

15 WC 37649  
20 IWCC 424  
Page 1

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF                )  
  CHAMPAIGN

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert A Talbott,  
  Petitioner,

vs.

NO: 15 WC 37649  
  20 IWCC 424

City of Springfield,  
  Respondent.


ORDER OF RECALL UNDER SECTION 19(f)

This matter comes before the Commission on Petitioner's motion to correct a clerical error in the Decision and Opinion on Review of the Commission filed July 30, 2020. After reviewing the Decision on Review, the Commission recalls the Decision for the purposes of correcting the clerical error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision dated July 30, 2020, is hereby vacated and recalled pursuant to Section 19(f) for a clerical error contained therein.

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

DATED: SEP 01 2020  
DLS/rm

  
Deborah L. Simpson



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF CHAMPAIGN )

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

**BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION**

ROBERT TALBOTT,

Petitioner,

vs.

NO: 15 WC 37649  
20 IWCC 424

CITY OF SPRINGFIELD,

Respondent.

**CORRECTED DECISION AND OPINION ON REVIEW**

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, the benefit rates, and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof.

*I. Findings of Fact*

Petitioner was a captain on Respondent's fire department. On April 11, 2015, Petitioner responded to an emergency medical call involving a dog attack on a child. When Petitioner arrived on the scene, he thought the child had already passed away due to her general appearance and the severity of her wounds. Petitioner testified that the child had been scalped and had bite marks on her arms, legs, thoracic cavity, chest, and scalp. Petitioner's crew provided active treatment to the child before an ambulance arrived two minutes later.

Petitioner testified that as his crew traveled back to the station, he was upset, sad, and mad all at once. He then put his crew out of service, because he believed that they could not go out on another call that day. Although Petitioner thereafter finished his shift, he indicated that he felt sad and withdrawn. He testified that after his shift, he crawled into his bed at home and cried for five hours, which he had never done before.

Thereafter, on August 27, 2015, Petitioner was back at work responding to a house fire



when he collapsed in the front yard. He was taken by ambulance to Memorial Medical Center and treated for an anxiety attack. Petitioner testified that as he was being cared for by the paramedics, he was crying, nervous, shaking, and unaware of what was going on.

Between the April and August incidents, Petitioner had similar episodes of unexplained crying. He testified that he was constantly on edge and nervous, had extremely high emotions, cried over almost anything, had no energy, and did not care. Petitioner further indicated that he was withdrawn and began having dreams replaying the dog attack call.

Petitioner first presented to Vincent Flammini, a licensed clinical social worker, for therapy between the two incidents on July 2, 2015. Mr. Flammini reported that since the April accident, Petitioner had flashbacks, nightmares, and other intrusive thoughts of both the dog attack call and several other calls from his career that had not previously interfered with his life. Petitioner's other symptoms included abnormal fears, anxiousness, concentration problems, depressed mood, guilt, hopelessness, isolation, panic attacks, sleep issues, somatic complaints, tearfulness, and feelings of worthlessness. Petitioner continued to undergo therapy for PTSD with Mr. Flammini through the hearing date. Throughout his therapy session notes, Mr. Flammini indicated that Petitioner was wrestling with whether or not to go back to work with his symptoms.

While still in the early stages of his therapy, on July 20, 2015, Petitioner presented to Memorial Medical Center complaining of intermittent chest pain and stress. A heart catheterization was performed after an abnormal stress test revealed inferior wall myocardial ischemia. Petitioner was discharged on July 22, 2015 with the diagnoses of non-cardiac chest pain, hypertension, mild coronary artery disease, and dyslipidemia. Petitioner then followed up with his primary care physician, Dr. Cara Vasconcelles, on July 29, 2015. At that time, Dr. Vasconcelles started Petitioner on Prozac after noting that he was emotional, cried easily, and had short term memory loss with poor concentration.

On August 5, 2015, Mr. Flammini recommended that Petitioner either decrease or stop working at his second job at Butler Funeral Homes. Mr. Flammini noted that Petitioner was experiencing significantly increased anxiety at this job, even though it was a low risk activity. Petitioner testified that he had started working at Butler Funeral Homes in February of 2001 but stopped working there from September of 2015 to February of 2018 due to his emotions.

On September 8, 2015, Dr. Vasconcelles diagnosed Petitioner with PTSD, anxiety, depression, and sleep disturbances. She referred him to Dr. Phillip Pan, a psychiatrist, and continued his medication. The following day, on September 9, 2015, Mr. Flammini indicated that it did not make sense for Petitioner to return to work for Respondent considering his anxiety regarding his ability to perform during a crisis and the risk of his PTSD symptoms returning.

When Petitioner thereafter presented to Dr. Pan on September 15, 2015, he was started on prazosin for his sleeping problems. Petitioner continued to regularly treat with Dr. Pan through August 15, 2017, at which time Dr. Pan told Petitioner to follow up with Dr. Vasconcelles since he was leaving the clinic. Throughout this period, Dr. Pan continued and adjusted Petitioner's medications for PTSD, nightmares, and panic attacks. At his March 3, 2016 visit, Petitioner told Dr. Pan that he was working on determining if he was ready to return to work or retire.



On March 17, 2016, Dr. Pan authored a letter stating that Petitioner's PTSD diagnosis was a direct result of his firefighter duties for Respondent. Dr. Pan recommended that Petitioner not return to active duty as a firefighter given his lingering issues with PTSD and the likelihood of a relapse. Thereafter, on April 28, 2016, Dr. Pan filled out a medical form indicating that Petitioner was off work indefinitely.

At Respondent's request, Petitioner then presented for a §12 neuropsychological examination with Dr. Ronald Ganellen on November 28, 2016. Dr. Ganellen opined that Petitioner had developed PTSD in response to the dog attack call. He further found that Petitioner's symptoms were consistent with a single episode of major depression of moderate severity that had developed following the events of 2015. Dr. Ganellen also opined that Petitioner was not able to return to work as a firefighter, although he encouraged Petitioner to pursue a meaningful new career. He believed that it would be positive for Petitioner's emotional state, sense of self-worth, and outlook to resume involvement in the workforce in another field.

