provider under that insurance plan. Dr. Jovanovich first examined Petitioner on March 17, 2009. Dr. Jovanovich noted a consistent history of the 2003 work accident. The doctor's impressions amongst other diagnoses were neck, shoulder and back pain. (Pet. Ex. 20)

By June 23, 2009, Petitioner continued with neck and back pain complaints. Dr. Jovanovich referred Petitioner to Dr. Edward Abraham for orthopedic care to the spine. (Pet. Ex. 20) Dr. Abraham examined Petitioner on August 6, 2009 at which time he diagnosed low back pain/syndrome and ordered a lumbar MRI and EMG of the upper extremities. Dr. Abraham next saw her on September 10, 2009 noting that the EMG was unremarkable but the lumbar MRI showed spondylosis bilaterally at L5, bulging at L3-4 and L4-5 with stenosis at L4-5 and bilateral degenerative facets at L4-5 and L5-S1.Dr. Abraham noted that although Petitioner's findings were consistent with age, it did not seemed to explain the entire picture she presented with. He diagnosed Petitioner with chronic low back and neck pain syndrome. (Pet. Ex. 20)

Petitioner continued following with Dr. Jovanovich thereafter. According to Dr. Jovanovich's records dated June 14, 2010, Petitioner's husband call his office and reported that Petitioner's pain was getting worse and radiating into the left lower leg. Dr. Jovanovich referred her for another MRI and for a neurosurgical consult. (Pet. Ex. 20)

Dr. Slavin first saw Petitioner on October 4, 2010. Dr. Slavin reviewed a lumbar MRI indicating same demonstrated partial lumbarized S1 vertebral bone and severe degeneration at L4-L5 and L5-S1 with disk protrusion and bilateral foraminal stenosis, worse on the left. Dr. Slavin felt Petitioner did not require surgery at that time. He indicated that she may eventually require surgery to the low back, but in the interim, injections and nerve blocks might be the most appropriate modalities. (Pet. Ex. 21) Petitioner refused further injections indicating they were not successful in the past. (Pet. Ex. 20)

On March 28, 2011, Dr. Slavin referred Petitioner to his partner, Dr. Neckrysh, who specializes in complex spine surgery. (Pet. Ex. 21) Dr. Neckrysh first examined Petitioner on April 15, 2011. At that time, Dr. Neckrysh noted a history of the onset of spinal pain as a result of a work lifting incident at work 8 years prior. Petitioner complained of low back pain radiating into the left leg and less severe neck pain radiating bilaterally. Dr. Neckrysh reviewed Petitioner's March 2011 lumbar and cervical MRIs. The doctor noted the lumbar MRI showed diffuse degenerative disc disease with mild spinal stenosis at L3-4 and L4-5 along with mild retrolothesis at L3 and L4. He opined that the cervical MRI showed right sided osteophyte pressing on C5 nerve root and C5, C6 level osteophyte complex on the left. He recommended Petitioner undergo a C3-5 cervical arthroplasty, discectomy and removal of osteophytes at C5-6 along with anterior cervical fusion at C5-6. (Pet. Ex. 21)

Petitioner was admitted to UIC Hospital on May 19, 2011 with an eight year history of neck and back pain with sudden onset after lifting heavy objects at work with a gradual increase of left hand weakness and dropping objects thereafter. Dr, Neckrysh performed an anterior cervical discectomy at C4-5 and C5-6 along with cervical fusion at C5-C6. Post-operatively, Petitioner was diagnosed with C4-5 and C5-6 herniated disc with cervical radiculopathy. (Pet. Ex. 21)

Respondent had a second Section12 examination with Dr. Edward Goldberg on June 24, 2011. Dr. Goldberg again opined that the care to the cervical spine was not related to the work accident since the cervical symptoms "did not appear until multiple months after the alleged accident of 2003." With respect to the lumbar

spine, the doctor opined that although there was some pain behavior, there was no symptom magnification. The doctor felt she should undergo a FCE once her cervical fusion healed. In the meantime, from the lumbar perspective, she could work with a 20 pound lifting restriction. (Pet. Ex. 19)

Petitioner continued treating with Dr. Neckrysh post-operatively. On September 23, 2011, Petitioner reported that her radicular symptoms into her arms had significantly improved. The doctor felt she was developing a solid fusion at C5-C6. Regarding her low back, Petitioner reported continual complaints of radiating low back pain. Dr. Neckrysh ordered updated MRI, CT and EMG of the low back/lower extremities. (Pet. Ex. 21)

Petitioner underwent the lumbar EMG on November 7, 2011. The EMG revealed minimal evidence of S1 radiculopathy. (Pet. Ex. 21) On December 9, 2011, Dr. Neckrysh recorded that Petitioner underwent the prescribed diagnostics. The doctor provided that the x-ray and MRI showed degenerative changes in the lumbar spine with disc protrusions at L5-S1. The CT scan revealed mild foraminal stenosis at L5-S1 bilaterally, left greater than right. Dr. Neckrysh recommended AC joint injections and selective nerve root blocks. (Pet. Ex. 21)

Dr. Bartis performed lumbar epidural steroid injections on January 12, 2012, February 6, 2012, and March 8, 2012. (Pet. Ex. 21)

On July 24, 2012, Petitioner presented to Dr. Neckrysh reporting a significant amount of back pain. Dr. Neckrysh noted that Petitioner's back corresponded with very arthritic facets at L4-L5 and L5-S1. He also noted she had left S1 radiculopathy. The doctor felt all non-operative options had been exhausted. As a result, he recommended Petitioner undergo an L5 laminectomy with nerve root decompression. (Pet. Ex. 21)

On August 15, 2012, Dr. Neckrysh performed a lumbar fusion of L4 through S1 with utilization of an iliac crest autograft and laminectomies at L4 and L5. The postoperative diagnosis was lumbar spondylotic radiculopathy. (Pet. Ex. 21) Postoperatively, Dr. Jovanovich ordered physical therapy which took place at Accelerated Rehabilitation from September 28, 2012 through November 8, 2012. (Pet. Ex. 22). By December 4, 2012, Petitioner presented to Dr. Neckrysh complaining of some pain and numbness in the left side S1 distribution. The doctor opined that Petitioner should have 12 months of recovery to establish a solid fusion. The doctor also felt Petitioner was not able to work as a machine operator in a factory and could not lift weights in the 70lb. range. (Pet. Ex. 21)

At the one year follow up visit on September 10, 2013, Dr. Neckrysh noted that Petitioner's left leg radicular symptoms improved by 50%. On November 28, 2013, the doctor opined that Petitioner could return to work with a permanent 10 pound weight lifting limit. (Pet. Ex. 21)

Dr. Goldberg, Respondent's Section 12 examiner, performed a third examination on May 9, 2014. Dr. Goldberg opined that Petitioner's lumbar spondylosis and left leg radicular pain was aggravated by the May 28, 2003 work accident. He opined that the lumbar and cervical treatment including surgical interventions was reasonable and necessary, although the cervical treatment was not work related. Dr. Goldberg opined that Petitioner could return to work with a 10 pound lifting restriction and recommended an FCE to determine her true capabilities and return work. He opined that Petitioner's work restrictions were due to the fusion necessitated by the May 28, 2003 work accident. Lastly, Dr. Goldberg opined Petitioner would be at MMI after she underwent an FCE of the lumbar spine. He noted the MMI did not apply to the cervical spine as it was his opinion same was not work related. (Pet. Ex. 19)

Petitioner underwent the FCE on June 23, 2014. The FCE was deemed valid showing Petitioner demonstrated functional capabilities at the sedentary to light physical demand level. Petitioner demonstrated physical capabilities of lifting 21.4 lbs desk to chair level, 14.8 lbs above shoulders bilaterally, and lifting and

carrying 17 lbs in each hand. The FCE noted Petitioner was capable of working 8 hours per day with 8 hours of sitting, 3-4 hours of standing, and 6-7 hours of walking. Also noted was that she was able to perform occasional bending, stooping, kneeling, crawling, crouching and squatting. (Pet. Ex. 23) Petitioner testified that following the evaluation, she had to lay down for approximately two days due to the increased neck and back pain caused by the evaluation.

