

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF KANE )

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Diana Lewis Craig,  
Petitioner,

**20IWCC0734**

vs.

NO: 18 WC 19444

State of Illinois-Illinois Youth Center, St Charles,  
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 12, 2019, 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.

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

DATED: **DEC 14 2020**  
o12/3/20  
DLS/rm  
046

*Deborah L. Simpson*

Deborah L. Simpson

*Barbara N. Flores*

Barbara N. Flores

*Marc Parker*

Marc Parker

SOXCC014

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

20IWCC0734

**LEWIS CRAIG, DIANA**

Employee/Petitioner

Case# **17WC021445**

18WC019444

**SOI-ILLINOIS YOUTH CENTER ST CHARLES**

Employer/Respondent

On 5/15/2019, 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 2.35% 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:

0139 CORNFIELD AND FELDMAN LLP  
JIM M VAINIKOS  
25 E WASHINGTON ST SUITE 1400  
CHICAGO, IL 60602

6212 ASSISTANT ATTORNEY GENERAL  
DREW DIERKES  
100 W RANDOLPH ST 13TH FL  
CHICAGO, IL 60601

1350 CENTRAL MANAGEMENT SERVICES  
BUREAU OF RISK MANAGEMENT  
PO BOX 19208  
SPRINGFIELD, IL 62794-9208

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

CERTIFIED as a true and correct copy  
pursuant to 820 ILCS 306 / 14

MAY 15 2019



*Brian O'Rourke*  
Brian O'Rourke, Assistant Secretary  
Illinois Workers' Compensation Commission



2017CC0734

STATE OF ILLINOIS )  
)SS.  
COUNTY OF KANE )

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

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

Diana Lewis Craig  
Employee/Petitioner

Case # 17 WC 21445

v.

Consolidated cases: 18 WC 19444

State of Illinois-Illinois Youth Center, St. Charles  
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 **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Geneva**, on **April 15, 2019**. 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 \_\_\_\_\_

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#### FINDINGS

On **October 23, 2016**, 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 **\$79,116.00**; the average weekly wage was **\$1,521.46**.

On the date of accident, Petitioner was **39** 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 **\$0.00** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$9,853.30** for other benefits, for a total credit of **\$9,853.30**.

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

#### ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$1014.31/week for 33 1/7 weeks, commencing October 24, 2016 through June 12, 2017, as provided in Section 8(b) of the Act. Respondent shall be given a credit of \$9,853.30 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary treatment for her conditions of ill-being in the left foot and right shoulder through June 12, 2017. Medical charges for this treatment have been paid by her group carrier. Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$775.18/week for 4.175 weeks, because the injuries sustained caused the 2.5% loss of the Left Foot, as provided in Section 8(e) of the Act, and an additional 5 weeks, because the injuries sustained caused the 1% loss of the person as a whole for the injury to the right shoulder, as provided in Section 8(d)2 of the Act.

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

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

Signature of Arbitrator

**May 15, 2019**  
Date

ICArbDec p. 2

**MAY 15 2019**

## Statement of Facts

This matter was tried in conjunction with consolidated case 18 WC 19444 (DOA: May 14, 2018). A single transcript was prepared although the Arbitrator is entering separate decisions.

Petitioner Diana Craig Lewis testified that she was employed by Respondent State of Illinois, IYC St. Charles as a Juvenile Justice Security Specialist. She was hired in June 2014. Petitioner's shift was from 6:00 a.m. until 2:00 p.m. Petitioner was issued equipment such as a radio, handcuffs, knife, first aid, and keys. Petitioner would be assigned to a post to which she had to report. Petitioner's duties included providing security and escorting 13 to 20 year-old youth around the facility.

On October 23, 2016, Petitioner was assigned to Lincoln Cottage. Petitioner and one other employee were to escort the youth inmates to dietary for breakfast. Petitioner would unlock the doors and have inmates step out, one-by-one, and then line up. A fight between two inmates broke out and a third inmate jumped in. Petitioner radioed a "10-10" for a fight in progress. Petitioner attempted to secure one of the inmates by wrapping her arms around the inmate from behind. The inmate swung out. Petitioner lost her balance, and the inmate stepped on Petitioner's left foot. Other officers arrived and restrained the inmates. Petitioner felt pain in her left foot and right shoulder. Petitioner also experienced swelling in her foot and was limping. Petitioner went to the nurse on site, was given an ice pack, and sent home for the day.