On January 5, 2017, Dr. Pan noted that Petitioner would run out of his sick time in March and would then need to make a decision regarding retirement. Thereafter, on March 2, 2017, Petitioner informed Dr. Pan that his disability benefits had not been worked out and there was confusion as to his active duty versus retirement. Also on March 2, 2017, Dr. Pan authored a report stating that Petitioner had been unable to work since September 15, 2015 and would remain unable to return to full duty as a firefighter or in emergency medical services indefinitely.

On May 17, 2017, Petitioner presented for another §12 examination with Dr. Terry Killian at the request of the Springfield Firefighters Pension Fund in response to Petitioner's application for a line of duty disability pension. Dr. Killian opined that Petitioner's PTSD symptoms were caused by his repetitive exposure to work trauma over the years. He opined that Petitioner had been totally disabled from his firefighter position since September of 2015 as a result of his PTSD. Dr. Killian indicated that returning to firefighting work would be increasingly unlikely as time progressed, and as such, Petitioner should be considered permanently disabled from his firefighter position as consistent with Dr. Pan's opinion.

On June 30, 2017, Petitioner was awarded a line of duty disability pension in the amount of \$5,285.56 per month by the Springfield Firefighters Pension Board. The Board's Final Administrative Decision stated that Petitioner had been examined by three doctors, Dr. Ganellen, Dr. Pan, and Dr. Killian, who had all agreed that Petitioner was disabled and unable to return to service in the fire department.

On July 31, 2017, Elizabeth Skyles, a certified rehabilitation counselor, authored a vocational report following her in-person assessment of Petitioner on May 24, 2017. Ms. Skyles opined that there were employment positions available within Petitioner's labor market area that fit his current profile and could provide him with substantial gainful employment. On August 23, 2017, Ms. Skyles performed a labor market survey that identified ten appropriate alternative positions within Petitioner's labor market area with a yearly pay range of \$35,000 to \$110,000.

Respondent thereafter wrote a letter to Petitioner on November 15, 2017 enclosing a job





description for a position that Respondent was planning to offer. On November 21, 2017, Petitioner's counsel responded that Petitioner could not accept the job, because doing so would cause Petitioner to lose his disability pension. He explained that any position within the fire department also required one to be ready to respond to emergency calls in full turnout gear. As such, Petitioner's counsel stated that Petitioner would be performing the duties of a full-time firefighter and would thus lose his disability pension benefits. He further expressed concern that the position would require Petitioner to participate in emergency calls and fire suppression duties.

On December 13, 2017, Respondent's Human Resources Director, Jim Kuizin, wrote a letter to Petitioner's counsel that attached a job description and offer for a fire inspector/public educator position. This was the same job description that had been previously sent to Petitioner by Respondent's counsel. Mr. Kuizin wrote that this position did not require Petitioner to respond to emergency calls, participate in fire suppression, or perform firefighter duties. In the attached job description, it stated that the applicant should sustain the rank of captain or battalion chief.

On December 19, 2017, the President of the Springfield Firefighters Local 37 Union, Gary Self, filed a grievance alleging that the creation of this new position had violated the Collective Bargaining Agreement. He sought to immediately bargain over the position and wanted Respondent to file a new unit clarification application with the Illinois Labor Relations Board. At the hearing, Mr. Self testified that the job description was for a position that had never been on the fire department during his tenure. Mr. Self testified that at the time of the hearing, the position remained unfilled, and as far as he knew, no longer existed. Mr. Self further testified that the offered position was in Division II and those jobs were not generally related to firefighting. Nevertheless, he recalled two instances where individuals from Division II had been called into action and involved in firefighting activities.

After the grievance was filed, on January 12, 2018, Respondent wrote a letter to Petitioner stating that it was clear that Petitioner did not intend to accept the job offer. Respondent indicated that it was therefore terminating Petitioner's temporary total disability benefits with no further checks issued after January 6, 2018.

On January 22, 2018, Stephanie Barton, Respondent's labor relations manager, sent an e-mail to Mr. Self stating that although she disagreed with the grievance, the issue was now moot as the position was no longer being filled. Ms. Barton testified at the hearing that once Petitioner refused the job offer, Respondent took the stance that they were no longer filling the position and it was management's right to fill or not fill it. Ms. Barton testified that although she was not directly involved in the decision to create the position, it was her understanding that Respondent had created it to specifically accommodate Petitioner. She opined that it was purely a management right to create such positions and disagreed with the Union's position that it was collective bargaining work.

Jeph Bassett, Respondent's deputy division chief of operations, also testified at the hearing regarding the job offer. Mr. Bassett testified that with the offered position, Petitioner would not be exposed to any emergency situations and would instead be performing fire inspections, which were separate from fire investigations. Nevertheless, Mr. Bassett testified that in 2011, the acting mayor moved three inspectors out of working in fire safety and placed them back into operations.



He explained that a grievance was filed, but it did not go to arbitration, as a new mayor was elected who reinstated those three positions back into fire safety. Mr. Bassett testified that there had also been an incident where a power plant exploded and Respondent contacted several fire inspectors to have them come to the firehouse to unlock it, use radios to assist volunteers, and ride on rigs.

Petitioner eventually returned to work at his second job with Butler Funeral Homes on February 18, 2018 after obtaining clearance from Mr. Flammini. Thereafter, on April 8, 2018, Dr. Vasconcelles reported that Petitioner had been offered a desk job, but due to its requirements, he could not take that position.

At the request of Petitioner's counsel, Dr. Vasconcelles then authored a report on August 1, 2018 indicating that Petitioner's permanent disability from his fireman's job due to his PTSD symptoms also prevented him from taking a desk job with the fire department. Dr. Vasconcelles indicated that Petitioner was under good control as long as he was not exposed to any triggers, which include any activities that reminded him of his fireman job. Nevertheless, she stated that she was not equipped as a primary care physician to render decisions on the job descriptions she was asked to review and suggested that Dr. Pan weigh in.

