ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC010460
Case Name	John D Lantz v. Rochelle Foods, Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0419
Number of Pages of Decision	18
Decision Issued By	Carolyn Doherty, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Gregory Szul
Respondent Attorney	Paul Coghlan

DATE FILED: 11/1/2022

/s/Carolyn Doherty, Commissioner
Signature

Special Concurrence: /s/Christopher Harris, Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

John D. Lantz,
Petitioner,

vs. NO: 15 WC 010460

Rochelle Foods, Inc.,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, with the changes stated as follows.

The Commission additionally addresses the issue of the admissibility of Dr. Sliva's narrative report, as properly preserved on Review before the Commission by the Petitioner. The Commission notes that Section 16 clearly does not apply to reports prepared by treating providers for use in litigation.[1] The report in question was a letter drafted by Dr. Sliva to Petitioner's attorney, wherein Dr. Sliva answered specific questions prepared by the attorney. As such, the report was obviously prepared by the treating provider for use in litigation and is therefore not admissible. [2]

Regardless of the opinions of Dr. Sliva, the Commission finds no causal connection for any of Petitioner's alleged conditions of ill-being based on other evidence and testimony properly admitted into the record. Petitioner has a documented history of chronic back pain and prior fusion surgery. He was actively treating for cervical, upper back and lower back pain as recently as eight days before the work accident. On the date of accident, Petitioner only complained of headache,

[1] "The records, reports, and bills kept by a treating hospital, treating physician, or other treating healthcare provider that renders treatment to the employee as a result of accidental injuries in question, certified to as true and correct by the hospital, physician . . . shall be admissible without any further proof as evidence of the medical and surgical matters stated therein . . . This provision does not apply to reports prepared by treating providers for use in litigation." *See* 820 ILCS 305/16 (West 2020).

[2] *See also* Earnest Warren v. Cozzi Iron & Metal 8 IWCC 1490; 2008 Ill. Wrk. Comp. LEXIS 1384 (December 22, 2008) (addressing whether it was proper to admit Respondent's Exhibit C, Dr. Lichtor's letter to Petitioner's attorney and finding the exhibit was received improperly pursuant to Section 16 which cures foundation concerns but provides that said provision is not applicable to reports prepared by treating providers for use in litigation, which is what Dr. Lichtor's report is).

neck pain, and vomiting to the orthopedic provider and the emergency room. The day after the accident, Petitioner reported injuring his neck at work and complained of neck pain and headache, as well as back pain, described as chronic along with a history of disc disease and surgery. However, Petitioner was not treated for any back pain complaints the day after the accident. Rather, he underwent a CT scan of the cervical spine and CT of the brain and was admitted to the ICU for eight days to treat an unrelated brain bleed. The day after he was discharged from his stay in the ICU, Petitioner returned to the ER with complaints of back pain which he described as "worsened," but without any reported work-related mechanism. Lastly, the Commission does not find the causal connection testimony of Dr. Coe to be persuasive because he did not review records prior to the work accident, nor did he examine or interview Petitioner. Further, Dr. Coe, an occupational medicine physician, stated that if the diagnosis and treatment is neurological or neurosurgical, that would be in Dr. Garg's wheelhouse in terms of specialty—not his. Thus, the Commission also relies on the opinions of Dr. Garg, a board-certified neurologist, who examined Petitioner twice and concluded Petitioner's current conditions of ill-being were not related to work accident.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on June 13, 2022 is hereby affirmed and adopted with the changes stated herein.

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

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

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. 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

November 1, 2022
o: 10/20/22
CMD/jjm
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

SPECIAL CONCURRENCE

I write separately because Dr. Sliva's narrative report was correctly admitted into evidence by Petitioner's failure to interpose an objection to Respondent's Exhibit 3.[3]

It is indisputable that Section 16 mandates that narrative reports prepared exclusively for trial are inadmissible. (820 ILCS 305/16 (West 2020)). However, that is not the final step in addressing the issue raised in this review as, absent an objection, otherwise inadmissible evidence "is to be considered and given its natural probative effect as if it was law admissible." *Cummings v. IWCC*, 2022 IL. App (1st) 210956WC-U, P30 *(*citing *Town of Cicero v. Industrial Comm.*, 404 Ill. 487, 495 (1949)). The majority's broad statement of inadmissibility of the report stops short of addressing Petitioner's failure or disinclination to object to the introduction of the narrative report in Respondent's Exhibit 3.

There is no dispute in the record that Petitioner knew that the narrative report was included in subpoenaed medical records[4], and Petitioner knew that the report had been specifically included in the tender of Respondent's Exhibit 3.[5] The Arbitrator was correct to the extent that the narrative report had already been entered into evidence by the time the hearing proceeded to the tender of Respondent's Exhibit 11 into evidence. It is also notable that in seeking review of the Arbitrator's evidentiary ruling, Petitioner makes no reference to Respondent's Exhibit 3 in his brief, or his rationale for having not objected to its admission in the first place.

I nonetheless agree with the majority opinion that the balance of evidence and testimony in the record, disregarding Dr. Sliva's narrative report, is more than sufficient to support the Commission's finding of no causal connection for any of the Petitioner's alleged conditions of ill-being.

/s/ *Christopher A. Harris*
Christopher A. Harris

3 "Mr. Coghlan: Respondent would offer what's been marked as Respondent's Exhibit 3 for identification. They are the records of the Rockford Spine Center.

Mr. Szul: No objection.

The Arbitrator: Admitted." (Trans. at 76).

4 "The Arbitrator: Is it already in the records contained within the context of the subpoenaed documents that have already been admitted?

Mr. Coughlan: Yes, it is.

Mr. Szul: That's true because the subpoena gets the entire chart…" (Trans. at 91.)

5 "Mr. Szul: I thought it was in your Respondent's Exhibit 3." (Trans. at 93).

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC010460
Case Name	LANTZ, JOHN D. v. ROCHELLE FOODS INC.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Gregory Szul
Respondent Attorney	Paul Coghlan

DATE FILED: 6/13/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 7, 2022 1.71%

/s/Frank Soto, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Kane**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JOHN D. LANTZ
Employee/Petitioner

v.

ROCHELLE FOODS LLC
Employer/Respondent

Case # **15** WC **10460**

Consolidated cases: _____

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 **Frank Soto**, Arbitrator of the Commission, in the city of **Geneva**, on **March 23, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☒ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **9/17/2014**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**51,916.80**; the average weekly wage was $**820.63**.

On the date of accident, Petitioner was **52** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**.00** for TTD, $**.00** for TPD, $**.00** for maintenance, and $**.00** for other benefits, for a total credit of $**.00**.

Respondent is entitled to a credit of $**N/A** under Section 8(j) of the Act.

ORDER

- Compensation denied. See attached findings of fact and conclusions of law.

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.

By: /o/ Frank J. Soto
Arbitrator

JUNE 13, 2022

Findings of Fact

John D. Lantz (hereafter referred to as "Petitioner") testified that on September 17, 2014 he was employed by Rochelle Foods (hereafter referred to as "Respondent") as a mechanic. He had been employed by Respondent for 2-3 years. Petitioner testified that his job as a line mechanic involved tearing down and then re-assembling equipment, as well as performing repairs and preventive maintenance. *(R. 11).*

Petitioner testified that on September 17, 2014 he was replacing 2 pumps when "I was stretched as far as I could and I was just completely using my body to pull it, and then I tried twisting it to get it up in there and get it in place and then something just popped. My body shook. I don't know what gave way. My body just popped." (R. 22). Petitioner further testified that as a result of the incident "basically my neck, I couldn't hardly move it. You know you watch them TV shows about concussions. They throw a concussion grenade and you are hearing muted sounds. That's what it was. For about five minutes. I couldn't hear. *(R. 23).*

