

11 WC 12905
19 IWCC 0578
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STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michelle Brooks,

Petitioner,

vs.

NO: 11 WC 12905
19 IWCC 0578

Regional Elite Airline Services, LLC,
Federal Insurance Company, and Gallagher Bassett Services, Inc.,

Respondents.

ORDER OF RECALL UNDER SECTION 19(f)

Pursuant to Section 19(f) of the Act, the Commission *sua sponte* finds that a clerical error exists in the Decision and Opinion on Review dated October 24, 2019 and received by the parties on October 29, 2019.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated October 24, 2019 and received by the parties on October 28, 2019 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 and Opinion on Review shall be issued simultaneously with this Order.

DATED:
d: 11/8/19
BNF/kb
45

NOV 12 2019


Barbara N. Flores

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 type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
<input checked="" type="checkbox"/> ON REMAND FROM APPELLATE COURT	<input checked="" type="checkbox"/> None of the above

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NO: 11 WC 12905
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Regional Elite Airline Services, LLC,
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Respondents.

CORRECTED DECISION AND OPINION ON REMAND

After reviewing the entire record, the Commission recognizes the 1st Amended Application for Adjustment of Claim, filed on November 7, 2019. Said Application for Adjustment of Claim names the parties to the instant claim as captioned above consistent with an Agreed Order previously entered at the Commission. Pursuant to Section 19(f) of the Act, the Commission, *sua sponte*, hereby corrects its previous decision dated October 24, 2019 and received by the parties on October 29, 2019 to reflect the properly named parties in the instant case.

This matter now comes before the Commission on remand from the Appellate Court. The Commission, in relevant part, affirmed the Arbitrator's denial of causal connection as it pertained to Petitioner's right elbow. The Circuit Court of Champaign County affirmed the Commission's ruling. On appeal, the Appellate Court reversed the Circuit Court's order affirming the Commission's decision. The Appellate Court found the Commission's affirmance of the Arbitrator's decision to be against the manifest weight of the evidence and remanded the matter for further consideration consistent with its opinion.

The Commission hereby incorporates by reference the findings of fact contained in the arbitration decision to the extent it does not conflict with the Appellate Court's order dated May 23, 2019. The Commission further incorporates by reference the Appellate Court's order, which delineates the relevant facts and analysis, attached hereto and made a part hereof. The Commission

further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

I. Right Elbow

The Appellate Court found that Petitioner had established a causal connection between her elbow condition and accident. *Brooks v. Illinois Workers' Compensation Comm'n*, 2019 IL App (4th) 180438WC-U. In its analysis, the Court noted that the record showed that Petitioner's prior cubital tunnel release surgery in 2006 had little to no effect on the onset of her elbow problem following her November 2011 and June 2012 shoulder surgeries. *Id.* ¶ 46. Given the lack of evidence of ulnar issues between 2006 and this testing, and Petitioner's ability to work after the 2006 surgery until her November 2011 rotator-cuff surgery, the Court found that the EMG results "clearly showed (as interpreted by Dr. Li and corroborated by Dr. Riskin) the onset of what was soon to become right ulnar neuropathy." *Id.* ¶ 49. The Court also disagreed that the formal diagnosis of right ulnar neuropathy after the June 2012 shoulder surgery negated the existence of right ulnar neuropathy symptoms prior to June 2012. *Id.* ¶ 50. In so concluding, the Court noted that Dr. Fletcher examined Petitioner on November 9, 2011 following her first shoulder surgery at which time she had an abnormal neurological examination and positive Tinel's sign in the right elbow. *Id.* Finally, the Court noted that none of the doctors opining about the onset of Petitioner's "elbow problems disagreed with Dr. Li's suggestion that the positioning of Petitioner's right arm during and after her rotator-cuff surgery aggravated her ulnar nerve causing her elbow problems." *Id.* ¶ 51.

Thus, the Court concluded, in pertinent part, that:

The record adequately and clearly demonstrates that claimant's elbow problem was the result of her reasonable and necessary shoulder surgery. Her May 2010 work-related accident caused an injury to her shoulder. The manifest weight of the evidence, taking the combined opinions and supporting medical documentation as set forth above, demonstrates that the required surgery to repair claimant's shoulder "was a causative factor in the resulting condition of ill-being." (Emphasis in original.) *Sisbro[, Inc. v. Industrial Comm'n]*, 207 Ill. 2d [193,] 205 [(2003)].