On August 2, 2018, Dr. Pan wrote a letter to Petitioner's counsel indicating that he no longer worked for Memorial Physician Services and had not treated Petitioner since August 15, 2017. Nevertheless, Dr. Pan opined that it would not be prudent for Petitioner to accept the fire inspector/ public educator position, because being on the scene and investigating the aftermath of fires would likely still trigger his PTSD. However, he anticipated that Petitioner would be able to perform any of the other positions listed in the labor market survey.

On September 11, 2018, Petitioner was sent an e-mail from Therese O'Brien, the account coordinator of IPPFA benefits. Ms. O'Brien wrote that she was unable to sign off on Petitioner's direct rollover request, because he needed to be officially separated from service to do so. Ms. O'Brien explained that when she had reached out to Springfield to confirm his termination date, she was told that Petitioner was neither retired nor officially terminated from his position yet.

Petitioner testified that he did not return to work for Respondent in any capacity after the August 27, 2015 incident. However, he testified that he was not retired as of May 21, 2017 and still considered himself to be Respondent's employee at the time of the hearing. Petitioner testified that he based that on Respondent's refusal to give him his deferred compensation money because he was not a separated employee. Petitioner testified that although he felt like a separated employee after his disability pension was approved, he was not separated according to the e-mail that he had received from Respondent.

Petitioner further testified that when Respondent previously offered him temporary light duty, Dr. Pan still recommended that he not be anywhere around the firehouse. He testified that Dr. Pan did not feel that the firehouse triggers of constantly hearing sirens, seeing the rigs go out, and listening to the calls would be beneficial to Petitioner. Petitioner did not know exactly when he turned down the light duty position, but he guessed that it was in the fall of 2015 or spring of 2016. He testified that he did not think he could have done light duty at that time, because being at the firehouse would have aggravated his stress and anxiety.



Petitioner further testified that in addition to his current position at Butler Funeral Homes, he and his wife had a secondhand antique business with a small booth in the Sangamon Antique Mall that buys and sells glassware. Petitioner still takes fluoxetine and prazosin every day as well as Xanax as needed for his anxiety. He testified that prior to April 11, 2015, he had not required any long or short-term psychological or psychiatric care.

Petitioner's wife, Jane Talbott, also testified that she noticed a change in her husband after the April 11, 2015 incident. Mrs. Talbott testified that after the accident, Petitioner had trouble sleeping, became withdrawn, and was easily agitated. She explained that before the accident, they talked about their future plans and what it would be like to retire, but now they just live one day at a time. They also no longer attend a lot of functions, because Petitioner cannot be in large groups.

Following the hearing on September 25, 2018, the Decision of the Arbitrator awarded Petitioner 50% loss of use of man as a whole as well as temporary total disability benefits from January 6, 2018 to February 11, 2018. The Decision of the Arbitrator further gave Respondent a credit for the temporary total disability benefits that had been paid for the awarded time period.

## *II. Conclusions of Law*

Following a careful review of the entire record, the Commission modifies the Decision of the Arbitrator to clarify that Respondent is not entitled to any temporary total disability credit for payments made to Petitioner through his line of duty disability pension.

Petitioner was unanimously determined to be medically unable to return to work as a firefighter by Dr. Ganellen, Dr. Pan, and Dr. Killian. He was thus awarded a line of duty disability pension on June 30, 2017, as his PTSD symptoms prevented him from returning to employment with Respondent. Due to his anxiety, Petitioner also stopped working at his second job with Butler Funeral Homes from September of 2015 until February 18, 2018 upon Mr. Flammini's recommendation. As the record shows that Petitioner was kept off work by several medical professionals for the claimed temporary total disability period of January 6, 2018 to February 11, 2018, the Commission affirms the Arbitrator's award of temporary total disability benefits.

The Commission further finds that there was no evidence in the record to show that Petitioner retired from employment with Respondent and voluntarily removed himself from the workforce. Although Petitioner expressed concerns as to whether he should retire to Mr. Flammini, there was no indication that he began a formal retirement process.

Additionally, the Commission finds that Petitioner's decision to decline Respondent's job offer does not affect his entitlement to temporary total disability benefits, because none of his doctors had determined that Petitioner would be medically able to pursue this position. Instead, Dr. Pan opined that it would not be prudent for Petitioner to accept the fire inspector/ public educator position, because being on the scene to investigate the aftermath of fires would likely trigger his PTSD. Although such Division II positions were not generally involved in firefighting activities, Mr. Bassett and Mr. Self both discussed occasions when employees in Division II had been put back on rigs and involved in firefighting duties. Thus, the offered position does not



constitute an adequate accommodation, as Petitioner's treatment records show that anything related to being a firefighter could induce his PTSD symptoms.

However, although the Commission agrees with the awarded period of temporary total disability benefits, it finds that Respondent is not entitled to a credit for the payments Petitioner received through his line of duty disability pension that commenced on June 30, 2017. In contemplating the award of firefighters' disability pensions, 40 ILCS 5/4-114.2(a) states:

“Whenever a person is entitled to a disability or survivor's benefit under this Article and to benefits under the Workers' Compensation Act [820 ILCS 305/1 et seq.] or the Workers' Occupational Diseases Act [820 ILCS 310/1 et seq.] for the same injury or disease, the benefits payable under this Article shall be reduced by an amount computed in accordance with subsection (b) of this Section. There shall be no reduction, however, for any of the following: payments for medical, surgical and hospital services, non-medical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of this State and for artificial appliances; payments made for scheduled losses for the loss of or permanent and complete or permanent and partial loss of the use of any bodily member or the body taken as a whole under subdivision (d)2 or subsection (e) of Section 8 of the Workers' Compensation Act [820 ILCS 305/8] or Section 7 of the Workers' Occupational Diseases Act [820 ILCS 310/7]; payments made for statutorily prescribed losses under subdivision (d)2 of Section 8 of the Workers' Compensation Act [820 ILCS 305/8] or Section 7 of the Workers' Occupational Diseases Act [820 ILCS 310/7]; and that portion of the payments which is utilized to pay attorneys' fees and the costs of securing the workers' compensation benefits under either the Workers' Compensation Act [820 ILCS 305/1 et seq.] or Workers' Occupational Diseases Act [820 ILCS 310/1 et seq.]”  
40 ILCS 5/4-114.2(a).

