STATE OF ILLINOIS)
) SS. BEFORE THE INDUSTRIAL COMMISSION
COUNTY OF COOK) OF ILLINOIS

Leroy Hughes,
Petitioner,

vs 19-IWCC-0114
(15 WC 04685)

Proviso Township District 209,
Respondent,

ORDER

The Commission on its own motion finds that said Decision should be recalled pursuant to Section 19(f) of the Act, for the correction of a clerical/computational error. The parties are to promptly return their respective Commission Decision to the Commissioner signing this Order.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision dated February 15, 2019 is hereby recalled pursuant to Section 19(f) of the Act.

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

DATED:

MAR 6 - 2019

Joshua D. Luskin
Commissioner

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

LeRoy Hughes,
Petitioner,

vs. No. 15 WC 04685
19 IWCC 0114

Proviso Township District 209,
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review, under Section 19(b), having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary 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, other than as stated above, the Decision of the Arbitrator filed August 9, 2017, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall 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.

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 6 - 2019

o-12/19/18
jdl/mcp
68

Joshua D. Luskin

Charles J. DeVriendt

L. Elizabeth Coppoletti

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

HUGHES, LeROY
Employee/Petitioner

Case# **15WC004685**

15WC004686
12WC030467

PROVISO TOWNSHIP DISTRICT 209
Employer/Respondent

19IWCC0114

On 8/9/2017, 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 1.14% 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:

0009 ANESI OZMON RODIN NOVAK ET AL
JENNIFER J C KELLY
161 N CLARK ST SUITE 2100
CHICAGO, IL 60601

1120 BRADY CONNOLLY & MASUDA PC
DANIEL J CODY
ONE N LASALLE ST SUITE 1000
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION 19(b)

19IWCC0114

Leroy Hughes
Employee/Petitioner

v.

Proviso Township District 209
Employer/Respondent

Case # **15** WC **4685**

Consolidated cases: **15WC4686 and 12WC30467**

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 **David Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **April 24, June 28 and July 21, 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. [x] 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. [x] 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. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **January 8, 2015**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$57,327.60**; the average weekly wage was **$1,102.45**.

On the date of accident, Petitioner was **39** years of age, *single* with **0** dependent children.

ORDER

All findings of fact and conclusions of law are rendered in the Decision in 15 WC 4686.

However, the Arbitrator notes that no benefits were awarded in this case.

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.

David A. Kane
Signature of Arbitrator

August 8, 2017
Date

AUG 9 - 2017

19IWCC0114

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LEROY HUGHES,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 15 WC 4685
	)	
	)	
PROVISO TOWNSHIP DISTRICT 209	)	
	)	
Respondent.	)	

<u>In support of his Decision, the Arbitrator notes the following:</u>

The arbitrator notes that all findings of fact and conclusions of law are rendered in the Decision in 15 WC 4686.

STATE OF ILLINOIS)
) SS. BEFORE THE INDUSTRIAL COMMISSION
COUNTY OF COOK) OF ILLINOIS

Leroy Hughes,
Petitioner,

vs 19-IWCC-0115
(15 WC 04686)

Proviso Township District 209,
Respondent,

ORDER

The Commission on its own motion finds that said Decision should be recalled pursuant to Section 19(f) of the Act, for the correction of a clerical/computational error. The parties are to promptly return their respective Commission Decision to the Commissioner signing this Order.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision dated February 15, 2019 is hereby recalled pursuant to Section 19(f) of the Act.

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

DATED

MAR 6 - 2019

Joshua D. Luskin
Commissioner

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

LeRoy Hughes,
Petitioner,

vs. No. 15 WC 04686
19 IWCC 0115

Proviso Township District 209,
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary 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, other than as stated above, the Decision of the Arbitrator filed August 9, 2017, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall 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.

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 6 - 2019

o-12/19/18
jdl/mcp
68

Joshua D. Luskin

Charles J. DeVriendt

L. Elizabeth Coppoletti

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

HUGHES, LeROY
Employee/Petitioner

Case# **15WC004686**

15WC004685
12WC030467

PROVISO TOWNSHIP DISTRICT 209
Employer/Respondent

19IWCC0115

On 8/9/2017, 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 1.14% 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:

0009 ANESI OZMON RODIN NOVAK ET AL
JENNIFER K C KELLY
161 N CLARK ST SUITE 2100
CHICAGO, IL 60601

1120 BRADY CONNOLLY & MASUDA PC
DANIEL J CODY
ONE N LASALLE ST SUITE 1000
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

19IWCC0115

Leroy Hughes
Employee/Petitioner

v.

Proviso Township District 209
Employer/Respondent

Case # 15 WC 4686

Consolidated cases: **15WC4685 and 12WC30467**

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 **David Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **April 24, June 28 and July 21, 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. [x] 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. [x] 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. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **May 20, 2014**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$57,327.60**; the average weekly wage was **$1,102.45**.

On the date of accident, Petitioner was **39** years of age, *single* with **0** dependent children.

ORDER

Due to the Arbitrator's findings on the issues of accident and causation, all other issues are rendered moot.

Compensation is hereby denied.

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

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

David T. Kane
Signature of Arbitrator

August 3, 2017
Date

AUG 9 - 2017

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LEROY HUGHES,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 15 WC 4686
	)	
	)	19IWCC0115
PROVISO TOWNSHIP DISTRICT 209	)	
	)	
Respondent.	)	

In support of his Decision, the Arbitrator notes the following:

STATEMENT OF FACTS

Leroy Hughes testified that he began working as a custodian for Proviso Township District #209 in September of 2005. He testified that for approximately 10 years he was a night custodian at Proviso Township West but testified in 2014 he transferred to Proviso Math & Science Academy as a day custodian. Pg. 19-20. He also testified that approximately 6 to 8 weeks before trial he transferred back to Proviso West as a day custodian. Pg. 69.

He testified that he worked from 4:00 p.m. to 12:00 p.m. during the school year and during the summers would work 7:00 a.m. to 3:30 or 4:00 p.m. when school was not in session. Pg. 20. He testified that he was responsible for the common area, cafeteria, art wing, band rooms, the ROTC wing which had auto shops and the main office for about two years. He testified that the Commons was a big area where students would gather outside the cafeteria area. Pg. 21.

He testified that his job duties included setting up and a lot of mopping. He was responsible for the classrooms for the art wing which had a lot of stuff on the floors that would also be tracked out into the hallway. He also would set up and break down chairs and tables for any functions that were needed and rearrange tables and chairs as needed for the different activities at the school. Pg. 23-24. He testified that the commons and the hallways were a terrazzo floor which was a hard tile like marble. The cafeteria kitchen had a painted vinyl floor that he indicated was hard to mop and he would spray bleach to clean it and used a scrub pad on his mop for the kitchen. Pg. 24-27. He testified that the first thing he did in the morning would prepare his mop bucket which he indicated he would push around all night to the different areas. He would change his water approximately three to four times per night. He testified that the mop bucket when filled weighed about 45 lbs. and also that a wet mop weighed about 20 lbs. Pg. 28-30. He testified that 75% of his time was spent mopping. He also testified that he would vacuum, shine glass, clean windows, breaking up and setting down tables and chairs and depending on the time of year would wax floors. Pg. 30. The petitioner testified that when mopping he would maintain a firm grip with both hands and in some parts would require a lot of force. Pg. 33.