At Petitioner's attorney's request, she underwent a vocational evaluation with Certified Vocational Rehabilitation Counselor Edward Rascati on March 19, 2015. In his report dated March 24, 2015, CRC Rascati noted that Petitioner's strengths were her long and consistent work history. Her vocational barriers consisted of singular work history; non-English speaking; no HS or GED; physical restrictions of maximum 10# lifting; minimal computer skills; and limited transferrable skills. CRC Rascati opined that based upon Petitioner's restrictions, limited transferrable skills, limited education, language barrier and minimal computer skills, no stable labor market exists for Petitioner. CRC Rascati added that "job placement would likely be a long drawn out affair with minimal chance at reemployment." He further added that "...if placement were to be considered [Petitioner] would benefit from immediate enrollment into English as a Second Language (ESL) courses." He further indicated Petitioner would need assistance with the identification of introductory computer and keyboarding classes. (Pet. Ex. 2)

Respondent obtained the services of CompAlliance for the purpose of performing a vocational assessment, transferable skills assessment and a labor market survey. The initial assessment conducted by CRC expert Sharon Babat occurred on May 21, 2015. In her report dated June 15, 2015, CRC Babat opined that a stable labor market existed for Petitioner. She indicated the "positive factors to successful outcome/assets" included, 1.) Petitioner completed high school and reported basic computer skills; 2.) Petitioner was bilingual in English and Albanian; 3.) Petitioner had been released to Sedentary to Light physical demand level; and 4.) Petitioner had access to an automobile. With respect to the "barriers and problem identification," CRC Babat indicated "[Petitioner's] reported physical limitations are more restrictive than what was demonstrated in the ATI Physical Therapy evaluation." CRC Babat felt Petitioner was employable in alternative occupations such as front desk clerk, customer service clerk, cashier and receptionist among others. (Resp1. Ex. 6)

CRC Babat also conducted a labor market survey. In her report dated July 7, 2015, CRC Babat identified twelve employers which she opined Petitioner would be able to qualify and secure employment. The positions identified included front desk clerk, desk office clerk, entry-level billing clerk, customer service clerk, sales clerk, call center clerk, cashier, receptionist and work order dispatcher. CRC Babat opined Petitioner could obtain and maintain employment in her local community. (Resp1. Ex 7)

On December 30, 2015, CRC Rascati authored an Updated Vocational Evaluation. CRC Rascati noted that he reviewed the vocational evaluation and labor market survey prepared by CRC Babat. CRC Rascati noted that although CRC Babat reported that Petitioner had been released to a Sedentary to Light physical demand level, he had not received any medical reports releasing Petitioner to that level of functioning. He noted that of the fourteen (14) alternative jobs noted by CRC Babat, only four (4) were classified as sedentary. Nine positions were classified as light and one position classified as medium. CRC Rascati opined all were beyond the recommendations of both Dr. Neckrysh and Dr. Goldberg. CRC Rascati specifically identified five (5) of the positions which he felt were beyond Petitioner's restrictions. Additionally, CRC Rascati noted that ten (10) of the twelve (12) positions required a high school or GED. CRC Rascati was unclear as whether Petitioner's education in Albania and/or her work history would be considered in lieu of a high school diploma or GED. Also, CRC Rascati noted that he was advised that with the help of Petitioner's daughter, Petitioner contacted the identified employers without any call backs. In conclusion, CRC Rascati provided that his opinion remained unchanged indicating that a viable and stable labor market did not exist for Petitioner. (Pet. Ex. 3)

Petitioner continued to treat with Dr. Neckrysh through 2016. On March 15, 2016, Dr. Neckrysh noted that one of the surgical rods below S1 appeared broken. Thereafter, on April 12, 2016, Dr. Neckrysh opined Petitioner's present pain complaints in the lumbar spine were caused by early degeneration above the fusion for which he indicated Petitioner should follow up as symptoms increase. (Pet. Ex. 21)

Petitioner testified that she had never suffered an injury prior to her May 28, 2003 work accident. She indicated that she had never suffered an injury to; required medical treatment for; or missed work for any problem with her neck, left hand or low back. Petitioner indicated that although she has not worked anywhere since she last worked at Respondent, on November 6, 2006, she would like to work. Petitioner indicated that she has never created a resume and had no experience looking for a job. She provided that since her 2007 termination of her employment with Respondent, no one has assisted her regarding how or where to find a job. Petitioner stated that she contacted all employers listed in the labor market survey. She obtained no job offers as a result and she has not performed any other job searching. Petitioner's Exhibit 27 is a copy of notes Petitioner and her daughter kept in connection with the contacts they made with said potential employers.

Petitioner testified that presently, she suffers from constant neck and low back pain which radiates to her left foot. She indicated that the pain prevents her from sitting more than 25 minutes at a time. Petitioner indicated that she no longer sleeps with her husband because the pain wakes her often as she does not sleep more than 2 hours at a time. Petitioner also has difficulty brushing her teeth, getting dressed, using the toilet and showering due to low back pain. Petitioner stated she requires assistance from family members with laundry as she has difficulty lifting a heavy laundry basket due to her low back problems. She also requires assistance with cooking as she has difficulty standing more than 20 minutes. She requires assistance with grocery shopping due to difficulty with lifting heavy items and standing in line too long. Lastly, Petitioner testified that she takes Vicodin and Ibuprofen on a daily basis to address her back pain.

CRC Edward Rascati testified via deposition in this matter. CRC Rascati testified that in his opinion there is no current viable and stable labor market for Petitioner. In forming his opinions, CRC Rascati indicated that he relied on her work history, Petitioner's current level of physical functioning at the sedentary level, her transferable skills noting that the majority of positions would require computer experience or interaction which Petitioner didn't have much experience. He noted that she Skypes but she doesn't really keyboard and she doesn't have any real experience with any software programs. He indicated that if placement were to be considered, Petitioner would require a lot of assistance. In addition to the above opinions, CRC Rascati provided that Petitioner's age and language skills were barriers. He indicated Petitioner would benefit from a course of English as a second language. (Pet. Ex. 7)

CRC Rascati testified that he was not provided information that Petitioner received a two-year post high school education in Kosovo. CRC Rascati testified that while Petitioner had some transferable skills including repetitive work, comparing data, taking instructions and handling objects, many of the jobs listed in the labor market survey require computer involvement and the use of the English language. He added that job placement would be a long drawn out affair with minimal chance of employment. (Pet. Ex. 7)

CRC Sharon Babat testified via deposition in this matter. CRC Babat testified that Petitioner had basic computer skills demonstrated by the fact that she used email, skype and facebook. CRC Babat testified that after reviewing a set of pre-employment application records, it was noted that Petitioner attended college for two years while in Kosovo. CRC Babat indicated that these attributes are beneficial in a job search along with the fact that she had been continuously employed since 1984. From 1984 to 1999, she worked as a bookkeeper in Kosovo. Then from 1999 through the date of accident, Petitioner worked for CDW as a pick-pack. (Resp. Ex. 5)

CRC Babat testified that she identified 12 jobs in a labor market survey and identified positions that indicate that Petitioner is employable. She stated that these jobs ranged from starting salary of $9.50 to $33.50 per hour and would be within Petitioner's work restrictions. CRC Babat estimated that average salary for these jobs would $15.00 per hour. CRC Babat testified that she does not agree with Petitioner's vocational expert, CRC Ed Rascatti, that no stable labor market exists for Petitioner indicating that she had a stable work history, she is bilingual, attended two years of college and has basic computer skills. Lastly, CRC Babat acknowledged she did not provide Petitioner any job placement services, but such services could benefit Petitioner. (Resp. Ex. 5)

Respondent presented Rudy Gonzalo, one of its shipping supervisors, who testified that Petitioner did not notify him of any work accident occurring on September 26, 2003. Further, Respondent presented Jennifer Vega, on if its Human Resources representatives who testified that Petitioner only filled out and submitted a Safety Incident Report or accident report regarding her May 28, 2003 accident, (See. Resp1 Ex. 12)

In support of the Arbitrator's decision relating to (F) IS THE PETITIONER'S CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY. the Arbitrator finds the following:

Petitioner testified unrebutted that prior to her May 28, 2003 work accident, she never suffered injury to her low back; missed work due to her low back; or underwent any medical treatment to her low back. There is no evidence in the record of any pre-existing injury.

Following her May 28, 2003 undisputed work accident, Petitioner first obtained medical care the following day from Dr. Vidovic, her primary care physician. Dr. Vidovic noted a consistent history of injuring her back at work the day prior and she noted tenderness and spasm in her lumbar spine. Petitioner then underwent a prolonged course of treatment to her low back as detailed above in the statement of fact culminating in the August 15, 2012 lumbar fusion Dr. Neckrysh performed.

Every doctor that treated or examined Petitioner's back offered a consistent history of tracing Petitioner's low back problems to her undisputed May 28, 2003 work accident. These include the following specific references in the record:

a. Dr. Vidovic (P. Ex. 8, p.1);
b. Dr. Powell (P. Ex. 8, p. 2);
c. Dr. Abraham (P. Ex. 8, pp. 3, 5);
d. Dr. Rifai (P. Ex. 10, pp. 1, 3);
e. Condell Medical Center Emergency Room (P. Ex. 11, pp. 3, 5);
f. Dr. Gleason (P. Ex. 13, p. 1);
g. Dr. Slack (P. Ex. 15, p. 1);
h. Dr. Schuette (P. Ex. 16, p. 1);
i. Dr. Lazar (P. Ex. 14, p. 1);
j. Dr. Treister (P. Ex. 18, p. 1);
k. Dr. Goldberg (P. Ex. 19, pp. 2, 7, 9, 10, 15, 17);
l. Dr. Jovanovich (P. Ex. 20, pp. 1);
m. Dr. Neckrysh (P. Ex. 21, pp. 8, 17, 24; 32, 58, 83); and
n. Accelerated Rehabilitation (P. Ex. 22, p. 1).

The record is void of any evidence attributing Petitioner's low back pain with radiating pain into the left leg to any cause other than the May 28, 2003 work accident.

Specifically, the Arbitrator finds Respondent's Section 12 examining physician, Dr. Edward Goldberg of Midwest Orthopaedics at Rush especially persuasive in this matter. In his November 3, 2008 report, Dr. Goldberg opined that Petitioner's lumbar degenerative disc disease and radiculitis was caused by the May 28, 2003 work accident. He went on to note that since Petitioner offered him no history of any other work accidents, (like September or December of 2003 or August or December of 2005), that no condition of ill-being originates from any such claimed accidents. Dr. Goldberg went on to note that there was no additional injury caused by Petitioner's intervening July 11, 2006 motor vehicle accident.