Petitioner was taken to the company nursing station. He stated that when he got there "The safety guy and the plant doctor were in there. I was in a chair like this, not sitting back, not leaning back, but I was in a chair and I couldn't move my neck. My eyes were watered. I told them I can't move. I am in a lot of pain here. They sat there and observed me for 15 minutes at least, and then all of a sudden, I said I am going to need a bucket. I am going to puke. I didn't take a break. When I did go upstairs to take a leak, I took two bites of my hamburger cold, and that's what came up in the bucket and then I got the dryness and tears started coming. They were just sitting there looking at me. I don't want to ruin my safety record or whatever. Before that a lot of my mechanic buddies found out what happened. They are all behind me and I didn't even know it. I turned around like this and I said what are you guys going to do. We got to do something here. The guys said, goddammit, take him to the emergency room because they were watching me." *(R. 25-26).*

The described incident coincided with an admittedly unrelated medical condition, a cerebral hemorrhage event, also referred to as a "brain bleed." *(R. 49).* Petitioner conceded that the unrelated brain bleed condition was serious and resulted in substantial medical treatment commencing on the date of the alleged accident herein and led to an inpatient stay involving 8 days in the intensive care unit. *(R. 49).* Petitioner also had ongoing medical problems, including both neck and back problems, and had treated for various issues including neck and low back pain as recently as 8 days prior to the alleged accident of September 17, 2014. *(R. 47).*

Petitioner had a prior lumbar back surgery, more specifically a L4-L5 & L5-S1 fusion, which was performed by Dr. Sliva on December 13, 2010. Petitioner continued to treat for low back pain, as well as neck pain and other complaints between 2010 and up until the time of this occurrence. *(R. 11-12, RX3).*

Petitioner's medical treatment show that Petitioner complained of low back and neck pain 8 days prior to his September 9, 2014 work incident. On September 9, 2014, Petitioner presented to CGH Medical Center with complaints of diffuse pain involving his hands, neck, upper and lower back, shoulders, hips, and knees on and off for many years which were slowing getting worse. *(RX7).*

Following the subject event of September 17, 2014, Petitioner initially was seen at Rockford Orthopedic Associates (n/k/a OrthoIllinois). Petitioner related a history of taking out 2 heavy pumps and when he was tightening the bolts to put them back in he "was suddenly unable to hear." He complained of neck pain, headache and also stated that he "vomited four times on the way here." Due to the nature of his complaints, Petitioner was referred to an ER via ambulance for further work up. *(PX1).*

Petitioner was transported to OSF Saint Anthony Medical Center ("SAMC") ER via ambulance. Upon arrival at SAMC Petitioner complained of neck pain that started that morning approximately 4 hours ago when he was at work and twisted his neck wrong. He stated that the pain was in his upper neck and was causing a headache. Petitioner denied pain his back. He further stated that he had no history of prior injury or trauma to his neck but he did have a history of a lumbar fusion. A CT scan was performed of Petitioner's cervical spine which showed an acute cervical strain but was essentially normal. Petitioner was prescribed Flexeril and Hydrocodone and was given home care instructions on how to treat a cervical sprain. Petitioner was taken off of work until his next follow-up appointment, which was scheduled for October 27, 2014. *(PX2).*

Petitioner testified that following his release from the SAMC he went home where he continued to experience severe pain. The following morning, his girlfriend took him to the ER at KSB Hospital ("KSB"). *(R. 30).*

Petitioner presented to the ER at KSB and related a history of injuring his neck and twisting his body in an unusual way. Petitioner also reported dizziness and vomiting at the time of the subject occurrence. Petitioner complained of pain in his low back, with shooting pains down his legs as well as headache and neckache. Petitioner was noted to have a history of chronic low back pain with prior surgery and he also had an MRI of his low back the prior year. A CT scan of the lumbar spine was performed which revealed post-surgical changes with screws and artificial disks at L4-to S1 but was otherwise negative. A CT scan of the brain was performed, which revealed a diffuse bilateral subarachnoid hemorrhage ("SAH"). Due to that finding, the Petitioner was initially transferred back to SAMC, and then to St. Francis Medical Center ("SFMC") in Peoria later that same day because, according to Petitioner, SFMC was better equipped to deal with the SAH condition. *(R. 32, PX3).*

The records of SFMC of September 18, 2014 indicate that the Petitioner presented in a delayed fashion with subarachnoid hemorrhage. He stated that on Wednesday morning while working he was bent down and twisted his neck, then experienced intense neck pain followed by the development of a severe headache. He stated that he awoke that morning with continued nausea, headache and "now bilateral sciatica and low back pain." Petitioner was admitted to the hospital and spent several days in the ICU unit. While he was an inpatient, he underwent a battery of diagnostic testing including CT scans of the head and brain, CT scan of the lumbar spine, and a CT angiogram of the brain. He was ultimately discharged on September 25, 2014. *(PX4).*

Petitioner testified that his low back pain was worsened by the days he was immobilized in the ICU unit at SFMC, stating "I had been in bed so long in critical care, that when I took that walk around and got back home, I think my back had really felt it because I laid stationary for eight days in ICU. I went back to Dixon for my back, neck pain." *(R. 50).*

The day after his discharge from SFMC, September 26, 2014, Petitioner again presented to KSB, where he was initially evaluated and then admitted to the hospital. Petitioner was an inpatient at KSB from September 26, 2014 through October 1, 2014. Petitioner treated for a variety of conditions at KSB including subarachnoid hemorrhage and back pain. An angiogram was performed. Petitioner was given a series of medications which included Lisinopril, Paroxetine, Hydrocodone, Gabapentin, and Lorazepam. *(RX4).*

On September 27, 2014, Petitioner was examined at KSB by Dr. Osmani who noted that he had a history of treating Petitioner. Dr. Osmani noted Petitioner was experiencing significant anxiety and complaining of a headache; but indicated that it was not any worse than usual. Dr. Osmani reviewed the cerebral angiogram Petitioner underwent on September 19th and found to be normal although it was believed Petitioner had vasospasm. Dr. Osmani recommended that Petitioner obtain a neurology consult the following Monday from Dr. Mohammad. *(RX4).*

On September 29, 2014, Petitioner was seen by Dr. Osmani at KSB. Dr. Osmani noted that Petitioner appeared to be doing well and all his vital signs were stable. Physical examination was unchanged and Petitioner was

ambulating much better, although Petitioner was insistent on continuing with IV pain medication for his spondylosis. Dr. Osmani notes that he is not convinced that Petitioner needs IV medications for his spondylosis and believes Petitioner could be treated with physical therapy as an outpatient. Dr. Osmani indicated that he is going to wait for the neurologist's consultation with Petitioner and await further recommendations. *(RX4).*

Petitioner was seen by neurologist Sulaiman Mohammad that same date at KSB, September 29, 2014. Petitioner related a history of low back pain, as well as headaches and neck pain, to Dr. Mohammad who did not find any evidence of significant neurological deficits related to the subarachnoid hemorrhage. Dr. Mohammad recommended Petitioner continue with the medications prescribed by his primary care physician for his back pain. *(PX5, RX4).*

On September 30, 2014, Petitioner was again seen by Dr. Osmani at KSB. Dr. Osmani noted that Petitioner "refused to be discharged yesterday (September 29th). Apparently, Petitioner first indicated that he did not have a ride home; but then stated that his back pain is getting steadily worse and was radiating into his right leg. Dr. Osmani noted that if for any reason Petitioner has to be discharged, "he will just go home and return to the emergency room for pain control." Dr. Osmani's examination of Petitioner was again unremarkable; although Dr. Osmani opines that since Petitioner has a history of chronic back pain and that he has had surgery in the past, it is likely that Petitioner may have a prolapsed disc. Dr. Osmani ordered an MRI and requested Dr. Mohammad's assistance for Petitioner's pain management. *(RX4, PX5).*

On September 30, 2014, Petitioner underwent an MRI of his lumbar spine at KSB Hospital. The MRI revealed status post spinal fusion of L4 through S1 levels. Hardware was in place. There was no significant central neural formainal stenosis or residual or recurrent disc material seen. The MRI also revealed progressive spondylosis involving L1 through L4, with L3-L4 being the most affected. *(RX4).*

On September 30, 2014, Petitioner was re-evaluated by Dr. Mohammad. Due to the fact that Petitioner is currently on several different medications including Demerol, Tramadol, Hydrocodone, Gabapentin, Dilaudid, Ibuprofen and Lorazepam; Dr. Mohammad explained to Petitioner that this could cause an elevation in intracerebral pressure which could be detrimental to someone with a history of subarachnoid hemorrhage. Dr. Mohammad recommended that Petitioner instead undergo an epidural or facet injection for pain relief. Petitioner was advised to undergo another CT scan to further evaluate the subarachnoid hemorrhage, especially due to the amount of pain medication Petitioner was currently taking. *(RX4).*