The Commission finds that 40 ILCS 5/4-114.2 does not relieve Respondent of its obligation to pay temporary total disability benefits once a line of duty pension is awarded. As such, the Commission modifies the Decision of the Arbitrator to clarify that Respondent is not entitled to a credit toward the temporary total disability award for any payments made by the Springfield Firefighters Pension Board. The Decision of the Arbitrator is otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated July 22, 2019 is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is not entitled to a temporary total disability credit for any payments made by the Springfield Firefighters Pension Board as related to Petitioner's line of duty disability pension. Respondent is only entitled to a temporary total disability credit for any payments it made to Petitioner under his workers' compensation claim as related to the April 11, 2015 work accident.





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

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

There is no bond for the removal of this cause to the Circuit Court by Respondent pursuant to §19(f)(2) of the Act. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

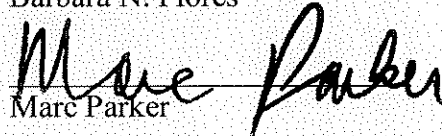
DATED: SEP 01 2020



Deborah L. Simpson



Barbara N. Flores



Marc Parker

DLS/met  
O: 6/4/20  
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ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION  
CORRECTED

**20 IWCC0424**

**TALBOTT, ROBERT**

Employee/Petitioner

Case# **15WC037649**

15WC037650

**CITY OF SPRINGFIELD**

Employer/Respondent

On 7/22/2019, 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 2.01% 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:

0728 LAW OFFICES OF THOMAS W DUDA  
330 W COLFAX ST  
PALATINE, IL 60067

0332 LIVINGSTONE MUELLER ET AL  
L ROBERT MUELLER  
620 E EDWARDS ST PO BOX 335  
SPRINGFIELD, IL 62705



20 I W CC 0424

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF Champaign )

<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  
CORRECTED ARBITRATION DECISION

**Robert Talbott**  
Employee/Petitioner

Case # 15 WC 37649

v.  
**City of Springfield**  
Employer/Respondent

Consolidated cases: 15 WC 37650

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Nowak**, Arbitrator of the Commission, in the city of **Urbana**, on **9/25/18**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

**20 I W C C 0 4 2 4**

**FINDINGS**

On **4/11/15**, 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 **\$97,269.58**; the average weekly wage was **\$1,873.95**.

On the date of accident, Petitioner was **53** years of age, *married* with **0** dependent children.

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

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

Respondent shall be given a credit for TTD benefits paid.

**ORDER**

Respondent shall pay Petitioner temporary total disability benefits of \$1,248.95/week for 5 2/7 weeks, commencing 1/6/18 through 2/11/18, as provided in Section 8(b) of the Act.

Respondent shall be given a credit for temporary total disability benefits that have been paid for the 5 2/7 weeks awarded herein.

Based on the factors enumerated in §8.1b of the Act, which the Arbitrator addressed in the attached findings of fact and conclusions of law, and the record taken as a whole, Respondent shall pay Petitioner the sum of **\$721.66/week for 250 weeks**, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **50% loss of the person as whole**.

**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

7/12/19  
Date

**JUL 22 2019**

FINDINGS OF FACTS

Robert Talbott testified that his date of birth is 6/29/61, making him 57 years old on the date of the hearing. He indicated he was hired by Respondent's fire department on 4/16/90. He was hired in as an entry level firefighter. He next was a driver engineer and then a captain. He obtained an emergency medical certification in his first year of employment. Petitioner described his job duties as a captain to oversee and manage his crew. This would include fire suppression activities. He noted that part of the job would involve rescuing people from burning structures. Further, there would be the responsibility to perform emergency medical services if necessary. Petitioner also noted responding to auto accident scenes and emergency medical situations. He noted the fire department responds to all advanced life support calls.

On 4/11/15 he was a captain with the Springfield Fire Department. At approximately 12:15 p.m., they responded to an emergency medical call involving an animal assault of a child. They were the first dispatched to the scene. Petitioner indicated he was first off the rig and was met by an adult female at the front door of the house. She indicated that the injured person was in the back yard and the dog involved was in a back bedroom behind a closed door. Petitioner indicated that his driver engineer, his firefighter and Petitioner entered the backyard. The driver engineer was BJ Crawford and the firefighter was Bobby Murphy. Initially when walking out on the deck in the backyard, they did not see any victim. There was another young girl standing at the top of a hill in the backyard. Petitioner indicated that they proceeded in that direction to where the young lady was standing. As they were approaching, they saw a young girl lying on the ground. His first thought was that she had already passed away. This was based upon her general appearance and the wounds on her body. She was not moving and from that distance they could not see any movement in her chest. His driver and his firefighter knelt down and started to assess the girl and realized that she was actually still alive. Petitioner indicated the girl had bite marks on both arms, both legs, and on her chest. She also had a very large laceration in her scalp. There did not appear to be any ongoing bleeding. The blood appeared to be all dry. The girl did not have any clothes on and the clothes were found strewn around the backyard and apparently ripped off by the dog. After a couple of minutes, the ambulance arrived. They moved quickly to transport the girl to the hospital. The ambulance crew and his crew did most of the preparation for transport of the little girl. Petitioner indicated he was just holding her head while she was loaded onto a backboard and then onto a stretcher.

On the way back to the station, the Petitioner noted knots in his stomach, and he was very upset, sad and mad at the same time. It was one of the worst calls Petitioner thought he had ever seen. He noted that the driver engineer showed symptoms of emotional upset. He was crying as he was driving the rig. Petitioner had the driver pull over and stop. He also put the rig out of service. They did go back to the station and he finished the shift that day. During the remainder of the shift, he was very sad and very withdrawn. He spent most of the rest of the shift by himself in a side office. Upon return to the station, he called the battalion chief and told him what had happened. He also contacted his wife. Petitioner indicated his driver engineer did not finish the day.