Additionally, Dr. Goldberg opined in his June 24, 2011 report that Petitioner did not injure her cervical spine in the May 28, 2003 work accident. He went on to note again that "[h]er lumbar condition is due to the work-related accident of 5/28/2003," but "[h]er cervical condition is not related to that accident."

Lastly, in his May 9, 2014 report, Dr. Goldberg stated that Petitioner suffered lumbar spondylosis and left leg radicular pain which was aggravated by the May 28, 2003 work accident, and the resulting lumbar fusion surgery, which was reasonable and necessary, was related to that accident.

Relying on the consistency between Petitioner's testimony regarding the lack of any prior injury or treatment, the extensive consistent medical treatment records and Dr. Goldberg's persuasive opinions, the Arbitrator finds that a causal relationship exists between Petitioner's present condition of ill-being involving her low back and left leg and the undisputed work accident of May 28, 2003. Petitioner suffered injury to her lumbar spine involving an aggravation of degenerative changes in her lumbar spine which necessitated the extensive course of medical treatment indicated in the record, including, but not limited to, the lumbar fusion Dr. Neckrysh performed on August 15, 2012.

In support of the Arbitrator's decision relating to (J) WERE THE MEDICAL SERVICES PROVIDED TO PETITIONER REASONABLE AND NECESSARY ANS HAS RESPONDENT PIAD ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, the Arbitrator finds the following:

The Arbitrator notes that Dr. Goldberg, Respondent's examining doctor, opined that the treatment Petitioner underwent to the lumbar spine including the fusion surgery was appropriate, reasonable and necessary. There is no evidence in the record disputing or challenging the reasonableness or necessity of the medical care Petitioner obtained to her lumbar spine. Therefore, the Arbitrator, being persuaded by said opinion finds that the medical services rendered to Petitioner were reasonable and necessary.

Addressing the medical charges for said services, medical bills contained in Petitioner's Exhibit 24 and Petitioner's Exhibit 25 were entered into evidence at arbitration. These exhibits contain bills and itemized reimbursement claims from group insurance carriers who processed bills on Petitioner's behalf. The Arbitrator notes that given the findings regarding causal connection and reasonableness and necessity above, Respondent is liable for all bills related to the medical services Petitioner received for her lumbar spine condition only. Specifically, Respondent is liable to pay for the following bills (outstanding or paid by Petitioner) contained in Petitioner's Exhibit 24 to the extent indicated unless such bills are subject to reductions pursuant to the Medical Fee Schedule:

A. M. Ramez Salem & Assoc. (P. Ex. 24, pp. 2-3)	$15.00
B. North Suburban Neurosurgery (P. Ex. 24, p. 4)	$135.00
C. Condell Medical Center (P. Ex. 24, p. 5)	$141.60
D. Swedish Covenant Hospital (P. Ex. 24, p. 6)	$94.25
E. University of Illinois Anesthesiology (P. Ex. 24, p. 8)	$3,135.00
F. University of Illinois Hospital (P. Ex. 24, pp. 10-16)	$64,213.03

G.	University of Illinois Hospital (P. Ex. 24, p. 17)	$224.00
H.	University of Illinois Hospital (P. Ex. 24, p. 18)	$167.00
I.	University of Illinois Hospital (P. Ex. 24, p. 19)	$89.00
J.	ATI (P. Ex. 24, p. 47)	$2,762.28
K.	Walgreens (P. Ex. 24, pp. 52-58)	$110.42
	TOTAL:	**$71,086.58**

The parties stipulated that Respondent is entitled to a credit pursuant to Section 8(j) for amounts paid by Blue Cross Blue Shield, Petitioner's group health carrier provided though Respondent, totaling $8,182.51. (Pet. Ex. 24, Arb. Ex. 1)

Lastly, Respondent is liable for lumbar-related bills paid by Union Health Service, Petitioner's health insurance carrier not provided by Respondent totaling $20,391.47 (Pet. Ex. 24), representing the $26,491.67 total paid less the $6,099.20 in bills paid for the unrelated cervical care/surgery. (*See* Pet. Ex. 24)

Based on the above, the Arbitrator orders Respondent to pay $91,478.05 for reasonable and necessary medical services, representing amounts paid by Petitioner out of pocket, amounts paid by Union Health service, and amounts remaining outstanding ($71,086.58 + $20,391.47 = $91,478.05).

In support of the Arbitrator's decision relating to (K) WHAT ARE PERIODS OF TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND MAINTENANCE, the Arbitrator finds the following:

Petitioner testified, with no evidence offered in rebuttal, that she always followed her doctors' orders regarding being off work or working only four hour shifts. Respondent stipulated that Petitioner was off work from May 29, 2003 through July 20, 2003. (*See* Arb. Ex. 1) Dr. Vidovic then kept Petitioner off work from October 7, 2003 through November 2, 2003. (Pet. Ex. 8) On November 3, 2003, Dr. Vidovic returned Petitioner to working only 4 hour shifts through December 6, 2003 and Respondent stipulated to this period. (Pet. Ex. 8 , *See* Arb. Ex. 1)

Next, Dr. Vidovic kept Petitioner off work from December 19, 2003 through January 9, 2005. (Pet. Ex. 8, Resp2. Ex. 5) Petitioner then was restricted to four hours of work per day from February 8, 2005 through May 15, 2005, after which she went abroad to visit her ill mother who had suffered a stroke. (Pet. Ex. 8, Resp2. Ex. 4) Petitioner then returned to working four hour shifts from August 8, 2005 through August 22, 2005. (Resp2. Ex. 4)

Thereafter, Dr. Vidovic took Petitioner off work from August 23, 2005 through September 22, 2005 (Resp2. Ex. 4) after which Petitioner returned to four hour shifts from September 23, 2005 through February 20, 2006. Then, Dr. Vidovic took Petitioner off work from February 21, 2006 through May 14, 2006 and again returned Petitioner to four hour shifts from May 15, 2006 through July 16, 2006. (Resp2. Ex. 4, Pet. Ex. 8)

Dr. Vidovic took Petitioner back off work from July 17, 2016 through July 31, 2006 and then returned her to four hour shifts from August 1, 2006 through November 3, 2006 except for September 25, 2006 through October 22, 2006, during which she kept Petitioner off work. (Resp2. Ex. 4, Pet. Ex. 8)

Petitioner last worked for Respondent on November 3, 2006. Dr. Vidovic then took Petitioner off work from November 6, 2006 going forward. (Resp2. Ex. 4, Pet. Ex. 8) Thereafter, Respondent never provided any work, light duty or otherwise. On November 7, 2007, Dr. Vidovic indicated Petitioner could return to working 4 hour shifts until further notice. (Pet. Ex. 8) Respondent did not accommodate the restrictions and terminated Petitioner's employment effective November 7, 2007. (Pet. Ex. 28)

Following the termination of her employment, Petitioner, who was never released from care or deemed at MMI, lost her health insurance and did not obtain further medical care until her new insurance took effect. (Pet. Ex. 20) Dr. Neckrysh noted Petitioner "was not able to work anymore" from the time of his first visit with Petitioner on October 4, 2010. (Pet Ex. 21). Further, Petitioner testified that Dr. Neckrysh directed her not to work until November 26, 2013 when he issued permanent restrictions. Respondent did not offer Petitioner accommodating work thereafter as her employment with Respondent was terminated previously.

Dr. Goldberg, Respondent's IME, opined that from November 3, 2008, the date he first evaluated Petitioner, that Petitioner could work with restrictions of lifting no more than 20 pounds. (Pet. Ex. 19) He maintained that opinion at his second evaluation of Petitioner on June 24, 2011. (Pet. Ex. 19) Lastly, at his last examination on May 19 2014, he indicated Petitioner could work lifting up to 10 pounds and "[s]he will be at MMI after an FCE to her lumbar spine." (Pet. Ex. 19) The subsequent FCE took place on June 23, 2014. (*See* P. Ex. 23)

Given that Petitioner's condition of ill-being involving her lumbar spine had not stabilized at the time of the termination of her employment with Respondent in 2007 and she resumed care promptly when she obtained health insurance, and given that the Arbitrator is persuaded by Dr. Goldberg's opinions in this matter, the Arbitrator finds that Petitioner reached MMI on June 23, 2014. As such, the Arbitrator finds Petitioner was temporarily totally disabled from November 6, 2006 through June 23, 2014. Petitioner was under medical care and work restrictions during this period but Respondent did not provide accommodating light duty work during said period.

Regarding maintenance, the Arbitrator awards no benefits for maintenance finding that Petitioner did not partake in any vocational rehabilitation program. The Arbitrator notes that Respondent never authorized such a program, and her contacting the potential employers listed in the labor market survey does not constitute engaging in a self-directed job search.

