

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

<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 type="checkbox"/>	PTD/Fatal denied
<input checked="" type="checkbox"/>	None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ESEQUIEL IRACHETA,

Petitioner,

vs.

No. 09 WC 20467 & 14 WC 10550
19 IWCC 446

CITY OF CHICAGO,

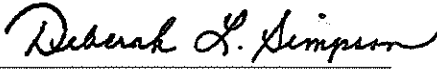
Respondent.

ORDER

This matter comes before the Commission on Respondent's Motion to Recall Commission Decision pursuant to Section 19(f). On consideration of the decision at issue, the Commission finds there is no clerical error. Therefore, Respondent's Petition is denied

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent's Motion to Recall Commission Decision is hereby denied.

DATED: SEP 30 2019


Deborah L. Simpson

16WC 22280
19IWCC0530

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

Miguel Arambula,
Petitioner,

vs.

NO. 16WC 22280
19IWCC0530

City of Chicago,
Respondent.

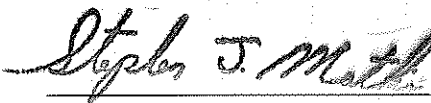
ORDER OF RECALL UNDER SECTION 19(f)

The Commission recalls the Decision and Opinion on Review of the Illinois Workers' Compensation Commission dated September 26, 2019, pursuant to Section 19(f) of the Act due to a clerical error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated September 26, 2019 is hereby recalled and a Corrected Decision and Opinion on Review is hereby issued simultaneously.

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 the Circuit Court.

DATED: **OCT 15 2019**
SM/sj
44


Stephen J. Mathis

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<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	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MIGUEL ARAMBULA,

Petitioner,

vs.

NO. 16 WC 22280
19IWCC0530

CITY OF CHICAGO,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

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

Permanent Disability

The Commission views the evidence differently with respect to Section 8.1b(b) factors (iv) and (v).

(iv) the employee's future earning capacity

Petitioner returned full-duty to his pre-injury job as a laborer on a garbage truck following surgery for a right medial meniscus tear. Thereafter he transitioned to a different position with respondent in the rodent control department that was less physically challenging. Petitioner sustained no wage loss as a result of his work injury. The Commission finds this factor weighs in favor of decreased permanent disability.

(v) evidence of disability corroborated by treating medical records

Petitioner completed a two-week work conditioning program and was returned to full-duty employment by his treating physician Dr. Maday. Petitioner last sought medical treatment on November 16, 2016 at which time Dr. Maday determined that he was at MMI. The Commission finds that Petitioner has not sought further medical treatment since that time and that this factor weighs in favor of decreased disability.

Having weighed the evidence and analyzed the Section 8.1b(b) factors, the Commission finds Petitioner sustained a 27.5% loss of use of the right leg.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of \$755.22 per week for a period of 59.125 weeks, as provided in §8e) of the Act, for the reason that the injuries sustained caused the loss of use of 27.5% of use of the right leg.

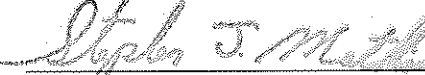
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

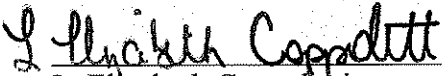
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

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 the Circuit Court.

DATED: OCT 15 2019
d-10-1-19
SM/msb
44


Stephen J. Mathis


L. Elizabeth Coppoletti

DISSENT

I respectfully dissent. I would adopt and affirm the well-reasoned Decision of the Arbitrator.


Douglas D. McCarthy

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ARAMBULA, MIGUEL

Employee/Petitioner

Case# 16WC022280

CITY OF CHICAGO

Employer/Respondent

19IWCC0530

On 4/4/2019, 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 2.38% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0233 DEPAOLO & ZADEIKIS
DONNA ZADEIKIS
309 W WASHINGTON ST SUITE 550
CHICAGO, IL 60606

0010 CITY OF CHICAGO LAW DEPT
D TAYLOR CHITTICK
30 N LASALLE ST SUITE 800
CHICAGO, IL 60602

19 IWCC0530

STATE OF ILLINOIS)

)SS.

COUNTY OF COOK)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY**

Miguel Arambula
Employee/Petitioner

Case # **16 WC 22280**

v.

Consolidated cases: **n/a**

City of Chicago
Employer/Respondent

The only disputed issue is the nature and extent of the injury. 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 **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **3/18/19**. By stipulation, the parties agree:

On the date of accident, **4/12/16**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained 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 **\$72,746.01**, and the average weekly wage was **\$1,398.96**.

At the time of injury, Petitioner was **59** years of age, *married* with **0** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of **\$26,648.28** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$26,648.28**.

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After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

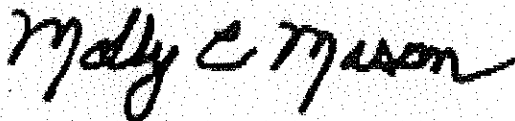
ORDER

Respondent shall pay Petitioner the sum of **\$755.22/week** for a further period of **75.25 weeks**, as provided in Section **8(e)** of the Act, because the injuries sustained caused **35% loss of use of the right leg**.

Respondent shall pay Petitioner compensation that has accrued from **11/16/16** through **3/18/19**, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected 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

4/3/19

Date

APR 4 - 2019

Summary of Disputed Issues

The parties agree that Petitioner injured his right knee while working as a laborer/garbage collector for Respondent on April 12, 2016. Petitioner underwent right knee surgery on July 25, 2016 and was released to full duty in October 2016. Petitioner testified he returned to his laborer duties at that point but wore a knee brace on a daily basis at the recommendation of his surgeon, Dr. Maday. Petitioner further testified he continued performing his laborer duties until April 2018, at which point he transferred to Respondent's rodent control division at his request. He testified he requested the transfer due to ongoing right knee pain and instability. He acknowledged he has not undergone any additional right knee care since his last visit to Dr. Maday in November 2016.

The sole disputed issue is nature and extent. Arb Exh 1.

Arbitrator's Findings of Fact

Petitioner testified he worked as a laborer for Respondent's Department of Streets and Sanitation as of April 12, 2016. His job consisted of collecting garbage in alleys. He spent part of each workday walking. When his crew changed "lines," he would ride on the back of the garbage truck to the next location. He held onto a bar and stood on a step that was about 18 inches above ground level while riding on the back of the truck.

Petitioner denied having any right knee problems before his injury on April 12, 2016. On that date, he was riding on the back of the garbage truck in an alley behind 108th Place. There were some tree branches blocking part of the alley. He began to get down from the back of the truck so that he could move the branches. As he stepped down, his right foot came into contact with a rock. His right leg bent backward. He felt an abrupt onset of pain in his right knee. After finishing his shift, he notified his supervisor of the accident and went to an office. He verbally reported the accident to a clerk who told him to return the next morning to complete a written report. He completed this report the following day and was then sent to MercyWorks.

The MercyWorks records (PX 1) reflect that Petitioner saw Dr. Ali on April 13, 2016. The doctor recorded a consistent history of the work accident and noted that Petitioner rated his right knee pain at 6-7/10. He described Petitioner as walking with a mild limp. On right knee examination, he noted mild diffuse swelling and mild diffuse tenderness, mostly over the medial joint line. He also noted a full range of motion with pain on forward flexion. McMurray's testing was equivocal. Right knee X-rays showed mild medial and patellofemoral compartment narrowing. Dr. Ali diagnosed a right knee sprain. He took Petitioner off work and prescribed an elastic support and Motrin. PX 1.

On April 18, 2016, Petitioner returned to MercyWorks and saw a different physician, Dr. Diadula. The doctor noted a complaint of 8-9/10 right knee pain, popping and instability. He indicated that Petitioner reported being unable to put much weight on his right leg. On examination, he noted slight swelling, tenderness in the medial, inferomedial and popliteal regions and positive McMurray's testing. He continued to keep Petitioner off work and prescribed a right knee MRI. PX 1.

The MRI, performed without contrast on May 9, 2016, showed a "large horizontal tear involving the posterior horn of the medial meniscus with extension to the superior articulating surface." The radiologist described this tear as extending into the body and partially into the anterior horn of the medial meniscus. He also noted moderate irregular thinning of the medial joint compartment cartilage, slight blunting of the free edge of the posterior horn of the lateral meniscus, mild quadriceps tendinopathy and a small joint effusion. PX 1, 3.

Petitioner returned to MercyWorks on May 12, 2016 and saw a third physician, Dr. Cerniak. The doctor noted that Petitioner rated his right knee pain at 6/10 when sitting and 10/10 when walking. After reviewing the MRI, he recommended that Petitioner stay off work, keep his knees and feet elevated, continue the Ibuprofen and see an orthopedic surgeon as soon as possible. He referred Petitioner to Dr. Maday of Midland Orthopedics. PX 1.

Petitioner first saw Dr. Maday on May 18, 2016. The doctor recorded a consistent history of the work accident and subsequent care. He noted that, since the accident, Petitioner had experienced multiple episodes of his right knee giving out and had recently been experiencing locking of the knee as well. He indicated that Petitioner had worked for Respondent for approximately twenty years without any previous injury.

On initial right knee examination, Dr. Maday noted approximately 10 to 20 ccs of an effusion, no tenderness over the quadriceps tendon or patellar tendon, 2 to 3+ medial joint line tenderness, minimal lateral joint line tenderness, positive flexion McMurray's, negative Lachman, negative anterior and posterior drawer, no opening with varus or valgus stressing at 0 to 20 degrees and a range of motion from 0 to 120 degrees. After reviewing the MRI, he recommended arthroscopic surgery to address the meniscal pathology. He indicated that Petitioner would be unable to resume working if he did not undergo surgery. He continued to keep Petitioner off work. He informed Petitioner that the degenerative changes could not be addressed arthroscopically. PX 2.

On July 25, 2016, Dr. Maday operated on Petitioner's right knee at Mercy Hospital, performing an arthroscopy and partial medial meniscectomy. In his operative report, he documented a complex tear of the posterior horn of the medial meniscus "with a significant horizontal split and flap tear" involving approximately 40 to 50% of the posterior horn. He described this tear as "irreparable" and in the "white-white zone." He noted no tearing of the lateral meniscus. He described the anterior and posterior cruciate ligaments as intact. He noted Grade II to III chondrosis of the patella, Grade III chondrosis of the medial femoral condyle and Grade 1 to II chondrosis of the medial tibial plateau. PX 2, 3.

At the first post-operative visit, on August 3, 2016, Dr. Maday noted no evidence of an infection and a range of motion from 0 to 90 degrees. He prescribed physical therapy and directed Petitioner to remain off work. PX 2.

Petitioner underwent an initial evaluation at ATI Physical Therapy on August 9, 2016. The evaluator noted a complaint of 8-9/10 right knee pain and difficulty walking, using stairs, squatting, standing after extended sitting and lifting. PX 4.

Petitioner continued attending therapy on a regular basis thereafter. In a note dated August 24, 2016, the therapist indicated that Petitioner's gait was still antalgic and that he had made "minimal objective improvement" with range of motion. PX 4.

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Petitioner returned to Dr. Maday on August 24, 2016. The doctor noted a range of motion from 0 to 100 degrees and mild tenderness over the medial compartment. He prescribed an anti-inflammatory cream. He prescribed additional therapy and directed Petitioner to remain off work. PX 2.

Petitioner continued attending therapy through September 15, 2016. On that date, his therapist recommended two to four weeks of work conditioning. PX 4.

On September 21, 2016, Dr. Maday described Petitioner as doing well and experiencing less pain. On re-examination, he noted a full range of motion, minimal joint line tenderness, negative Lachman, negative drawer testing and no opening with varus or valgus stressing at 0 or 20 degrees. He recommended that Petitioner transition from therapy to work conditioning. PX 2.

Petitioner began a course of work conditioning on September 27, 2016. In a progress report dated October 5, 2016, Ryan Stachorek, ATC, reported that Petitioner appeared to have entered work conditioning at a medium physical demand level. Stachorek described Petitioner's garbage-related duties as heavy, with occasional lifting of 100 pounds. On October 7, 2016, Stachorek noted that Petitioner was still at a medium physical demand level and reporting "mild increased knee pain with functional strengthening exercises." He recommended two more weeks of work conditioning. PX 4.

On October 12, 2016, Dr. Maday noted that Petitioner had completed two weeks of work conditioning and felt able to resume working. He also noted the therapist's recommendation of additional work conditioning. On re-examination, he noted a full range of motion, no medial or lateral joint line tenderness, negative Lachman, negative drawer testing and no opening with varus or valgus stressing at 0 or 20 degrees. He released Petitioner to full duty as of October 17, 2016 and directed him to return in four weeks. PX 2.

Dr. Maday's last note of November 16, 2016 reflects that Petitioner had been back to work for only one week due to having to take his vacation. He also noted that Petitioner was performing home exercises. He noted no abnormalities on re-examination. He found Petitioner to be at maximum medical improvement and allowed him to continue full duty. PX 2.