On November 12, 2014, Petitioner followed-up at CGH Medical Center with Dr. Buddaraju with respect to his joint pains. Petitioner advised that he has been off of work for the last 2 months, and currently complains of pain in the lower back, mostly on the right side, for the last month. Petitioner advised his pain is constant. Petitioner was diagnosed with acute chronic back pain status post-surgery, degenerative disc disease, cervicalgia, cervical spondylosis, probably fibromyalgia syndrome, osteoarthritis in the hands and osteoarthritis in the knee. Petitioner advised he wanted to be weaned off of Gabapentin, as such Dr. Buddaraju recommended same. Dr. Buddaraju also continued Petitioner on Tizanidine, started Petitioner on Norco, continue Ibuprofen as needed, and use warm packs. Petitioner was advised to follow-up in one month. *(RX7).*

Petitioner testified he returned to work in approximately November of 2014. *(R. 35).*

On December 9, 2014, Petitioner followed-up with Dr. Buddaraju at CGH Medical Center. Petitioner advised that he returned to work on 11/27/2014. Petitioner continued to complain of back pain which he stated is intermittent and varies in intensity; worse when he is sitting and walking. Petitioner further complained of pain in the left knee and stated that he had seen Dr. Hernandez with regard to his knee. Petitioner was taking Tylenol 3, Norco, Tizanidine, and Ibuprofen as needed. Dr. Buddaraju continued Petitioner on his current medications

and advised him to use compounded cream, warm packs, and to continue with exercises as tolerated. Petitioner was advised to follow-up in 6 months. *(RX7).*

On March 3, 2015, Petitioner presented to Dr. Christopher Sliva with complaints of neck and back pain with weakness and difficulty with walking. Dr. Sliva noted that Petitioner was last seen in May of 2011 and previously underwent an L4 to sacrum fusion with complete resolution of his leg pain. Petitioner advised Dr. Sliva that he developed subarachnoid hemorrhage back on September 17, 2014 after a work accident. Dr. Sliva noted that he discussed with Petitioner the natural history of cervical, thoracic and lumbar degenerative disk disease as well as transition syndrome in the lumbar spine. Dr. Sliva ordered an MRI of the cervical and thoracic spine to rule out a disk herniation or spinal stenosis with regard to Petitioner's neck and mid back pain, and weakness in his upper extremities in addition to some difficulty with his balance and coordination. *(R. 36, PX9, RX3).*

On March 31, 2015, Petitioner followed-up with Dr. Sliva with respect to the recently completed MRIs of the cervical and thoracic spine. Petitioner's primary complaints on this date were of mid back pain. Petitioner complained of pain in his mid-thoracic spine with radiation to the left greater than right plank regions. Petitioner also complained of low back and neck pain, but stated that it is not nearly as bothersome to him as the symptoms in his mid-back. Dr. Sliva noted that Petitioner has cervical and thoracic degenerative disease noted on the MRIs with a disk prominence most notable at T8-T9. Dr. Sliva recommended a T8-9 thoracic epidural injection. Petitioner indicated he would like to undergo same. Dr. Sliva stated it was unlikely Petitioner will require surgical intervention with reference to his thoracic spine. Petitioner was advised to follow-up on an as-needed basis. *(PX9, RX3).*

On April 16, 2015, Petitioner presented to Dr. Thomas Dahlberg at Rockford Pain Center on the referral of Dr. Sliva. Petitioner was referred to Dr. Dahlberg for the recommended epidural steroid injection for his right T8 radicular pain. Petitioner also reported some pain into his right buttock consistent with right S1 joint discomfort. Dr. Dahlberg noted that Petitioner is well known to him since he has been seeing him since June of 2011 for low back pain. Dr. Dahlberg noted that the right lower extremity radicular pain had resolved following surgery with Dr. Sliva; and Petitioner is referred back by Dr. Sliva for the new complaints. Dr. Dahlberg noted Petitioner had two distinct problems: bilateral T8 distribution radicular pain, more left than right; and right S1 joint related pain. Dr. Dahlberg injected the right S1 joint; and also provided a thoracic epidural steroid injection at T8-T9. *(PX8, RX5).*

On April 28, 2015, Petitioner followed-up with Dr. Dahlberg at Rockford Pain Center. Petitioner indicated that he did not receive much relief from the last injection and had questions regarding his back pain and whether or not it may be due to his kidneys. Dr. Dahlberg noted that, after examining him, he does not believe the pain is related to the kidneys and opined that the pain seems much more consistent with a T8 radiculopathy as well as some right S1 joint reproducible pain. Dr. Dahlberg recommended another S1 joint injection and a repeat T8-T9 thoracic epidural steroid injection; Petitioner agreed to undergo same. *(PX8, RX5).*

On May 14, 2015, Petitioner followed-up with Dr. Dahlberg at Rockford Pain Center. On that date, Petitioner was 2 weeks status-post his last visit, at which time a right SI joint injection and a T8-T9 thoracic epidural steroid injection was performed. Petitioner indicated that he did not get any significant lasting improvement from these injections. Upon examination, Dr. Dahlberg noted Petitioner had clearly defined tenderness into his right flank, as well as a radicular component in the T8 distribution on the right side that gives him significant pain, especially when he is forward flexing. Dr. Dahlberg noted Petitioner had both a reproducible and non-reproducible component to his discomfort. Dr. Dahlberg also noted that Petitioner has a number of tattoos. On this date, Dr. Dahlberg noted that a right parathoracic muscle trigger point injection would be performed. Dr. Dahlberg diagnosed Petitioner with "two distinctly different problems", that being a right parathoracic myofascial pain and a right T8 distribution radicular pain. *(PX8, RX5).*

On June 11, 2015, Petitioner followed-up with Dr. Dahlberg one-month status post his last visit. Petitioner advised that the thoracic epidural steroid injection given at his last visit did give him significant improvement of his right T8 radicular pain for the duration of the anesthetic but he is still having significant pain in his thoracic and low back, as well as radiation around the right T8 distribution. Dr. Dahlberg noted that, at this juncture, he does not see anything that is clearly amenable to surgery, and as such, put Petitioner on Norco, Relafen and a Medrol Dosepak. *(PX8, RX5).*

On July 7, 2015 Petitioner was seen for a §12 examination at the request of Respondent with Dr. Rishi Garg. *(R. 37).*

On July 8, 2015, Petitioner followed up with Dr. Dahlberg. Petitioner complained of mid-thoracic back pain radiating around his ribs bilaterally. Petitioner also stated that he has a decreased appetite and feels bloated in his abdomen. Dr. Dahlberg noted that Petitioner underwent MRI scans of his cervical, thoracic and lumbar spine. The cervical MRI showed mild multi-level foraminal stenosis but no significant central or foraminal stenosis at any level, most prominent at T8-9 where he had moderate central canal and left foraminal stenosis but no significant lesions. The MRI of Petitioner's lumbar spine showed some L5 bilateral spondyloysis with secondary anterior L5-S1 spondylolisthesis. There was a disk bulge in addition to apparent focal herniation of the right lateral foramen, asymmetrically severe right foraminal stenosis with potential impingement upon the right L5 nerve root but noted the majority of the Petitioner's pain is thoracic in distributions, more in the T6, T7, T8 dermatoma distributions. Dr. Dahlberg noted Petitioner had tenderness into his bilateral paraspinal musculature through the mid-thoracic spine. Dr. Dahlberg recommended Petitioner discontinue use of the Relafen and start physical therapy. Dr. Dahlberg's diagnosis was mid thoracic back pain with radiation into his upper abdomen bilaterally and the etiology was not clear. *(PX8, RX5).*

On October 20, 2015, Petitioner followed-up with Dr. Sliva. Petitioner reported little improvement of his symptoms, and also indicated that he recently had his gallbladder removed in September and now the pain that was radiating around his flank region has improved. Petitioner continued to complain of GI symptoms and that sitting or long period of time tended to make his symptoms worse, with pain at the T8 region as well as his right S1 joint region. Dr. Sliva diagnosed transition stenosis at L3-4 above an L4-5 fusion with lumbar scoliosis, cervical and thoracic degenerative disk disease, and a T8-9 disk protrusion. Dr. Sliva noted that Petitioner's transition stenosis could be contributing to his current symptoms and that he would like to have Dr. Dahlberg provide an L3-4 epidural steroid injection. Dr. Sliva noted that if Petitioner's symptoms do not improve after the injection, he would potentially be a candidate for an extension of his fusion up to L3. *(PX9, RX3).*

On October 27, 2015, Petitioner followed-up with Dr. Sliva after undergoing an L3-4 epidural steroid injection with Dr. Dahlberg that morning. He stated the injection did not provide him with much relief. Petitioner complained of right-sided low back pain with mid-back pain. Dr. Sliva recommended that Petitioner undergo another MRI of his lumbar spine to rule out any disk herniation and to assess the transition stenosis at the L3-4 level. *(PX9, RX3).*

On October 30, 2015, Petitioner underwent an repeat MRI of his lumbar spine.