The petitioner testified that in 2010 or 2011 he began experiencing right-hand pain in his fingers and hands. He saw Dr. Miller who eventually referred the petitioner to Dr. Bednar. Pg. 34-35. He admitted that in August of 2010 he was referred by Dr. Miller to a rheumatologist but claimed it was only due to pain in his fingers and not any other body parts. Pg. 36. He testified that he did not have any conversation with Dr. Miller as to the relationship of his work to his hand complaints. Pg. 37.

He began seeing Dr. Bednar who recommended wrist splits which helped. By July of 2012 he testified that his wrist was hurting and that he couldn't turn keys and Dr. Bednar recommended a left carpal tunnel release. At that time he also gave Dr. Bednar a job description and they discussed the relationship of the symptoms to his work. Pg. 38-39, 42.

On June 15, 2013 the petitioner underwent a left carpal tunnel release which did improve his symptoms. Shortly thereafter the right hand started to have the same symptoms and he underwent a right carpal tunnel release on October 16, 2013. Pg. 44-45. He testified that he continues to have pain some times and every other day is different. Pg. 46.

The petitioner then testified that on May 20, 2014 he reported to Dr. Miller for left elbow pain. He admitted there was no specific incident and Dr. Miller referred the petitioner to Dr. Schiffman. Pg. 47. The petitioner saw Dr. Bednar on June 3, 2014 and was prescribed elbow pads.

The petitioner testified that at the end of 2014 he transferred to the Math & Science Academy as a day custodian and his hours were 8:30 a.m. to 5:00 p.m. Tuesday through Saturday. Pg. 48. He testified that one of his first assignments was waxing the floors. He testified that he did not strip the floors, that the other custodians did that. His responsibility was waxing the floors which was done with a mop and bucket similar to

mopping a floor. Pg. 50-52. He claimed that his elbow started hurting and his pinky started hurting. Pg. 53. The medical records actually show that he began having elbow pain reports in June 2014 for his transfer to the Map and Science Academy.

The petitioner testified he returned back to Dr. Bednar in January of 2015 and said he didn't know what was causing the symptoms. He also saw Dr. Miller who again referred him to Dr. Schiffman and Dr. Schiffman took the petitioner off of work for three weeks. Pg. 54-56. The petitioner testified that his pain was relieved when he was not working. The petitioner testified that he went back to work and was working full duty again when he saw Dr. Schiffman on July 31, 2015 who allowed him to continue with activities as tolerated. Pg. 57-58.

The petitioner testified that while school was not in session they would do deeper cleaning. He also testified that the work at the Math & Science Academy allowed him to use elevators. He did, however, testify that the work was similar at both schools. Pg. 60-61.

The petitioner testified that he would have left elbow pain down his arm to the index and ring fingers and that when he saw Dr. Schiffman in October and on January 4, 2016 Dr. Schiffman was recommending surgery but there were no new symptoms. Pg. 63-65. He last saw Dr. Schiffman on April 11, 2016. Pg. 66.

The petitioner testified he hadn't had surgery because he was nervous and he might get surgery in the future but was nervous about it currently. He made no mention of why he was nervous for this surgery but was not for the prior two carpal tunnel surgeries. Pg. 67.

The petitioner testified that he was diagnosed with borderline diabetes that he thought occurred in 2014. He sees Dr. Miller and takes

one pill a day for that but he claimed on-direct that it hadn't caused him to lose time from his work. Pg. 68. He continues to have symptoms with his elbow and was to return to Dr. Schiffman when he was ready for surgery. He claims that he is not as steady and would tend to drop things with his arm. Pg. 69-70.

On cross-examination the petitioner testified that he couldn't remember that he had previously fallen and broken his right hand when he was a child or that he had problems with both of his arms in 1994 after falling off a loading dock at work. Pg. 74-75. The petitioner further denied any memory in December of 1997 when he was treated for pain going down his right arm (pg. 76) nor did he remember in April of 1998 complaining of both of his hands and feet getting numb. Pg. 79. He further denied any memory of telling those doctors that he was frustrated that no one could diagnosis him. He further denied any memory in 1999 complaining that all of his joints hurt all of the time and being diagnosed with joint pain of unknown origin. Pg. 79. He further did not recall in 2001 going to the emergency room at Loyola because of right wrist pain with no known trauma. Pg. 79. He admitted that he began working for Proviso in 2005 and therefore he testified that all of these things would have had to occur before he began at Proviso. Pg. 80. The petitioner further denied any memory of being treated by Dr. Miller in 2008 for left arm weakness and pain. Pg. 80-81. The petitioner further denied memory of being diagnosed with borderline diabetes in August of 2010 despite his earlier testimony that he was not diagnosed until 2014. Pg. 82-83.

The petitioner did remember being referred to Dr. Ostrowski at Loyola by Dr. Miller back in 2010 which he understood to be a rheumatologist. This was for joint pains throughout the body including his wrist and fingers

for a year and a half. He further does not remember being diagnosed with generalized arthrology and joint pain or being recommended exercises for that. Pg. 83-84. The petitioner indicated he didn't know if the time he was seeing Dr. Miller in December of 2010 for numbness in his fingers and all the other joint pains were about the same time he was diagnosed with borderline diabetes. Pg. 85.

The petitioner admitted executing respondent's Exhibit No. 1 alleging a date of loss of June of 2014 and further testified that he had a lump on his elbow but it was not related to trauma. Pg. 88-89. The petitioner further admitted to executing Exhibit No. 2 which was another Application for Adjustment of Claim but thought it was for repetitive trauma to both arms on January 8, 2015 for carpal tunnel.

The petitioner testified while working for Proviso Township High School his shift was 4:00 p.m. to midnight with a 30-minute lunch. Pg. 96. He further indicated that the daily checklist marked as Respondent's Exhibit No. 4 was a list of job assignments some of which he had to complete and that was true in 2011. Pg. 97. The petitioner testified that it would take him approximately two minutes to wash a little window and five minutes to wash the larger windows. Pg. 99. He further testified that there were two doors with one window each for small windows. He further testified that the classrooms with larger windows had four or five each and he had to do 12 classrooms like that. There were approximately 18 classrooms in total but only 12 had the large windows. The petitioner also admitted that he would clean graffiti as he would go along with a spray bottle and mop bucket but the total time would be approximately an hour cleaning graffiti. Pg. 106-107. Upon questioning from the arbitrator the petitioner admitted that he would change what he was doing as he went continuously doing different