Prior to this incident, Petitioner had a bunionectomy to her left foot in January 2016. Petitioner was on medical leave for approximately eight months. Petitioner had been back to work for a couple of months before the date of accident and had returned in a full duty capacity.

Petitioner presented to Access Southwest Family Health Center on October 25, 2016, complaining of left foot pain and right shoulder stiffness (PX 1). She noted that she was injured at work breaking up a fight. Petitioner was given medication and taken off work. It was noted she had an appointment with podiatry. Petitioner was limited to sedentary, administrative duty only (PX 1).

Petitioner saw Dr. Matthew Keene of the University of Illinois Hospital and Health Science Systems on October 26, 2016 (PX 2). Dr. Keene noted the previous bunion correction. Petitioner stated she was doing well, having no pain and had returned to her regular shoes and job. She is now reporting pain and discomfort to the 1<sup>st</sup> metatarsal. Petitioner is requesting that she be placed in physical therapy. Dr. Keene's examination noted no pain on palpation over the 1<sup>st</sup> metatarsal. She has proper range of motion and the correction is maintained. Dr. Keene states that he wrote the order for physical therapy "as she requested." He notes that currently, she is not clinically symptomatic. He scheduled follow up in 3 weeks (PX 2). On November 16, 2016, Petitioner reported that she is undergoing physical therapy, taking ibuprofen and icing the area. She states overall, she is doing much better with less pain but still some discomfort. Dr. Keene assessed a bone contusion, trauma related. He recommended she finish out her physical therapy (PX 2).

Petitioner had her initial physical therapy evaluation on November 16, 2016. Testing revealed a likely bone contusion at the 1<sup>st</sup> metatarsal and tendinopathy of the left ankle for compensation. The plan of treatment consisted of manual therapy and therapeutic exercise once or twice a week for six to eight weeks (PX 2). On January 6, 2017, Petitioner reported she is better but not 100%. She has completed 4 out of 5 physical therapy sessions. Examination noted no areas of erythema or ecchymosis. Neurovascular status was intact. There was no pain to palpation. Range of motion was normal without pain or crepitus. Dr. Keene diagnosed a



bone contusion. He stated Petitioner could start increasing her activity level. He noted that Petitioner wants more physical therapy which he found reasonable (PX 2).

Petitioner saw Dr. Patton at Access Southwest Family Health Center on January 13, 2017, complaining of intermittent pain in the right shoulder and foot pain. He stated she should follow up with podiatry for her foot. She would like physical therapy. He also provided medication refills for her HTN. On March 16, 2017, she noted the shoulder was improving but there was intermittent pain and decreased range of motion. She is still seeing podiatry and physical therapy. The record notes that her November to March paperwork must be backdated due to lack of coverage. The assessment was shoulder pain. She was given medication. On April 6, 2017, Petitioner returned to Dr. Patton to complete her disability paperwork. She was noted to have swelling and pain in the left foot and decreased range of motion in the right shoulder. She was taking Flexeril and ibuprofen for pain. Examination of her right shoulder noted decreased range of motion, tenderness and decreased strength (PX 1).

Petitioner returned to Dr. Keene on April 21, 2017, noting she was doing better, but had not completely resolved the pain and continued edema. Examination noted only mild pain to palpation along the 1<sup>st</sup> metatarsal dorsal shaft. Dr. Keene stated Petitioner was not ready to return to work. She should continue with physical therapy. His disability slip noted she was disabled from her regular work due to swelling and pain. He notes she has a moderate to severe physical impairment (PX 2). Petitioner saw Dr. Patton on May 30, 2017 for medication refills. He does not record any right shoulder complaints or perform any examination. Dr. Patton's CMS physician's statement notes only foot pain and weakness. He restricts Petitioner to light duty (PX 1).