He followed-up with Dr. Sliva on December 4, 2015. Dr. Sliva noted that as Petitioner's symptoms continue and that he will need to make a decision on whether or not his symptoms are severe enough to warrant surgical treatment, which would require a facetectomy on the right side and extension of his fusion up to the L3 level. Dr. Sliva further noted that surgery will not address all of his issues including his upper back pain as well as the back pain as this is purely a surgical treatment for the radicular complaints that he is experiencing. Lastly, Dr. Sliva noted that Petitioner is at a young enough age that if he continues to work as a mechanic with heavy

equipment, he may ultimately continue to have deterioration of his lumbar spine above the L3 level if he ultimately decides to have a fusion. *(PX9, RX3).*

On December 14, 2015 Dr. Sliva performed surgery consisting of an L3-4 posterior spinal fusion and interbody cage placement. *(R. 38, PX9, RX3).* Petitioner testified that the surgery "It may have helped a little bit but still got the pain. Still got sharp pains and then it's always a dull pain no matter which way I sit. There is always going to be pain there. It may have helped a little bit." *(R. 38-39).*

On December 23, 2015, Dr. Sliva issued a Narrative Report stating that the subject work injury can cause muscular injury and cause short-term myofascial pain; however, it is not the cause of his cervicothoracic and lumbar degenerative disk disease, nor is it the cause of the transition disease at L3-L4, above the spinal fusion. Dr. Sliva was also asked to comment on the relationship between Petitioner's current condition and the work activities that he performed as a line mechanic on September 17, 2015. Dr. Sliva responded by indicating that there was likely a short-term causal relationship between the lifting injury that Petitioner described; however, there is not a causal relationship for his ultimate need for surgery for the transition stenosis at the L3-L4 level. Dr. Sliva stated that Petitioner's mid-back pain that he experienced after his work accident, as well as the neck discomfort, can be attributable to the accident described, however, those symptoms would be short-term, no more than 3-4 months. *(RX3, RX11).*

On January 22, 2016, Petitioner followed-up with Dr. Sliva 6 weeks post-surgery. Petitioner reported some improvement in the buttock pain on the right side, but still noticed weakness in his bilateral legs. Petitioner stated his biggest complaint was persistent right-sided flank pain which he states has been ongoing since his September 2014 work injury. Dr. Sliva noted that Petitioner was evaluated extensively by Dr. Dahlberg and also underwent imaging studies of his thoracic spine which revealed mild degenerative changes. Dr. Sliva recommended that Petitioner begin a course of physical therapy and gave him a refill on medication. With regard to Petitioner's posterior flank pain, which is the pain Petitioner is most concerned about, Dr. Sliva noted that he cannot make a definitive explanation with regard to same and recommended Petitioner undergo a bone scan to rule out pathology in the rib itself. Dr. Sliva noted that if the bone scan is negative, he is going to send him back to see Dr. Dahlberg for further evaluation. *(PX9, RX3).*

On February 17, 2016, Petitioner followed-up with Dr. Dahlberg. Dr. Dahlberg noted that since he last saw Petitioner, Petitioner underwent an L3 to S1 fusion. Dr. Dahlberg opined the majority of his symptoms are coming from T8-T9 radiculopathy and noted that while he did not have any significant pathology within his cervical spine, he did have a left T8-T9 disk herniation seen in the past. Dr. Dahlberg recommended Petitioner undergo a repeat thoracic epidural steroid injection at the T8-T9 level, Petitioner agreed to undergo same. *(PX8, RX5).*

On March 15, 2016, Petitioner again followed-up with Dr. Dahlberg. Petitioner indicated that the steroid injection did not give him any significant improvement; however, his low back and leg pain is under much better control following his lumbar spine surgery performed by Dr. Sliva, but the area of thoracic back pain has been refractory to all treatments and there is no clear etiology of what is causing the pain. Dr. Dahlberg noted that some components of Petitioner's symptoms seem myofascial and others seem radicular, and further noted that Petitioner does have a T8-T9 disk herniation, but it is left-sided and the Petitioner's pain is all right-sided. Dr. Dahlberg referred Petitioner to myofascial therapy and gave him some information with regard to long-term pain management. Dr. Dahlberg also recommended a psychiatric evaluation with Dr. Jason Soriano for a possible implant of a dorsal column stimulator. *(PX8, RX5).*

On March 22, 2016, Petitioner followed-up with Dr. Sliva and continued to complain of right-sided flank pain which he stated was getting worse. Dr. Sliva noted that Petitioner's bone scan was negative and recommended Petitioner undergo a final thoracic MRI for consideration of a spinal cord stimulator. *(PX9, RX3).*

On April 7, 2016, Petitioner followed-up with Dr. Dahlberg. Petitioner advised that the myofascial therapy is not really helping. Petitioner stated that he follows-up with Dr. Sliva on 3/22/16. Dr. Dahlberg stated that he plans to await Dr. Sliva's recommendations. Dr. Dahlberg recommended Petitioner follow-up in 10 days to review Dr. Sliva's recommendations. *(PX8, RX5).*

On April 8, 2016, Petitioner followed-up with Dr. Sliva and to review the results of his thoracic spine MRI. Dr. Sliva confirmed the presence of thoracic spondylosis, but no evidence of nerve or spinal cord compression. Dr. Sliva noted that he does not believe any kind of surgical intervention of Petitioner's thoracic spine will help him and discussed with Petitioner that there are other potential etiologies that exist which can contribute to Petitioner's symptoms, but they are not spine related. Dr. Sliva advised Petitioner to follow-up with this primary care provider and Dr. Dahlberg with regard to optimizing his pain control. *(PX9, RX3).* Petitioner testified that Dr. Sliva released him from care on this date and referred him to Dr. Dahlberg for further care. *(R.39).*

On June 14, 2016, Petitioner followed-up with Dr. Dahlberg. Petitioner presented for a dorsal column stimulator trial for the treatment of his mid-thoracic back pain radiating down into his low back and buttocks. Dr. Dahlberg noted that Petitioner's pain has always been primarily right-sided; however, he does have intermittent left-sided pain. Petitioner underwent placement of the dorsal column stimulator on this date. *(PX8, RX5).* On June 17, 2016, Petitioner followed-up with Dr. Dahlberg 4-days after placement of the temporary dorsal column stimulator. Petitioner stated that he has had about 50% overall improvement with the stimulator. The leads were taken out and Petitioner was advised to think about whether he wants to proceed with permanent placement. *(PX8, RX5).*