functions during the shift. Pg. 108. He specifically admitted that he was not consistently doing one function in each classroom but several functions including windows, graffiti, mopping, cleaning out sinks and "just all kinds of functions." Pg. 109. He again admitted on cross-examination that his day was very varied as he went from classroom to classroom with all the different functions he had to do. Pg. 110-111. The petitioner further testified that he would have to dust each of the 18 classrooms and that would take about 10 minutes for one classroom. Pg. 111-112. He further admitted he would have to dust the office which took about five minutes and there were eight offices that he had to cover. Pg. 112. The petitioner further admitted that he would have dust mop each of the 18 classrooms and that it would take approximately 10 minutes to dust mop one classroom. He further dust mopped the corridors which included four or five and that would take 15 to 20 minutes to dust mop a corridor. Pg. 113-114. The petitioner also testified that he had to wet mop the bathrooms but nothing else because there were bathroom attendants unless the bathroom attendant was off. Pg. 115-116. He also testified that he would empty the garbage cans in each of the classrooms and it would take approximately three minutes per classroom and a second for each of the offices that he did. Pg. 116-117. He also would have to take out the garbage twice a night. He claimed that to go out to the dumpster he would have to do that twice a night and that he was able to do that within five seconds. Pg. 117-119. After extensive questioning he admitted that the second time he would have to go out would take about a minute. Pg. 121. He further testified that he had to wash chalkboards which took about two minutes but claimed only 2 of the 18 classrooms that he had to clean had chalkboards.

After the petitioner transferred to the Math & Science Academy he continued to complain of pains in his hands and wrists. He denied knowledge of going back to Dr. Bednar saying that the surgery had failed and further did recall Dr. Bednar indicating he could not explain the petitioner's symptoms. Pg. 125-126. The petitioner further again denied missing any time related to his diabetes but admits filing an Application for Adjustment of Claim for an injury of August of 2016 involving his leg. He admitted that he had a hematoma that got infected but denied being told that his diabetes was out of control. Pg. 128.

The petitioner further testified that filling up his mop and getting things ready to prepare for the shift would take approximately three minutes and further that he would have to replace his mop water three or four times in a shift. Pg. 136-137.

The petitioner testified that while working at the Math & Science Academy it had elevators which made it easier but it was still demanding work. He testified that he didn't have classrooms like at West and had to do a little of breakdowns, mopping the cafeteria, breaking the cafeteria down and setting it back up and they had a lot of programs. Pg. 140-141. He further testified that he would have to vacuum each office which would take about two minutes because they are small and he did eight of them. Pg. 141-142. He further had to vacuum the floor or rugs in front of the doors and it would take about five minutes to vacuum them but he only had one. He testified that he would have to set up or break down about once a week that would take 15 or 20 minutes. Pg. 144.

On re-direct the petitioner denied similar symptoms to his bilateral wrists before he began working for Proviso Township and the same was true for his left elbow. Pg. 148.

The petitioner testified that when he signed the Applications for Adjustment of Claim his counsel had not even filled them out. Pg. 155. His counsel specifically admitted that her office would frequently ask the petitioners to sign blank documents. Pg. 158. The petitioner further testified that he would be going through wiping down desks and stuff and that when he was through with the room he would mop it and that the mop would be traveling with him through the course of his shift. Pg. 162-163. He further testified that one of his tasks was degreasing the kitchen floor which included spraying bleach and mopping it. He claimed that that took 2-1/2 hours each night. He further claimed it would take 25 minutes to mop the teachers' cafeteria and that he would spend 30 to 45 minutes mopping the student cafeteria and getting up spills. Pg. 164-166. He further testified that it would take about 45 minutes to mop the student common area. Pg. 166. Upon further questioning from the arbitrator the petitioner again indicated that during the course of his rounds he would do a whole variety of functions including the mopping. Pg. 167. He further testified that to mop the large hallways it would take an hour and longer in the winters. In addition to that he testified that he had to do mopping in all of the classrooms. Pg. 169. On re-direct the petitioner changed his testimony to indicate that the 18 rooms included both classrooms and offices with only 12 having vinyl floors that he had to mop every day. Pg. 173. The petitioner testified that cleaning the graffiti would include pressure on his hands and arms. Pg. 175. He again reiterated that he did not do classrooms at the Math & Science Academy after 2014. Pg. 176. Most of his time at the Math & Science Academy was setting up things, mopping, delivering paper, delivering stuff to classrooms and then in the summertime would wax and scrub floors. He testified at Proviso West he had to mop

four bathrooms. He later changed that to six and it would take 10 minutes to do the larger ones of which he had four and two small ones which would take five minutes. Pg. 177-178. The petitioner testified that his only treatment for diabetes is one Metformin a day and he received no treatment for his diabetes while in the hospital for the hematoma.

The respondent presented the testimony of Ronald Pearson. He testified that he was the night foreman in 2012 when the petitioner alleged his carpal tunnel syndrome. T 6/28 Pg. 4. He said that he supervised the petitioner for approximately two years before this condition allegedly developed due to his work. Pg. 5. At that time of his supervision he was overseeing Proviso East and Proviso West and would spend about a half day at each of the schools during the shift when the petitioner worked. Pg. 27. He oversaw approximately 25 custodians but the petitioner's assigned area was right close to his office and therefore he saw the petitioner much more than he did some of the other custodians that were further away in the building. Pg. 29, 52. He testified that they would have a 15 minute meeting each day either at the beginning of the day or right after lunch depending on what building he started his day. He would also then see the petitioner a total of about 20 minutes throughout the day. Pg. 53.

He testified that he was familiar with the job duties required of the petitioner and that the three different job descriptions and duty lists that were introduced were accurate descriptions of the petitioner's responsibilities. Pg. 89. He walked through each of those responsibilities to highlight the varied nature of the petitioner's job. Ultimately, Mr. Pearson testified that the petitioner would likely spend up to 30% of his day involved in wet mopping. Pg. 23. He did testify that the petitioner's assignment did not include the school cafeteria at Proviso West. It did include the cafeteria

kitchen as well as one entrance and the hallway sometimes referred to as the Commons. Pg. 31. He also had several classrooms. Mr. Pearson testified that the day staff would do ongoing cleaning throughout the day so he was not cleaning up all the messes that had been created by the students during the day. Pg. 32. He admitted that the kitchen floor would have residue and grease and that included wet mopping but no dust mopping and that the floor might require more force than other floors. Pg. 34.

He testified that the courtyard cleaning, corridors, classrooms, and the stairs could include mopping but it would depend on basically spot mopping. The petitioner was responsible for a bathroom and the washroom did require mopping each day. The other floors did not. Pg. 39-41, 70. He further testified to multiple tasks the petitioner performed with his hands that were not wet mopping. Pg. 41-47.

Mr. Pearson testified that when school was on break that one of the projects that they may do is waxing and cleaning of the hallways which was done basically three times a year. The petitioner would have been assigned to a group of three to five individuals and one or two of those would be doing the waxing of the floor at any one time. He testified that that was not the petitioner's primary responsibility and it would not be one continuous project but would be done throughout the break. Pg. 64-68.