On June 12, 2017, Petitioner saw Dr. Kathleen Weber for a Section 12 examination at Respondent's request with respect to the right shoulder and left foot (RX 1). Dr. Weber reviewed the medical records of Dr. Patton and Dr. Keene though May 30, 2017. On examination, there is some reduced range of motion and strength on in the right shoulder. The left foot noted tenderness and some cogwheeling with EHL testing. Dr. Weber diagnosed a left foot contusion that had resolved and a right shoulder possible mild strain of the rotator cuff that had resolved. She opined that these conditions were causally related to the accident described. Dr. Weber opined that no further medical treatment was necessary. Petitioner was at maximum medical improvement, and had full ability to participate in work activities (RX 1).

Petitioner saw Dr. Keene on July 21, 2017 complaining of an inability to weight bear fully for an extended period of time. Physical examination noted no abnormalities. Dr. Keene noted that her condition should have been much improved by that point in time. He recommended finishing physical therapy and if she was not at maximum medical improvement in the near future, he would have her attend a functional capacity evaluation or see another doctor for a second opinion (PX 2). He continued restriction of Petitioner to clerical, Administrative work (RX 3). Petitioner saw Dr. Patton on August 28, 2017, reporting swelling in her ankle. She was also seen through Access for anxiety and depression for family issues. Petitioner attended physical therapy through September 30, 2017 at which point she was discharged to a home exercise program (PX 2).

Petitioner saw Dr. Keene on October 6, 2017. She reported improvement and felt she would be able to return to work later this month. Dr. Keene found her at maximum medical improvement and released her to return to work full duty on October 30, 2017 (PX 2). Petitioner testified that she returned to work on October 30, 2017 to her regular assignment. Petitioner testified that she was never offered any type of restricted duty prior to returning to regular work.

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On November 15, 2017, Petitioner requested paperwork for an accommodation to avoid double shifts every day. On February 6, 2018, while getting a return to work slip for sinusitis, Petitioner reported to Dr. Patton that she had swelling in her left ankle but no pain. She noted working long hours standing (PX 1). Petitioner followed up with Dr. Keene on March 7, 2008. She reported having no pain and no limitations since returning to work. Dr. Keene diagnosed a resolved bone contusion and released her from care to return as needed (PX 2).

Petitioner testified that she received some benefits while she was off work. She received full pay and then believes she received SERS 50%. Respondent offered a payment log as RX 6. Her medical bills were paid by her Blue Cross/Blue Shield insurance. Petitioner testified that she notices pain and swelling in her left foot. She takes ibuprofen, elevates and ices her foot. Petitioner testified that she is unable to stand for long periods of time. Petitioner testified she still has pain right shoulder.

Petitioner is claiming a subsequent injury to her neck, back and left arm and shoulder occurring on May 14, 2018 which is the subject of the consolidated case 18 WC 19444 decided in conjunction with the present case.

### Conclusions of Law

**In support of the Arbitrator's decision with respect to (F) Causal Connection, the Arbitrator finds as follows:**

A Workers' Compensation Claimant bears the burden of showing by a preponderance of credible evidence that his current condition of ill-being is causally related to the workplace injury. *Horath v. Industrial Commission*, 449 N.E.2d 1345, 1348 (Ill. 1983) citing *Rosenbaum v. Industrial Com.* (1982), 93 Ill.2d 381, 386, 67 Ill.Dec. 83, 444 N.E.2d 122. The accident need not be the sole or principal cause, as long as it was a causative factor in a claimant's condition of ill-being. *Lopez v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130355WC-U, P25 (Ill. App. Ct. 3d Dist. 2014).