Id. ¶ 53. Accordingly, in compliance with the Appellate Court's order, the Commission finds that Petitioner's reasonable and necessary right shoulder surgery was a causative factor in her resulting right elbow condition. Although not specifically ordered by the Appellate Court, the Commission, in keeping with the Court's order, also finds that Respondent shall be liable for medical expenses related to Petitioner's elbow condition and finds that the causally related elbow condition warrants award of the prospective right ulnar nerve surgery prescribed by Dr. Li.

II. Neck Pain

Having found that Petitioner's right elbow condition was causally related to the accident at work, the Court turned its attention to Petitioner's alleged neck pain. *Brooks*, 2019 IL App (4th)

180438WC-U. The Court noted the Arbitrator's finding that Petitioner did not seek treatment for the head and neck pain until after March 2013 was not borne out in the records. *Id.* ¶ 56. From April 2013 until March 2014, Petitioner sought treatment from Dr. Madden, her primary care physician, who noted her ongoing complaints of chronic headache and neck/back pain as well as symptoms about the occiput with radiating pain down the spine, for example. *Id.* The Court also disagreed with the finding that a non-occupational fall prompting an emergency room visit on March 8, 2014 was not significant as well as the finding that Petitioner did not report a history of ongoing headaches, neck pain, or right shoulder pain related to her work accident. *Id.* ¶¶ 57-58. The Court highlighted that both propositions were repudiated by the emergency room records. *Id.* Finally, the Court found that the Arbitrator's summary of Dr. Sweeney's testimony was inaccurate based on the totality of the medical reports in the record demonstrating that Petitioner had not completely recovered, and that reliance on Dr. VanFleet was misplaced as he did not review the emergency room records. *Id.* ¶¶ 59-60. The Court concluded that Dr. VanFleet's opinion was based on an inaccurate overview of the pertinent circumstances. *Id.*

Accordingly, in compliance with the Appellate Court's order, the Commission finds that the record supports the conclusion that Petitioner's neck pain condition is causally related to her accident at work. The Commission further finds the opinions of Dr. Sweeney that Petitioner's back, neck, and shoulder injuries were caused by the work-related accident to be more persuasive than those of Dr. VanFleet and accords no weight to Dr. VanFleet's opinions. Although not specifically ordered by the Appellate Court, the Commission, in keeping with the Court's order, also finds that Respondent shall be liable for medical expenses related to Petitioner's neck condition and finds that the causally related neck condition warrants award of the prospective occipital neuralgia injections to treat her cervicogenic headaches, suboccipital neuritis, and cervical facet syndrome as prescribed by Drs. Fletcher and Sweeney.

III. Penalties and Fees

In compliance with the Appellate Court's order, the Commission denies Petitioner's claim for penalties and fees.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner has proven causal connection between her work accident and her conditions of ill-being in the back, neck, shoulders and right elbow.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$190.00 per week for a period of 82 weeks (March 11, 2013 to April 21, 2014 and October 4, 2015 to April 12, 2016), that being the period of temporary total incapacity for work under §8(b).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner any and all medical expenses related to her neck, back, shoulder(s) and right elbow pursuant to §8(a) and §8.2 of the Act. These expenses total \$21,576.82.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner be awarded prospective right ulnar nerve surgery.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner be awarded prospective occipital neuralgia injections.

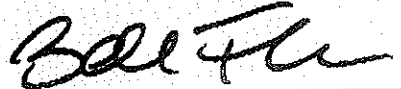
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.


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.

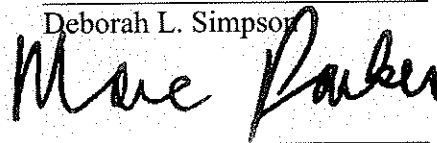
IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$41,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: NOV 12 2019
d: 10/17/19
BNF/wde
045


Barbara N. Flores


Deborah L. Simpson


Marc Parker