The respondent also submitted the testimony of Ronald Anderson. He was the building and project manager at the Proviso Math & Science Academy and had been for 10 years. Pg. 73. That was where his office was located although he did also oversee special projects at Proviso East and West High School. He testified that he was the direct supervisor of the petitioner when the petitioner worked there. He thought the dates were

2015 through the beginning of 2017. Pg. 73. He reviewed the job description marked as Respondent's Exhibit 8 and testified that it was consistent with the petitioner's job duties although the petitioner was not involved in the athletic requirements because there was no athletic facility at the Math & Science Academy. He further testified that the assistance with the ground crew for snow removal and lawn care and exterior maintenance was only occasionally. Mr. Anderson identified each task and noted that there was very little wet mopping involved. Pg. 75-79. He further indicated that the petitioner was supposed to use the Zamboni machine every day but didn't always. Pg 96. He described the use of the Zamboni machine as a self-propelled powered mopping machine which replaced the majority of the mopping that was required. Pg 95. He indicated that a user would stand behind the machine with his arms extended and allow the machine to work. In addition to the use of a Zamboni machine the petitioner would have to occasionally spot mop where needed if there was a spill. Pg. 79-80. He testified that the petitioner was not using the floor buffer in the 2015/2016 break. Pg. 83. There were other assignments ongoing at that time including waxing floors. Pg. 84-85.

On cross examination, Mr. Anderson testified that there was a receiving clerk that assists in providing communicating assignments to the petitioner. Mr. Anderson would provide them to the receiving clerk who would note them on the petitioner's time card. Pg. 89. He further testified that the first item on the job list is cleaning and maintaining classrooms, corridors and stairs which would be the primary job duties. This included occasional mopping or spot mopping. Pg. 92. He further testified that the petitioner would have been involved in waxing the floors over Christmas break but they would have only work six days over two weeks because of

the Christmas and New Years holidays for which they get two days each week. Pg. 84, 98.

The petitioner also testified in rebuttal following the close of Respondent's case. He testified that a stripper solution would be spread on the floors and allowed to break up the wax and then a handheld scrub machine was used which is a brush placed on the bottom of a scrubbing machine which he would then move from side to side until the wax is removed and then new wax is spread with a wet mop followed by a dry mop. He testified that only certain areas were stripped during winter break. He testified that he performed the similar task while at Proviso West. Pg. 102, 105. He testified that Proviso West likely got a Zamboni for the mopping but not until 2013. He then speculated that West "probably couldn't use it at West because the guy in the A Building probably got it in the fieldhouse or the athletic department." Pg. 106. He then admitted that there was some old ones that was broke down all the time so he hardly ever used it. Pg. 107. The petitioner further testified that sweeping and mopping was everything that he did at Proviso Math & Science. Pg. 108. He further testified that the student cafeteria was one of the sections he would maintain with breakdowns or set-ups and spot mopping to clean up spills. Pg. 109. The petitioner further testified that video was from November 25, 2015 and during that time period he was asked by Ron Anderson to help clean the boiler room with the boiler guy. Pg. 111.

The petitioner also submitted the deposition testimony of Dr. Michael Bednar. Dr. Bednar testified that he was a board-certified hand surgeon practicing at the Loyola University Medical Center, Hines VA Hospital and Shriners Hospital for Children. Pg. 6. Dr. Bednar first started treating the petitioner on March 15, 2011 and reported a 7-month history of developing

pain in his wrist. Dr. Bednar reviewed the EMG and felt the petitioner had carpal tunnel syndrome which was worse on the right than the left. Dr. Bednar relied on the patient database sheet that was filled out by the patient for the past medical history. Pg. 8. Splints were prescribed and at that the follow-up a month later had helped improved symptoms. Pg. 10. The petitioner then returned on July 19, 2012 with increased symptoms and a repeat EMG and splinting was again recommended. Pg. 12. The EMG reported increased symptoms on the left side and left carpal tunnel release was recommended. Pg. 13. On the visit of July 24, 2012 the petitioner told Dr. Bednar that he spent the majority of his job mopping which was more than 50% of the day. He also did vacuuming and wiping objects and Dr. Bednar felt that that appeared to be a job that involved repetitive use of the hand but he requested a job description. Dr. Bednar testified that jobs that are both high force and high repetition are likely to be jobs that aggravate carpal tunnel syndrome. He described jobs such as a jackhammering, working in a meat processing plant and those types of things. Pg. 14-15.

On July 26, 2012 Dr. Bednar wrote a note based on his review of the job description which he admitted did not state the percent of time that the petitioner was doing various activites. Dr. Bednar noted that the petitioner would do dusting, mopping, cleaning corridors, mopping and cleaning classrooms, wet mopping, cleaning bathrooms and vacuuming. He described it as a lot of the types of activities and the petitioner said it was frequent mopping and vacuuming that he did most of the time. Pg. 16. Dr. Bednar felt that the most significant activity was that more than half of his time was spent wet mopping where you would have something heavy and repetitively grabbing it and moving it through a variety of motions. Dr. Bednar admitted that he hadn't seen the mop and wasn't able to answer

whether a custodian in a school setting would be different. Based on what the petitioner had indicated and the job description Dr. Bednar felt that a carpal tunnel syndrome was causally related to repetitive work activities. Pg. 17-18. Dr. Bednar specifically offered the petitioner the opportunity of proceeding under his group insurance but the petitioner did not want to do that. Pg. 19. On June 5, 2013 the petitioner decided to undergo the carpal tunnel surgery under his group insurance. Dr. Bednar noted a moderate amount of flattening of the nerve and swelling around the tendons which was what would be expected for someone such as the petitioner. Pg. 20. At the first follow-up visit the petitioner reported good relief of his symptoms. Pg. 21. As of June 18, 2013 the petitioner was allowed no use of the left arm and was to return in four weeks to consider an injection to the right hand. Pg. 23. This was administered on July 11, 2013. Dr. Bednar testified that the bilateral carpal tunnel syndrome was causally connected to the petitioner's work activity previously described. Pg. 24. The petitioner underwent right carpal tunnel release on October 16, 2013 and there were the same findings. Pg. 26. By the time the petitioner saw Dr. Bednar on November 5, 2013 he had complete relief of his symptoms. Pg. 27-28. He was told to wear splints as needed and follow up as needed. The petitioner was allowed full duty work with no restrictions as of that date. Pg. 29.

On February 4, 2014 the petitioner went back to Dr. Bednar and indicated that in November he had begun doing heavy work removing wax from a gym floor and developed heaviness of the hands. The examination was essentially normal and the plan was for new wrist splints. He was asked to return if the symptoms worsened. Pg. 30. When the petitioner returned back to Dr. Bednar on June 3, 2014 he was now reporting

problems with his left elbow that he claimed began five weeks earlier. It was at the tip of the olecranon and Dr. Bednar diagnosed olecranon bursitis and he was prescribed a pad to protect the elbow. Pg. 30.

He then returned back to Dr. Bednar on June 24, 2014 and was reporting pain in both hands for a couple weeks and was reporting numbness over the dorsum or back of his hand rather than on the palm side. The examination was normal and Dr. Bednar advised the petitioner just to watch it. That was his last visit with the petitioner. Pg. 31.