Although Petitioner had a prior left foot surgery in January 2016, her un rebutted testimony was that she had been back to work for a couple of months before the date of accident and had returned in a full duty capacity. After the accident, on October 26, 2016, Dr. Keene also noted Petitioner stated she was doing well, having no pain and had returned to her regular shoes and job. She is now reporting pain and discomfort to the 1<sup>st</sup> metatarsal. On November 16, 2016, Dr. Keene assessed a bone contusion, trauma related. Petitioner also reported right shoulder symptoms immediately after the injury. On October 25, 2016, she complained of right shoulder stiffness and saw Dr. Patton for follow up care. Dr. Weber diagnosed a left foot contusion and a right shoulder possible mild strain causally related to the accident described.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that her condition of ill-being in the right shoulder and left foot are causally connected to the accidental injury sustained on October 23, 2016.

**In support of the Arbitrator's decision with respect to (J) Medical, the Arbitrator finds as follows:**

Under §8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's



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injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Commission*, 409 Ill. App. 3d 258,267 (1<sup>st</sup> Dist., 2011).

Petitioner offered medical bills from Access Community Health Network (PX 3), University of Illinois Hospital & Health Sciences (PX 4), UIC Physicians Group (PX 5), and University of Illinois College of Medicine (PX 6, PX 7). Petitioner testified that her bills were submitted through her health insurance. The party's stipulation was that the amount paid by the group carrier was unknown (Arb. Ex. 1). The Exhibits also include charges for treatment related to the May 14, 2018 injury which is the subject of the consolidated case 18 WC 19444 decided in conjunction with this matter.

The Arbitrator has reviewed the bills and notes Petitioner is claiming charges through March 2018 are related to the present case based upon the medical records and orders of Dr. Patton and Dr. Keene. Respondent argues that only treatment through June 12, 2017 is reasonable and necessary based upon the report and opinions of Dr. Weber.

It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07, 459 N.E.2d 963, 76 Ill. Dec. 828 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009); *Flickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041, 721 N.E.2d 1165, 242 Ill. Dec. 634 (1999). Expert testimony shall be weighed like other evidence with its weight determined by the character, capacity, skill and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Commission*, 309 Ill. 91, 138 N.E. 211 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, 960 N.E.2d 587, 355 Ill. Dec. 705. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.*, 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87, 274 Ill. Dec. 284 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue, but may look 'behind' the opinion to examine the underlying facts.

Having reviewed the medical records and reports, the Arbitrator finds the opinions of Dr. Weber more persuasive. Dr. Weber reviewed Petitioner's treating records and performed a physical examination and opined that she was at maximum medical improvement and able to return to work. The Arbitrator notes that both Dr. Patton and Dr. Keene chose treatment in large part based upon the request of the Petitioner and her subjective complaints and personal opinions of whether she could do her job. The Arbitrator notes that the diagnosis was a contusion of the foot, yet Petitioner had a full year of therapy. Dr. Keene commented on July 21, 2017 that he expected Petitioner to be better by then. Given the lack of anything but a soft tissue diagnosis, this passive medical care including acquiescence to requests for extended physical therapy was not reasonable and necessary. The Arbitrator also takes into consideration the records documenting Petitioner's non-work-related home stressors. The Arbitrator also notes, as more fully discussed in the decision in the consolidated case 18 WC 19444, that Petitioner's presentation and inconsistent history tend to paint a more significant injury than that supported by the evidence. This makes her subjective presentation, including her medical complaints and subjective findings unpersuasive.

Based upon the review of the evidence, the Arbitrator finds that medical care for Petitioner's right shoulder and left foot through June 12, 2017 is reasonable, necessary and causally related to the accident on October 23, 2016. The Arbitrator has reviewed the medical bills submitted and finds that such bills have been paid fully by the group carrier and that there are no balances due and owing.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that she is entitled to reasonable and necessary treatment for her conditions of ill-being in the left foot and right shoulder through June 12, 2017. Medical charges for this treatment have been paid by her group carrier. 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.

**In support of the Arbitrator's decision with respect to (K) Temporary Compensation, the Arbitrator finds as follows:**

Temporary compensation is provided for in Section 8(b) of the Workers' Compensation Act, which provides, weekly compensation shall be paid as long as the total temporary incapacity lasts, which has interpreted to mean that an employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Petitioner is seeking temporary compensation from the date of injury though Dr. Keene's release to return to regular duty on October 30, 2017. Respondent argues that benefits should be terminated as of the date of Dr. Weber's examination and finding of maximum medical improvement at full duty on June 12, 2017.