Petitioner testified he resumed his regular garbage collection duties but wore a knee brace throughout each shift. He testified that Dr. Maday prescribed this brace and that it helped a little. He was able to work but "not like a regular person." He put all of his body weight on his left leg. He continued to experience right knee pain, although it was less severe than it had been prior to the surgery. He had difficulty bending his right knee and stepping onto and off the step on the back of the garbage truck.

Petitioner testified he continued performing his garbage collection duties until approximately April 2018, at which point he transferred to a laborer job in Respondent's rodent control division. He put in for a transfer to this division because he knew the rodent control duties were lighter than those of a garbage collector. He still had to walk throughout each shift but he was no longer required to lift or step on and off of the back of a truck. His new duties consisted of looking for rat holes, laying bait and checking residents' backyards. When his crew moved from one location to another, they rode in a passenger van, not a truck.

Petitioner testified he is still working in rodent control. He continues to experience right knee pain. His right knee gives way, which causes him to lose his balance. He addresses his symptoms by applying ice to his knee, keeping his leg elevated and wearing the brace. He testified he wears the brace "all the time," regardless of whether he is at work.

Petitioner testified he has difficulty navigating the stairs in his house that lead to the basement. He has to hold both sets of railings when climbing or descending these stairs. It is especially difficult for him to step up with his right leg. He is able to kneel when he attends church but only on his left knee. He keeps his right leg extended due to pain. He also keeps his right leg extended when he sits on a toilet. He uses his left leg to "push up" from a seated position. Because he continues to avoid putting weight on his right leg, he is worried about his left leg. If his job came to an end, he would have to look for something light that required no lifting.

Under cross-examination, Petitioner denied having any right leg symptoms before the work accident. Dr. Maday released him to unrestricted duty as of October 17, 2016. He resumed his regular laborer duties at that point, with no reduction in his earnings. He has not returned to Dr. Maday since November 2016. He has not undergone any other right knee care since November 2016. He performed his regular laborer duties between October 2016 and April 2018, when he began working in rodent control. No one told him he was physically unable to continue working as a laborer.

Respondent did not call any witnesses. Respondent offered into evidence a print-out of the temporary total disability benefits and medical expenses it paid in this claim. RX 1.

Arbitrator's Credibility Assessment

Petitioner did not identify his hire date but Dr. Maday described him as having worked for Respondent for twenty years. That lengthy tenure weighs in Petitioner's favor, credibility-wise.

Petitioner came across as hard-working. He did not overstate his complaints. None of his treating physicians noted any symptom magnification. The Arbitrator found him very credible.

Arbitrator's Conclusions of Law

What is the nature and extent of the injury?

Because the accident occurred after September 1, 2011, the Arbitrator looks to Section 8.1b of the Act for guidance in determining the nature and extent of Petitioner's injury. That section sets forth five factors to be considered in assessing permanency, with no single factor predominating. The Arbitrator views the first factor, any AMA Guides impairment rating, as irrelevant since neither party offered such a rating into evidence. The Arbitrator assigns weight to the second factor, Petitioner's occupation. On October 7, 2016, Petitioner's therapist recommended two more weeks of work conditioning, noting that Petitioner's job was heavy and that he was still functioning at a medium physical demand level. On October 12, 2016, Dr. Maday noted this recommendation but nevertheless released Petitioner to full duty. Petitioner testified he resumed his regular garbage collection duties thereafter but also testified he did not work in a normal fashion in that he wore a brace on his right knee, as prescribed by Dr. Maday, and put all of his weight on his left leg. He indicated that Dr. Maday told him to use the brace for "safety and support." Dr. Maday's records do not mention the brace but the Arbitrator finds Petitioner's detailed testimony on this point credible. Petitioner also credibly

19IWCC0530

testified that, in 2018, he applied for a transfer to a somewhat lighter rodent control job because, while that job still involved significant walking, it did not require him to lift heavy items or step up a distance of 18 inches to ride on the back of a garbage truck. Petitioner was still performing the rodent control job as of the hearing, albeit not without difficulty. The Arbitrator also assigns weight to the third factor, Petitioner's age at the time of the accident. Petitioner was 59 as of the April 12, 2016 accident. The Arbitrator views him as an older individual who is rapidly approaching typical retirement age. This factor cuts both ways in the sense that, while Petitioner might not work for much longer, he will still have to deal with his right knee symptoms when performing routine activities as a retiree. The Arbitrator also assigns weight to the fourth factor, future earning capacity. Petitioner readily acknowledged he remained at the same rate of pay when he resumed working as a laborer in the fall of 2016. He did not claim any diminution of earnings secondary to his transfer to the rodent control division. As for the fifth and final factor, evidence of disability corroborated by the treatment records, the Arbitrator notes the MRI report, Dr. Maday's operative report, which describes the meniscal tear as "complex, irreparable and in the white-white zone," the fact that Petitioner did not reach a heavy physical demand level during work conditioning and Dr. Maday's essentially negative examination findings on October 12 and November 16, 2016.

The Arbitrator, having considered the foregoing, finds that Petitioner is permanently partially disabled to the extent of 35% loss of use of the right leg, representing 75.25 weeks of benefits, under Section 8(e) of the Act.

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

Egan Coleman)
Petitioner,)
vs.)
AKMG and the Illinois State Treasurer as.,)
Ex Officio Custodian of the Injured)
Workers' Benefit Fund,)
Respondent,)

No. 14 WC 38286
18 IWCC 000703

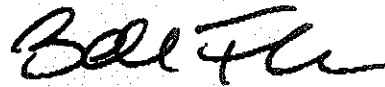
ORDER

This matter comes before the Commission on its own Petition to Recall the Commission Decision to Correct Clerical Error pursuant to Section 19(f) of the Act. The Commission having been fully advised in the premises finds the following:

The Commission finds that said Decision should be recalled for the correction of a clerical/computational error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision and Opinion dated November 16, 2018, is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner Barbara Flores.

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



Barbara N. Flores

BNF/mw
045

OCT 17 2019

DATED:
10/16/19

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

<input type="checkbox"/> Affirm and adopt (no changes)	<input checked="" 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 <input type="checkbox"/> down	<input type="checkbox"/> PTD/Fatal denied
	<input type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EGAN COLEMAN,

Petitioner,

vs.

NO: 14 WC 38286
18 IWCC 000703

AKMG and the Illinois State Treasurer as Ex Officio
Custodian of the Injured Workers' Benefit Fund,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of employer/employee relationship, accident, medical expenses 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 hereof.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. On May 13, 2014 Petitioner was a Bartender working in Respondent's establishment (Jaster's Bar). He worked part-time hours and had his schedule set by the Manager. He worked three 8-10 hour shifts per week and clocked in and out at the register.
2. Prior to working at Jaster's, Petitioner was already familiar with Adam, one of Jaster's Co-Owners at the time. Adam used to be a patron at a bar owned by Petitioner's father. In April 2014 Petitioner had a conversation with Adam, during which Petitioner was offered \$5/hour plus tips to bartend at Jaster's. Petitioner was required to report his tips.
3. If Petitioner wanted a day off, he would have to discuss it with either Adam or the Manager (Tanya). He was trained on how to operate the register, setting up and

cleaning the bar and how to make specialty drinks that Jaster's offered.

4. Petitioner was asked to complete a W-4 form, and had taxes, Medicare and withholdings taken out of his checks. His breaks were approved by either Adam or Tanya, and he was told to wear a black shirt for each shift.
5. On May 13, 2014 Petitioner was wiping down a piece of metal in front of the beer stands. He testified that Adam routinely wanted the bar to be wiped down. The metal was not attached to the wood on the bar, so it slid and hit a stack of pint glasses. Petitioner reached to catch the glasses before they fell, but by the time he grabbed them, the pints had become broken glass and cut Petitioner's left hand. Petitioner stated that he was bleeding "pretty bad" and wrapped his hand in a towel.
6. Adam took Petitioner to the hospital, where he received stitches. The stitches were removed on or about May 24, 2014.
7. On May 29, 2014 Petitioner followed up at the hospital because his hand was "still bad." He testified that his wound had not closed, and he believed it had become infected. He was referred to a hand surgeon.
8. The following day, Dr. Patel examined Petitioner and recommended surgery for wound exploration and repair of the ulnar digital nerve and possible tendon repair.
9. Surgery was performed June 4, 2014 and Petitioner was taken off work. Stitches were removed June 12, 2014 and physical therapy was prescribed. However, therapy was denied due to the therapist not receiving any payments. Subsequently, Petitioner was returned to work on June 19, 2014.
10. On July 3, 2014 Dr. Patel recommended a home exercise program and soft tissue massage. Petitioner continued periodic follow ups, but still complained of pain and numbness in early November 2014.
11. Petitioner resigned from employment with Jaster's in July 2014 due to a disagreement with the Co-Owners.
12. Petitioner is right handed. He now works for Paylocity, which is a payroll company, where his duties require him to type 90% of the day. He has difficulty typing with his left hand, cannot feel the tip of one of the fingers on his left hand, and has lost grip strength. He takes over-the-counter medication.
13. On the date in question, Melissa Neupert was the other Co-Owner of Jaster's, and was married to Adam. They have since divorced and Ms. Neupert is now the sole owner of the establishment.
14. Ms. Neupert testified that Jaster's always had employees complete W-4 forms, as it was required before she could input them into the Pay Core payroll system. She also

testified that anyone who was working the bar was an employee.

Upon review, the Commission affirms the Arbitrator's findings regarding employer/employee relationship, accident, and medical expenses.

The Commission, however, views the evidence slightly different than does the Arbitrator regarding the permanent partial disability award. No American Medical Association impairment rating was offered by either party. Petitioner was a 29-year old Bartender at the time of accident and was able to return to work for Respondent after the accident. His subsequent resignation was unrelated to his physical condition. There was no evidence offered detailing the potential effects Petitioner's condition will have on his future earning capacity, although he does still suffer from some lingering effects of the injury. Based on the above factors, the Commission finds that Petitioner's level of impairment equates to a 27.5% loss of use of his left small finger. This award is modified down from a previously awarded 35% loss of use of said finger.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner met his burden of proof regarding an employer/employee relationship.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner temporary total disability benefits of \$212.08 per week for a period of 2-1/7 weeks, commencing 06/04/2014 through 06/19/2014, as provided in §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$212.08 per week for a period of 6.05 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused a 27.5% loss of use of Petitioner's little finger.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$11,358.04 for medical expenses under §8(a) of the Act.

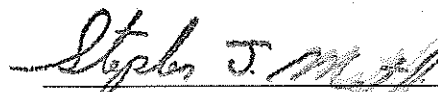
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

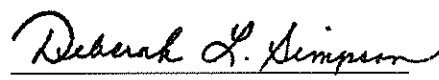
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$13,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
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OCT 17 2019

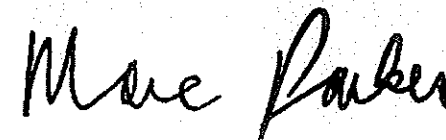

Stephen Mathis


Deborah L. Simpson

SPECIAL CONCURRING OPINION

This case was scheduled for Oral Arguments on September 20, 2018 before a three member panel of the Commission including members David L. Gore, Stephen Mathis, and Deborah L. Simpson at which time Oral Arguments were either heard, waived or denied. Subsequent to Oral Arguments and prior to the departure of member David L. Gore, a majority of the panel members had reached agreement as to the results set forth in this decision and opinion, as evidenced by the internal Decision worksheet initialed by the entire three member panel.

Although I was not a member of the panel in question at the time Oral Arguments were heard, waived or denied, and I did not participate in the agreement reached by the majority in this case, I have reviewed the Decision worksheet showing how Commissioner Gore voted in this case, as well as the provisions of the Supreme Court in Zeigler v. Industrial Commission, 51 Ill.2d 342, 281 N.E.2d 342 (1972), which authorizes signature of a Decision by a member of the Commission who did not participate in the Decision. Accordingly, I am signing this Decision in order that it may issue.


Marc Parker

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Sladana Radosavac,

Petitioner,

vs.

NO: 16 WC 17561
16 WC 17562
19 IWCC 0437

Advocate Christ Medical Center,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

Pursuant to Section 19(f) of the Act, the Respondent finds that a clerical error exists in the Decision and Opinion on Review dated August 16, 2019, in the above captioned.


Respondent's Motion for Corrected Decision was timely filed on September 11, 2019.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated August 16, 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:
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BNF/wde
45

OCT 29 2019


Barbara N. Flores

16 WC 17561
16 WC 17562
19 IWCC 0437
Page 1

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<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="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="text" value="down"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SLADANA RADOSAVAC,

Petitioner,

vs.

NO: 16 WC 17561
16 WC 17562
19 IWCC 0437

ADVOCATE CHRIST MEDICAL CENTER,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, medical expenses-CC and prospective medical care, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The 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. FINDINGS OF FACTS

A. Background

Petitioner was a 33-year-old employee of Respondent at the time of her accepted accidents on February 10, 2016 and April 6, 2016. She was employed as an equipment distribution and processing (EDP) technician that also performed patient transport.