Dr. Bednar testified that the post-operative complications included symptoms that the petitioner did not have. He further testified that only a couple of percent maybe up to 5% of patients actually have recurrence of carpal tunnel syndrome. Dr. Bednar indicated he did not see a lot of patients who have that. Those patients typically are renal dialysis patients or chronic renal failure which did not apply to the petitioner. Pg. 32-33. Dr. Bednar further admitted that individuals with increased body mass index such as Mr. Hughes are pre-disposed to carpal tunnel syndrome. Despite that, Dr. Bednar felt that the work activities at least aggravated the carpal tunnel syndrome. Pg. 34. Dr. Bednar indicated he could not testify that the petitioner's ongoing work activities would cause any future problems. Pg. 36. Upon pressing he testified that it was more likely not than yes. Pg. 36. Dr. Bednar further indicated that the petitioner made no complaints of decreased strength. Pg. 37. On cross-examination Dr. Bednar couldn't explain why the patient information form which he admitted would be part of the medical file was not produced via subpoena to the respondent. Dr. Bednar testified on cross-examination that it was the gripping of the mop handle that he believed contributed to the carpal tunnel but he admitted he did not know if there were different motions for each hand. Pg. 45. Dr.

Bednar admitted that he was not an ergonomics expert and therefore couldn't testify what specific motions he felt would contribute despite his opinion to that. Pg. 46. He felt that moving a heavy mop was repetitive enough with enough high force and high repetition to cause it. Dr. Bednar admitted that he was basing his opinions simply on what the petitioner told him. Pg. 46. Dr. Bednar again admitted he could not tell the specific motions of the hands as he was mopping. Dr. Bednar admitted that he did not testify that dusting caused his carpal tunnel syndrome or that it was the same motions as wet mopping. He said the same regarding emptying trash or vacuuming. Pg. 47. Further, Dr. Bednar admitted that he had no idea whether or not the petitioner being right-handed or left-handed would have any impact on his opinion. Pg. 48. He admitted that there a lot of reasons that would cause the compression of the media nerve as it passes through the carpal tunnel and this included obesity. Pg. 48-49. Dr. Bednar further admitted that the reason that people using a jackhammer or in a meat processing plant develop carpal tunnel is that they stand in the same place and do the same job all day every day. Pg. 50. He testified that a variety of work activities is one way to reduce the likelihood of carpal tunnel. Pg. 51. Dr. Bednar admitted that the petitioner's report of numbness on the top of his hand would have nothing to do with carpal tunnel. Pg. 51. Dr. Bednar further testified that diabetes is a known risk factor for development of carpal tunnel because it can have an effect on all of the nervous system in the body. He testified that the EMG did not show polyneuropathy but compressive neuropathy but he didn't know the impact of the numbness that the petitioner reported in his medical records dating back to 1998 and what impact that had on the job contributing. Pg. 52. He restated that the only history he had of the petitioner is what the petitioner

reported to him. Pg. 53. Dr. Bednar admitted that if he had complaints of numbness before working in his current job then that numbness would not be related to the petitioner's position at Proviso. Pg. 55-56. He based his opinion on the relationship of the job on the progressive nature of the petitioner's symptoms but admitted that regardless of cause, carpal tunnel can progress and that it would not be unusual at all. Pg. 56. Dr. Bednar noted that the petitioner had good relief on July 11, 2013 and when he saw the patient again on November 5, 2013 Dr. Bednar noted that the petitioner had had complete relief. Pg. 58-59.

The petitioner also submitted the deposition testimony of Dr. Kenneth Schiffman. Dr. Schiffman testified that he is a board-certified orthopedic surgeon with a specialty in upper extremities currently working at Loyola University Medical Center. Prior to that, he spent 24 years at Hinsdale Orthopedics. Pg. 6-7, 41.

Over a Ghere objection for failure to disclose office notes prior to the deposition testimony, Dr. Schiffman testified that he saw the patient on January 26th and February 5th of 2015. Pg. 8-9. On January 26, 2015 the petitioner reported bilateral elbow and wrist pain. He claimed the elbow pain began in December and the wrist pain more recent. There was tenderness reported at the dorsal aspect of both wrists and at the lateral epicondyle of the left elbow. Based on that the petitioner was diagnosed with bilateral lateral epicondylitis and bilateral wrist pain. Pg. 10-11. Dr. Schiffman testified that that was an inflammation of the tendon attachment to the bone of the elbow and is not primarily a nerve problem. Pg. 12. When the petitioner returned on February 16, 2015 the elbow pain was very much diminished and he was allowed to go back to work. Again over a Ghere objection Dr. Schiffman testified that on February 16, 2015 he felt

that the lateral epicondylitis was related to the petitioner's work. He felt that the condition is typically caused or provoked by gripping tasks. Pg. 15.

The petitioner returned back to Dr. Schiffman on March 2, 2015 for intermittent numbness and tingling in both hands that occurred more often when the elbows were in a flexed position. The examination found a Tinel sign at the cubital tunnel on the right and a positive elbow flexion test. Based on the right elbow testing, Dr. Schiffman diagnosed bilateral cubital tunnel. Pg. 15-16. Dr. Schiffman admitted that cubital tunnel is not always related to some sort of work activity. He felt that the petitioner frequently performed tasks with elbows in a flexed position which could provoke or aggravate the condition. He stated that the specific activity doesn't matter as much as the position of the elbow. Pg. 18. The petitioner informed Dr. Schiffman that the elbow pain would be primarily during work when he was having to move objects and lift things which would be consistent with causing or aggravating cubital tunnel. An EMG was performed which showed no clear evidence of ulnar nerve compression which indicated that the condition was probably not severe. Pg. 19-20. When Dr. Schiffman saw the petitioner on July 31, 2015 after the EMG he changed his diagnosis to bilateral medial epicondylitis. Dr. Schiffman testified that it was not unusual to see symptoms consistent with epicondylitis and cubital tunnel. Pg. 21. Dr. Schiffman saw the petitioner in October and the hand exam was normal for both hands and there was no indication that an elbow exam was even done. Pg. 22-23. Dr. Schiffman explained that the reason for that was that the primary complaint was numbness and tingling affecting his hands. Repeat EMG's confirmed that he was not suffering from recurrent carpal tunnel syndrome. Dr. Schiffman felt that the symptoms

were due to ulnar nerve compression or irritation at his elbows and the assessment was now ulnar neuropathy. Pg. 24-25.

When he saw the petitioner on January 4, 2016 the petitioner was complaining of flexion of the elbows in a bent position such as when he was holding his phone or driving his vehicle. Now the petitioner's symptoms were on the left side with a positive elbow flexion and a subluxation of the ulnar nerve. This is not necessarily a cause but could be related to the irritation of the ulnar nerve. Pg. 26-27. As of January 4, 2016 the new diagnosis was now bilateral cubital tunnel syndrome and surgery to decompress and transpose the nerve was recommended. Pg. 28. Dr. Schiffman testified that the numbness and tingling primarily to the small and ring fingers could be related to ulnar nerve compression. The findings on the January 25th exam now showed both right and left complaints and the assessment was now bilateral cubital tunnel syndrome. Pg. 31. Despite the petitioner's request, Dr. Schiffman declined a cortisone injection because it would not expect to help him and could possibly harm the nerve. If the diagnosis was epicondylitis then an injection could help the symptoms for some period of time. Pg. 34-35. Prior to his testimony, Dr. Schiffman last saw the petitioner on April 11, 2016 and he was allowed to continue work and was told to contact the doctor when he was ready to proceed with surgery. Pg. 36. At the time of his deposition, Dr. Schiffman was now believing that the lateral epicondylitis had resolved and that the ongoing condition was bilateral cubital tunnel. Pg. 37. Dr. Schiffman felt that the bilateral lateral epicondylitis was caused by the sustained gripping and lifting which was part of his job. Pg. 37. He testified that the work activities aggravated the condition but that it was hard to identify a cause for cubital tunnel syndrome. He felt that activities that required either

repetitive or sustained elbow flexion or having the elbow in a bent position would typically provoke or worsen the condition and Dr. Schiffman did not see any other cause for his elbow symptoms. Pg. 39.