Based on the above, the Arbitrator finds Petitioner was temporarily totally disabled and temporarily partially disabled for the following periods:

TTD periods:

5/29/2003through 7/20/2003, totaling 7 3/7ths weeks
10/7/2003 through 11/2/2003, totaling 3 5/7ths weeks
12/19/2003 through 1/9/2005, totaling 55 2/7ths weeks
8/23/2005 through 9/22/2005, totaling 4 2/7ths weeks
2/21/2006 through 5/14/2006, totaling 11 5/7ths weeks
7/17/2006 through 7 /31/2006, totaling 2 weeks
9/25/2006 through 10/22/2006, totaling 3 6/7ths weeks
11/6/2006 through 6/23/2014, totaling 398 weeks

TOTAL TTD: 492-2/7ths weeks at $310.60 per week

TPD periods:

11/3/2003 through 12/6/2003, totaling 4 5/7ths weeks, 4 hours per day
2/8/2005 through 5/15/2005, totaling 13 5/7ths weeks, 4 hours per day
8/8/2005 through 8/22/2005, totaling 2 weeks, 4 hours per day
9/23/2005 through 2/20/2006, totaling 21 3/7ths weeks, 4 hours per day

5/15/2006 through 7/16/2006, totaling 8 6/7ths weeks, 4 hours per day
8/1/2006 through 11/3/2006, totaling 13 3/7ths weeks, 4 hours per day

TOTAL TPD: 64-1/7ths weeks at $155.30 per week (representing 2/3 of the difference between the amount Petitioner could earn in the full performance of her work (AWW) and the gross amount she is able to earn in modified work (50% of the AWW (4 hours shifts)), = $465.90 - $232.95 = $232.95 x 2/3 = $155.30).

In support of the Arbitrator's decision relating to (L) WHAT IS THE NATURE AND EXTENT OF THE INJURY, the Arbitrator finds the following:

At arbitration, Petitioner testified that presently, she continues to suffer from constant low back pain which radiates into her left leg and into her left foot. Her back pain wakes her about every two hours during the night. She has difficulty dressing herself, bathing herself and sitting on the toilet. She needs assistance with laundry and shopping as she is unable to stand for prolonged periods or lift anything heavy. She can stand for only about 20 minutes, and she continues to take Vicodin and ibuprofen daily.

Dr. Neckrysh, Petitioner's surgeon, indicated that Petitioner's permanent restrictions were no lifting more than 10 pounds. (Pet. Ex. 21) Similarly, Respondent's Section 12 examining doctor, Dr. Goldberg agreed with Dr. Neckrysh opining that Petitioner has a 10 pound lifting restriction and that restriction is due to the lumbar spine injury. (Pet. Ex. 19)

The June 23, 2014 valid FCE showed Petitioner capable of work only at the sedentary to light level lifting from desk to chair level occasionally up to 21 pounds; lifting above shoulder level at 14.8 pounds occasionally and bilateral lifting from chair to floor at 14.8 pounds occasionally. Further, the evaluator noted Petitioner had difficulty with prolonged standing, bending, stooping, kneeling, crawling, crouching and squatting. (Pet. Ex. 23)

Most recently, Petitioner returned to Dr. Neckrysh with continued back pain. On April 12, 2016, he noted Petitioner was now experiencing the early stages of disk degeneration at L3-L4, the level immediately above the fusion. (Pet. Ex. 21)

The Arbitrator notes that Petitioner's picker/packer job with Respondent required her to lift up to 75 pounds and required her to stand and move quickly for eight or more hours per day. (Pet. Ex. 4)

Based on Petitioner's credible testimony regarding her current complaints, the consistent medical opinions and the valid FCE, the Arbitrator finds that as a result of her May 28, 2003 work accident, Petitioner is unable to return to her occupation as a warehouse worker for Respondent.

After the 2007 termination of Petitioner's employment, Respondent never offered Petitioner accommodating light work.

Certified Vocational Rehabilitation Counselor Edward Rascati performed a vocational assessment of Petitioner and found that given Petitioner's significant vocational barriers including limited transferable skills, her limited education (with no education in the United States), her limited ability to speak, understand, read and write English, her age and her limited computer skills, that no stable labor market exists for Petitioner and job placement services would likely be prolonged with a minimal change at reemployment. (Pet. Ex. 2)

Respondent's vocational counselor, Sharon Babat, opined that Petitioner is currently employable in various job categories of clerk jobs, i.e., motel clerk, reservation clerk, billing clerk and car rental clerk. CRC Babat never provided Petitioner any vocational rehabilitation services. Specifically, she never provided

Petitioner assistance drafting a resume, job leads, job placement services or any instruction on how to go about job searching.

Petitioner testified that with the assistance of her daughter, she contacted all the employers listed in the labor market survey, documented those contacts (*See* Pet. Ex. 27), and obtained no offers of employment from those contacts.

The Arbitrator is persuaded by CRC Rascati opinion regarding the lack of stable labor market for Petitioner. Further, although Petitioner knows and can speak some English, the Arbitrator observed that her language barrier is significant. Lastly, given her lack of computer skills, her lack of education in the United States, her age (54), lack of transferable skills, it is unlikely that even with extensive job placement services Petitioner would be employable.

The Arbitrator is not persuaded by CRC Babat in this matter. She classifies Petitioner as bilingual. It is clear that Petitioner's limited abilities with English would impede her with performing any job that would involve communicating in English with customers. Further, the Arbitrator notes that almost all of the categories of occupations identified by CRC Babat indicate Petitioner is able and qualified to perform (motel clerk, customer service clerk, billing clerk, car rental clerk, etc..), all require such English communication with customers. Therefore, the Arbitrator finds that these job categories of jobs propounded by CRC Babat that involve "clerk"-type jobs would not be feasible for this Petitioner.

The Arbitrator notes that Petitioner's counsel demanded Respondent provide vocational rehabilitation services. (Pet. Ex. 26) Respondent offered no such services without explanation. Respondent did not provide Petitioner with the vocational rehabilitation services she demanded. Having done so would have served to remove any doubt as to Petitioner's present employability.

Based on all the above, including but not limited CRC Rascati's persuasive opinion that no stable labor market exists for Petitioner, the Arbitrator finds that Petitioner has met her burden and proved that as a result of her May 28, 2003 work accident, she is permanently totally disabled from work on an odd-lot basis from June 23, 2014, the MMI date, continuing for life. Respondent is ordered to pay Petitioner benefits for said disability at a weekly rate of $376.66, representing the applicable minimum total permanent disability rate.

In support of the Arbitrator's decision relating to (M) SHOULD PENALTIES OR FEES BE IMPOSED UPON RESPONDENT, the Arbitrator finds the following:

The Arbitrator notes that this matter involved multiple claimed accidents, a complicated history of medical treatment, and contrary medical opinions specifically Dr. Slack, Dr. Trister and Dr. Laza. The Arbitrator declines to award penalties and attorney's fees.

In support of the Arbitrator's decision relating to (O) IS PETITIONER ENTITLED TO VOCATIONAL REHABILIATION, the Arbitrator finds the following:

Given the Arbitrator's findings as to the nature and extent of the injury finding that no stable labor market exists for Petitioner, the Arbitrator makes no award for vocational rehabilitation.

In support of the Arbitrator's decision relating to (O) DID PETITIONER VIOLATE THE TWO-DOCTOR RULE, the Arbitrator finds the following:

Petitioner chose to treat initially with Dr. Vidovic (Ravenswood Medical Group). Dr. Vidovic and her medical group provided referrals for Petitioner's care with Dr. Abraham, Dr. Rafai/Pain Management Center, Dr. Gleason, Dr. Lazar, Dr. Schuette and Dr. Simikin. Once Petitioner obtained her health insurance with Union Health Service, she chose to treat with Dr. Jovanovich who thereafter referred her to Dr. Abraham, Dr. Slavin, Dr. Neckrysh, Drs. Patel and Bartis. Dr. Slack, Dr. Nagle, Dr. Treister and Dr. Goldberg were Section 12 examining physicians.

Based on the above, the Arbitrator finds that none of Petitioner's care to her lumbar spine violated the two-doctor rule as all care was administered, directed or ordered by the two physicians she chose, namely Dr. Vidovic and Dr. Jovanovich, and was in their chain of referrals resulting therefrom.

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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JUSTIN CUNLIFFE,

Petitioner,

vs.

NO: 16 WC 7333
18 IWCC 684

BLOOMINGTON PUBLIC SCHOOL DISTRICT #87,

Respondent.

ORDER

This matter came before Commissioner Michael J. Brennan pursuant to Respondent's "Section 19(f) Petition to Recall November 8, 2018 Decision" filed November 21, 2018.

Per the Petition, Respondent alleged that Petitioner filed a Petition for Review along with his Statement of Exceptions. The Respondent, however, did not file a Petition for Review of the Arbitrator's Decision. Instead, the Respondent filed "additional issues in its response, contesting the Arbitrator's finding of accident 'arising out of' and 'in the course of' the employment, which is proper under 820 ILCS 305/19(f)..." The Respondent alleges that the Commission "did not in any way address or discuss the employer's additional arguments raised on review. Indeed, this Commission, in its opening paragraph of the Decision, did not reference the additional issues, and only mentioned the issues raised by petitioner's review." The Respondent has requested that the Commission recall its Decision to address the employer's additional issues and to issue a corrected Decision.

Section 19(e) of the Act states in relevant part that, if a petition for review and agreed statement of facts or transcript of evidence is filed, as provided herein, the Commission shall promptly review the Decision of the Arbitrator and all questions of law or fact which appear from the statement of facts or transcript of evidence. As the Petitioner complied with the requirements of Section 19(e), the Commission was obligated to review all questions of law or fact that appear from the transcript of evidence. The Commission fulfilled its duty as it modified the Decision, in

part, and affirmed and adopted the remainder of the Decision.