On July 25, 2016, Petitioner presented to OrthoIllinois and was seen by Dr. Brian Braaksma to obtain a second opinion. Petitioner provided a history of low back pain which he stated was the result of a gradual injury while lifting a hydraulic motor. Dr. Braaksma diagnoses was that of intervertebral disc degeneration of the thoracic region; intervertebral disc displacement of the thoracic region; arthrodesis; radiculopathy of the thoracic region and low back pain. Dr. Braaksma noted that Petitioner has failed all non-operative treatment and indicated there is no surgical intervention that comes with any guarantees of back pain relief. Dr. Braaksma further noted that that the only surgical option, other than a permanent spinal cord stimulator implant, would be a spinal fusion, specifically, a T8-T9 posterior thoracic fusion with instrumentation. Dr. Braaksma indicated to Petitioner that there is a very real possibility that he will continue to have back pain after surgery and also reinforced the fact that surgery has, at best, a 50% chance of any improvement of his back, and also could potentially make him worse. Petitioner elected to undergo surgery. *(PX11).*

On September 21, 2016, Petitioner underwent surgery at Swedish American Hospital. The surgery was performed by Dr. Brian Braaksma and consisted of a posterior thoracic fusion at T8-9 and decompressive facetectomy and foraminotomy, left T8-9 for decompression of nerve roots. *(R. 40-41, PX11).*

On October 3, 2016, Petitioner followed-up with Dr. Braaksma. Petitioner advised his pain is controlled with the use of Oxycodone and states that he is doing worse in comparison to the last visit. Petitioner complained of pain at the incision site. He had not yet started physical therapy. Petitioner underwent x-rays of his lumbar spine on this date which showed normal alignment of the hardware and fusion. Dr. Braaksma noted that Petitioner is doing well overall except for some incisional pain that is reasonable well-controlled and no radicular complaints or myelopathy symptoms. Petitioner was continued on Norco for pain relief and issued work restrictions of no bending, twisting, or heavy lifting. Petitioner was advised to follow-up in 6 weeks. *(PX11).*

On November 21, 2016, Petitioner followed-up with Dr. Braaksma at OrthoIllinois with respect to his back. Petitioner is currently 8 weeks/5 days post-op and stated his pain is controlled with the use of Norco. Petitioner is doing better in comparison to his last visit. Petitioner complained of pain in his upper back and is not

currently undergoing therapy. Upon examination, Dr. Braaksma noted limited lumbar range of motion secondary to pain from recent surgery. Petitioner underwent x-rays on this date which revealed normal positioning of the hardware. Dr. Braaksma noted that Petitioner was very happy with the early post-operative results with resolution of his radicular pain. Dr. Braaksma continued Petitioner on work restrictions of no lifting more than 25 pounds and to advance as tolerated in physical therapy and was expected to be released to full duty in 6 weeks. *(PX11).*

On December 12, 2016, Petitioner followed-up with Dr. Braaksma. Petitioner indicated that his pain was controlled with the use of Norco and that he is doing about the same in comparison to the last visit. Petitioner had complaints of aching in his mid and lower back. He is currently undergoing physical therapy and performing home exercises. Upon examination, Dr. Braaksma noted limited lumbar range of motion secondary to pain from recent surgery. Petitioner underwent x-rays on this date which revealed normal positioning of the hardware. Dr. Braaksma noted that Petitioner is doing exceedingly well and there is no pain, radicular symptoms, or symptoms of neurogenic claudication and has achieved radiographic fusion Petitioner was instructed to resume usual activities within his pain threshold. Dr. Braaksma also discussed the potential risk of adjacent segment disease with this procedure. Petitioner testified that he was released from care on this date. *(R. 41, PX11).*

On October 20 2017, Petitioner returned to see Dr. Braaksma. Petitioner stated that his right leg gives out while walking. Petitioner advised he is not currently undergoing any therapy. Dr. Braaksma noted mild pain with left hip flexion and internal rotation, limited lumbar range of motion secondary to pain from recent surgery, guarding with range of motion, paraspinal tenderness and paraspinal muscle spasms. Dr. Braaksma also noted subjective pain and paresthesia of the thoracic region to bilateral flanks. Dr. Braaksma noted that Petitioner has had mild to moderate middle and low back pain especially with increase in activity level. The pain was described as radiating around the thoracic region and to the bilateral flanks but does not wrap around to the abdomen. Petitioner also complained of left-sided hip and groin pain and weakness. Petitioner advised he is currently seeking treatment for his left hip, which includes injections which he underwent with a Dr. Boutros. Dr. Braaksma recommended Petitioner undergo repeat MRIs of his thoracic and lumbar regions to evaluate for new or worsening neuro-compression. *(PX11).*

On November 3, 2017, Petitioner followed-up with Dr. Braaksma with regard to his back pain and to obtain the results of the MRIs he underwent on October 30, 2017. Petitioner's main complaint on this date was pain across his lower back and weakness to the left leg. Petitioner also complained of pain in the cervical region which is causing him headaches and dizziness, for which he is being treated by Dr. Collins at OSF Neurology. Petitioner advised he is doing about the same as he was at the last visit. Upon examination, Dr. Braaksma noted mild pain with left hip flexion and internal rotation, limited lumbar range of motion secondary to pain from recent surgery, guarding with range of motion; paraspinal tenderness and paraspinal muscle spasm. Dr. Braaksma also noted subjective pain and paresthesia of the thoracic region to bilateral flanks. Dr. Braaksma noted that Petitioner has complaints of neck pain and back pain without radiculopathy or significant claudication and that he is not interested in any type of surgical intervention at this time. Dr. Braaksma noted that he does not believe any surgery would be beneficial Petitioner anyway and recommended Petitioner undergo treatment with pain management and referred him for same. Petitioner was advised to follow-up as needed. *(PX11).* Petitioner testified that he was referred to Dr. Jones at Valley Spine and Pain care by Dr. Braaksma. *(R. 41).*

On November 27, 2017, Petitioner presented to Rockford Valley Pain Care Centers for an initial pain treatment evaluation pursuant to the referral of Dr. Braaksma. Petitioner testified that he treated at this facility for pain management from late 2017 until the middle of 2020, at which point he relocated to Florida and started seeing a pain management physician in Florida. *(R. 41-42).*

On August 27, 2019 Petitioner was again evaluated by Respondent's §12 physician, Dr. Rishi Garg.

Petitioner testified that he currently has a variety of complaints including pain shooting down his back, neck pain, headaches approximately twice a month which last about three days. He testified that he currently takes Norco and Cymbalta. He testified that he has difficulty bending and lifting. *(R. 43-45).*

On cross-examination, Petitioner conceded that he had low back and neck pain prior to the subject accident, and in fact had treated for both as recently as September 9, 2014, 8 days before the alleged work accident. *(R. 46-47).*

Expert Medical Testimony

Petitioner's §12 physician, Dr. Jeffrey Coe, testified on October 27, 2017. Dr. Coe is board certified in Occupational Medicine. Dr. Coe's involvement was limited to a records review for purposes of providing testimony. Dr Coe testified that Petitioner's two back surgeries were causally related to the alleged work accident. Dr. Coe conceded on cross-examination that since his involvement was limited to a records review, he was not able to take a history from Petitioner as to when the problems started, and how they may have changed after the alleged date of accident. *(PX12).*

Respondent's §12 physician, Dr. Rishi Garg, testified on April 16, 2019; and again, on November 20, 2020. Dr. Garg is a board-certified Neurologist. Dr. Garg testified that neither of Petitioner's two medical conditions, more specifically his "brain bleed" condition, and also his purported back injury, were related to his employment with Respondent. Dr. Garg opined that at the time of his examination on July 7, 2015, Petitioner was capable of continuing to work full duty without restrictions.

During his second deposition, Dr. Garg further testified that none of the additional treatment or alleged lost time subsequent to his first IME in 2015 was due to the alleged occupational accident herein. He testified that Petitioner was not in need of any further medical care and was able to work without restrictions as of the second IME, which was unchanged from his opinions expressed in his first deposition. *(RX1, RX2).*

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below:

With Respect to issue "C' whether sustained an accident that arose out of and in the course of employment, the Arbitrator finds as follows:

An injury is accidental within the meaning of the Act when it is traceable to a definite time, place, and cause and occurs in the course of the employment, unexpectedly, and without affirmative act or design of the employee. *Mathiessen & Hageler Zinc. Co v. Industrial Board, 284 Ill. 379 (1918).* The aggravation of a preexisting disease may be an accidental injury and compensable if it meets the requirements that the occurrence is traceable to a definite time, place, and cause. *Riteway Plumbing v. Industrial Comm'n., 67 Ill.2d 404 (1977).*

The Arbitrator finds Petitioner met his burden of establishing that there was an accidental injury as alleged and as supported by his testimony and contemporaneous medical records which establish that an accidental injury occurred which may have coincided with his brain bleed event of the same date.