Petitioner's job as an EDP technician mainly involved patient transport. She explained that the physical requirements of the position included a lot of lifting, pushing and pulling of beds, equipment, and patients. Petitioner's duties also included lifting and moving heavy patients from side to side and from one bed to another.

Petitioner testified that if a patient to be transported was overweight, they had to transport the patient in the bed itself. She transported patients to the Imaging Center, surgery, and for any testing. Heavier patients were mostly transported to the testing and surgery areas. Petitioner transported 17 to 21 patients per day.

Petitioner explained that the patient was initially in bed when she arrived. She used her whole-body force to get the patients on the stretcher and lift with the sheet, and sometimes she needed help to get the patients on the stretcher, which was easier to maneuver. Petitioner testified that, given her short stature, she had to lift from across the bed and pull using force. She extended her arms and sometimes got on top of the stretchers to pull them out to not use too much of the weight. Petitioner would then move the patient on the gurney to whatever area was required maneuvering through hallways and elevators throughout a hospital with nine floors.

Petitioner worked for Respondent from 2:00 p.m. to 10:30 p.m., five days per week and every other weekend. She was also employed elsewhere on a part-time basis at Miller's Ale House as a server/trainer. Petitioner acknowledged that her job there included taking orders, training people, greeting people, and bringing out drinks.

B. Accidents and Interim Medical Treatment

On February 10, 2016, Petitioner sustained an undisputed accident. She testified that she went to transport a heavy, comatose patient from intensive care to interventional radiology requiring extreme caution. Petitioner explained that there was not enough lifting help with only three individuals in the respiratory department, so they used a board requiring Petitioner to lean

over (the patient). As Petitioner was getting ready to pull the sheet under the heavy patient, with the initial pull, her whole body went numb and she felt pain all over.

Petitioner went to Respondent's emergency room reporting the incident and her symptoms. After an examination, she was prescribed Hydrocodone, Norco and Flexeril, and placed on light duty work restrictions.

Petitioner then went to the employee health department the next day at the hospital and saw Dr. Greene. She described her pain and was examined. Dr. Greene placed her off work for three days followed by a return to work with a 20-pound lifting restriction and no patient transfers. On February 22, 2016, Dr. Greene recommended that Petitioner try to return to regular work. Petitioner did so and continued with further follow-up visits until her second accident.

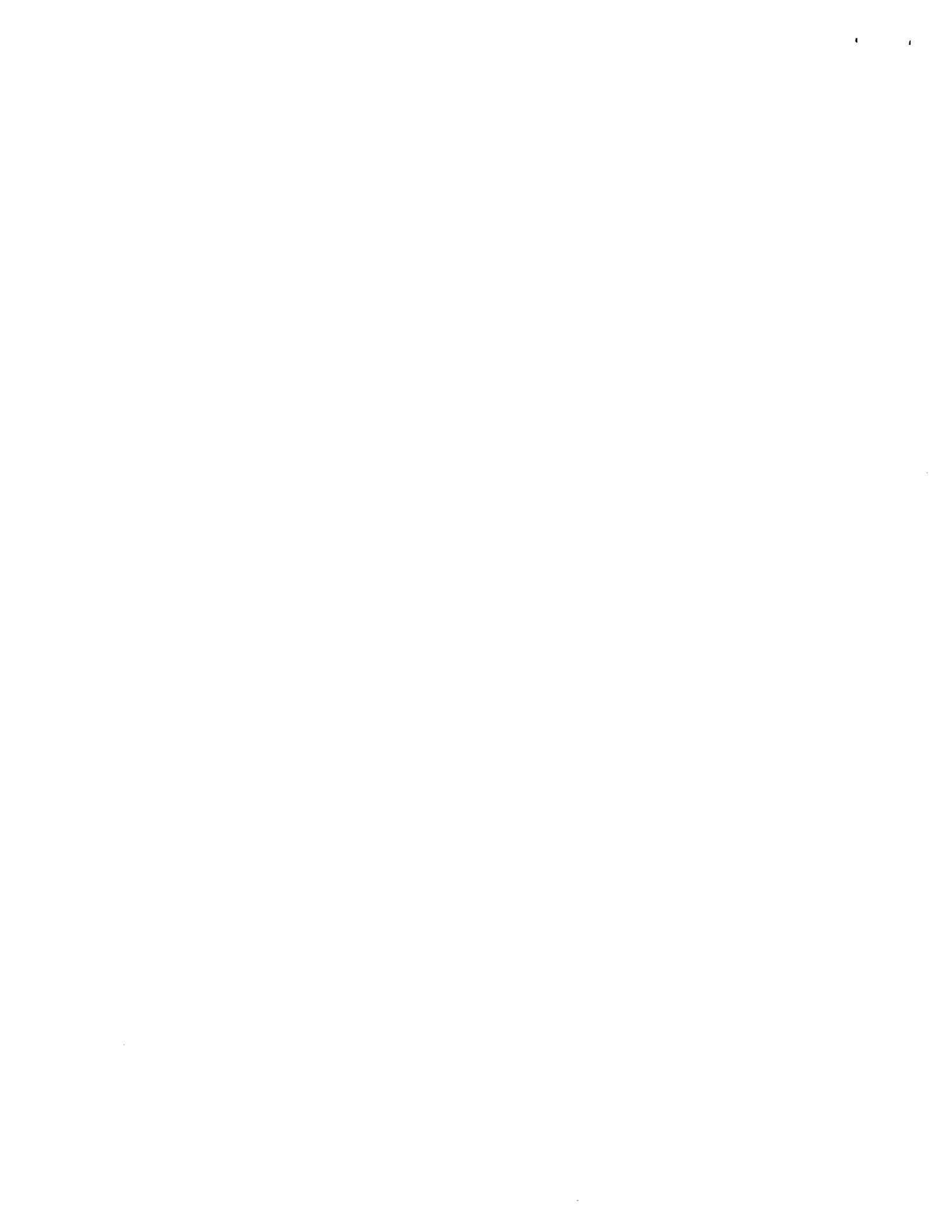
While doing her regular work, Petitioner reported that she was very sore, with constant pain, a lot of headaches, and a shooting sensation down her back. She indicated that it was getting very hard to get up in the morning without pain. Petitioner localized the pain in her back from her neck to her lower back shooting down her spine to her buttocks.

On April 6, 2016, Petitioner sustained a second undisputed accident. She testified that she went to move a patient from the transfer room and followed patient protocol given the lack of help. They set the gurney closer to the bed putting a sheet underneath the patient as they did not have a board to use. Petitioner was holding the sheet and, as they were leaning over to pull the patient, she could not move at all once she picked up the patient. She explained that she had been leaning over the stretcher, bent at the waist when they moved the patient. Petitioner testified that she experienced that same numbness as she was pulling her whole body in this process.

C. Subsequent Medical Treatment

Petitioner returned to Respondent's emergency room where she was examined, given medication, and instructed to follow-up with employee health department. Petitioner reported an injury while transferring a patient resulting in a back injury and subsequent neck to lower back pain as well as headache. She also reported that she felt a "pull" in her left upper back while engaged in transferring the patient. Petitioner was diagnosed with a left upper trapezius back injury and prescribed Ibuprofen, Norco, Cyclobenzaprine (Flexeril). She was also instructed to use ice as needed and placed on light duty work restrictions with no lifting or pushing/pulling with her left arm. Petitioner remained off work from April 7, 2016 through April 10, 2016 as Respondent did not have work within the restrictions.

Petitioner returned to Dr. Greene on April 11, 2016 at which time she reported symptoms including neck, upper back and back pain, worse with moving left shoulder, and a worsening



headache; No radiating leg symptoms were noted. After an examination, Dr. Greene diagnosed a muscle strain of the low back, thorax, and shoulders. He prescribed additional medications and continued light duty work restrictions. Respondent was able to accommodate the work restrictions including no overhead pushing, pulling, or lifting with her left arm. On April 18, 2016, Dr. Greene referred Petitioner to an orthopedic surgeon. Thereafter, Petitioner returned to employee health on April 25, 2016 at which time another physician continued her medications and work restrictions.

On April 28, 2016, Petitioner saw Dr. Ojiako at Employee Health with continued complaints of numbness and tingling in her left shoulder and leg. At the time, Petitioner was working light duty performing equipment and medication delivery. She lifted infusion pumps weighing 5-10 pounds, channels [equipment], anything a patient needed in the room as in-patient, and sometimes heavier things, but within her restrictions. He diagnosed Petitioner with a muscle strain, fascia and tendon at neck level, strain of muscles and tendons of the rotator cuff left shoulder and ordered Ibuprofen, Cyclobenzaprine, and physical therapy. Dr. Ojiako also continued work restrictions of no pushing/pulling with the left upper extremity and no overhead work.

On May 2, 2016, Dr. Greene continued Petitioner's medication regimen and physical therapy noting her continued symptoms. He then placed her off work effective May 2, 2016 to May 9, 2016. Petitioner testified that she has not returned to work for Respondent since that time.

Petitioner continued to see Dr. Greene, and, on May 23, 2016, he maintained Petitioner's diagnosis of muscle strain, fascia and tendon at neck level, strain of muscles and tendons of the rotator cuff left shoulder. He ordered continued therapy and work restrictions with no lifting over five pounds. Dr. Greene also referred Petitioner to an orthopedic surgeon providing a list of prospective providers. Petitioner was not offered light duty by Respondent at the time.

Petitioner then saw Dr. Lim, an orthopedic surgeon on staff at Respondent's hospital with whom she was familiar. On June 1, 2016, she presented to Dr. Lim's physician's assistant reporting sharp and throbbing pain symptoms, constant, severe headaches, and radiating pain in the left arm at times. After an examination, Petitioner was diagnosed with cervical disc disorder with radiculopathy, cervicothoracic region C5-6, degenerative disc disease, and kyphosis, prescribed medications and kept Petitioner off work. A cervical MRI was also ordered, which Petitioner underwent at Respondent's hospital on June 15, 2016. The interpreting radiologist noted cervical disc disorder with radiculopathy, cervical degenerative disc disease with changes at C5-6, C6-7 causing mild canal stenosis, a C5-6 broad based disc osteophyte complex with large focal central disc extrusion, a focal central disc protrusion mildly pressing on the ventral cord, and a C6-7 focal central/left disc protrusion and left uncinat arthropathy with the disc protrusion contacting the adjacent cord, mild stenosis.

On June 24, 2016, Petitioner saw Dr. Lim for the first time. He noted both of her injuries at work involving patient transfers, and Petitioner's chief complaint of neck pain with suboccipital headaches, left arm numbness, pins and needles sensation, and left lower extremity symptoms. Dr. Lim examined Petitioner noting a positive Spurling's sign on the left and weakness of the left wrist extensors graded 4/5. He also reviewed the MRI finding two herniated discs at C5-6 and C6-7, with C6-7 eccentric to the left and C5-6 more central, but causing spinal cord impingement. Dr. Lim diagnosed Petitioner with cervical pain with radiculopathy and cervical herniated nucleus pulposus at C5-6 and C6-7. He also stated that Petitioner's symptoms were a direct result of her work-related injuries in February and April of 2016 and was concerned about the manifestation of long tract signs in the lower extremity which most likely is associated with impingement on the spinal cord secondary to the disc herniations. He noted that Petitioner did not have clear objective signs of myelopathy but, recommended close follow up to confirm there were no worsening symptoms of the lower extremity symptoms. Dr. Lim recommended an epidural steroid injection (ESI) and placed Petitioner on sedentary work restrictions with no use of her left arm and no overhead work.

Petitioner testified that Respondent did not offer her work within the restrictions. She underwent the recommended injection shortly thereafter and returned to see Dr. Lim on September 2, 2016 at which time he diagnosed cervical disc disorder with radiculopathy, mid-cervical region. Dr. Lim noted Petitioner then had not improved with nonsurgical management and further options, including surgery were discussed. Petitioner opted for another ESI and Norco was refilled.

On September 2, 2016, Dr. Lim noted Petitioner's continued symptoms (not specific) and pain reported at a level of 9 out of 10. Diagnosis was cervical disc disorder with radiculopathy, mid-cervical region. He recommended surgery if a second epidural steroid injection did not provide relief. Dr. Lim then released Petitioner back to work with restrictions including no work above shoulder level.

With regard to the work restrictions, Petitioner testified that she placed the restriction script on the table by the doctor's office fax and she was given a confirmation that it was sent. She testified that this was true for every visit. Petitioner testified that she never received a letter or call from her department regarding Respondent offering work within her restrictions.

On October 14, 2016, Petitioner obtained a second opinion from Dr. An at Midwest Orthopedics at Rush regarding her neck. Dr. An examined Petitioner and reviewed the MRI. He recommended a Medrol dose pack, Ultram, and possibly Neurontin. Dr. An noted Petitioner may be a candidate for ESI; surgery as a last resort.