On cross-examination Dr. Schiffman admitted that a history was an important part of formulating his opinions and that he did not review any histories provided by any of the other providers in this case. Pg. 45. He admitted that the person's general health condition can contribute to feelings of discomfort and numbness and Dr. Schiffman admitted that he was not aware that in the year prior to December of 2015 the petitioner had reported back pain, stomach pain, chest pain, bilateral arm pain and bilateral hand pain or headaches. Pg. 47. He admitted that the diagnosis of the olecranon bursitis made by Dr. Bednar when the petitioner first started making elbow complaints in June of 2014 was not consistent with his own diagnoses. He admitted that there were three different conditions all related to the elbow that had been diagnosed since June of 2014 and that all of those diagnoses were for different conditions with different symptoms and different mechanisms of causation. Pg. 48. He admitted that Dr. Bednar had first diagnosed lateral epicondylitis and Dr. Schiffman agreed with that diagnosis in January of 2015. He further admitted that by March of 2015 the diagnosis had changed to bilateral cubital tunnel. He further admitted that by July of 2015 he was now diagnosing bilateral medial epicondylitis and that that was yet a fourth condition of the petitioner. Dr. Schiffman admitted that the reported symptoms were moving all over which is the basis for each of his diagnoses. He further admitted that the two EMG's that the petitioner had showed no problem with his ulnar nerve. Pg. 50. The diagnosis was based simply on the signs and symptoms reported by the petitioner. Pg. 51. He further admitted that

the current diagnosis was bilateral cubital tunnel which could be aggravated by elbow flexion but also could pop up in the general population with no reason at all. Pg. 51-52. Dr. Schiffman was unaware that Dr. Miller had found nothing wrong with the petitioner's elbows in June of 2015 and that when he saw the petitioner on October 16, 2015 the petitioner was only reporting bilateral hand pain and numbness and that when he saw the patient in October of 2015 there was no record of any elbow complaints at the time. Dr. Schiffman admitted that had there been any arm complaints those would have been recorded because that was part of his job in recording the history. Pg. 53. He further admitted that the petitioner's reports of numbness and tingling in the entire hand could not be explained by cubital tunnel syndrome nor would the petitioner's bilateral complaints of pain and numbness in the wrists. He further admitted that the most recent EMG was simply consistent with treated carpal tunnel syndrome. Pg. 54. Dr. Schiffman admitted that he was not aware that a couple of the petitioner's medications that he was on could cause numbness and weakness in the hands and he was aware that the Meloxicam that the petitioner was taking could cause joint and muscle pain. Pg. 56.

Dr. Schiffman admitted that the repetitive elbow flexion that might aggravate the cubital tunnel syndrome would appear within a day or two of the activity. He admitted that even while resting if the elbow was held in a flexed position this could aggravate the syndrome and provoke symptoms. Pg. 57. Dr. Schiffman testified that the mopping, cleaning the floors, lifting and moving desks where the elbow is in a flexed position would aggravate the symptoms. Dr. Schiffman, however, admitted that he had no idea how much time the petitioner spent mopping, if there was a difference between dry mopping or wet mopping and what dominant hand the petitioner was

and what impact that may have on his work activities. He admitted that when mopping one arm is generally extended and Dr. Schiffman did not know which arm the petitioner would generally favor in that situation and that therefore it would not explain a bilateral syndrome. Pg. 59-60. Dr. Schiffman further admitted that anywhere the petitioner was flexing his elbow whether it be at work, at home or in the car, it could aggravate his symptoms. When Dr. Schiffman discusses aggravation, he does not mean it is changing the underlying cubital tunnel syndrome but is simply a symptom. Again he admitted that this was true whether he is sitting at home watching T.V. with his elbow flexed or mopping at work it could possibly increase the symptoms but not change the underlying cubital tunnel syndrome. Pg. 61-62. Further, Dr. Schiffman admitted that he did not have any explanation for the numbness and tingling that the petitioner was reporting in October of 2015 because his symptoms were not localized. Pg. 63.

Dr. Schiffman testified that waxing of the floors would have involved elbow flexion and was consistent with the onset of the elbow symptoms described. Pg. 77. When asked to describe what was involved with waxing of the floors for the petitioner, Dr. Schiffman testified that he was using a buffing machine but admitted he had no specific idea of what the petitioner did but still felt it was aggravating the symptoms. Pg. 80.

Dr. Schiffman admitted he had no idea what the petitioner was doing when he was waxing the floors but was still willing to say that that activity aggravated the symptoms. He was unable to say to what degree the elbows would be flexed but guesstimated 30° to 45° or more when using a buffer. Pg. 80-81. He stated that any flexion could be enough to aggravate cubital tunnel but that would be expected in moderate cases. Pg. 82. Dr.

Schiffman went on to testify that the EMG ruled our carpal tunnel syndrome and therefore supported his diagnosis of cubital tunnel syndrome with the signs and symptoms presented but admitted that the signs and symptoms of the previous medial epicondylitis and the signs and symptoms of the lateral epicondylitis were different. Although he had previously testified that there were objective findings he did retract that in re-cross indicating that there were physical findings but not necessarily objective. Pg. 84.

The respondent also submitted the testimony of Dr. Michael Vender. Dr. Vender is a board-certified orthopedic surgeon having completed a fellowship in hand and upper extremity surgery and treats patients with hand and upper extremity disorders. Page 5-6. Dr. Vender first examined the petitioner on October 24, 2012 where he reported symptoms in June and July 2012 of the right side and then later developed symptoms in the left side. Page 10. The petitioner reported standing 5'11" and weighing 251 pounds and was right-hand dominant. Page 10. Following the examination and discussing with the petitioner the history he felt the petitioner had left carpal tunnel syndrome that was not related to his work. He did not feel the petitioner was engaged in any force combined with duration. He noted that intermittent forceful motion was not significant in causing carpal tunnel syndrome. He felt that when you're doing different things with different use patterns of the hand that precludes the concept of repetitiveness because one is not doing the same thing over and over again. Page 13. Also his exposure to forceful use was very limited. He testified that in probably at least half of the cases of carpal tunnel there is no potential cause but simply are idiopathic. Major risk factors do include obesity, smoking, diabetes and hyperthyroidism. Additionally rheumatoid arthritis could cause or contribute to carpal tunnel but less frequently. Work is also a potential

factor. Of these, the petitioner did have increased body mass index and was obese. Page 16.