The Respondent's argument that the Commission only considered those issues raised by the Petitioner is a misapprehension of the Commission's Decision. The opening paragraph clearly indicates that a timely Petition for Review had been filed by the Petitioner only and those issues raised in said Petition for Review were casual connection and prospective medical. However, as stated in the second paragraph of the Commission's decision, "[T]he Commission has considered all the testimony, exhibits, pleading, and *arguments* [emphasis added] submitted by the parties." After considering all arguments raised by both parties, the Commission modified, in part, the Decision of the Arbitrator, and affirmed the remainder of the Decision of the Arbitrator, which included the issue of accident.

IT IS HEREBY ORDERED that the "Section 19(f) Petition to Recall November 8, 2018 Decision" as was filed by the Respondent be and it is hereby Denied.

DATED: DEC 10 2018
MJB/tdm
D: 11/26/18
52

Michael J. Brennan

Thomas J. Tyrrell

Kevin Lamborn

13WC22871
18IWCC0735

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

Bessie Joy Kaufhold,

Petitioner,

vs. NO. 13WC22871
18IWCC0735

Grand & Ashland Tap Inc. d/b/a
Grandbar and the Illinois State Treasurer as ex-officio
Custodian of the Injured Workers'
Benefit Fund,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

The Commission on its own Motion pursuant to Section 19(f) of the Workers' Compensation Act recalls the Review Decision dated November 30, 2018.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated November 30, 2018 is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained herein.

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

Stephen J. Mathis

DATED: DEC 3 - 2018
SM/sj
44

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

Bessie Joy Kaufhold,

Petitioner,

vs.

NO: 13WC022871
18IWCC0735

Grand & Ashland Tap Inc. d/b/a
Grandbar and the Illinois State Treasurer as ex-officio
Custodian of the Injured Workers'
Benefit Fund,

Respondents.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Petitioner and the Injured Workers' Benefit Fund and notice given to all parties, the Commission, after considering the issue(s) of causal connection, benefit rates, wage calculations, permanent 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 30, 2018 is hereby affirmed and adopted.

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.

IT IS FURTHER ORDERED BY THE COMMISSION that the Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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

DATED: DEC 3 - 2018
SJM/sj
o-11/15/2018
44

Stephen J. Mathis

David L. Gore

Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KAUFHOLD, BESSIE JOY
Employee/Petitioner

Case# 13WC022871

GRAND & ASHLAND TAP INC D/B/A GRANDBAR AND THE ILLINOIS STATE TREASURER AS CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND
Employer/Respondent

18IWCC0735

On 5/30/2018, 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 2.03% 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.

0147 CULLEN HASKINS NICHOLSON ET AL
JOSE M RIVERO
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CHICAGO, IL 60602

0103 RUTH STELZMAN PC
14 S LINCOLN WAY
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0975 BARBER LAW OFFICES LLC
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1834 WALDEN OFFICE SQ #500
SCHAUMBURG, IL 60173

6096 ASSISTANT ATTORNEY GENERAL
JOHN CATALANO
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

18 IWCC0735

☒ 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

Bessie Joy Kaufhold
Employee/Petitioner

v.

Grand & Ashland Tap, Inc. d/b/a Grandbar and the Illinois State Treasurer as custodian of the Injured Workers' Benefit Fund
Employer/Respondent

Case # **13WC22871**

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 **Brian T. Cronin**, Arbitrator of the Commission, in the City of **Chicago**, County of **Cook**, on **October 2, 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: **Notice of trial for Respondent Employer and Proof of Insurance**

FINDINGS

On **March 16, 2013**, Respondent-Employer *was* operating under and subject to the provisions of the Act.

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

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-Employer.

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

In the year preceding the injury, Petitioner's average weekly wage was **$1,212.96**.

On the date of accident, Petitioner was **41** years of age, married with 0 dependent child.

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

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

Respondent-Employer is not awarded any credit for TTD, TPD, maintenance, or for other benefits.

Respondent-Employer is not entitled to a credit under Section 8(j) of the Act.

ORDER

Temporary Total Disability
Respondent-Employer shall pay Petitioner temporary total disability benefits of **$808.64**/week for **23** weeks, commencing March 17, 2013 through August 24, 2013, as provided in Section 8(b) of the Act.

Medical benefits
Respondent-Employer shall pay the medical bills for the reasonable and necessary medical services, which total **$30,734.25**, pursuant to Section 8(a) and subject to Section 8.2 of the Act.

Permanent Partial Disability with 8.1b language (For injuries after 9/1/11)

Respondent-Employer shall pay Petitioner $712.55/week for **175** weeks as Petitioner sustained permanent partial disability to the extent of **35%** loss of use of a person as a whole, pursuant to §8(d)2 of the Act.

Injured Workers' Benefit Fund 18IWCC0735

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This finding is hereby entered as to the Fund to the extent permitted and allowed under §4(d) of the Act. In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner pursuant to Section 5(b) and 4(d) of this Act. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund, including but not limited to any full award in this matter, the amounts of any medical bills paid, temporary total disability paid or permanent partial disability paid. The Employer-Respondent's obligation to reimburse the IWBF, as set forth above, in no way limits or modifies its independent and separate liability for fines and penalties set forth in the Act for its failure to be properly insured.

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

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

Signature of Arbitrator

5/30/18
Date

MAY 30 2018

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ATTACHMENT TO ARBITRATION DECISION

Bessie Joy Kaufhold
Employee/Petitioner

18IWCC0735

v.

Case No. 13 WC 22871

Grand & Ashland Tap, Inc. d/b/a Grandbar
and the Illinois State Treasurer as Ex-Officio
Custodian of the Injured Workers' Benefit Fund
Employer/Respondent

I. FINDINGS OF FACT

This action was pursued under the Illinois Workers' Compensation Act (the "Act") by the Petitioner-Employee, Bessie Joy Kaufhold, ("Petitioner") and sought relief from the Respondent-Employer, Grand & Ashland Tap, Inc., ("Grandbar") and the Illinois State Treasurer as custodian of the State of Illinois, Injured Workers' Benefit Fund, ("IWBF").

On October 2, 2017, a trial was held and proofs were closed before Arbitrator Brian T. Cronin in Chicago, Illinois. Attorney Jose Rivero represented the Petitioner. The Illinois Attorney General's office represented the IWBF. Respondent-Employer was not present; however, they were represented by counsel, Scott Barber, who only made a brief statement and did not present a defense. Petitioner entered into evidence a certification from the National Council on Compensation Insurance showing that Respondent-Employer was not insured at the time of the injury. [Px.19].

A. **Summary of Petitioner's Testimony at Trial**

On March 16, 2013, Petitioner was 41 years old, married with no dependent children. [Ax.1]. Petitioner was married at the time of the incident; however, her divorce had not yet been finalized. Transcript of Proceedings (hereinafter "T.") 82. Petitioner's highest level of completed education is 12th Grade; however, Petitioner took additional courses at Elgin Community College in electronics, although she never received an associate's degree. [Px.16 and T. 63]. Petitioner did have CDL training at Star Truck Driving School, apprenticeship as a journeyman lineman through Electricians Local 9, and training/licensure as a mortgage broker, although that licensure has lapsed. [T. 63].

Grandbar is owned by Betty Stokes, Petitioner's aunt, and managed by Gene Stokes, Petitioner's cousin. [T. 45]. Grandbar had approximately seven plus employees working the night of the accident and served alcoholic beverages to the public. [T. 56].

Petitioner worked for Grandbar as a cocktail waitress, but was unsure when she had started working there. [T. 55-56]. Petitioner found out about the job through her family and never signed an employment contract. [T. 54]. While working at Grandbar, Gene Stoke acted as Petitioner's boss and would discipline her with regard to getting there early, requesting time off, and moving faster. [T. 12-13]. Petitioner worked from 9:00 p.m. to 4:00 a.m. on Fridays, and from 9:00 p.m. to 5:00 a.m. on Saturdays. [T. 9]. While Petitioner stated she was paid in cash at the end of every night, she could not recall how much her pay rate was, even when presented with her tax returns. [T. 10-12]. Moreover, Petitioner never received a W-2 from Grandbar. [T. 60]. Petitioner identified, as Petitioner's Exhibits 25 and 26, her tax returns for the years 2012 and 2013. [T. 11]. Additionally, Petitioner testified that Grandbar served alcohol, and had sharp

cutting tools and refrigerators. [T. 13]. Petitioner never received any training by Grandbar. [T. 58].

On March 16, 2013, at approximately 3:00 a.m., while Petitioner was working as a cocktail waitress, she approached two customers, a husband and a wife, the latter identified as Vanessa Suarez. [T. 16]. Petitioner asked if they wanted a shot to go with their drinks as the bar would be closing soon. *Id.* They declined, so Petitioner moved past these two customers to the bar where she attempted to get the attention of the bartender, Zita. *Id.* At that time, Vanessa Suarez took a pint glass, broke it on Petitioner's head, and ran it down Petitioner's nose, cheek, and neck. [T. 19]. Initially, Petitioner did not feel pain, but instant wetness. [T. 18]. Petitioner asked the bartender the following: "did this f---ing bitch just throw a drink on me?" *Id.* [Letters deleted.] The bartender responded that Petitioner was bleeding. Petitioner touched her face and saw that there was blood everywhere. [T. 18-19]. Petitioner offered into evidence photographs of Petitioner's face as Exhibit 17. [T. 20]. Petitioner testified that she felt light-headed and fell to the floor. [T. 22].