Therefore, the Arbitrator finds that the Petitioner met his burden of proof to a preponderance of the evidence as to said issue; and finds that Petitioner sustained an accidental injury under the Act as alleged.

With Respect to issue "F" whether Petitioner's current condition of ill-being is causally related to his work accident of September 17, 2014, the Arbitrator finds as follows:

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current condition of ill-being can be said to have been causally connected to the work related injury and not simply the result of a normal degenerative process of a pre-existing condition. Caterpillar Tractor Co. v, Industrial Comm'n, 92. Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n,* 89. Ill.2d 432, 60 Ill. Dec. 629, 433 N.E.2d 671 (1982). When an employee with a preexisting condition in injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill.2d 193, 278 Ill. Dec. 70. 797 N.E.2d 665, (2003). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co., v. Industrial Comm'n.,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989).

The Arbitrator has carefully reviewed and considered all the evidence and finds Petitioner has failed to prove by the preponderance of the credible evidence that his current lumbar and/or thoracic spine conditions are causally connected to his work accident of September 17, 2014, as set forth more fully below.

Petitioner sustained a brain bleed event which either coincided with, or was triggered by, a serous cerebral "brain bleed" event. Petitioner was already receiving active medical treatment in relation to both his lumbar and cervical spine before this event, and Petitioner admitted that after he was admitted into the Intensive Care Unit for 8 days in relation to the brain bleed event, he attributed his back pain to the hospitalization stating he had pain "because I laid stationary for eight days in ICU." *(R. 50).*

It is not surprising that the Petitioner complained of back pain shortly after the accident, since he also had the same or similar complaints before the accident. The Arbitrator finds significant that Dr. Sliva, the treating surgeon, denied that there was any causal relationship between the work accident and Petitioner's lumbar surgery.

Petitioner presented the causal connection opinion of Dr. Coe. Respondent presented the causation opinion of Dr. Garg. The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them.

The Arbitrator does not find the opinions of Dr. Coe persuasive. The Arbitrator notes that Dr. Coe never examined Petitioner, never spoke to Petitioner nor reviewed Petitioner's prior medical records. (Px. 12, p. 29-30). Dr. Coe provided a records review which included reviewing only Petitioner's medical records after his September 17, 2014 work accident. The Arbitrator notes Petitioner received medical treatment involving his back and neck on September 9, 2014, 8 days prior to Petitioner's work accident. *(R. 46-47).* The Arbitrator finds Dr. Coe's opinions to be based upon guess, surprise or speculation regarding the onset of Petitioner's symptoms because Dr. Coe did not review Petitioner's prior medical records, including the treatment records from September 9, 2014, nor did Dr. Coe solicit a history of Petitioner symptoms and whether or not Petitioner's symptoms changed after his September 17, 2014 work accident. It is axiomatic that the weight accorded an expert opinion is measured by the facts supporting it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. Retirement Board*, 318 Ill.App.3d 507, 514-17 (First Dist. 2000).

The Arbitrator finds the opinions of Dr. Garg, the Section 12 examiner, to be more persuasive than the opinions of Dr. Coe. Dr. Garg opined Petitioner's back condition(s) were not causally connected to the accident. The Arbitrator notes that Dr. Garg's opinions, in part, are consistent with the opinions of Dr. Sliva, the treating

surgeon, who stated surgery he performed on in December of 2015 was not causally related to Petitioner's work accident.

Based upon the record as a whole, including the medical records admitted and the persuasive opinions of Dr. Garg and Dr. Sliva, the Arbitrator finds that Petitioner's condition of ill-being is not related to the accidental injury sustained on September 17, 2014. As such, compensation is denied and the remaining issues are moot and need not be addressed.

By: /o/ Frank J. Soto — June 10, 2022

Arbitrator — Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025441
Case Name	Jeffrey Geiken v. Hennig Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0420
Number of Pages of Decision	17
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	PATRICK MOORE
Respondent Attorney	Daniel Flores

DATE FILED: 11/1/2022

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse Accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JEFFREY GEIKEN,

Petitioner,

vs. NO: 21 WC 25441

HENNIG, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care and temporary total disability (TTD) benefits, and being advised of the facts and applicable law, reverses the Decision of the Arbitrator for the reasons stated below:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner began working for Respondent in April 2021. (T.11). He testified that he had dislocated his left shoulder 20 years prior while playing football when he was about eight to 10 years old. (T.11-12). Petitioner had not dislocated his left shoulder again since that time. (T.12; T.24). He had never dislocated his right shoulder prior to August 3, 2021. (T.12).

Petitioner worked as a welder for Respondent. "I built doors for the actual units that we build at Hennig. They're big outside units that power whole companies. I built the doors, and I built staircases like the one on the outside. They're called platforms." (T.12).

Petitioner arrived at work at 5:00 a.m. on August 3, 2021. He was not having any pain, discomfort or any other symptoms in either shoulder. (T.13). Petitioner's job duties on that date included assembling the staircases which comprised of a thousand pieces. (T.12-13). During the assembly process, Petitioner would have to flip and rotate the platform. He did not know how much the platform weighed but testified that it required two or three people to flip the platform. (T.13-15). Petitioner further testified that he had to reach overhead when flipping the platform. (T.13-14). He also performed welding work which required lifting the welding whip and his arm up to shoulder height, over his head or back behind his body – with his shoulder and arm externally

rotating or the back of his hand going away from his stomach and chest. (T.15). Petitioner testified that connecting two units together from underneath, drilling and taking railing measurements involved overhead reaching as well. (T.15-18).

Petitioner stated that he was working the entire time on August 3, 2021 – from 5:00 a.m. to 10:30 a.m. (T.19). He explained how he was injured:

> I had to go to the MSC machine which is where we get all our products like grinding disks and sanding, anything to do our work. I walked up to the machine; and right when I was entering my code and I opened the door, my shoulder popped out. I dropped to the floor. (T.19-20).

Petitioner stated that his right shoulder dislocated or popped out. (T.20). "I was on the ground. My boss was 10 feet from me. I asked him to come over there. Then he called the ambulance." (T.20).

Petitioner was taken by ambulance to Javon Bea Hospital. (T.20; Pet. Ex. C). The August 3, 2021 ED Triage Notes stated: "Patient in via EMS for shoulder pain. Patient reports he was typing at work when his left shoulder dislocated. No history of this. Patient arrives in sling by EMS." (Pet. Ex. C). The History additionally stated: "Patient reports that he was at work at his computer when he lifted his arm up, reports still below shoulder level when he felt a sudden pop and immediate onset of severe pain. States he fell to the ground secondary to the pain." (Pet. Ex. C). The emergency room record noted that Petitioner had no chronic medical problems. Petitioner reported some numbness and tingling in his hand and that he had been holding his hand in an elevated position to help control pain in his shoulder. (Pet. Ex. C).

X-rays were completed at the hospital and revealed a right shoulder anterior dislocation. Petitioner was given fentanyl and the physician performed a reduction. Petitioner's shoulder was placed in an immobilizer and he was prescribed Norco for significant pain. Petitioner was to follow-up with an orthopedic surgeon. "Patient works as a welder and his job requires lots of heavy lifting, was given work note." (T.20; Pet. Ex. C). Petitioner was allowed to return to work on August 13, 2021. (Pet. Ex. C).

Petitioner testified that he provided the work status to his employer, but that he continued to be off work as of the date of arbitration. (T.21). Petitioner was waiting for the worker's compensation carrier to approve an MRI so that he could return to work. (T.21). He testified that he was still experiencing shoulder pain and that his right shoulder had subsequently dislocated again. (T.21). Petitioner stated that within the first couple weeks, his right shoulder dislocated five or six times. (T.21-22). Petitioner was able to pop his shoulder back in himself. (T.22). He did experience flare-up pain when his shoulder would pop out. (T.22). Petitioner confirmed that the additional dislocations did not change his baseline pain. (T.22-23).