Dr. Vender also indicated that an EMG would not rule in or out whether diabetes is contributing and compressive pathology is used to show that pathology is localized in the area and does not state the cause of that. Page 17. The EMG did rule out diabetic polyneuropathy but it doesn't indicate whether diabetes was contributing to the compressive neuropathy. Page 18. He did agree that surgery was appropriate at that time. Page 21.

Dr. Vender next saw the petitioner March 26, 2014. At that point the petitioner had undergone bilateral carpal tunnel release with improvement in his preoperative symptoms. Dr. Vender did not dispute the need for those surgeries. Page 21-23. Dr. Vender did indicate that wet mopping does have some repetition and some force and the amount of time and the duration of each time that he did it would be a factor. None of the other activities of the petitioner would contribute to carpal tunnel syndrome. The fact that the petitioner had limited exposure and was variable in doing other types of activities is important and his job would not be a contributing factor. Page 25-26. Dr. Vender did perform an AMA impairment rating pursuant to the 6th Edition and felt the petitioner had 3% impairment of the upper extremity on the left and 2% of the upper extremity on the right. Page 27.

Dr. Vender admitted that pushing a mop back and forth would require some force which is one of the factors. If an activity is very forceful then you would want to see that the majority of the time of work. If it's extremely forceful that it would really involve less time. There is no cut off. Medium force would require much more repetition. Page 37-38. Dr. Vender further indicated that a return back to the prior job would not cause a recurrence of

carpal tunnel because the surgery changed the anatomy. Page 44. Dr. Vender eliminated much of the activities as causative factors simply because of the intermittent nature of things such as moving furniture or emptying a trash bag. Wet mopping if it was really very forceful then at least over 50% of the workday would be required to consider the contributing factor. It's probably not an issue unless he's doing it 80% of the workday. Page 47. Mopping itself and pushing it on the floor would not be forceful enough. It would require leaning into it and using some force. Page 47-48.

The respondent also submitted the testimony of Dr. Prasant Atluri. He is board certified in orthopedic surgery with an added certificate of added qualifications in surgery of the hand. His practice only treats problems involving the upper extremity. Page 5-7. He first saw the patient on January 27, 2016 at that time Mr. Hughes was describing problems with both elbows with onset in June 2014. He reported developing a knot on the posterior aspect of left elbow and that the entire left hand had gone numb. No specific injury was reported. Page 10. Dr. Atluri noted that the petitioner had previously been diagnosed with olecranon bursitis which could be described as a knot. That condition could cause irritation of other structures in the elbow. The most common cause of olecranon bursitis is direct trauma and the second most common cause is just idiopathic and possibly underlying bone spurs. The next most common cause is prolonged immobilization such as after shoulder surgery. Page 11-12. Dr. Atluri testified that the report of his entire hand going numb by the petitioner crosses multiple distributions of nerve innervation suggesting a problem with multiple nerves or a circulation problem but is atypical with a single isolated nerve abnormality. Page 13. The fact that the symptom was

originally one-sided and became bilateral suggested that it was progressive as one would see with diabetes. The swelling and inflammation could have contributed to developing other symptoms but the most common cause of bilateral cubital tunnel syndrome is idiopathic meaning there is no precipitating event or other factor causing it. Page 14. During the exam the petitioner admitted that he had borderline diabetes and hypertension and discussed his carpal tunnel syndrome and releases. The petitioner claimed a new onset of hand numbness in mid-2014. Page 15. Dr. Atluri noted that the petitioner failed to reveal any medications he was on the Comprehensive Health Information Form that was provided as part of the examination. Page 16. He further failed to disclose any medications when this was discussed directly with Dr. Atluri. Page 78.

Dr. Atluri noted that the examination was basically normal and he had a negative Wartenberg sign which is specifically for ulnar issues. The petitioner also had a normal Froment sign. Dr. Atluri did find an unstable ulnar nerve which subluxed anteriorly when flexed and a positive Tinel at the cubital tunnel and positive cubital tunnel compression test. He noted that that was typical or normal in a certain percentage of the population and that individuals with that instability have a higher incidence of ulnar neuritis. Page 22-23. On the left side the petitioner again had normal Wartenberg and Froment findings suggesting no motor involvement of the ulnar nerve. Page 25. There was tenderness in the tip of the olecranon and distal triceps. He further had an unstable ulnar nerve on the left and a positive Tinel on the cubital tunnel and positive digital compression test over the cubital tunnel. Page 26.

Dr. Atluri testified that the most common causes of numbness in the hands can be mechanical factors such as compression of a nerve or a

pinched nerve or hormonal problems such as diabetes. Other systemic medical problems can also cause hand numbness. Some medications can further cause hand numbness. Page 28. X-rays were taken which showed bilateral small bone spurs and mild degenerative changes. A bone spur in the location found is associated with olceranon bursitis and the petitioner also had a little fracture of the bone spur which could explain some of the tenderness at the posterior elbow of the right side. Page 30. Dr. Atluri noted that the EMG failed to find anything related to the ulnar nerve. Page 31. The abnormality for the median nerve was consistent with treated carpal tunnel syndrome. Page 32. Dr. Atluri testified that when the nerve test doesn't match the presentation clinically then it suggests some underlying condition as opposed to simple compressive neuropathy. Page 33.

Dr. Atluri testified that the lateral epicondylitis that was diagnosed and the ulnar neuropathy are two completely different diagnoses with completely different structures in the elbow. One is a tendon problem in one is a nerve problem. Page 33-35. Multiple nerve tests did not show any actual damage to the ulnar nerve so Dr. Atluri knew that he did not have ulnar neuropathy but he could have had an ulnar neuritis but that's on the opposite side of the elbow from lateral epicondylitis. Page 35-36. There was no evidence of any lateral epicondylitis in the petitioner. The diagnosis was bilateral ulnar nerve instability which was congenital and possible cubital tunnel syndrome. Page 36. Dr. Atluri was concerned that the actual cause of symptoms had not really been identified. The history of prior musculoskeletal problems and bilateral nature of the symptoms as well as the distribution suggested an underlying systemic condition. With the history of diabetes probably contributing to some extent and the instability probably a contributing factor but neither explained all of the symptoms.

Page 37-38. The symptoms suggested that it was progressive which could be explained by diabetes. Dr. Atluri noted that diabetes affects every organ system in the body and specifically the nerves. It does so by decreasing the blood supply to the nerves causing deterioration and also damage to the nerve from having high blood sugars which results in a stocking glove distribution. The doctor noted that this could happen even if the diabetes is under control because the system is never truly normal. It generally means that a certain blood sugar level was maintained but normal people have daily fluctuations will which a diabetic patient will not have even if the blood sugars are below a certain level. Page 39 – 40.