After Petitioner had been injured, the bartender's husband's friend, a chef, pressed a dirty bar towel to Petitioner's face to stop the bleeding. [T. 23]. After using the restroom with the assistance of others and having a cigarette, Petitioner got into the ambulance with the help of the paramedics. [T. 26-28]. When the paramedic removed the towel, Petitioner felt pain in the left side of her head, temple, and face. [T. 28]. Gene Stokes got in the ambulance and briefly spoke with Petitioner. *Id.* Petitioner asked Gene if he was coming with her. *Id.* Gene responded that he was not, but that he loved her. *Id.*

Petitioner did not return to work for Respondent-Employer after this injury.

B. **Summary of Petitioner's Medical Treatment Based Upon Petitioner's Testimony and Medical Records**

Petitioner was taken to Northwestern Memorial HealthCare on March 16, 2013. [Px.5]. Petitioner was treated for a 4-cm. laceration across her left cheek that was deep. Petitioner had an additional 1-cm. deep laceration above her left eyebrow and a third laceration that was thin, shallow 1.5-cm. and across bridge of Petitioner's nose. Petitioner complained of a headache and had CT scans of her face and brain taken. [Px.5].

The CT scan of Petitioner's face revealed, in pertinent part, that she did not have an acute facial fracture, but rather a large vertical laceration involving the soft tissues overlying the left check extending inferolaterally to the level of the mid left lower mandible, as well as a smaller vertical laceration more posteriorly in the soft tissues overlying the left lateral face, and lastly, a small amount of air overlying the anterior left aspect of the maxillary alveolus that may reflect an additional lactation. [Px.5].

The CT scan of the Petitioner's brain showed no acute intracranial hemorrhage and mild swelling in the extracranial soft tissues overlying the left supraorbital region. Petitioner was discharged later that day. The records of Northwestern Memorial Hospital also indicate that Petitioner had been previously treated for anxiety. [Px.5].

Petitioner was treated at Northwestern Maxillofacial Surgeons, P.C. for her lacerations. [Px.7]. There, Petitioner's lacerations were cleaned and stitched up. On March 22, 2013, Petitioner's sutures were removed and Petitioner returned to Northwestern Maxillofacial Surgeons, P.C. for follow-up visits. Petitioner was told to see her primary care physician/neurologist regarding head trauma and to wait five months before undergoing scar revision surgery. [Px.7].

On April 8, 2013, Petitioner saw her primary care physician Gloria F. Millare, M.D. [Px.8]. Petitioner complained of pain in her face, blinding headaches, tingling and numbness in her left lower jaw, problems with concentration and memory, nightmares, and crying spells. After examining Petitioner, Dr. Millare diagnosed with multiple deep lacerations, head injury with persistent headaches, and post-traumatic stress disorder. Dr. Millare advised Petitioner to take off from work for approximately two months while undergoing treatment and to follow up with plastic surgeon. [Px.8].

On April 25, 2013, Anthony Geroulis, M.D, a plastic surgeon from North Shore Center for Cosmetic Surgery, examined Petitioner and found that her scar appeared to be smooth and level, but that in other areas, the scar appeared to be irregular and not level. [Px10]. He opined that a future scar revision would have to be evaluated further down the line since it takes a good year for a scar to mature. [Px10].

Post-accident, Petitioner saw Karen Lake, LCSW, of Associates in Psychiatry & Coun., on April 18, 2013. [Px1]. Pre-accident, and since 2003, Petitioner had been seeing Karen Lake, LCSW, for therapy for anxiety, depression, and sleep problems. [Px.1, Px.13]. In fact, Petitioner stated she was depressed prior to the accident due to a number of factors. [T. 73-74]. However, Petitioner testified she could not recall how long she had going to therapy prior to the accident or how frequently she had been receiving such therapy. [T. 72-73].

After the accident, Petitioner made numerous complaints to Karen Lake, LCSW including, significant headaches, bad dreams, anxiety, stress, exhaustion, and low self-esteem. [Px.2, Px.3, Px.4]. Petitioner stated that she was also having difficult time concentrating, recalling certain memories, and recalling words. [Px.2, Px.3, Px.4].

Petitioner also began treating with Bindu Gandhiraj, M.D., a psychiatrist, prior to this accident as well. [T. 73]. Petitioner testified that prior to the accident, she saw Dr. Gandhiraj "usually quarterly or twice a year." Id. However, she could not recall when she started seeing Dr. Gandhiraj, but did recall that it was for her condition following the deaths of loved ones and a divorce. [T. 73-74]. While not all of Petitioner's records from past psychiatric treatment were provided, the records due indicate that Dr. Gandhiraj saw Petitioner prior to the accident on January 26, 2013 and February 8, 2013.

On January 26, 2013, Dr. Gandhiraj listed her problems as Major Depressive Affective Disorder, Recurrent Episode Moderate Degree, and Anxiety State, Unspecified. [Px1]. Dr. Gandhiraj also prescribed Klonopin, Lexapro, and Wellbutrin. [Px.1]

On February 8, 2013, which was five weeks before the accident, Dr. Gandhiraj wrote, in the Client Report section of the Clinician Progress Note, the following:

> "Client is a 41 year old female. Client was seen at the office for individual therapy. Client reports feeling anxious, some low mood. Feeling overwhelmed. Client reports that she often "feels like crying." She reports feeling lonely. She is not sleeping well and is waking up frequently. Client reports that she has been having some medical issues lately. She reports that she has been having severe financial issues. She reports that her house has been ordered into foreclosure. She also reports that her divorce is still pending. Plus, now she has to find a new attorney because her current attorney is no longer working her case. Client reports that she still wishes husband did not want a divorce. Client reports that relationship with daughter is showing some improvements. Daughter is being more pleasant while talking with client. Client reports that overall her job is good and she is happy to have a job. How-Ever, she reports that there are a lot of work stressors." [Px.1]

After the accident, Petitioner continued to see Dr. Gandhiraj and made new complaints of recurrent nightmares and crying spells; however, Dr. Gandhiraj's course of treatment largely stayed the course; he continued to prescribe similar medication for Petitioner. [Px.2, Px.3, Px.4]. Petitioner also testified that she continues to see Dr. Gandhiraj today and is in the process of setting up another appointment. [T. 80].

On May 3, 2013 and June 3, 2013, Petitioner saw Todd Gephart, M.D., at Northwest Health Care Associates - East Dundee. [Px.11]. Petitioner complained of headaches, disorientation, memory lapses, visual changes, and numbness of the face, and fatigue. A CT scan of Petitioner's brain was negative for intracranial bleed. Petitioner was told to follow up for a neuropsychological evaluation. Dr. Gephart referred Petitioner to Alan G. Shephard, M.D., who examined her and referred her to Beth Borosh, Ph.D. [Px.11].

On September 18 and 19, 2013, Petitioner underwent an evaluation at Northwestern Memorial HealthCare. [Px.6]. D. Mark Courtney, M.D., and Kory Gebhardt, M.D., examined Petitioner's head. The MRI of the brain was found to be unremarkable. Petitioner complained of continued intermittent headaches, difficulty with concentration and focus, work finding difficulties, memory difficulty, sleep disruptions, and increased daytime tiredness. Dr. Courtney, the attending physician, offered the following impression:

> "not totally clear if this is true post concussive syndrome. based on near constant every day HA and duration this seems unlikely. may be some component of post traumatic syndrome of somatic manifestation of anxiety/depression." [Px.6].

On October 15, 2013, Beth Borosh, Ph.D., of Neuropsychology Assessment and Wellness, LLC, conducted a neuropsychological evaluation of Petitioner. [Px.13]. After taking a

history that indicated Petitioner had been seeing a therapist since 2003, and administering various tests, Dr. Borosh found that Petitioner had mild to moderate processing speed impairment and mild naming impairment, and relative weakness in sustained attention, working memory, verbal reasoning, and mental flexibility. [Px.13]. While Dr. Borosh determined Petitioner's profile demonstrates depression, "there is an indication of an element of exaggeration of complaints or a 'cry for help.'" She opined that her clinical profile reveals marked elevations across several scales that suggest the presence of significant distress likely associated with a traumatic event. Ultimately, Dr. Borosh found that Petitioner suffered mild to moderate frontal networks dysfunction and a mild nonspecific naming impairment for which the "differential for this type of profile is quite broad; however, Petitioner's profile likely reflects both post concussive syndrome and psychiatric etiologies." [Px.13].

On June 5, 2014, Petitioner underwent Active FX/Deep FX/ CO2 Resurfacing Surgery for her facial disfiguration. [Px.12].