On August 6, 2021, Petitioner was evaluated by Physician Assistant Leah Simpson in the Orthopedic Surgery department of Mercyhealth. The office visit note stated that on August 3, 2021 Petitioner "was reaching for something when at work and noticed his right shoulder 'popped out'.

This has never happened on the right side, but states it has happened a couple of times previously on the left. He is left-handed." (Pet. Ex. B).

Physician Assistant Simpson noted Petitioner's treatment in the emergency room and that Petitioner currently complained of discomfort and pain, but no numbness or tingling. Physical examination demonstrated limited range of motion, diffuse swelling over the anterior and lateral shoulder and apprehension with palpation over the AC joint and proximal humerus. Physician Assistant Simpson reviewed the x-rays and her impression was status post right shoulder anterior dislocation. She recommended continued use of the shoulder immobilizer, Norco with the eventual transition to NSAIDs for pain management, and follow-up with Dr. Schneider for further management. (Pet. Ex. B).

Petitioner consulted with Dr. William Schneider, DO, on August 20, 2021. The office visit note documented Petitioner's right shoulder dislocation on August 3, 2021 at work and stated that Petitioner had dislocated his shoulder two more times this week. Dr. Schneider examined Petitioner and noted apprehension with any active movement and limited range of motion with guarding. X-rays were completed during the appointment and revealed no acute fracture or dislocation and no acute osseous abnormality. Dr. Schneider diagnosed Petitioner with injury and instability to the right shoulder. The office visit note stated: "Given his extreme apprehension, the acuity of his injury, and lack of ability to utilize both arms in his profession I feel that he would be best served by obtaining [an] MRI Arthrogram to rule out Labral injury with possible bony glenoid injury." Petitioner was to maintain his shoulder in the immobilizer. (Pet. Ex. B).

Petitioner clarified during cross-examination that his right shoulder dislocated while he was in the process of entering the code into the machine. (T.28-29). During re-direct examination, Petitioner explained that to enter the code he had to lift his arm "[r]ight above my head." (T.29).

Respondent sent Petitioner for a Section 12 examination with Dr. Ajay Balaram on September 1, 2021. (T.26). Dr. Balaram's evidence deposition was completed on December 21, 2021. (RX1). He is a board-certified orthopedic surgeon with the added qualification of being a hand surgeon. (RX1, pg. 8). Dr. Balaram provided a report detailing his findings from the Section 12 examination. (RX1, pgs. 8-9; RX2). He also issued an addendum report on November 15, 2021. (RX1, pg. 10; RX3).

Dr. Balaram noted that Petitioner was performing his job duties as a welder on August 3, 2021 and that he had dislocated his right shoulder while reaching into a machine to remove grinding pads. Dr. Balaram testified that Petitioner reported not lifting anything with his right arm but that he was simply reaching in front of him to get into a supply cabinet. (RX1, pgs. 11-12).

Dr. Balaram further noted similar examination findings in both shoulders including limited range of motion and positive signs of instability and impingement. (RX1, pgs. 13-14). Dr. Balaram reviewed Petitioner's medical records and a picture depicting the supply vending machine that had a digital touch-screen and sat five feet off of the floor. This photograph was not made part of the arbitration record. (RX1, pgs. 14-15). Dr. Balaram also reviewed x-rays of the right shoulder completed on September 1, 2021. He found no evidence of a fracture, dislocation or bony Bankart lesion. There was a small Hill-Sachs lesion which Dr. Balaram described as a finding of the

humeral head showing damage after a dislocation. The joint was well-positioned and there was no injury to the AC joint and no evidence of fragmentation of the bones. (RX1, pgs. 15-16).

Dr. Balaram diagnosed Petitioner with bilateral recurrent shoulder instability. He testified that shoulder instability could result from a systemic or whole body condition involving lax joints. The condition is often bilateral and a low energy mechanism of injury could be associated with recurrent instability. (RX1, pg. 16). Dr. Balaram stated that Petitioner's description of his injury on August 3, 2021 was not a sufficient mechanism to cause a shoulder dislocation without an underlying chronic disorder contributing to that condition. (RX1, pgs. 17-18). Dr. Balaram further testified that the reported mechanism of injury was similar to an activity of daily living. "[T]his wasn't an awkward shoulder position where the shoulder was pushed out to the side or turned backwards or even reaching behind him. This was a forward elevation of the shoulder, which is similar to activities of daily living." (RX1, pgs. 18-19).

Dr. Balaram next opined that Petitioner's medical treatment for his shoulder dislocation had been reasonable and necessary. "[T]he patient has a chronic underlying disorder that led him to have hyperlaxity and a chronic - - chronically unstable shoulder and so - - although the patient sustained this dislocation, it was appropriately treated with a reduction, and any further treatment would be attributed to the patient's chronic instability." (RX1, pg. 20). Dr. Balaram clarified: "I think the temporary exacerbation of the patient's dislocation was appropriately addressed with the closed reduction in the emergency department and any further treatment would be attributed to his chronic underlying condition." (RX1, pg. 21). Dr. Balaram stated that Petitioner would have reached maximum medical improvement (MMI) six weeks after the accident due to residual discomfort associated with the joint that would require some time to resolve. (RX1, pg. 22). He also believed that any work restrictions after Petitioner's shoulder reduction would be attributed to his chronic underlying condition. (RX1, pg. 23).

During cross-examination, Dr. Balaram agreed that as of the date of his deposition he was unable to rule out whether Petitioner had sustained any additional injuries as a result of his shoulder dislocation. Dr. Balaram testified that an MRI would be warranted to evaluate Petitioner's underlying instability as well as evaluating the possibility of other injured components in the shoulder. (RX1, pgs. 25-27). Dr. Balaram stated that Petitioner could work with restrictions while awaiting the MRI results. (RX1, pg. 26). With respect to the Hill-Sachs lesion he noted on the x-ray, Dr. Balaram explained that this condition could develop after a dislocation. "But, again, that would be a chronic dislocation. I did not see an acute Hill-Sachs injury associated with the patient's radiographs." (RX1, pg. 27).

Dr. Balaram additionally testified that in the context of an underlying instability, certain activities could make a dislocation more or less likely to occur. "Reaching to the side with your arm up in a 90-degree angle and rotated backwards is the position of dislocation that can occur in chronic instability. Reaching overhead in chronic instability should not dislocate the shoulder." (RX1, pgs. 28-29). Dr. Balaram agreed that if a patient performed repetitive external rotation with their arm behind them with a lifting load, that could contribute to aggravation of the underlying condition. (RX1, pg. 36). Dr. Balaram also indicated that rotator cuff tears could occur in the setting of chronic instability. (RX1, pg. 42).

The Arbitrator determined that Petitioner failed to prove that he sustained an accident that arose out of and in the course of his employment with Respondent. The Arbitrator concluded that Petitioner was not credible due to material inconsistencies between Petitioner's testimony and the evidence with respect to the mechanism of injury and Petitioner's right shoulder dislocation. The Arbitrator also noted that Petitioner was inconsistent with respect to the histories provided for his unrelated prior left shoulder dislocations. The Arbitrator thus found that Petitioner did not meet his burden on the issue of accident and denied benefits.

The Commission is not bound by the Arbitrator's findings. Our Supreme Court has long held that it is the Commission's province "to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *City of Springfield v. Indus. Comm'n*, 291 Ill. App. 3d 734, 740 (1997) (citing *Kirkwood v. Indus. Comm'n*, 84 Ill. 2d 14, 20 (1981)). Interpretation of medical testimony is particularly within the province of the Commission. *A.O. Smith Corp. v. Indus. Comm'n*, 51 Ill. 2d 533, 536-37 (1972). The Commission has considered all the testimony, exhibits, pleadings, and arguments submitted by the parties.

The Commission reverses the Arbitrator's Decision and instead finds that the evidence is consistent with respect to the mechanism of injury and the body part injured on August 3, 2021. The crux of the injury in this claim involved Petitioner reaching out with his right arm, and then up, but slightly below shoulder level, to enter a code into a keypad on a machine to access grinding pads. Petitioner sustained a right shoulder anterior dislocation and by the evidence, this was the first time he sustained this type of injury. The Commission does not find the histories as it pertained to the right shoulder so vastly different or wholly inconsistent. Based on the Arbitrator's credibility finding, the Arbitrator did not conduct further analysis as to whether Petitioner encountered an employment-related risk on August 3, 2021.