Petitioner noted that after he finished his shift following the 4/11/15 incident, he went home and crawled into bed and cried for five hours, something he had never done before. His emotions were high, and he would cry over almost anything. He had no energy and he did not care. He felt like he was just going through the motions. He started having nightmares. With regard to his personal life, he was very withdrawn. He did not want to do



anything, even with his family. Prior to the 4/11/15 incident, he had never had anything psychological or psychiatric care.

Petitioner noted that on 7/16/15, he went to the Memorial Hospital emergency room. Earlier he had been crying in a movie attended with his wife and daughter. At home later on he had some chest pains. Petitioner indicated they could not figure out exactly what was going on in the ER. A cardiologist was called in. While waiting in the emergency room, Petitioner indicated he was crying and did not have control of his emotions.

On 8/27/15, there were two fires that he and his crew worked. One of them was about dinner time, 5:00-6:00 p.m. They arrived at the scene at the same time as another rig. He directed his firefighter to pull a hose line. They went in the house and found the fire and started to work on extinguishing it. After working inside the building, he apparently became hot and was overcome. He indicated he was told he collapsed in the front yard. He received medical treatment at the scene and then by an ambulance crew that took him to the ER. When he was being cared for by the paramedics, he was very nervous and shaking and did not know what was going on with him. He was also crying maybe just because of his nerves being totally shot. Petitioner noted that he had had episodes of unexplained crying between 4/11/15 and 8/27/15.

On 8/27/15 he was transported to Memorial Medical Center. After he sat in the waiting room for two hours, the ER doctor gave him a bag of fluids for dehydration. She said he apparently suffered a heat episode. He was sent home to rest. Petitioner did not complete his shift on 8/27/15 after being taken to the Memorial Medical Center ER. In fact, he did not return to work for the City Fire Department in any capacity after that date.

After his ER treatment on the 8/27/15 date, he followed up with his family doctor, Dr. Vasconcelles. She did a general assessment for the emotions and nerves and everything and started him on a prescription of Fluoxetine. She thought he needed to see a psychiatrist and set him up to see Dr. Pan. Dr. Pan assessed the situation. He agreed to continue the Fluoxetine but at an increased amount. He also prescribed Prazosin, which was supposed to help with the dreams. Petitioner indicated that he still takes the Fluoxetine and the Prazosin every day. He also was prescribed Xanax for anxiety which he is to take as needed. He stopped seeing Dr. Pan a year ago or more.

In addition to seeing Dr. Pan, he is seeing a psychotherapist, Vincent Flammini. He still sees Dr. Flammini, having last seen him on 9/17/18. Initially he saw him twice a week and now sees him about once a month.

With regard to his condition, Petitioner indicated that any situation that he is unfamiliar with such as being in court could act as a trigger to his condition. He also mentioned hearing sirens on the streets, especially if they are close. This causes him to flash back to that day. In his personal life, he has become very guarded. He used to be outgoing. Now he just sits around, and his wife does the talking. He indicated he has to be careful of the TV shows he watches.

Petitioner indicated that he did talk to Flammini about his status, whether he was retired, whether he was disabled, whether he was on disability. Petitioner indicated that he was not retired. He was an employee with the



City Fire Department as of 5/21/17. In attempting to transfer his deferred compensation from the City account into a personal IRA, he was told he was not a separated employee.

Early on, maybe in the fall of 2015 or the spring of 2016, he was offered a light duty job by the City. This was offered by Mark Hart, who was a chief of Division 1. Dr. Pan thought this was a bad idea. Subsequently, the City offered a permanent position which he did not accept. That was in November or December of 2017. Before being offered that position, he said he believed he had heard of that position. He indicated that the position is filled. He assumed that the position the City was offering him represented a new position. The title and description they gave him was for the exact same position in our department, in our labor contract that was already filled and there was only one position. The union did object to the City offering the position.

Beginning in February of 2001, he has worked for Butler Funeral Home as a part-time staff member assisting on days of either a visitation or a funeral. Basically, he was meeting and greeting families and lining up cars. In approximately September of 2015, he stopped working for them until February of 2018. He indicated he stopped working for them because of his emotions, and he could not do the job. He could not meet and greet people and talk to them. He just could not handle the stress. He noted that the job can be stressful. Petitioner indicated that he returned to work for the funeral home on 2/18/18. Petitioner indicated that he finally got the clearance from Vincent Flammini, who thought it would be great if Petitioner could start going back to work. He called the funeral home and asked if his job was still available and they said it was. At some point after going back to work at the funeral home, he tried to go full time there. The added duties included courier duties as well as odd jobs in the office.

With regard to talking to Flammini in May of 2017, Petitioner indicated he was not stressed about his retirement, he was stressed about his PTSD. Petitioner did agree that on 8/17/17 he told Flammini that this is not how I planned to retire. In addition to his work at Butler, Petitioner indicated that he and his wife have a small antique second hand business at an antique mall. He noted that he buys and sells small glassware.

Petitioner agreed that as of his 25 year anniversary with the fire department, April 16, 2015, he made \$92,924.34 annually. Petitioner noted that in addition to the base salary there are additions that can add to that base. With regard to his status with the City, Petitioner indicated he thought he was separated because after he received the duty disability pension, the City promoted and replaced employees in his place. Petitioner indicated he was told by deferred comp that he had to be a separated employee, which he was not.

Gary Self has been with the Springfield Fire Department for 18 ½ years. He has been president of the local union for three years. In December of 2017, he learned about a job offer to Petitioner by a call from Petitioner's attorney's office. He indicated that he reviewed the job description and felt that it was not a job that was currently or had been a position with the Springfield Fire Department. He immediately filed grievances over the non-bargaining and demanded to bargain with the City. The grievance process went through three steps and there was no resolution. Therefore, the union filed for arbitration and arbitration is currently set aside pending this hearing. The position is unfilled as of today and no longer exists. The job offer indicated there were no firefighting duties assigned with the position. Self noted there were two instances where individuals from Division II, which is fire safety, have been called into action. Division II is the same division in which this job offered to Petitioner is. One was when there was an explosion at the power plant. The other was when the interim mayor moved three investigators out of fire safety Division II and put them back on rigs. Self indicated

that the union has instructed its attorney not to file for arbitration in this case due to the fact that the job offer was rescinded. The grievance process was concluded but the next step has not been taken.