Petitioner returned to Dr. Lim on November 23, 2016 and Dr. Lim asked if Petitioner had the second epidural steroid injection, and it was noted that Petitioner had not received that injection

which she wished to still undergo. Dr. Lim ordered a second cervical MRI, continued medications, and he placed Petitioner off work.

D. Secondary Employment and Continued Medical Treatment

From May 2, 2016 through November 23, 2016, Petitioner continued to work part-time at Miller's Ale House while she was authorized off work or on work restrictions, that Respondent could not accommodate. Petitioner last worked at Miller's Ale House on November 26, 2016.

Petitioner underwent the second cervical MRI at Christ Hospital. In the December 12, 2016 report, the interpreting radiologist noted C5-6 degenerative disc disease with an uncovertebral disc bulge, a central disc protrusion with migration that indents the ventral thecal sac and anterior spinal cord, moderate stenosis, and mild C6-7 degenerative disc disease with an uncovertebral disc bulge without stenosis. The radiologist noted that these findings were similar compared to those in the June 15, 2016 study.

Petitioner then returned to Dr. Lim on December 19, 2016 at which time he examined her, reviewed the updated MRI, and recommended surgery in the form of decompression addressing the herniated disc. Dr. Lim also recommended sedentary work, which Respondent did not offer. Miller's Ale House did not have sedentary type work for Petitioner given her position there as a server.

Petitioner again saw Dr. Lim January 4, 2017. He maintained her diagnosis of cervical disc disorder with radiculopathy, mid-cervical region. The medical records reflect that he reviewed her MRI and again restricted her to sedentary work. Petitioner testified that by this visit, her temporary total disability benefits were discontinued. She lived alone at that time, so she started looking for another job.

Petitioner was able to find a suitable job within Respondent's Advocate Health System starting January 16, 2017 as a patient service representative. In this full-time position, she scheduled appointments, answered phone calls from patients, and connected patients with their doctors via a messaging system. Petitioner explained that the position was 40 hours per week, Monday through Tuesday and Thursday through Saturday from 8:00 a.m. to 4:30 p.m. The facility at which she worked was in Rosemont, Illinois.

Petitioner also worked at Miller's Ale House part-time through March 25, 2017. Over two days per week, Petitioner estimated that she worked six hours. At the restaurant, Petitioner did some training and wrote orders. She testified that her shift ended at 11:00-11:30 p.m. and 1:00-2:00 a.m. on the weekends. Petitioner would get home from Miller's Ale House at about midnight. Given that she resides south in Palos Heights, she testified that she then woke up at 4:30-5:00 a.m.

and left her home at 5:30-6:00 a.m. to avoid traffic with a commute lasting an hour to an hour and a half. Petitioner agreed she was making 50 cents more per hour working in this position but explained that she did have to pay tolls to get there. By contrast, when she did work at the hospital she would start at 2:00 p.m. so she would sleep until she had to go to work at the restaurant and she was able to get 4-5 hours more sleep.

Petitioner testified that she stopped working at the restaurant on March 25, 2017 because it was very physical, and she was very tired going from one job to another due to her lack of sleep. Petitioner has not worked at Miller's Ale House since March of 2017 and she continued to work for Respondent in Rosemont.

Petitioner *last* saw Dr. Lim on April 5, 2017 at which time he prescribed medications, Norco and muscle relaxers. She reported that she was still in a lot of pain with continued soreness, constant headaches, and numbness on her left side. Petitioner also reported that she was extremely tired, sometimes requiring pain medication to go to sleep. Dr. Lim last recommended the second epidural steroid injection and further therapy, which she testified that she wanted to undergo. Dr. Lim had been recommending that ESI since November 23, 2016.

Regarding her current condition of ill-being, Petitioner testified at work now, "[i]t's getting really heavy. I have to stand up several times a day to stretch. My left side goes numb." She explained that she experienced numbness from her left shoulder/neck to her feet, and attributed the tingling, numbness, and pain to the entire left side including her arm and fingers.

E. Testimony of Mr. Weinstein

Respondent called Brett Weinstein as a witness. He is employed with Miller's Ale House in Lombard and had been so employed for about 8½ years in the position of assistant general manager over the last several months. Mr. Weinstein testified that he had been in management for over three years with prior experiences as a bartender. Currently, Mr. Weinstein oversees day-to-day operations, scheduling, inventory, running the front of the house, dealing with customers and employee issues.

Mr. Weinstein testified that he was familiar with Petitioner as an employee of Miller's Ale House. He did not know her socially, only through work. Mr. Weinstein stated that Petitioner was one of the servers and he wrote Petitioner's schedule and dealt with issues that arose. He was familiar with the duties of a server, as he oversaw their work. He had also done the job previously. Mr. Weinstein testified that the server position involved dealing with guests, helping run food, performing side work, and cleaning silverware and tables. Servers also waited on tables, took and entered orders, brought out food and drinks, checked back on the tables, and ensured payment. Mr. Weinstein testified that a server could carry out one to three plates at a time, depending on the

server and use trays for two or more drinks. Servers would also pre-bus tables and, if no busboy was available, fully bus the tables, wipe them down, and put out silverware.

Mr. Weinstein was aware Petitioner had suffered injuries while working for another employer as Petitioner had let them know. He believed it was about February 2016 and testified that she performed restricted work thereafter at the restaurant. Mr. Weinstein testified that he was involved with that ensuring that Petitioner was following those guidelines for restricted work. He testified that Petitioner could not lift anything heavy, so she dealt with tables and not with anything heavy. Mr. Weinstein testified that Respondent provided work within her restrictions and were able to accommodate her. They had received paperwork regarding the restrictions. He believed that Petitioner was on restrictions from February of 2016 until she ended employment with the restaurant.

F. Testimony of Ms. Love

Respondent called Catherine Love as a witness. She testified that she was employed by Respondent for approximately 19 years spending about 15 years as the manager of the equipment processing distribution and patient transportation department. In this position, Ms. Love testified that she oversees the associates/employees who transport patients, deliver medical equipment, and pick up soiled linens and dirty equipment for cleaning. Ms. Love stated that the employees also run around the campus for wheelchairs and picking up transport carts.

Ms. Love testified that she was familiar with Petitioner as an EDP technician who worked in her department. She did not know Petitioner outside of work. Petitioner performed the patient transportation and equipment duties as she noted. Ms. Love also testified that there is light duty available within the department and they would always take a light duty associate, whenever possible. She explained, however, that they cannot provide light duty with no pushing, no pulling, no lifting, no anything.

Ms. Love stated they did have restricted work for Petitioner. She explained that, if she was provided with a medical note from Petitioner's doctor with no above-shoulder work, she would go through Kim Salazar, manager of workers' compensation, and take directives from her. If Ms. Salazar said that Petitioner could work that way, Ms. Love would have provided Petitioner with work.

Ms. Love testified she was not handed any note with restrictions for Petitioner to return to work after September of 2016, and Petitioner never attempted to return to work after September 2, 2016. They did not provide Petitioner with light work after April of 2016. Ms. Love believed that Petitioner was in the department a couple weeks in April on light duty delivering equipment.

Ms. Love testified that, had they received a restriction with no above-shoulder work in September, they would have continued having Petitioner do equipment runs. She explained that the department had two people performing that work, and it would not involve overhead work. Ms. Love explained that the equipment was located on counters and such work did not involve lifting heavy equipment over the shoulders. She acknowledged that there may be some items that the employee would have to reach from a rack with a CMP machine being the heaviest piece to obtain from a shelf.

G. Respondent's Section 12 Examination & Deposition Testimony – Dr. Hsu

While Petitioner was undergoing medical treatment, she submitted to a Section 12 examination with Dr. Hsu at Respondent's request on December 10, 2016. Dr. Hsu issued a report dated December 15, 2016. After an examination, reviewing various treatment records, and taking a history from Petitioner, Dr. Hsu diagnosed Petitioner with cervical strains from the accidents that had resolved. He opined that Petitioner's current condition was not related to the accidents. He also placed Petitioner at maximum medical improvement and indicated that she could return to work without restrictions at that time.

Dr. Hsu later gave testimony at an evidence deposition on March 22, 2017. He is board-certified spine surgeon and has been for 10 years. Dr. Hsu testified consistent with the opinions in his report and gave certain opinions regarding Petitioner's condition and its relatedness, if any, to her accidents at work.

Dr. Hsu obtained a history from Petitioner regarding her accidents as noted in his reports. He noted that both accidents involved primarily low back and neck pain followed by medical treatment including therapy, an epidural steroid injection and light duty work restrictions. Petitioner only noted the headaches and neck pain at the time of his exam, which revealed decreased motion of the lumbar spine. However, Dr. Hsu did not believe that Petitioner gave her full effort as it was not consistent with how she walked outside the exam room. He also noted a grossly normal neurological exam and cervical rom, but positive Waddell's sign with axial compression and hip rotation. Dr. Hsu noted his review of medical records, including Petitioner's MRI films showing C5-6, C6-7 posterior osteophyte complexes (bone spurs). He noted that the C5-6 bone spur was causing what he considered to be moderate stenosis as well as narrowing of the canal and mild central stenosis at C6-7. Dr. Hsu also viewed surveillance video of Petitioner performing different activities in which he saw no inability to work related to the injury.

Dr. Hsu opined that Petitioner had sustained cervical strains and soft tissue injuries from the incidents at work. He maintained that she was at maximum medical improvement six weeks after the second accident. Dr. Hsu further opined that the incidents did not aggravate her pre-existing spondylotic, bone spur condition as the accidents were of low impact. He attributed

Petitioner's symptoms as secondary to her cervical spondylotic changes (i.e., chronic degenerative wear and tear) which pre-existed and was in no way related to her accidents.

On cross-examination, Dr. Hsu acknowledged that he only brought his report with him to the deposition. He testified that any handwritten notes that he took during the examination would have been shredded after he formulated his dictation. Although he testified that Petitioner did not complain of pain down the left arm with numbness at the time of his examination, he acknowledged that he did not have his handwritten notes from the date of his examination. Dr. Hsu acknowledged that he did not have the job description that he was provided. Dr. Hsu acknowledged that he did not review the films or disk from Petitioner's December 6, 2016 MRI, but he agreed with the interpreting radiologist's findings from the report. He also acknowledged that he did not know what work restrictions Dr. Lim had placed on Petitioner at the time she was under surveillance in July and November of 2016.

On cross-examination, Dr. Hsu also acknowledged that spondylosis and bone spurs can possibly be aggravated or made symptomatic by trauma. He acknowledged that he saw no evidence of neck or back symptoms prior to her accident in February of 2016. Regardless of causal connection, as of December 15, 2016, Dr. Hsu believed that Petitioner had not exhausted all conservative care and he would probably send her back to physical therapy if she were his patient. He also believed that she might be a candidate for a second epidural steroid injection.

H. Deposition Testimony – Dr. Lim

Dr. Lim gave testimony at an evidence deposition on March 7, 2017. He is board-certified spine surgeon and has been for 18 years. Dr. Lim testified regarding his treatment of Petitioner and gave certain opinions regarding her condition and its relatedness, if any, to her accidents at work.

Dr. Lim noted that he first saw Petitioner on June 1, 2016 with an initial presentation for shoulder pain. He obtained a history of Petitioner's accidents, noting neck pain to be almost immediate and severe enough to stop working. Petitioner's MRI as ordered by his physician's assistant showed two herniated discs at C5-6, C6-7 with C6-7 eccentric to the left and C5-6 more central, but with cord impingement. Dr. Lim confirmed the presence of a C5-6 herniation with spinal cord compression with overall moderate stenosis.

Ultimately, Dr. Lim opined that Petitioner had spinal cord compression secondary to an acute herniated disc at C5-6 that caused her ongoing symptoms since February 2016. He noted that her pathology was directly correlated given Petitioner's subjective complaints and physical examination findings. Dr. Lim found that there was a causal connection between the two work accidents and her disc herniation although he could not state to which accident. Regardless, he

maintained that the cumulative trauma to her cervical spine caused the disc herniation and subsequent condition of ill-being.

II. CONCLUSIONS OF LAW

Petitioner gave uncontroverted testimony regarding both accidents at work while moving patients and her ongoing symptoms thereafter. Her testimony is supported by the medical records reflecting continued pain and symptoms since the accidents necessitating active treatment. While Petitioner had degeneration as reflected in her MRI's, the record is devoid of evidence that she had symptoms prior to her accidents impeding her ability to work full duty, and there is no evidence that Petitioner underwent any prior medical treatment for such degeneration.