Dr. Atluri noted that the ulnar nerve instability had nothing to do with the work activities. Page 42. Job-related cubital tunnel syndrome requires prolonged hyper flexion of the elbow or forceful pushing and pulling of the elbow for a long duration of time. The petitioner's job activities did involve some forceful use of the upper extremities but the activities were relatively varied and he does a lot of different things. Even though there was exposure to heavy, forceful use it didn't meet the standard of prolonged, forceful hyperflexion or frequent, forceful pushing and pulling of the upper extremities for a long duration of time. Page 43. Dr. Atluri further pointed out that the distribution of symptoms didn't even really match cubital tunnel syndrome exactly or any type of activity related condition. It was more suggestive of the systemic condition which suggests that the condition was not work related. Page 43 – 44. Dr. Atluri specifically testified that wet mopping would not be the kind of forceful pushing and pulling that would lead to the development or aggravation of cubital tunnel syndrome. Page 47. Treatment of the petitioner could include splinting but that would not be

expected to relieve all of the symptoms because they are not all associated with that nerve distribution. Page 49-50.

Dr. Atluri testified that the most common complaint of cubital tunnel is numbness and tingling involving the ulnar aspect of the forearm extending to the hand involving the small finger and ring finger and the dorsal part of the hand of the ulnar side. There are also commonly reports of pain to the posterior medial aspect of the elbow radiating to the ulnar forearm. Page 59. Dr. Atluri agreed that some individuals with carpal tunnel can be made symptomatic based on work activities. The position of the elbow is one of three primary factors but the activity is important to consider because forceful activities with elbows hyperflexed increase the likelihood of pressure on the ulnar nerve. The classic activity is using a jackhammer where the elbows are hyper flexed and the individual is gripping the handle and subject to vibration. Page 61. Dr. Atluri admitted that moving furniture, lifting and moving desks, emptying trash into the dumpster and mopping involve elbow flexion but ongoing performance of that type of work would not cause persistence or worsening of cubital tunnel syndrome. Page 62-63. Further, none of those activities involved prolonged hyperflexion of the elbows which is a requirement for development of cubital tunnel syndrome arising out of work activities. Page 79. Dr. Atluri noted the distinction between an activity causing the condition or an activity feeling symptoms. He noted that sleeping is a common time for symptoms to exhibit themselves but that doesn't mean that sleeping caused the issue. He again noted that the standard was hyperflexion meaening over 120-125°. Page 64. Dr. Atluri admitted that a negative EMG is not conclusive that cubital tunnel syndrome does not exist. Page 68. Dr. Atluri noted that it would be very unusual to do both surgeries at once if the petitioner proceeded with

cubital tunnel surgery, especially when there are doubts about the extent of his symptoms that may resolve with surgery. Page 75 – 76.

The respondent also admitted the medical records of Loyola Medical Center. They note that on August 24, 2016 the petitioner was admitted for hematoma to his leg. During this admission it was noted that the blood sugars were "extremely high" at 182 (RE 19 - page 132).

The respondent further admitted the surveillance video of the petitioner showing him doing regular work activity with no apparent pain behavior. (RE 20).

The respondent admitted the medical records of Maywood Family Practice. (RE 15). These records show that the petitioner fell and broke his right hand as a child and had problems with both of his arms in 1994 after falling off a loading dock at work. (3/8/94 DOS). The medical records further show that the petitioner had radiating right arm pain in December 1997 and had hands and feet getting numb on April 27, 1998. That date of service noted that the petitioner was frustrated that no one could explain why his joints hurt all the time. The record further noted that on February 17, 1999 the petitioner had complaints of joint pains throughout his body including his arms. The diagnosis was joint pain of unknown origin. The medical record also noted that on April 6, 2001 he was treated in the emergency room for right wrist pain with no known trauma. By April 12, 2006 the medical records were noting possible diabetes. The medical record noted that on July 9, 2007 the petitioner had elevated glucose and on November 11, 2008 was treated for left arm pain and possible early radiculopathy. On August 26, 2010 the petitioner saw his rheumatologist on the referral from Dr. Miller, his family doctor who noted borderline diabetes

and joint pains for over a year and a half. The assessment was generalized arthralgias.

CONCLUSIONS

A claimant bears the burden of proving by a preponderance of the evidence that his injury arose out of and in the course of the employment. Illinois Bell Telephone Co. v. Industrial Comm'n, 131 Ill. 2d 478, 483, 546 N.E.2d 603, 137 Ill. Dec. 658 (1989).

With respect to Issue C – Did an accident occur that arose out of and in the course of petitioner's employment by respondent? the Arbitrator finds as follows:

The evidence showed that the petitioner was in a job that required many varied activities throughout the day. At three different times the petitioner himself testified to that. Although the petitioner tried to emphasize wet mopping as a major activity, if you were to believe the petitioner's time that he spent wet mopping and the time that he devoted to his other activities his shift would last approximately 15 hours. Obviously that cannot be accurate. Although the petitioner did have to wet mop some areas he would only spot mop most of the areas that were covered during his shift. He would do so throughout the course of the evening and did not have any extensive length of time where the petitioner would be wet mopping. His supervisor testified that at most the petitioner would involve wet mopping only 30% of his day. This simply is not the type of excessive activity that would lead to carpal tunnel syndrome. Dr. Bednar testified that it would require at least 50% of the day and Dr. Vender testified that it would be 50% to 80% of the day. Under either scenario, the petitioner simply didn't do as much wet mopping as would be required to have his job be

considered a contributing factor to the development of his carpal tunnel syndrome. The ongoing complaints of numbness in the hands is much more suggestive of a systemic issue such as diabetes rather than a recurring carpal tunnel syndrome which all of the doctors testified is extremely unlikely. This is especially true when considering that throughout the petitioner's adult life he has had multiple complaints of joint pains including his arms and hands long before he ever even started working for the respondent. Dr. Vender specifically noted that the lack of neuropathy found on the EMG does not mean that diabetes was not the cause of the compressive pathology but instead simply refers to a particular area of the nerve where damage exists.

The arbitrator notes that the petitioner did have diabetes and the medical evidence supports that it had been going on roughly the same time that the petitioner was reporting multiple arthralgias. Further, despite the petitioner claiming that it was under control, the medical supports that he had severely elevated blood sugars at different times in his treatment. Additionally, Dr. Atluri noted that even controlled diabetes still has an impact on the multiple systems of the body including the nerves and could easily be the explanation of the multiple arthralgias that the petitioner presented. The fact that the petitioner had four different diagnoses of his elbow complaints suggest that his pain was more general in scope and migratory suggesting a systemic cause rather than a specific activity leading to repetitive trauma.

The overwhelming evidence suggests that the petitioner has an idiopathic health condition which has led to his multiple joint complaints including the development of the carpal tunnel syndrome and his elbow complaints and that there is no competent evidence that his job aggravated

those conditions. Dr. Schiffman specifically looked at use of a floor buffer as a possible cause for the petitioner's multiple different elbow complaints that he had. The petitioner, however, testified that he never actually used the floor buffer but instead concentrated on wet mopping which was after his carpal tunnel releases had already occurred and there is no medical evidence to suggest that had anything to do with his elbow condition.

As the Arbitrator has found that Petitioner failed to prove both accident and causation, all other issues are rendered moot.

Therefore, Compensation is hereby denied.