Jane Talbott is married to Petitioner. She indicated that she noticed a change in her husband after the 4/11/15 incident. She went to the station house after the incident and noted that Petitioner was visibly shaken up. He indicated that he had just had the worst call he has ever seen involving a little girl. When he came home the next morning, he went to bed and cried all day. At that point, he did not know if the little girl had survived. She indicated that Petitioner was worried about the girl and her future. Mrs. Talbott did indicate that the little girl did survive and that she is a healthy young lady now. Mrs. Talbott indicated that Petitioner had a lot of trouble sleeping and that it involved nightmares. Petitioner became very withdrawn and did not want to do a lot. He became agitated very easily. He tried to cover everything up. At the time of the first visit with the psychiatrist, Petitioner was shaking and near tears in the waiting room and throughout the entire appointment. Mrs. Talbott indicated that they do not attend a lot of functions. She indicated Petitioner cannot be in large groups of people.

Jeph Bassett is a Deputy Division Chief of Operations with the Springfield Fire Department. He has been in that position about six months. Prior to that for about three years he was Deputy Division Chief of Technical Services. Before that he was Deputy Division Chief of Fire Safety for about a year. With regard to the job description and position offered to Petitioner, Petitioner would not be exposed to any emergency situations whether it be fires or accidents or emergency situations such as a heart attack. He would be doing fire inspections. The Division II fire safety has four functions, which are plan review, fire inspections, fire investigations and public education. The job description for Petitioner was written to address fire inspections and public education. A fire inspector goes out and looks for code violations and code enforcement within buildings. Investigators go to a fire scene to figure out the origin. Going to a fire scene was not in the job description for Petitioner. The duties in the job description are all duties done by firemen. The previously noted figure of \$92,924.34 would have been the same for this job description. There is the potential to make more with certain education requirements. With regard to Mayor Edwards moving three inspectors back to operations, this was unusual and a grievance was filed. It did not go to arbitration. There was an election and a new mayor reinstated the three back into fire safety. Edwards was an interim mayor for a few months. Division II works out of the Municipal Center West on the third floor, where most of the people are. There is also on the south side of town out by the university something called the Children's Safety Village where the senior public education officer works. There would be a uniform for the position, the same as what everyone wears. With the advent of cell phones, radios are not really used as much anymore. Fire safety is assigned to channel four. Operations calls are not dispatched over that channel. If a fire investigation was requested, that would come over that channel. Where there is an extremely large incident like the power plant explosion, someone from Division II could be called into an operational mode. The inspectors in Division II have a job description which is different than that given to Petitioner.

Stephanie Barton was employed by the City of Springfield as a labor relations manager. She was previously employed in the Attorney General's office in the Employment and Labor Law Bureau. She was also at the Department of Corrections as the Chief of Labor Relations. Then she became Deputy General Counsel over CMS labor relations, responsible for the negotiation of all state contracts. With the City of Springfield she was involved with negotiating contracts including the Collective Bargaining Agreement with firefighters. There were 23 Collective Bargaining Agreements at the City of Springfield. Last December she was familiar with the job that

was offered to Petitioner. She talked with the now-retired fire chief at that time. Contract negotiations were still ongoing then. She is familiar with the grievances filed by the union. The position being created for Petitioner was run by her from a collective bargaining standpoint. She gave her opinion that it is purely a management right to create positions. The City had the right to create a position even under the Illinois Labor Relations Act. The Union took the position that it was collective bargaining work and the City thought the opposite. Ms. Barton indicated that the union could start the process of filing a petition. The City had no obligation to bargain over it until the Labor Relations Board had certified that this was a position under the Collective Bargaining Agreement. Nothing was ever filed with the Illinois Labor Relations Board. Once Petitioner had refused the job, the City took the position that they were no longer filling the position. This was the management right to fill or not to fill. Her position was that it was then a moot issue once Petitioner rejected the job offer. Her understanding was that the City created the position to specifically accommodate Petitioner with whatever accommodations he needed. The City position was that the demand to bargain was moot because the Petitioner rejected the position and there was nothing to bargain over.

The records from Vincent Flammini (PX9) reflect that Petitioner was first seen on 7/02/15. The history was that Petitioner reported feeling a number of symptoms since April 2015 after a firefighter call when he encountered a young girl who had been attacked by a dog. Petitioner reported numerous flashbacks, nightmares, and other intrusive thoughts about the call as well as other calls from his career that had not affected him until after this April call. Petitioner reported withdrawal, increased irritability, and decreased frustration tolerance. Flammini's diagnosis was PTSD-moderate tending toward severe. At the time of the next visit on 7/15/15, the agreement was that Flammini would call Dr. Vasconcelles, Petitioner's personal physician, to prescribe medication. As of 7/29/15, Flammini noted that Petitioner's PTSD was negatively impacting all areas of his life. Flammini continued to see Petitioner on approximately once a week basis at least through the end of the year. As of 11/16/15, Flammini reported that Petitioner's symptoms were lessening but that he was still easily triggered by novel situations. As of 2/18/16, Flammini did not think it made sense for Petitioner to return to work since he was still having significant anxiety regarding his ability to perform during a crisis and was having anxiety regarding the risk of intense PTSD symptoms returning. Petitioner indicated he was leaning more toward retiring versus the risk of returning to work and experiencing significant PTSD again. As of 5/25/17, Flammini indicated that Petitioner had significantly more stress related to legal issues re PTSD and retirement. At the next visit on 8/17/17, Flammini again noted stress related to legal issues re PTSD and retirement. At that visit, Petitioner indicated to Flammini that he had an okay summer in which he did some lawn work at home and helped out a few friends in the neighborhood. Petitioner indicated this is not how I planned to retire (PX9).