Once referred for an orthopedic evaluation, Petitioner began treatment with Dr. Lim on June 1, 2016, a surgeon on staff at Respondent's hospital. He had the opportunity to examine and evaluate her on a regular basis noting her ongoing complaints and his clinical findings corroborating a diagnosis cervical disc disorder with radiculopathy, mid-cervical region. Dr. Lim also opined that there was a causal connection between Petitioner's accidents at work, her current condition of ill-being and the need for further medical care including an epidural steroid injection and possibly surgery if that was not successful. He confirmed the presence of a C5-6 herniation with spinal cord compression with overall moderate stenosis as reflected in Petitioner's MRI, and opined that Petitioner had spinal cord compression secondary to that acute herniated disc. Dr. Lim testified that it was this herniation that caused her ongoing symptoms since the time of her first accident in February of 2016. While Dr. Lim could not attribute Petitioner's herniation and ongoing symptoms to one or the other accident specifically, he found that there was a causal connection between the two work accidents noting that Petitioner's pathology was directly correlated to her subjective complaints and physical examination findings after her injuries at work. With regard to the time between both accidents, the record reflects that Petitioner underwent uninterrupted medical treatment immediately after her first accident at Respondent's hospital or with its physicians up through the time of her second accident at work. Regardless, Dr. Lim maintained that the cumulative trauma to Petitioner's cervical spine caused the disc herniation and subsequent condition of ill-being.

Respondent offered the opinions of its Section 12 Examination examiner, Dr. Hsu, into evidence. Dr. Hsu opined that Petitioner only sustained a cervical strain and that she was at maximum medical improvement no later than six weeks after the second accident. He believed that the incidents were low impact, so they did not aggravate Petitioner's pre-existing condition. However, Dr. Hsu acknowledged that he did not have the job description that he was provided, he specifically admitted that he did not review the December 6, 2016 MRI films, and he did not know what work restrictions Dr. Lim had placed on Petitioner at the time she was under surveillance in July and November of 2016. He further acknowledged that spondylosis and bone spurs can

possibly be aggravated or made symptomatic by trauma and that there was no evidence of neck or back symptoms prior to Petitioner's first accident at work. Regardless of causal connection, Dr. Hsu believed that Petitioner needed additional care, albeit, from the pre-existing condition. Nonetheless, Dr. Hsu attributed only strain-type injuries to Petitioner's accidents at work, which he opined had resolved and at "some point" he opined that the pre-existing condition became symptomatic resulting in her current condition of ill-being.

In contrast, Petitioner's treating physician, Dr. Lim, confirmed the presence of a C5-6 herniation with spinal cord compression with overall moderate stenosis after reviewing her MRI films. He opined that Petitioner had spinal cord compression secondary to an acute herniated disc at C5-6 that caused her ongoing symptoms since February of 2016. Dr. Lim noted that Petitioner's pathology was directly related to her accidents at work noting that her subjective complaints and physical examination findings correlated. Dr. Lim could not state specifically which accident caused her condition but testified that the cumulative trauma to her cervical spine caused the disc herniations and subsequent condition of ill-being. Dr. Lim had testified at deposition that the MRI showed two herniated discs, C5-6. C6-7 (C6-7 eccentric to the left).

The opinions of Dr. Lim is more persuasive given the totality of this record. Petitioner had no prior complaints or treatment to the neck or back before her accidents at work. Between her accidents she underwent continuous treatment at Respondent's hospital or with its physicians. She had an ongoing condition with increasing symptomatology after her first, and second, accident that included radicular symptoms into the left upper extremity correlating to her left sided disc herniations and the spinal cord compression noted by Dr. Lim. The opinions of Dr. Lim are fully supported in the evidence and history and more persuasive than Dr. Hsu opinions. The opinions of Dr. Hsu are not persuasive in this case given the two undisputed accidents at work, lack of prior symptoms or treatment, uninterrupted medical treatment after both accidents, and lack of review of Petitioner's MRI films.

As to the surveillance video, Petitioner is observed dancing and holding a tray of food at one point, but not engaging in physical activities beyond her restrictions.

Thus, the Commission finds that Petitioner met her burden of proving an ongoing causal relationship between the undisputed accidents at work, her current condition of ill-being, and the need for further treatment as ordered by Dr. Lim. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence, and, herein, affirms and adopts the Arbitrator's finding as to causal connection.

Temporary Total Disability Benefits

As to issue of temporary total disability (TTD), the Commission finds that Petitioner was off work from Respondent's employment for a period of 37 and 4/7th weeks (April 7, 2016 through

April 10, 2016, May 2, 2016 through January 15, 2017) at \$350.07 per week. (total TTD \$13,152.63) The Commission herein, affirms and adopts the Arbitrator's decision regarding the temporary total disability benefits totaling \$13,152.63. Respondent entitled to credit for TTD paid of \$10,602.12

However, as to Petitioner's claim of testified that during her concurrent employment at the restaurant, the Commission notes that Petitioner began losing time from work on November 27, 2016 when she was placed on sedentary restrictions. Mr. Weinstein (from Miller's Ale House), who is not employed by Respondent, testified that he was involved with that ensuring that Petitioner was given work within her restrictions after she was placed on restrictions in the spring of 2017. The Commission notes that Petitioner was working for Advocate in Rosemont under sedentary work restrictions making slightly more per hour at that time.

Petitioner had concurrent employment with Miller's Ale House at the time of the accident. Petitioner began losing time from that employer November 26, 2016. She then returned to work at Miller's February 5, 2017 (while still on sedentary restrictions). Petitioner, therefore, is entitled to TTD/TPD as to lost wages from Miller's November 26, 2016 through February 5, 2017 (10-1/7 weeks at \$194.74; total regarding Miller's concurrent employment \$1,975.22). Any claimed temporary total disability/temporary partial disability while employed by Miller's Ale House thereafter is denied.

Thus, the Commission, herein, affirms in part, and modifies in part as to the issue of temporary total disability/temporary partial disability as noted herein.

Medical Expenses/Prospective Medical Treatment

The Commission with the above finding of an ongoing causal connection to Petitioner's current condition of ill-being, in reliance on the opinions of Petitioner's treating physician Dr. Lim, further finds that Petitioner met her burden of proving entitlement to prospective medical treatment awarded by the Arbitrator. The record evidences the need for the care ordered by Dr. Lim for the further therapy and epidural steroid injections, as his last recorded recommendation; Petitioner would be a candidate for discectomy per Dr. Lim's June 24, 2016 record; Petitioner was to return after the ESI was done. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence, and, herein, affirms and adopts the Arbitrator's finding as to Petitioner's claim for medical expenses and prospective medical treatment as ordered by Dr. Lim.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$350.07 per week for a period of 37 and 4/7th weeks regarding lost time from Respondent, and the sum of \$194.74 per week for a period of 10-1/7 weeks (regarding lost time from Miller's Ale House [prior concurrent employment-TTD/TPD]), that being the period of

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temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall be given credit of \$10,602.12 for temporary total disability paid to Petitioner.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the physical therapy and epidural steroid injection to Petitioner's cervical spine that Dr. Lim has ordered, pursuant to Section 8(a) and subject to Section 8.2 of the Act.

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.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$25,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **OCT 29 2019**

BNF/jsf
6/20/19
045



Barbara N. Flores



Deborah L. Simpson

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16 WC 17562
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Marc Parker

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

RADOSAVAC, SLADANA

Employee/Petitioner

Case# **16WC017561**

16WC017562

ADVOCATE CHRIST HOSPITAL

Employer/Respondent

19IWCC0437

On 10/18/2017, 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 1.24% 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:

1838 RAYMOND M SIMARD PC
205 W RANDOLPH ST
SUITE B15
CHICAGO, IL 60606

2461 NYHAN BAMBRICK KINZIE & LOWRY
DANIEL J UGASTE
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Sladana Radosavac
Employee/Petitioner

Case # 16 WC 17561

v.

Consolidated cases: 16WC 17562

Advocate Christ Hospital
Employer/Respondent

19 IWCC0437

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brian T. Cronin**, Arbitrator of the Commission, in the city of **Chicago IL**, on **6/26/17**. 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. Is Petitioner entitled to any prospective medical care?
- L. What temporary benefits are in dispute?
 TPD Maintenance TTD
- M. Should penalties or fees be imposed upon Respondent?
- N. Is Respondent due any credit?
- O. Other _____

191WCC0437

FINDINGS

On the date of accident, **2/10/16**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned **\$41,099.22**; the average weekly wage was **\$824.92**.

On the date of accident, Petitioner was **33** years of age, *single* with **0** dependent children.

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

Respondent shall be given a credit of **\$0.00** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$0.00**.

Respondent is entitled to a credit of **\$0.00** under Section 8(j) of the Act.

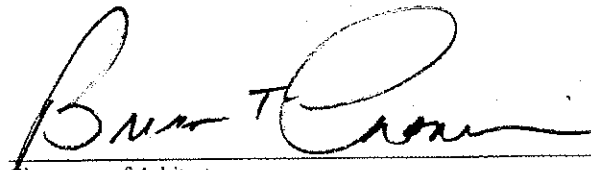
ORDER

The disputed issues of causation and prospective medical care are addressed in the decision for consolidated case 16WC 17562.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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



Signature of Arbitrator

10/18/17
Date

OCT 18 2017

**SLADANA RADOSAVAC v. ADVOCATE CHRIST MEDICAL CTR.
16WC 17561 & 16WC 17562****CONSOLIDATED STATEMENT OF FACTS**

On February 10, 2016 and April 6, 2016, Petitioner was employed by Respondent as an EDP technician. Her job consisted of transporting patients to and from their rooms to the imaging or surgical centers, and distributing equipment, carts, and other commodities to and from assigned areas. (Tr. 11, RX2) Petitioner testified that the job required much physical activity in lifting patients from their bed to a cart (stretcher) for transport. (Tr. 10) She would, at times, reach across the cart or bed to lift and move a patient. (Tr. 12) She pushed the cart by herself through the hospital turning corners and getting in and out of elevators. She transported 17-21 patients per day. (Tr. 11-12) Petitioner worked from 2:00 p.m. to 10:30 p.m. five days per week which included every other weekend. (Tr. 13)

Petitioner held concurrent employment at Miller's Ale House as a server/trainer. She testified that her work shift ended at 11:00 p.m. or at 1:00 or 2:00 a.m. on weekends. After work, she would drive home to sleep prior to starting her shift for Respondent at 2:00 p.m. (Tr. 13) At Miller's, she would serve food and drinks to patrons. (Tr. 14)

Petitioner testified that on February 10, 2016, she leaned forward to lift a heavy, comatose patient when she experienced pain and numbness in her whole body. (Tr. 15) Four hours later, she went to Respondent's emergency room where she complained of neck pain and bilateral shoulder pain that radiated to her lower back after assisting with pulling a patient onto a cart at work. (PX3) After he examined Petitioner, the ER physician prescribed light-duty work, Hydrocodone, and Cyclobenzaprine, and advised her to follow up with Employee Health. (PX3)

Petitioner saw Andrew Greene, M.D., at Christ Employee Health on February 11, 2016. Dr. Greene found muscle spasms over her lumbar and thoracic spine. Petitioner was tender to palpation of the shoulders. Dr. Greene diagnosed strains of the lumbar and thoracic spine. He advised Petitioner to stay home for two days and to return to work on light duty on February 13, 2016. He prescribed Flexeril and Ibuprofen. Petitioner continued on these medications and performed light-duty work until February 22, 2016, at which time Dr. Greene advised her to try to return to regular duty. On February 29, 2016, Petitioner advised Dr. Greene that she was performing regular-duty work with little difficulty. Dr. Greene gave Petitioner a home stretching program and discharged her from care. (PX5)

Petitioner testified that between February 29, 2016 and April 6, 2016 she experienced constant pain from her neck to low back with headaches while performing her usual job duties. (Tr. 18)

Petitioner testified that on April 6, 2016, as she was bending at the waist and leaning over a stretcher to pick up a patient, her previous pain recurred. (Tr. 19) That evening, she presented to Respondent's emergency room where the staff took the following HPI:

“Patient is a 33-year-old female history of upper back pain (sic), presenting with similar complaints. Patient states she was transferring a patient care on 4 PM (sic) she felt a ‘pull’ in her left upper back. Patient states this is similar to her pain in the past. Patient states the pain is now giving her a mild aching headache. Patient denies any neurological symptoms such as numbness, tingling, shooting pains down either extremity, vision changes. Patient was seen early February for similar complaints.” (PX3)

The ER physician examined her, gave her medication, and advised her to follow up with Employee Health. (PX3)

Petitioner saw Dr. Greene at Employee Health on April 7, 2016, who prescribed Ibuprofen, Norco, and light-duty work. Petitioner was off work on April 7, 8, 9 and 10 because Respondent could not accommodate the restriction of no use of the left arm. (Tr. 21) On April 11, 2016, Dr. Greene renewed her medications and prescribed physical therapy and light-duty work. Petitioner returned to work on a light duty basis. (Tr. 21, PX5)

On May 2, 2016, Petitioner complained to Dr. Greene of worsening neck pain that radiated through her left arm. Upon examining Petitioner, Dr. Greene found 90 degrees of abduction in the left arm. He continued his prescription for physical therapy and medication. He took Petitioner off work. (Tr. 25, PX5)

On May 23, 2016, Dr. Greene advised Petitioner to continue with the medication and physical therapy. He released Petitioner to light-duty work with no lifting over five pounds. Respondent did not provide work within those restrictions. (Tr. 25, PX5) Petitioner testified after May 2, 2016, she never returned to work for Advocate Christ Hospital. (Tr. 25)

On May 23, 2016, Dr. Greene gave Petitioner a list of orthopedic surgeons to see for treatment. She chose Dr. Lim but Respondent made an appointment for her to see Dr. Leonard, a shoulder surgeon. (Tr. 52)

On June 1, 2016, Michael Olschansky, Dr. Leonard's Physician's Assistant, noted Petitioner complaints of 10/10 neck pain radiating into the left arm. He ordered a cervical spine MRI and referred Petitioner to Dr. Lim. (PX4) MR images of the cervical spine were taken at Advocate Christ Hospital on June 15, 2016 was interpreted as showing a broad-based disc osteophyte complex at C5-6 with a larger focal central disc extrusion that mildly impresses upon

the ventral cord with mild canal stenosis. The interpretation of the images at C6-7 was that Petitioner had a focal central/left paracentral disc protrusion which contacts the adjacent cord.