As more fully discussed in the Arbitrator's finding with respect to Medical above, the Arbitrator finds Dr. Weber's opinions more persuasive than those of Dr. Patton and Dr. Keene. The Arbitrator notes Dr. Keene's statement on July 21, 2017 that he expected Petitioner would be better by then, but acquiesced to her request for more physical therapy. The Arbitrator also notes that despite being released from therapy by the time Dr. Keene saw Petitioner on October 6, 2017, he acquiesced to Petitioner's statement that she feels she will be ready to return to work later that month and does not release her until October 30, 2017, over three weeks after the office visit.

Respondent paid Petitioner full salary from October 31, 2016 through December 5, 2016 and from March 16, 2017 through April 16, 2017, a period of 9 5/7 weeks. Respondent would be entitled only to the temporary compensation rate of \$1,014.31 for this period or a total credit of \$9,853.30.

Based upon the record as a whole and the Arbitrator's findings with respect to Causal Connection and Medical, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that she is entitled to temporary total compensation commencing October 24, 2016 through June 12, 2017, a period of 33 1/7 weeks. Respondent shall be given a credit of \$9,853.30 for temporary total disability benefits that have been paid.

**In support of the Arbitrator's decision with respect to (L) Nature & Extent, the Arbitrator finds as follows:**

Petitioner's date of accident is after September 1, 2011 and therefore the provisions of Section 8.1b of the Act are applicable to the assessment of partial permanent disability in this matter.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a Juvenile Justice Security Specialist at the time of the accident and that she is able to return to work in his prior capacity as a result of said injury. The Arbitrator notes that this occupation can require strenuous physical exertion, often without prior warning or opportunity to plan the encounter. Because of these facts, the Arbitrator therefore gives some weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 39 years old at the time of the accident. Petitioner would be expected to remain in the work force for many years. Because of this, the Arbitrator therefore gives some weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner has returned to her prior occupation and no evidence of loss of earning was offered. Because of this, the Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner was diagnosed with a contusion of the left foot and a sprain/strain of the right shoulder. The medical records note little objective evidence of disability except for her complaints of pain and some swelling in the foot. Dr. Patton and Dr. Weber did note some loss of motion and weakness in the right shoulder. Petitioner's treatment consisted of medication and extensive physical therapy. The Arbitrator notes that the medical records indicate that Petitioner requested this course of care which was acquiesced to by the treating doctors. Petitioner had virtually no treatment for the shoulder other than periodic office visits with Dr. Patton. On March 7, 2008, Petitioner advised Dr. Keene that she was having no pain and no limitations since returning to work. Dr. Keene diagnosed a resolved bone contusion. Because of these facts, the Arbitrator therefore gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 2.5% loss of use of Left Foot pursuant to §8(e)11 of the Act and of 1% loss of Whole Person pursuant to §8(d)2 of the Act for the injury to the right shoulder.



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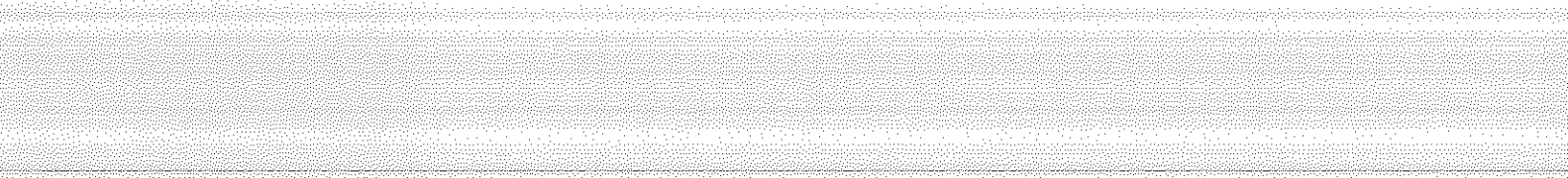
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