Petitioner first saw Dr. Pan on 9/15/15, on referral from Dr. Vasconcelles. At that time, Petitioner described the incident occurring on 4/11/15 and how it affected him. He indicated to Dr. Pan that he had been seeing Vincent Flammini. Petitioner continued to see Dr. Pan until August 15, 2017. As of 3/17/16, Dr. Pan indicated that his recommendation was that Petitioner not return to active duty for the fire department. On 3/02/17, Petitioner reported to Dr. Pan that he was receiving temporary total disability benefits. There were still some issues to be worked out and he was frustrated by the lack of resolution. He was also frustrated that on TTD he could not work otherwise. Dr. Pan's impression was that Petitioner was doing well at that time. In a letter dated 3/02/17, Dr. Pan indicated that Petitioner had made a great deal of improvement and was reasonably stable with treatment. It remained the doctor's opinion that Petitioner should not return to work as a firefighter. He felt that the inability to return to full duties as a firefighter or in emergency medical situations was indefinite

(PX7). Dr. Pan indicated in a letter to Petitioner's attorney dated 8/02/18 that he did not feel Petitioner should accept the position as fire inspector/public educator because being on the scene and investigating fires would likely trigger his PTSD. He did note that Petitioner would be able to perform any of the positions listed on pages 8 and 9 of the labor market survey from Elizabeth Skyles (PX8).

Dr. Vasconcelles, in response to an inquiry from Petitioner's attorney, indicated that on perusing the job description, she did not see any that would be a clear concern for flaring up Petitioner's PTSD. She went on to indicate that she had not specifically reviewed them with the patient to see if he would foresee a problem. The doctor noted that Petitioner was physically capable of doing the jobs, but that it would depend upon his ability to emotionally handle the situations (Joint Exhibit 1).

Petitioner was seen for an independent medical evaluation by Dr. Ganellen on 11/28/16. Dr. Ganellen reviewed medical records and talked with Petitioner. His opinion was that Petitioner should not return to work as a firefighter. He thought it would be a good idea for Petitioner to resume involvement in the work force and would encourage Petitioner's efforts to pursue a new career (RX1). With respect to Petitioner's claim for disability pension benefits, he was evaluated by Dr. Terry Killian on 5/17/17. Dr. Killian talked to Petitioner and reviewed medical records. He essentially agreed with Dr. Pan and Dr. Ganellen. He indicated that Petitioner should be considered permanently disabled from his position as a firefighter (PX12).

Petitioner was evaluated by Elizabeth Skyles, a vocational consultant, in 2017. Her initial report with regard to her evaluation of Petitioner was dated 7/31/17. She felt that Petitioner was employable and that positions were available for him (RX2). Elizabeth Skyles also performed a labor market survey and issued a report dated 8/23/17. In the course of that evaluation, Petitioner indicated that he likely would have the opportunity to return to work at the funeral home. He indicated that it was to be determined whether he would be able to work full time there, which would depend upon how much work they had. Petitioner advised that this definitely could be a good possibility and option for him. Petitioner also reported to Elizabeth Skyles that he had independently built three houses for himself. He further reported that he bought, renovated, repaired and flipped homes as well. He noted that he had acted as a general contractor and performed all the labor. He did state that he had subcontracted out some plumbing and sewer work (RX3).

### CONCLUSIONS

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

In addition to the testimony about earnings, Respondent offered into evidence wage records which include Petitioner's actual earnings from the Fire Department in the 52 weeks preceding the accident (RX9). In addition, Petitioner entered into evidence wage records which include Petitioner's actual earnings from Butler Funeral Home in the 52 weeks preceding the accident (PX14).

For the Fire Department, Petitioner's average pay period was 100 hours and forty eight minutes, or 100.8 hours every two weeks.  $100.8 \div 2 = 50.4$  hours per week. From 4/11/14 through 2/28/15, 46  $\frac{2}{7}$  weeks, Petitioner earned \$34.3939 per hour. From 3/1/15 through 4/10/15, 5  $\frac{6}{7}$  weeks, Petitioner earned \$34.9098 per hour.

$\$34.3939 \times 50.4 \text{ hours per week} = \$1,733.45 \times 46 \frac{2}{7} \text{ weeks} = 80,232.85$ .  $\$34.9098 \times 50.4 \text{ hours per week} = \$1,759.45 \times 5.857 = \$10,305.12$ . Therefore, Petitioner's straight time earnings in the 52 weeks preceding the accident were \$90,537.97.

The Arbitrator notes that Petitioner earned overtime in 13 of the 26 pay periods preceding the accident. In 9 of the pay periods, including one after the pay increase, Petitioner worked 12.0 hours. In the other pay periods he worked 1.0, 8.0, 4.0, and 12.5 hours of overtime for a total of 25.5 hours for these periods. However, there is no evidence in the record which addresses whether the overtime was mandatory, therefore the Arbitrator declines to include these hours in the wage calculation.

There is also evidence in the record, including both parties questioning of Petitioner, to establish that during the 52 weeks prior to the accident Petitioner had concurrent employment with Butler Funeral Home. Petitioner's exhibit 14, which was admitted without objection, shows Petitioner earned \$6,880.50 in the 52 weeks preceding the accident. The Arbitrator finds that these earnings should be included in the wage calculation.

Therefore, the Arbitrator finds that in the 52 weeks preceding the accident Petitioner earned \$90,537.97 + \$6,880.50 = \$97,418.47 for an AWW of 1,873.43.

**Issue (K): What temporary benefits are in dispute?**

Petitioner claims entitlement to TTD from 1/6/18 through 2/11/18 (5  $\frac{2}{7}$  weeks). This is the only period the parties placed in dispute at the hearing. Petitioner last worked for Respondent on 8/27/15. Petitioner stopped working for Butler Funeral Home in September of 2015 and did not return to work for them until 2/18/18. There is no evidence in the record to establish Petitioner performed any work within the period for which TTD is claimed. The Arbitrator therefore concludes Petitioner is entitled to the claimed 5  $\frac{2}{7}$  weeks of TTD.