(PX4)

Petitioner saw Richard D. Lim, M.D., for the first time on June 24, 2016. Dr. Lim noted radiating pain in the bilateral upper extremities and in the left leg. After a review of the MRI films of June 15, 2016, Dr. Lim ordered a cervical spine epidural steroid injection and released Petitioner to return to work with no use of the left arm and no overhead work. Petitioner returned to Dr. Lim on September 2, 2016, after having undergone the steroid injection to the cervical spine. Dr. Lim noted no improvement and discussed further options including surgery. Dr. Lim noted that Petitioner would like to try a second epidural injection. He prescribed Norco and a topical pain cream to see if it would help her symptoms. (PX4) Dr. Lim released Petitioner to return to work with no work above the shoulders. Petitioner testified that she was given a sheet of paper that described her restrictions after each visit and that a copy was placed next to the fax machine in Dr. Lim's outer office. Petitioner testified that she was given a fax confirmation after each visit. (Tr. 31) Petitioner further testified that Dr. Lim's staff gave her the file and the fax confirmation number each time she visited and allowed her to compare it with the number at Advocate Health to see if the fax went through. (Tr. 53-54)

On October 14, 2016, Petitioner obtained a second opinion from Howard An, M.D., at Midwest Orthopedics at Rush. (PX6) Dr. An reviewed the MRI films prior to his examination of Petitioner. Dr. An found some disc degeneration at C5-6 and C6-7 with some foraminal stenosis on the left. He did not find significant central canal stenosis or spinal cord compression. Dr. An recommended continued physical therapy and medication. Dr. An opined that should Petitioner

fail to respond to conservative care, she should receive a second epidural steroid injection, and, as a last resort, a cervical fusion from C5 to C7. (PX6)

Petitioner returned to Dr. Lim on November 23, 2016. Dr. Lim ordered a repeat MRI study of the cervical spine and prescribed Norco. Dr. Lim advised Petitioner to remain off work. (PX4) Petitioner testified that while she was off work for Respondent between May 2, 2016 and November 23, 2016, she continued to work at Miller's Ale House. She stopped working at Miller's on November 26, 2016, based on Dr. Lim's advice. (Tr. 35)

Petitioner underwent a repeat MRI on December 8, 2016 at Advocate Christ Hospital. The radiologist interpreted the images as showing, at C5-6, a degenerative uncovertebral disc bulge, central disc extrusion with inferior and superior migration that indents the ventral thecal sac and the anterior spinal cord. There was moderate central canal stenosis, and mild bilateral neuroforaminal stenosis. The radiologist interpreted the images as showing, at C6-7, a mild degenerative uncovertebral disc bulge, with no central canal stenosis, no neuroforaminal stenosis. (PX4)

Dr. Lim reviewed the repeat MRI on December 9, 2016 and recommended surgery to relieve the spinal cord compression secondary to an acute disc herniation at C5-6. He explained the potential risks associated with the condition left untreated, including paralysis. Petitioner was hesitant to undergo surgery at that time as she wanted to return to work. He advised her against any type of patient lifting or transfers or overhead work. He recommended that she perform low impact exercises such as the Stairmaster, exercise bike or swimming. He released Petitioner to a primarily sedentary-type job. (PX4)

Petitioner testified that on December 15, 2016, Dr. Wellington Hsu, an orthopedic surgeon, examined her. Petitioner testified that her workers' compensation benefits were stopped after she

saw Dr. Hsu. As she is the head of the household, and lives by herself, she began looking for another job. (Tr. 36) She saw Dr. Lim on January 4, 2017, who released her to a sitting job and renewed her medications.

Petitioner testified that she started employment with Advocate Health System as a Patient Service Representative on January 16, 2017. (Tr. 37) She works in a seated position while she answers phone calls from patients and helps them schedule appointments. (Tr. 37) She works an 8-hour day (8 a.m. to 4:30 p.m.), and a 40-hour week. on Mondays, Tuesdays, Thursdays, Fridays and Saturdays. (Tr. 38) She leaves her house at 5:30-6:00 a.m. so that she may avoid traffic. She testified that her morning commute is 1-1½ hours long. (Tr. 38-39). Petitioner testified that, previously, her shifts at Miller's Ale House ended at 11:00-11:30 p.m., which allowed her to get enough sleep prior to her 2:00 p.m. starting time at Respondent. However, the starting time of 8:00 a.m. at her new job did not allow her to get enough sleep to do both jobs. She testified that she would get home from Miller's at 12:00-12:30 a.m. Petitioner testified that she worked a few hours training staff at Miller's in February and March 2017. (PX1) She testified that she had to stop working the part-time hours at Miller's because it got very physical on her body and she was extremely tired going from one job to another. (Tr. 46-47)

Petitioner testified that she currently, her job in Rosemont has gotten "really heavy," and that she has to stand up several times a day to stretch. She testified that her left side - from the top of her shoulder through her arm to her feet - goes numb. She also feels tingling and pain, and a lot of cramping in her legs. She experiences numbness in the entire left side of her body. She sometimes types with only her right hand when she experiences numbness in her left hand. She experiences constant headaches. (Tr. 47-49). Petitioner wishes to proceed with the epidural injection and physical therapy that Dr. Lim has prescribed. (Tr. 50)

Deposition of Dr. Richard Lim
Petitioner's Ex. #8

Direct Examination

Richard D. Lim, M.D., testified that he is a board-certified spine surgeon. (PX8, p. 5) He first saw Petitioner on June 24, 2016, after she had undergone an MRI examination of the cervical spine. (Id., p. 7). He personally reviewed the films (Id., p. 10), which showed a central herniation at C5-6 causing spinal cord impingement and a herniated disc at C6-7, which was eccentric to the left. (Id., p. 7) Examination revealed a decreased range of flexion, extension and rotation of the cervical spine. Petitioner has 4/5 weakness in her left wrist. She also had a positive Spurling's test on the left, which is indicative for a pinched nerve. (Id., p. 10) After conducting an examination and reviewing the MRI films, Dr. Lim diagnosed Petitioner as having herniated disks at C5-6 and C6-7 with radiculopathy. (Id., p. 11) Dr. Lim causally related Petitioner's symptoms to her work injuries in February and April 2016. (Id.) Dr. Lim expressed concern that Petitioner demonstrated long tract signs in the left leg which was most likely associated with spinal cord impingement secondary to disc herniation. (Id.) He prescribed sedentary duty with no use of the left arm or overhead work and an epidural steroid injection. (Id., p. 13)

Petitioner returned to Dr. Lim on September 2, 2016 after receiving an epidural steroid injection. Petitioner complained that her symptoms had not improved. Her physical examination was unchanged. (Id.) Dr. Lim prescribed a topical cream to see if it helped, to be followed by a second epidural injection. (Id., p. 14) Dr. Lim restricted Petitioner from overhead work. (Id.)

Dr. Lim testified that Petitioner returned to him on November 23, 2016, and reported that she did not receive a second epidural steroid injection due to lack of authorization. (Id., pp. 15-16). Dr. Lim took Petitioner off work, prescribed Norco and ordered a repeat cervical spine MRI. Such repeat MRI was done on December 8, 2016. (Id., p. 16) Dr. Lim found, on December 9, 2016,

that the repeat MRI confirmed the presence of a C5-6 disc herniation with spinal cord compression. There was moderate stenosis and a C6-7 disc protrusion. (Id., p. 17) Dr. Lim recommended surgical intervention because of the spinal cord compression. He placed Petitioner on sedentary duty. (Id.)

Petitioner reported no improvement on January 4, 2017. Her examination and diagnosis remained unchanged. Dr. Lim again prescribed surgery based on an MRI that clearly showing a disc herniation with nerve root impingement and mild cord abutment of the disc. Dr. Lim explained that at the normal disc levels, the anteroposterior diameter of the spinal column was 12 millimeters. At the level with spinal cord impingement, the anteroposterior diameter was 6 millimeters due to significant neural impingement. (Id., p. 19) He ordered physical therapy and advised Petitioner that she could perform sedentary duty at a new position at a call center. (Id.)

Dr. Lim opined that Petitioner's subjective complaints correlate with her physical examination and MRI findings. (Id., p. 20) He also opined that a causal connection exists between the accidents of February 10, 2016 and April 6, 2016 and Petitioner's condition of ill-being. The cervical disc herniations were a direct result of the combined injuries. (Id., p. 21)

Cross-Examination

Dr. Lim testified that the C5-6 dermatome goes into the forearms to the dorsum or back side of the wrist and results in the weakness of the wrist that he found on examination. (Id., p. 24) The C6-7 dermatome goes to the triceps region. (Id., p. 25) Dr. Lim testified that Petitioner's disk herniations are central, which can produce symptoms bilaterally, although the C5-6 herniation is eccentric to the left. (Id., p. 25) Dr. Lim testified that he would recommend surgery to a patient if the radiculopathy followed the findings of the MRI studies. (Id., pp. 25-26)

Dr. Lim could not opine as to whether or not Petitioner was capable of working as a server in a restaurant without knowing her exact job duties (Id., p. 28) because some servers only take orders and other people bring the food out. (Id., p. 27) Dr. Lim stated that he has not seen Petitioner since January 4, 2017 at which time she did not want to have surgery. (Id., p. 30) Dr. Lim testified that his chart notes lead him to believe that he personally reviewed the two MRI examination films because he makes a notation when he reviews only the report. (Id., p. 31)

Re-Direct Examination

Dr. Lim opined that Petitioner has exhausted non-surgical care (Id., p. 32) but that it would not be unreasonable for her to attempt a second epidural steroid injection to relieve her symptoms. (Id., p. 33) He prescribed physical therapy on January 4, 2017 to ameliorate her symptoms. (Id., p. 34)

Deposition of Dr. Wellington Hsu Resp. Ex. # 1

Wellington K. Hsu, M.D., testified that he was board-certified as an orthopedic surgeon in 2010. (RX1, p. 5) He spends 10% of his work week performing examinations for litigation purposes. (Id., p. 6) He personally obtained a history from Petitioner on December 15, 2017, in which she complained only of neck pain and headaches with no pain elsewhere following her two work accidents. (Id., p. 8) On examination, Dr. Hsu found a decreased range of lumbar motion but he suspected that Petitioner did not give a full effort. (Id., p. 9) He found two positive Waddell signs. The neurological examination of the spine was grossly normal but he found that the strength shown on examination was inconsistent with her ability to walk. (Id., p. 10) The examination of the cervical spine was normal. (Id.)

Dr. Hsu reviewed the films and report of the MRI of June 15, 2016, but only the report and not the films of the repeat MRI of December 8, 2017. (Id., p. 11) Prior to his examination of Petitioner, he reviewed the office notes of Dr. Lim and Dr. An, as well as the surveillance videos. (Id.)

Dr. Hsu opined that the MRI study of June 15, 2016 showed posterior osteophyte complexes (bone spurs) at C5-6 and C6-7 that caused moderate canal stenosis at C5-6 and mild stenosis at C6-7. (Id., p. 12) He also reviewed surveillance video clips from May, July and November 2016 that showed Petitioner running errands, getting in and out of a car, bending, twisting, lifting and moving without difficulty, doing laundry, serving food and dancing at a bar. (Id.)