On November 21, 2014 and December 1, 2014, at the request of Petitioner's counsel, Petitioner presented to Kathy Borchardt, Psy.D., for an independent neuropsychological evaluation. [Px.15]. At that time, Petitioner complained of residual cognitive impairments from her head injury, including word-retrieval deficits, difficulty with sustained concentration, short-term/working memory impairments, and gaps in her autobiographical memory. [Px.15]. After taking a work history and noting that Petitioner had returned to work a month earlier, Dr. Borchardt administered a series of tests to Petitioner. Dr. Borchardt stated the results should be interpreted with caution since there is "significant variability." Dr. Borchardt opined that Petitioner's FSIQ of 80 was an underrepresentation of her true abilities since Petitioner reported that she was an A-B student in college, earned credits toward a college degree, and held a

mortgage broker's license. Dr. Borchardt then wrote: "It is highly probable that her apparent cognitive processing deficits and word-retrieval impairments likely resulted from her traumatic brain injury and depressed her FSIQ score during this neuropsychological evaluation." Dr. Borchardt determined that Petitioner had mild cognitive deficits and was likely to need work-related accommodations upon a return to work. Additionally, Petitioner needed supportive psychotherapy to assist Petitioner with her PTSD and anxiety. Lastly, Petitioner should consider speech therapy to address her significant word-retrieval deficits. [Px.15].

On April 16, 2015, James F. Boyd, M.S., C.R.C., conducted a vocational evaluation of Petitioner. [Px.16]. Petitioner told Mr. Boyd that she periodically worked at a friend's window and door company. At that time, Petitioner's job consisted of replying to emails and scheduling appointments. He wrote that she never worked more than four to six hours. Mr. Boyd found that Petitioner would have difficulty maintaining any level or type of competitive employment at that time. Mr. Boyd stated that vocational test results indicated relative strength in reading comprehension, math computation, auditory comprehension, and keyboarding. However, Mr. Boyd stated that Petitioner's below average visual-motor speed, excessive error rates, inconsistent attention to detail and poor visual problem solving are not compatible with the requirements of any full or part-time jobs in the competitive labor market. [Px.16].

Petitioner testified that because of the incident she has a difficult time sleeping and is continually stressed and anxious. [T. 36]. Petitioner also states that she gets blinding headaches. [T. 43].

Petitioner testified that she was off of work until May 10, 2016. [T. 34]. At that time, Petitioner began working for McHenry County Glass and Mirror. [T.35].

At trial, Arbitrator Cronin viewed Petitioner's scars from approximately six feet away and described the longer scar as a three to four-inch scar running from Petitioner's left eye to jaw and narrowing. [T. 39, 41]. The Arbitrator also observed Petitioner's scars on both her clavicle and nose. [T. 41]. In addition, Petitioner offered into evidence photographs her injuries. [Px.17A, Px.17B].

Petitioner testified that due to the nerve damage from her accidental injury, she experiences pain on the left and right sides of her face. [T. 43] The scars still itch and she has massive, blinding headaches, for which she takes Tylenol turns the lights down low. [T. 43]

II. CONCLUSIONS OF LAW

With respect to issue (A), whether Respondent was operating under and subject to the Illinois Workers' Compensation Act, the Arbitrator finds as follows:

The Arbitrator finds that the Respondent was operating under and subject to the Illinois Workers' Compensation Act as Petitioner's testified that Respondent used sharp cutting tools (820 ILCS 305/3(8)), sold alcoholic beverages for the public for consumption on its premises (820 ILCS 305/3(12)), and operated equipment powered by electricity (820 ILCS 305/3(15). (T. 13).

With respect to issue (B), was there and employer and employee relationship, the Arbitrator finds as follows:

Petitioner testified that Respondent's owners, Betty and Gene Stokes, hired her. (T. 9). Gene paid her at the end of each night and had the capacity to discipline her for arriving late and not working fast enough. (T. 10, 13). Petitioner's testimony is unrebutted. Accordingly, the Arbitrator finds that Respondent controlled Petitioner's work to the degree that an employer and employee relationship existed.

With respect to issue (C) and (D) whether an accident occurred that arose out of her employment with the Respondent and what is the date of accident, the Arbitrator finds as follows:

Petitioner testified that she suffered injuries to her head and face on March 16 ,2013 when she was attacked with a glass by a patron of the Respondent's bar while she was attempting to place a drink order with the bartender. (T. 15-21). The Arbitrator finds that Petitioner's testimony is corroborated by the treating records and consequently finds that on March 16, 2013, Petitioner sustained an accident that arose out of and in the course of her employment by Respondent.

With respect to issue (E), whether timely notice was provided to the Respondent, the Arbitrator finds as follows:

Petitioner testified that Gene Stokes entered the ambulance with her when she was being transported from the scene of the accident to the hospital. (T. 28-29). Furthermore, Petitioner read into the record a text message sent to her by Betty Stokes wherein Respondent admitted to having been informed of the incident by "Hector" the day after the accident. (T. 50). Accordingly, the Arbitrator finds that timely notice was provided to Respondent of the accident sustained by Petitioner.

With respect to issue (F), is Petitioner's condition of ill-being causally related to the injury, the Arbitrator finds as follows:

Petitioner offered photographs of the lacerations to her head, face and neck shortly after the accident. [Px.17A]. Petitioner also offered more recent photographs of the lacerations to her head and face. [Px.17B]. The Arbitrator find that the injuries to Petitioner's head, face and neck that he observed at trial are consistent with the photographs displayed in Px.17B.

In addition, Petitioner has been diagnosed with PTSD, anxiety and post-concussive syndrome.

With regard to the post-concussive syndrome, Dr. Courtney examined Petitioner and opined:

> "not totally clear if this is true post concussive syndrome. based on near constant every day HA and duration this seems unlikely. may be some component of post traumatic syndrome of somatic manifestation of anxiety/depression." [Px.6].

While the records reflect that Petitioner received psychological therapy and psychiatric treatment prior to the accident, the Arbitrator finds that this condition was aggravated by the accident she sustained on March 16, 2013. In a report authored by Dr. Borchardt after she conducted neuropsychological testing on November 21, 2014 and December 1, 2014, the doctor wrote: "It is highly probable that her apparent cognitive processing deficits and word-retrieval impairments likely resulted from her traumatic brain injury and depressed her FSIQ score during this neuropsychological evaluation." She also opined that Petitioner's "anxiety, PTSD, depression, and chronic pain syndromes, all of which appear to have resulted from the bar-room attack, likely are exacerbating [her] difficulties with mental energy, slowed cognitive processing speed, and sustained concentration and attention."

Dr. Borchardt's opinions stand unrebutted.

Neither Respondent-Employer nor Respondent-IWBF offered any testimony or documents into evidence.

Accordingly, given Petitioner's testimony and the medical/psychological records and opinions, the Arbitrator finds that Petitioner's facial lacerations, PTSD, anxiety, depression, and

post-concussion syndrome are causally related to the accidental injury she sustained on March 16, 2013.

With respect to issue (G), what were Petitioner's earnings, the Arbitrator finds as follows:

Petitioner testified that she was paid cash as a cocktail waitress for Respondent Grandbar. She testified that she worked for Respondent Grandbar on Friday and Saturday nights only. On Friday nights, she worked from 9:00 p.m. to 4:00 a.m., and on Saturday nights, she worked from 9:00 p.m. to 5:00 a.m. While Petitioner stated she was paid in cash at the end of every night, she could not recall how much her pay rate was, even when presented with her tax returns. She also testified that she must pay the busboy at the end of the night. Moreover, Petitioner never received a W-2 from Grandbar.

Petitioner offered into evidence Federal income tax returns for the years 2012 and 2013. [Px. 25 and Px.26]. As Petitioner was married during those tax years, she filed jointly with husband Robert E. Corcoran. However, for 2012, Schedule SE (Form 1040), the Self-Employment Tax form, indicates that Bessie Joy Kaufhold had a net profit from Schedule C, line 31; Schedule C-EZ, line 3; Schedule K-1 (Form 1065), box 14, code A (other than farming); and Schedule K-1 (Form 1065-B0, box 9, code J1, of $25,000.00. On the document entitled Federal Statements, Bessie Joy Kaufhold and Robert E. Corcoran, Page 1, Petitioner lists her waitress income at Grandbar of $25,000.00. [Px.25]

For 2013, Schedule SE (Form 1040), the Self-Employment Tax form, indicates that Bessie Joy Kaufhold had a net profit from Schedule C, line 31; Schedule C-EZ, line 3; Schedule K-1 (Form 1065), box 14, code A (other than farming); and Schedule K-1 (Form 1065-B0, box

9, code J1, of $2,750.00. On the document entitled Federal Statements, Bessie Joy Kaufhold and Robert E. Corcoran, Page 1, Petitioner lists waitress income of $2,750.00. [Px.25]

The Arbitrator finds that these tax returns provide the best evidence available to determine Petitioner's weekly earnings with Respondent Grandbar. Pursuant to Section 10 of the Act, one must calculate earnings for the 52-week period immediately prior to the date of accident. Therefore, the Arbitrator finds that for the prior 10-4/7 weeks of 2013, Petitioner earned $2,750.00, and for the 41-3/7 weeks in 2012, Petitioner earned $19,917.58. Then, adding $2,750.00 to $19,917.58 equals $22,667.58. Dividing by 52 weeks yields weekly earnings of $435.92 for her job as a cocktail waitress at Grandbar.

In addition, Petitioner testified that during the year prior to her accident, she concurrently worked for both Mortgage Services LLC and Guaranteed Rate, Inc. Petitioner testified that she informed Grandbar about this concurrent employment and that her employer was "Ok" with it.

Petitioner's Exhibit 27 indicates that Petitioner earned $4,184.62 at Guaranteed Rate, Inc., from December 24, 2012 through and March 8, 2013. The pay period from February 24, 2013 through March 8, 2013 was the last full pay period immediately preceding the date of injury. Pursuant to Section 10 of the Act, the bonus of $1,680.00 has been excluded. Then, for the 10-5/7 weeks Petitioner worked for Guaranteed Rate, Inc, she earned $4,184.62/10-5/7 weeks = $390.56/week.