Respondent shall pay Petitioner temporary total disability benefits of \$1,248.95/week for 5  $\frac{2}{7}$  weeks, commencing 1/6/18 through 2/11/18, as provided in Section 8(b) of the Act. Respondent shall be given a credit for temporary total disability benefits that have been paid for the 5  $\frac{2}{7}$  weeks awarded herein.

The Arbitrator notes that Respondent seeks credit for TTD benefits paid from 5/28/17 through 1/5/18, because in an office visit with his psychologist, on 5/27/17 Mr. Flammini notes "[s]ignificantly more stress related to legal issues re PTSD and retirement," and on 8/17/19 he notes "stress related to legal issues PTSD and retirement," Petitioner considered himself retired as of 5/27/17. The totality of the evidence in the record clearly indicates that Petitioner had not retired on 5/27/17. In fact, Petitioner had applied for a line of duty disability pension from the Firefighters' Pension Board but did not have a hearing before that Board until 6/30/17. He was there after awarded the line of duty disability pension effective as of 6/30/17. There is absolutely no question Respondent is not entitled to any credit for benefits paid during the period of 5/28/17 through 6/29/17.

With respect to the period of 6/30/17 through 1/5/18, firefighters' line of duty pensions are awarded pursuant to 40 ILCS 5/4-110 et seq. Specifically, 40 ILCS 5/4-114.2 deals with reduction in line of duty

disability benefits for corresponding benefits payable under the Workers' Compensation Act. Section 5/4-114.2 provides, in pertinent part:

(a) Whenever a person is entitled to a disability or survivor's benefit under this Article and to benefits under the Workers' Compensation Act [820 ILCS 305/1 et seq.] or the Workers' Occupational Diseases Act [820 ILCS 310/1 et seq.] for the same injury or disease, the benefits payable under this Article shall be reduced by an amount computed in accordance with subsection (b) of this Section. There shall be no reduction, however, for any of the following: payments for medical, surgical and hospital services, non-medical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of this State and for artificial appliances; payments made for scheduled losses for the loss of or permanent and complete or permanent and partial loss of the use of any bodily member or the body taken as a whole under subdivision (d)2 or subsection (e) of Section 8 of the Workers' Compensation Act [820 ILCS 305/8] or Section 7 of the Workers' Occupational Diseases Act [820 ILCS 310/7]; payments made for statutorily prescribed losses under subdivision (d)2 of Section 8 of the Workers' Compensation Act [820 ILCS 305/8] or Section 7 of the Workers' Occupational Diseases Act [820 ILCS 310/7]; and that portion of the payments which is utilized to pay attorneys' fees and the costs of securing the workers' compensation benefits under either the Workers' Compensation Act [820 ILCS 305/1

40 ILCS 5/4-114.2(a). Clearly this provision does not contemplate elimination of obligation to pay TTD benefits otherwise payable based on the award of a line of duty disability pension.

Respondent next alleges that when Petitioner failed to accept a position offered by Respondent on 12/13/17 which was allegedly "within Petitioner's restrictions" he refused the offer and had voluntarily removed himself from the work force. The Arbitrator disagrees. No physician ever cleared Petitioner to return to work in that position. Dr. Vasconcelles, in response to any inquiry of 7/23/18, wrote:

...I have been managing Robert's medications for his PTSD. It is under good control as long as he is not exposed to any triggers that can exacerbate his PTSD symptoms. Unfortunately, that seems to be any activities that remind him of his job as a fireman and EMT. On perusing the jobs descriptions enclosed, I do not see any that would be a clear concern for flaring his PTSD but I have not specifically reviewed them with the patient to see if he foresees any concerns. He is physically capable of doing any of these positions but it will depend on whether he can emotionally handle the rigors. I am not equipped as a primary care doctor to render a decision in this regard....

(JX 1). The Arbitrator does not believe this to be an opinion that Petitioner was capable of returning to work in one or more of the offered positions. Instead, it is a fairly clear statement that the doctor is not qualified to render an opinion of the matter. Further, the statement was not rendered until many months after the last requested payment of TTD.



Respondent does not claim credit for any benefits paid during the requested benefit period of 5 2/7 weeks from 1/6/18 through 2/11/18.

Based upon the foregoing the Arbitrator concludes Respondent is not entitled to the credit claimed.

**Issue (L): What is the nature and extent of the injury?**

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of §8.1b of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that neither party submitted an impairment rating. The Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes Petitioner was a firefighter and described his job activities in great deal. The Petitioner testified that he is unable to perform his job activities given the level of psychological impairment he still feels to date. His symptoms and treatment thereof continue through the date of trial. The Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 53 years old as of the date of his workplace injury. Petitioner will likely live the rest of his life afflicted by the ongoing results of the psychological trauma sustained in this injury. The Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner is unable to work in any emergency field due to his psychological triggers from the trauma of the incident. The emergency service field was his chosen occupation and primary source of income to provide for himself and his family, that field as a whole is no longer available to Petitioner. The Arbitrator therefore gives *greater* 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 that Petitioner testified to the ongoing psychological problems he is enduring. Respondent did not offer any evidence or testimony to refute the testimony of Petitioner, nor did Respondent offer the testimony of any expert to refute the Petitioner's condition. The Arbitrator finds the Petitioner to have testified credibly and the medical records to corroborate his medical condition. Petitioner entered into evidence the report of Dr. Pan, who indicated that Petitioner is certified as permanently disabled from firefighter service as a result of cumulative effects of acts of duty as a firefighter. (PX 7). Also submitted into evidence are the medical records of Dr. Pan which indicate a history of medical treatment and exams given by Dr. Pan to Petitioner.

All of the treating medical records entered into evidence without objection from Respondent corroborate the symptoms and the impact on Petitioner in his personal life. The records of the treaters in this case indicate the protracted duration of recovery, if there is even any recovery to be had in this matter. Because the medical

records and evidence taken as a whole corroborate the Petitioner's complaints, 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 50% loss of use of the person as a whole pursuant to §8(d)2 of the Act.