Dr. Hsu opined that the accidents of February and April caused soft tissue cervical strains. (Id., p. 13) He further opined that the symptoms that Petitioner described to him were secondary to a pre-existing cervical spondylotic condition that was in no way related to her work-related injuries. (Id.) Dr. Hsu disagreed with the notion that Petitioner had acute herniated discs. He opined that Petitioner suffers from unrelated bone spurs that have formed over a period of time (Id., p. 14) and that Petitioner suffered only cervical strains from her work injuries. (Id.) Dr. Hsu opined that Petitioner recovered from her cervical strains and was at MMI for her work-related injuries six weeks after the accident of April 6, 2016. Dr. Hsu testified that since Petitioner was still symptomatic from her unrelated cervical spondylosis, he would treat her with physical therapy and epidural injections with surgery as a last resort. (Id., p. 17) Dr. Hsu found that Petitioner could work in an unrestricted fashion based upon his examination. He did not need the surveillance video to reach that conclusion. (Id., p. 18)

Cross-Examination

Dr. Hsu testified that he performs 4-8 Section 12 examinations per week. He receives exam requests from third-party companies such as MES, Exam Works, Corvel and MCN. (Id., p. 22) The report in this case was addressed to a Ms. Salazar, who propounded a number of interrogatories to be answered by him. (Id., p. 26, Dep. Ex. 2)

Dr. Hsu testified that he did not review any medical records after the November 23, 2016 chart note of Dr. Lim. (RX1, p. 24) He did not review the films of the updated MRI of the cervical spine that were taken on December 8, 2016. (Id., p. 27) He did review the report and agreed with the conclusion of the radiologist. (Id., p. 28)

Dr. Hsu testified that compression of the cord from a moderate cervical stenosis could produce arm pain, neck pain, difficulty with balance or walking. (Id.) Dr. Hsu testified that Petitioner did not complain to him of a radiating left arm pain at the time of his examination, but he did not have his handwritten notes from the examination. (Id., p. 30)

Dr. Hsu testified that a spondylosis or bone spurs can be aggravated or made symptomatic by trauma. (Id, pp. 31-32) If Petitioner were his patient, he would send her for physical therapy and perhaps a second epidural injection.

Re-Direct Examination

Dr. Hsu opined that the accidents of February 10, 2016 and April 6, 2016 did not aggravate her spondylosis based on the low impact mechanism of the accidents, as well as on the symptoms described and activity performed after those injuries. (Id., p. 33) Dr. Hsu saw no evidence of any cervical spine condition prior to the two accidents. (Id., p. 34)

Re-Cross Examination

Dr. Hsu opined that the two accidents did not cause pre-existing conditions to become symptomatic. It is not his testimony that the spondylosis coincidentally and spontaneously became symptomatic on the dates of accident. (Id., p. 35) He considered each of these accidents to be a low impact accident, as opposed to high impact accident, such as a rollover car accident. (Id., p. 35)

Further Re-Direct Examination

Dr. Hsu opined that the work-related injuries caused soft tissue injuries and that at some point the soft tissue injuries resolved and that her unrelated spondylosis was currently responsible for her continued symptoms. (Id., p. 37)

Brett Weinstein

Mr. Weinstein testified that he was Petitioner's manager at Miller's Ale House. (Tr. 93) Weinstein testified that Petitioner advised him of her occupational injuries at Advocate as early as February 2016. Petitioner brought restricted-duty slips, which Weinstein implemented; he made sure Petitioner followed the restricted-duty guidelines. (Tr. 98) Weinstein modified her job so that she did not carry anything heavy. (Tr. 100) Petitioner was terminated in December 2016 and April 2017, because the scheduling computer automatically terminates any employee who does not schedule a shift for 30 days. (Tr. 106)

On cross-examination, Weinstein stated that Petitioner requested modified work after her injuries at Christ Hospital. As a server, Petitioner had the option of serving dinners one plate at a time. (Tr. 108) Weinstein testified that although Respondent tailored Petitioner's job duties to

whatever the doctor's note said, they would not be able to provide modified-duty work for someone with a "no work" restriction, or a "sitting work only" restriction from his or her doctor. (Tr. 109)

Catherine Love

Ms. Love testified that she has been the manager of the Patient Transport and Equipment Distribution Department for 15 years. (Tr. 112) Petitioner was one of her employees. There is light-duty work available within her department. (Tr. 114) Love testified that she will always accept a light-duty associate because the injured employee's wages are charged to workers' compensation and are not taken out of her department budget. (Tr. 122) Love takes her directives on light-duty issues from Kim Salazar, who is the manager in charge of workers' compensation. (Tr. 122). If Salazar gave Love paperwork that Petitioner could work in her department, she would provide light-duty work as long as she could keep Petitioner in the department. (Tr. 122-123) Love testified that she was not provided a note stating Petitioner could return to work after September 2016. (Tr. 123)

Cross-Examination

Love testified that she never communicated a light-duty job or the availability of light duty directly to Petitioner unless the job were sent to her by Kim Salazar. The light-duty slips went to Salazar and she would then contact Love to implement the light-duty work. (Tr. 133) Love does not contact injured employees to notify them to come in for light-duty work. She believes Salazar is the one who communicates the availability of light duty to injured employees. (Tr. 134) Everything concerning light duty is routed through Salazar. (Tr. 134) Love did receive an email from Salazar on November 21, 2016 communicating a transitional work agreement for Petitioner. Love believed Salazar was also sending such agreement to Petitioner. Prior to November 21, 2016,

she had last received a transitional work note from Salazar concerning Petitioner in April 2016.

(Tr. 135)

Surveillance Films

Respondent offered surveillance video of Petitioner serving food at Miller's Ale House, doing laundry at a laundromat, running miscellaneous errands, and dancing at a bar. (RX2, RX3) Petitioner was shown bending approximately 45 degrees at the waist, picking up a jug of liquid laundry detergent, lifting pieces of laundry a little above shoulder level, and pushing a young woman in a wheelchair. The video was taken over several months in 2016. The last date of surveillance was November 10, 2016.

FINDINGS OF FACT & CONCLUSIONS OF LAW 16WC 17561 AND 16WC 17562 (CONSOLIDATED)

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

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to the accidental injuries of February 10, 2016 and April 6, 2016.

The Arbitrator finds the opinions of Richard D. Lim, M.D., that Petitioner's disc herniations at C5-6 and C6-7 are causally related to the combined injuries, to be persuasive. (PX8, p. 21) Dr. Lim testified that Petitioner's subjective complaints of a radiating cervical pain with numbness correlate directly with the disc pathology based upon his understanding of spinal cord compression, disc compression and radiculopathy. (PX8, p. 20). The Arbitrator also finds that Dr. Lim's opinion is consistent with the chain of events.

A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove

a causal nexus between the accident and the employee's injury. *International Harvester v. Indus. Comm'n*, 93 Ill. 2d 59, 63-64 (1982)

In the case at bar, there is no history of any pre-existing complaints or medical care relating to the cervical spine. Prior to the accident, Petitioner worked full time for Respondent and as a server at Miller's Ale House on her days off from Respondent. She sustained two accidents to her cervical spine for which she has received consistent medical care up through the date of arbitration. Petitioner has never returned to her pre-accident baseline condition of well-being.

Moreover, there is no evidence of any intervening, non-work-related injury to Petitioner's cervical spine that broke the causal chain.

The Arbitrator notes that Dr. Lim's curriculum vitae states that he is President-Elect of Respondent, Advocate Christ Medical Center. (PX8, Dep. Ex. 1, p. 2)

The Arbitrator finds the opinion of Wellington K. Hsu, M.D., that Petitioner sustained cervical sprains which resolved six weeks after the accidents, to be unpersuasive. (RX1, p. 13) Furthermore, the Arbitrator finds unconvincing the testimony of Dr. Hsu that Petitioner's current symptoms are the result of an unrelated cervical spondylotic condition that became symptomatic "at some point" after she received treatment for her soft tissue injuries. (RX1, p. 36). Both Dr. Lim and the radiologist at Respondent's hospital viewed the repeat MRI and found that an extruded disk, and not an osteophyte complex, indented the thecal sac and the anterior spinal cord.

Dr. Hsu's opinion is also contrary to the chain of events which shows a condition of well-being followed by two accidents that resulted in consistent symptoms in the neck and left arm.

(J) WERE THE MEDICAL SERVICES THAT WERE RENDERED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

Petitioner submitted the bill of Dr. Lim in the amount of \$161.72 for follow-up visits on January 4, 2017 and April 5, 2017. (PX9) Respondent objected to liability. (Tr. 151)

Based on his findings and conclusions on the issue of causation, the Arbitrator finds that Petitioner is entitled to receive from Respondent \$161.72 for the medical services rendered to her by Dr. Lim, pursuant to Section 8(a) and subject to Section 8.2 of the Act.

Petitioner submitted the bill of Midwest Orthopedic Consultants in the amount of \$3,224.98 for a topical analgesic compound cream, flurbiprofen, which was prescribed by Dr. Lim on September 2, 2016 to help relieve Petitioner's pain. (PX8, p. 14, PX10) Respondent submitted into evidence a utilization review report that was authored by Grace Hunter, D.O., an osteopathic physician. Dr. Hunter is board-certified in physical medicine and rehabilitation. (RX4) Dr. Hunter, citing ODG guidelines, non-certified payment for the medication. Dr. Hunter wrote:

"There is little to no research to support many of these agents. Any compounded product that contains at least one drug (or drug class) that is not recommended is not recommended. The use of these compounded agents requires knowledge of the specific analgesic effect of each agent and how it will be useful for the specific therapeutic goal required. Custom compounding and dispensing of combinations of medicines that have never been studied is not recommended, as there is no evidence to support their use and there is potential for harm." (RX4)

There is no evidence that Petitioner actually applied the flurbiprofen topical cream.

There is no evidence that Dr. Lim contacted Dr. Hunter to discuss the matter.

Based on the foregoing, the Arbitrator denies payment of \$3,224.98 by Respondent to Petitioner for a topical analgesic compound cream, flurbiprofen, which was prescribed by Dr. Lim.

(K) IS PETITIONER ENTITLED TO PROSPECTIVE MEDICAL CARE?

Dr. Lim testified that it would not be unreasonable to attempt a second epidural steroid injection and more physical therapy prior to surgery. (PX8, p. 33) Dr. Lim recommended surgical intervention because of the spinal cord compression.

Dr. Hsu, setting aside the issue of causal connection, testified that if Petitioner were his patient, he would prescribe more physical therapy and send Petitioner for a second epidural injection. (RX1, p. 32) Dr. Hsu would consider surgery to be a last resort after Petitioner had exhausted conservative care. (RX1, p. 31)

The Arbitrator notes that Dr. Lim and Dr. Hsu agree on the best course of treatment for Petitioner.

Based upon his findings and conclusions on the issue of causation, the Arbitrator finds that Respondent is liable for prospective medical care in the form of additional physical therapy and a second epidural steroid injection, as prescribed by Dr. Lim.

(L) WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Petitioner did not claim any temporary disability benefits following the first accident of February 10, 2016, case number 16WC 17561. (AX1)

For the second accident of April 6, 2016, case number 16WC 17562, the parties stipulated that Petitioner had an average weekly wage of \$817.22 that included her average weekly wage of

\$525.11 from Respondent combined with her average weekly wage of \$292.11 from her concurrent employment at Miller's Ale House. (AX2)

Petitioner was authorized off work from April 7, 2016 through April 10, 2016 (4/7 week) by Dr. Greene at Employee Health (PX5) and is entitled to TTD benefits for that period.

Petitioner testified that she was again taken off work by Dr. Greene at Employee Health on May 2, 2016 and then placed on light duty on May 23, 2016. (PX5)

On June 1, 2016, P.A. Olschansky at Midwest Orthopedic Consultants (PX4) took Petitioner off work until Dr. Lim saw her on June 24, 2016. (3-2/7 weeks). Petitioner came under the care of Dr. Lim on June 24, 2016, who prescribed light-duty work until November 23, 2016 at which time he took Petitioner off work. (Tr. pp. 33-34) On December 9, 2016, Dr. Lim released Petitioner to a sitting job.

Dr. Hsu examined Petitioner on December 15, 2016 and opined that Petitioner could have returned to regular work from her cervical strain injury approximately six weeks after the accident. The Arbitrator, having found that Dr. Hsu's causal connection opinions are not persuasive as to the nature of the injuries sustained, finds Dr. Hsu's opinion as to the attainment of maximum medical improvement to be unconvincing.

The Arbitrator viewed the surveillance videos and does not find any instance where Petitioner exceeded her light-duty restrictions or demonstrated any activity that exceeded her stated limitations to her treating doctors. However, from a layman's point of view, the Arbitrator finds that Petitioner did not demonstrate any pain behaviors such as grimacing, stretching, or rubbing her neck, left arm or left hand, or "shaking out" her left hand.

Petitioner testified on direct examination that she stopped working at Miller's Ale House because of the toll it was taking on her and the shortened hours of sleep. She testified that on the

nights that she worked, she did not leave Miller's Ale House until 11:00-11:30 p.m. However, on cross-examination, Respondent asked her about six instances in which she clocked out before 11:00 p.m. (Tr. 56-58)

With regard to her home address, Petitioner testified as to the discrepancy between her testimony on direct and the paperwork she completed for Miller's Ale House in February 2017. Petitioner testified that she lived in Wheeling temporarily - - in January and February of 2017. (Tr. 58-60, 80-81)

Petitioner testified that she continued working at Miller's Ale House from May 2, 2016 to November 26, 2016. Brett Weinstein, her manager, testified that Miller's could accommodate the restrictions from Dr. Lim with the exception of the off-work restriction of November 23, 2016 and the sitting restriction of December 9, 2016. (Tr., p. 109)

Respondent paid Petitioner TTD benefits from November 23, 2016 through December 22, 2016. (Tr. 140)

The issue presented is whether Respondent made light-duty work available to Petitioner from May 2, 2016 through November 22, 2016 (29-2/7 weeks) and from December 9, 2015 through January 15, 2017 (5-3/7 weeks). Petitioner testified that she was given a sheet of paper that described her restrictions after each visit and that a copy of that sheet was placed next to the fax machine in Dr. Lim's outer office. Petitioner testified that she was given a fax confirmation after each visit. (Tr. 31)

However, at arbitration, Petitioner did not produce such fax confirmations.