Petitioner's Exhibit 28 indicates that Petitioner earned $3,920.05 in commissions from Mortgage Services, Inc., from November 11, 2012 through January 20, 2013. The birthday bonus of $55.95 was not included. Then, for the 10-1/7 weeks that Petitioner worked for Mortgage Services, Inc., she earned $3,920.05/10-1/7 = $386.48/week.

By totaling the earnings from the three sources of income, the Arbitrator finds Petitioner's average weekly wage to be $435.92 + $390.56 + $386.48 = $1,212.96.

With respect to issues (H) and (I), what was Petitioner's age and marital status at the time of the accident, the Arbitrator finds as follows:

Petitioner testified that her date of birth is October 30, 1971, which made her 41 years old on the date of accident. (T. 71). Her testimony as to her date of birth is corroborated by the medical records. Petitioner further testified that she was married and had no children under 18 years of age on the date of accident. Therefore, the Arbitrator finds that on the date of accident, Petitioner was 41 years old, married, and had no children under 18 years of age.

With respect to issue (J), were the medical services rendered to Petitioner reasonable and necessary, the Arbitrator finds as follows:

Given the Arbitrator's finding with respect to causation, the Arbitrator finds that the medical services rendered to Petitioner by the providers listed below and the associated bills submitted into evidence were reasonable and necessary:

Px.29	City of Chicago Emergency Services	$ 951.00
Px.30	Northwestern Memorial Hospital	$8,608.30
Px.31	Northwestern Memorial Hospital	$3,166.35
Px.32	Northwestern Memorial Hospital	$4,913.00
Px.33	Northwestern Med. Fac. Fdn.	$1,052.00
Px.34	Northwestern Med. Fac. Fdn.	$1,065.00
Px.35	Dr. Todd Gephart/NWHC	$ 238.00
Px.36	Dr. Alan Shepard/Lake Shore Med.	$ 591.00
Px37	CEPAMERICA/Dr. Douglas Foulke	$ 133.00

Px.38	Dr. Anthony Geroulis -Reimbursement	$ 95.00
Px.39	Reimbursement to Petitioner	$3,220.00
Px.41	Northwestern Maxillofacial Surgeons	$5,034.00
Px.42	Millare Healthcare	$ 502.00
Px.43	Reimbursement to Petitioner	$ 79.00
Px.44	Beth Borosh, Ph.D.	$ 250.00
Px.46	Updated Bills for Associates in Psychiatry & Coun. - Reimbursement to Petitioner	$ 836.60
	Total	$30,734.25

The Arbitrator orders Respondent to pay such bills, pursuant to Section 8(a) and subject to Section 8.2 of the Act.

With respect to issue (k), whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

Petitioner is claiming TTD benefits from March 17, 2013 through May 10, 2016. Petitioner testified that she was off work from March 16, 2013 through May 9, 2016, and that on May 10, 2016, she began working for a new employer.

However, the August 24, 2013 medical record from Associates in Psychiatry & Coun. indicates the following: "Patient reports that she is doing better with her anxiety symptoms. Is coping well with her current situation. Has got a job and was excited about it." Additionally, on November 23, 2013, Karen Lake, LCSW, wrote: "Patient reports doing better with her mood and her anxiety sxs. Is currently working in glass company and is coping better with her trauma." [Px.2]. Moreover, on cross-examination, Petitioner stated that she had started working for a friend's window and door company in October 2014. [T. 66].

Petitioner argues that the work she performed before May 10, 2016 was occasional work. She testified that in October 2014, she started working at EHD window and door company. This was a business owned by a friend. The tasks she performed included picking up his coffee, picking up a part, letting out his dog, filling up his truck, and watering his plants. She testified that the amount she was making was minimal, and she did it just to get out of the house and get her brain working. The amount that she earned was so minimal, she did not claim it on her tax returns. [T. 66-67].

Petitioner testified that she did not recall if she began working approximately six months after her accident. [T. 68-70] When asked if she ever started working in August of 2013, Petitioner responded: "I don't know. I don't know what you are talking about. I don't know." [T. 68]

After an October 15, 2013 neuropsychological evaluation by Dr. Borosh, the doctor wrote a report in which she listed specific recommendations for her work environment, as well as the necessity of taking frequent breaks and avoiding multitasking. [Px.13]

In a report written after the December 1, 2014 testing, Dr. Borchardt wrote that Petitioner is likely to need work-related accommodations upon a return to work, including those specified in Dr. Borosh's report. [Px.15]

Petitioner subpoenaed any and all records from Express Services, Inc. the temp agency, that initially sent her to work at McHenry County Glass & Mirror. [Px.47, Px.48] Such records show that her first paycheck was for the week ending May 15, 2016. [Px.47]

Petitioner did not, however, offer into evidence the subpoenaed records of EHD window and door company or corroborating testimony.

The Arbitrator finds that Petitioner was temporarily totally disabled from March 14, 2013 through August 24, 2013.

With respect to issue (L), what is the nature and extent of the injury, the Arbitrator finds as follows:

Pursuant to Section 8.1b of the Act, for accidental injuries that occur on or after September 1, 2011, the following criteria are to be used in the determination of permanent partial disability:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The 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. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors: (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.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the injured employee, the Arbitrator notes that the record reveals Petitioner was employed as a cocktail waitress and a mortgage broker at the time of the injury. Although Mr. Boyd opined that a transferable skills analysis utilizing the OASYS software program yielded no job matches for Petitioner's overall

performance and vocational test limits, Bessie Joy Kaufhold was able to secure employment with McHenry County Glass & Mirror. [Px.16] Petitioner performs clerical work there. [Px.47, Px.48]. The Arbitrator therefore gives major weight to this factor.

With regard to subsection (iii) of §8.1b(b), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 41 years old at the time of the accident. The Arbitrator gives moderate weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner's Exhibit 48 indicates that Petitioner has earned $16.00/hour in her clerical position at McHenry County Glass & Mirror. Mr. Boyd evaluated Petitioner on April 16, 2015, but did not provide job placement services for her. The Arbitrator calculated Petitioner's average weekly wage to have been $1,212.96. The Arbitrator gives major 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 following:

Following neuropsychological testing on October 13, 2015, treating psychologist Beth Borosh, Ph.D., determined that Petitioner's profile demonstrated depression, but found that "there is an indication of an element of exaggeration of complaints or a 'cry for help.'" She opined that Petitioner's clinical profile revealed marked elevations across several scales that suggest the presence of significant distress likely associated with a traumatic event. Ultimately, Dr. Borosh found that Petitioner suffered mild to moderate frontal networks dysfunction and a mild nonspecific naming impairment for which the "differential for this type of profile is quite broad;' however, Petitioner's profile likely reflects both post concussive syndrome and psychiatric etiologies." [Px.13].

The most recent treating record from Associates in Psychiatry & Coun. Is dated November 12, 2016. In such record, Dr. Gandhiraj took the following HPI:

> "Pt. reports feeling better with her mood. Sleep and appetite are fine. Is adjusting better with her parents moving in with her. Energy level and concentration are better. No feelings of hopelessness or worthlessness. Lesser nightmares about her traumatic event. No overt panic attacks. Denied sxs suggestive of MDD or mania or hypomania or psychosis. She is compliant with her psychotropics with no side effects."
>
> [Px.45].

Dr. Gandhiraj recorded that Petitioner has no headache or weakness or abnormal movements. Upon examination, he found, *inter alia*, that Petitioner's speech was fluent and spontaneous and that he thought process was clear, logical, and goal-directed, and that there were no formal thought disorders. With regard to thought content, Dr. Gandhiraj noted that there was no evidence of delusions or perceptual disturbances, and that her recent and remote memory was good. He diagnosed her with major depressive disorder, recurrent episode moderate degree, anxiety state unspecified, and PTSD. He ordered Lexapro 20 mg. and TabKlonopin 1 mg. Tab. [Px.45].

Petitioner offered into evidence photographs of the lacerations to her face, head and neck. Petitioner's Exhibit 17A is a group exhibit of photos taken no long after the accident. Petitioner's Exhibit 17B is a group exhibit of more recent photos of Petitioner.

The Arbitrator gives major weight to this factor.

Determination of permanent partial disability ("PPD") is not simply a calculation, but is an evaluation of the five factors. The Arbitrator has carefully considered all five factors. By

applying §8.1b and by considering the relevance and weight of all five factors, the Arbitrator finds that as a result of the March 16, 2013 accident, Petitioner has sustained a permanent loss of use of her person as a whole to the extent of 35%, pursuant to Section 8(d)2 of the Act.

With respect to issue (O), notice of trial for Respondent Employer and whether Respondent lacked workers' compensation insurance at the time of the accident, the Arbitrator finds as follows:

Respondent-Employer was notified of the trial and was not present. However, Respondent-Employer was represented by counsel, Scott Barber, who only made a brief statement and did not present a defense.

Petitioner offered into evidence a letter from the National Council on Compensation Insurance with a certification attached thereto, establishing the Petitioner lacked workers' compensation insurance on October 16, 2013. [Px.19]

Brian T. Cronin
Arbitrator

5-30-18
Date