Petitioner further testified that Dr. Lim's staff gave her the file and the fax confirmation number each time she visited and allowed her to compare it with the number at Advocate Health

to see if the fax went through. (Tr. 53-54) The Petitioner did not know to whom the modified or off-work slips were faxed.

The Arbitrator notes that the off or restricted-duty work slips submitted into evidence by Petitioner (PX4) and by Respondent (RX5) indicate that the insurance company was Advocate Risk Management and that the contact person there was Kim Salazar, whose fax number appears on every such slip.

The Arbitrator makes the reasonable inference that the staff for Dr. Lim, who is President-Elect of Respondent, faxed Petitioner's work restriction slips to Respondent.

Catherine Love, Petitioner's department manager, testified that Ms. Salazar is the manager of workers' compensation for Respondent. (Tr. 139) Love testified that she had light-duty work available for Petitioner but that she must take her directions from Kim Salazar, manager of workers' compensation, as to whom light-duty work is made available. (Tr. 122) Love testified that she never communicated a light-duty job to Petitioner unless being told to do so. (Tr. 133) The standard procedure was that the light-duty work slips were sent to Kim Salazar, who would then contact Love to implement the light duty. (Tr. 134) Love testified that everything concerning light-duty work is routed through Salazar. (Tr. 134) Love did receive an email from Salazar concerning light-duty work for Petitioner on November 21, 2016, which was two days before Dr. Lim took Petitioner off work completely. (Tr. 134) Prior to that, Love testified that she last received an email from Salazar concerning light-duty work for Petitioner in April 2016.

Respondent did not call Kim Salazar to testify as to any offers of light-duty made to Petitioner. Although Love had modified work available to Petitioner, Respondent's procedure, according to department manager Love, was that offers of modified-duty originated from Salazar. Love did not hear from Salazar from April 2016 to November 21, 2016.

Petitioner testified that after she was given light-duty restrictions on April 18, 2016, she did not think to call the hospital to see if they had any work for her as of September 2, 2016. (Tr. 55-56) Petitioner testified that Kim Salazar left a voice mail message for her, but instead of returning to work, she saw Dr. Lim, who changed her restrictions from no working above the shoulder to completely off work. (Tr. 65-66)

On December 9, 2016, Dr. Lim released Petitioner to return to work at a sitting job. Respondent offered no evidence that such work was offered to Petitioner and Weinstein testified that Miller's could not provide sitting-only work. Petitioner started a sitting job within the Advocate Health System on January 16, 2017. Petitioner lost time from working at Miller's beginning on November 26, 2016 and carrying through February 5, 2017, when she returned to work, contrary to her sitting job restrictions. Petitioner worked at Miller's for six weeks from February 6, 2017 until March 19, 2017, when she quit because work became very painful for her and she had a lack of sleep. Petitioner submitted her payroll records from Miller's for the period in question. (PX1) Her earnings at Miller's were as follows:

Pay Period Ending	Gross Earnings
02/12/2017	\$30.94
02/19/2017	\$24.75
02/26/2017	\$91.58
03/03/2017	\$50.74
03/19/2017	\$59.74
03/25/2017	\$45.13
	\$302.88

Petitioner did not work at Miller's during the week of March 6 through March 12, 2017.

Based on the above, the Arbitrator finds that Petitioner is entitled to receive from Respondent the following amounts in temporary total disability and temporary partial disability:

For lost earnings from Respondent:

- 1. Temporary total disability benefits of \$350.07 per week from April 7, 2016 through April 10, 2016 (4/7 weeks) \$200.04
- 2. Temporary total disability benefits of \$350.07 per week from May 2, 2016 through January 15, 2017 (37 weeks) \$12,952.59
- Total TTD due from employment at Respondent:** **\$13,152.63**

For lost earnings at Miller's Ale House:

- 1. Temporary total disability benefits at \$194.74 per week from November 27, 2016 through February 5, 2017 (10-1/7 weeks) \$1,975.25
- 2. Temporary total disability benefits at \$194.74 per week from March 6, 2017 through March 12, 2017 (1 week) \$194.74
- 3. Temporary total disability benefits at \$194.74 per week from March 26, 2017 through June 26, 2017 (13-2/7 weeks) \$2,587.32
- Total TTD due from Miller's Ale House employment:** **\$4,757.31**

Temporary Partial Disability benefits as follows:

	Period Ending	Average Weekly Wage	Earnings	2/3 Lost Wages
1.	02/12/2017	\$292.11	\$30.94	\$174.11
2.	02/19/2017	\$292.11	\$24.75	\$178.24
3.	02/26/2017	\$292.11	\$91.58	\$133.69
4.	03/03/2017	\$292.11	\$50.74	\$160.91
5.	03/19/2017	\$292.11	\$59.40	\$155.14
6.	03/26/2017	\$292.11	\$45.13	\$164.65

Petitioner is entitled to a total TPD amount of **\$966.74**.

CONCLUSION AS TO ISSUE "L"

Petitioner is entitled to receive from Respondent TTD and TPD benefits that total **\$18,876.68**, as shown above.

Respondent is entitled to a credit in the amount of **\$10,602.12** for TTD benefits previously paid to Petitioner.

Brian T. Cronin

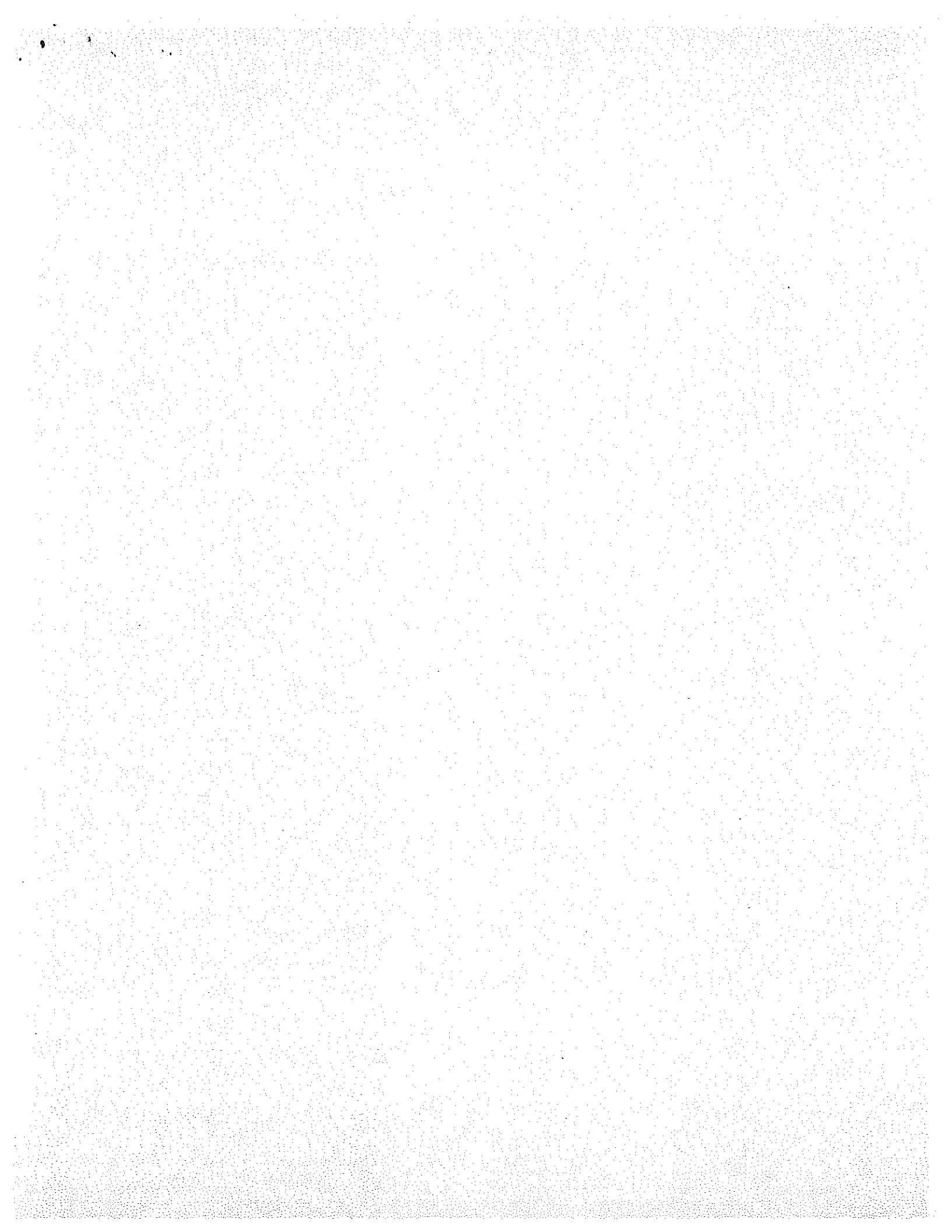
Brian T. Cronin
Arbitrator

19 IWCC0437

10-18-17

Date

19 IWCC0437





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

RADOSAVAC, SLADANA

Employee/Petitioner

Case# **16WC017562**

16WC017581

ADVOCATE CHRIST HOSPITAL

Employer/Respondent

19IWCC0437

On 10/18/2017, 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 1.24% 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:

1836 RAYMOND M SIMARD PC
205 W RANDOLPH ST
SUITE #15
CHICAGO, IL 60606

2461 NYHAN BAMBRICK KINZIE & LOWRY
DANIEL UGASTE
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Sladana Radosavac
Employee/Petitioner

Case # 16 WC 17562

v.
Advocate Christ Hospital
Employer/Respondent

Consolidated cases: 16WC 17561

19 IWCC0437

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brian T. Cronin**, Arbitrator of the Commission, in the city of **Chicago IL**, on **6/26/17**. 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. Is Petitioner entitled to any prospective medical care?
- L. What temporary benefits are in dispute?
 TPD Maintenance TTD
- M. Should penalties or fees be imposed upon Respondent?
- N. Is Respondent due any credit?
- O. Other _____

191WCC0437

FINDINGS

On the date of accident, 4/6/16, 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 \$42,945.11; the average weekly wage was \$817.22.

On the date of accident, Petitioner was 33 years of age, *single* with 0 dependent children.

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

Respondent is entitled to a credit of \$10,602.12 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$10,602.12.

Respondent is entitled to a credit of \$0.00 under Section 8(j) of the Act.

ORDER

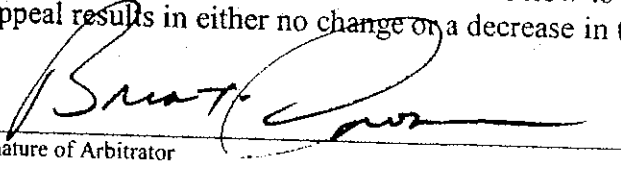
1. Respondent shall authorize and pay for the physical therapy and the epidural steroid injection to Petitioner's cervical spine that Dr. Lim has ordered, pursuant to Section 8(a) and subject to Section 8.2 of the Act.
2. Respondent shall pay \$161.72 (PX9) to Petitioner for the treatment rendered by Midwest Orthopedic Consultants, pursuant to Section 8(a) and subject to Section 8.2 of the Act.
3. Respondent shall pay Petitioner temporary total disability benefits, in accordance with Section 8(b) of the Act, of \$350.07 per week for 37-4/7 weeks for the periods commencing April 7, 2016 through April 10, 2016 (4/7), and from May 2, 2016 through January 15, 2017 (37 weeks) for her employment with Respondent.
4. Respondent shall pay Petitioner temporary total disability benefits, in accordance with Section 8(b) of the Act, of \$194.74 per week for 24-3/7 weeks for the periods commencing November 27, 2016 through February 5, 2017 (10-1/7 weeks); commencing March 6, 2017 through 12, 2017 (1 week), and March 26, 2017 through June 26, 2017 (13-2/7 weeks) for her employment at Miller's Ale House.
5. Respondent shall pay Petitioner temporary partial disability benefits, as provided in Section 8(a) of the Act, of \$966.74 as calculated in issue (L) of the attached Findings of Fact & Conclusions of Law.
6. Respondent shall be given a credit of \$10,602.12 for temporary total disability benefits that have been paid to Petitioner.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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.

19IWCC0437

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



Signature of Arbitrator

10/18/17
Date

IC ArbDec19(b)

OCT 18 2017