There is no genuine dispute that Petitioner was in the course of his duties when he dislocated his shoulder. In other words, Petitioner's injury "generally must occur within the time and space boundaries of the employment." *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 203 (2003). Respondent offered no evidence to rebut Petitioner's testimony that he was at work on August 3, 2021 at the MSC machine attempting to retrieve some tools for his work. Petitioner testified that his boss was 10 feet from him at the time of injury. Respondent did not call Petitioner's boss to rebut Petitioner's testimony.

With respect to the arising out of component, *Young v. Ill. Workers' Comp. Comm'n*, 2014 IL App (4th) 130392WC, is instructive. This case also deals with an injury following the act of reaching. In *Young*, the claimant was inspecting parts that were inside a deep box. The claimant testified that as he was bent over into the box and reaching deep down to retrieve a spring clip for inspection, he felt a pop in his left shoulder. The Appellate Court found that the claimant was performing acts that the employer might reasonably have expected him to perform so that he could fulfill his assigned duties, thus, the claimant's injury arose out of an employment-related risk and was compensable. *Id.* at ¶ 22. The Appellate Court further stated: "Whether claimant reached into a deep, narrow box only once or multiple times per day, he was, nevertheless, performing an act that was incidental to the fulfillment of his job-related duties at the time of his injury. Under these circumstances, claimant's injury was causally connected to his work." *Id.* at ¶ 24, *Contra Noonan*

v. Ill. Workers' Comp. Comm'n, 2016 IL App (1st) 152300WC (The Court did not find claimant's act of reaching to retrieve a dropped pen or the fact that he used a pen to fill out forms as an act distinctly associated with his employment).

In light of the foregoing, the Commission reverses the Arbitrator's Decision on the issue of accident. The preponderance of the evidence supports a finding that Petitioner sustained a work-related accident on August 3, 2021. Petitioner's act of reaching out with his right arm to enter a code into a keypad on a machine to access grinding pads was an act that Petitioner might reasonably have been expected to perform incident to his assigned duties for Respondent.

With respect to the remaining issues in this claim, the Commission clarifies for the record that this case appears before the Commission pursuant to Section 19(b) of the Act. This is evident by the parties' 19(b)-related filings and the relief sought in this case. Petitioner testified that he was awaiting authority for additional medical by way of an MRI of the right shoulder and by his Brief, Petitioner requested that this matter be remanded to the Arbitrator for a further determination of benefits if the Commission found in his favor. With that said, we turn to the evidence.

Petitioner injured his right shoulder while at work on August 3, 2021 and he was taken by ambulance from Respondent's facility to the hospital on that same date. There is no genuine dispute that Petitioner dislocated his right shoulder on August 3, 2021, which was reduced at the emergency room and which apparently continued to dislocate on its own multiple times. Petitioner's physician, Dr. Schneider, and Respondent's Section 12 examiner, Dr. Balaram, diagnosed Petitioner with instability of the right shoulder. Additionally, after examining Petitioner and conducting specific tests to check for instability, Dr. Balaram found evidence that Petitioner had this instability condition in both shoulders and he considered it an underlying chronic disorder.

The Commission finds that Petitioner's right shoulder dislocation was the result of the August 3, 2021 work accident. The evidence does not demonstrate that Petitioner's pre-existing condition alone was the cause of his injury given Petitioner's testimony as to his overall job duties as a welder for Respondent and the totality of the tasks he performed on August 3, 2021. While Petitioner's injury occurred while trying to enter a code into a machine, Petitioner testified that he had also been building platforms on the date of accident which involved overhead reaching, lifting his arm back behind his body or his shoulder and arm externally rotating. Dr. Balaram agreed that in the context of an underlying instability, these types of movements could make a dislocation more likely to occur.

Additionally, the Commission finds no evidence that Petitioner's right shoulder condition was so deteriorated to the point where any normal activity could have caused the injury. In fact, there is no evidence that Petitioner had any right shoulder complaints, injuries or treatment prior to August 3, 2021. It is not unreasonable to infer that Petitioner's work was *a* causative factor in the resulting condition of ill-being given no evidence of any prior issue with the right shoulder, Dr. Balaram's findings of an underlying condition and Dr. Balaram's explanation as to how certain movements and a low energy mechanism of injury could result in a shoulder dislocation in someone with this underlying condition. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 204-05 (2003).

Furthermore, the Commission is not persuaded by Dr. Balaram's opinion as to the temporary nature of Petitioner's injury and that Petitioner reached MMI six weeks after the accident. The Commission notes that Dr. Balaram evaluated Petitioner approximately four weeks after the work injury, and that by the record, Petitioner had been consistently and continuously symptomatic in his right shoulder and persisted with his complaints through the date of Arbitration (December 22, 2021). Dr. Balaram also acknowledged that there could be residual symptoms following a shoulder reduction as well as the possibility of additional injured structures after a dislocation.

In light of the foregoing, the Commission strikes the Arbitrator's finding that Petitioner's current condition of ill-being is not causally related to the August 3, 2021 work accident. There is no evidence that Petitioner's condition had stabilized at the time of Dr. Balaram's Section 12 examination and the extent of Petitioner's right shoulder injury remains unclear. The Commission therefore finds that the MRI of the right shoulder is warranted in this claim as recommended by Dr. Balaram as well as Petitioner's treating physician, Dr. Schneider, who also recommended the MRI to rule out any other injuries.

The Commission further finds that Petitioner is entitled to an award of medical bills and TTD benefits. Respondent disputed liability based on its position on accident and causal connection. Having found in Petitioner's favor, the Commission awards the medical bills contained in Petitioner's Exhibit A. The Commission finds the charges reasonable, necessary and causally related to the August 3, 2021 work accident. Additionally, Dr. Balaram opined that Petitioner's medical treatment for his shoulder dislocation had been reasonable and necessary. With respect to TTD benefits, the Commission notes that Respondent denied liability but did not dispute the TTD period. Again, having found in favor of Petitioner on the issues of accident and causation, the Commission awards Petitioner TTD benefits from August 4, 2021 through December 22, 2021, the date of Arbitration.

The Commission remands this case to the Arbitrator for further proceedings and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed on January 24, 2022, is hereby reversed and remanded to the Arbitrator for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay all reasonable, necessary, and related medical bills as evidenced in Petitioner's Exhibit A pursuant to Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is entitled to the recommended MRI of the right shoulder to be authorized and paid for by Respondent.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $458.71 per week for 20 1/7 weeks, from August

4, 2021 through December 22, 2021, that being the period of temporary total incapacity for work under Section 8(b) 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 other amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $15,300.00. 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 the Circuit Court.

November 1, 2022

/s/ *Christopher A. Harris*
Christopher A. Harris

CAH/pm
d: 9/8/22
052

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025441
Case Name	GEIKEN, JEFFREY v. HENNIG, INC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Patrick Moore
Respondent Attorney	Daniel Flores

DATE FILED: 1/24/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 19, 2022 0.37%

/s/ Paul Seal, Arbitrator

Signature

STATE OF ILLINOIS)

)SS.

COUNTY OF WINNEBAGO)

22IWCC0420

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jeffrey Geiken Case # **21 WC 025441**

Employee/Petitioner
v.

Hennig Inc.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Rockford on 12/22/21**. 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 prospective medical benefits?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☒ What is the nature and extent of the injury?
N. ☐ Should penalties or fees be imposed upon Respondent?
O. ☐ Is Respondent due any credit?
P. ☐ Other

FINDINGS

On **8/3/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

Timely notice of the alleged 8/30/21 accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the alleged 8/30/21 work accident.

In the year preceding the alleged injury, Petitioner earned **$11,144.34.** The average weekly wage was $**688.06.**

On the alleged 8/3/21 accident date, Petitioner was **27** years of age, **single** with **0** dependents under the age of 18.

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

Respondent ***has*** paid all appropriate charges for all reasonable, related 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

Petitioner failed to prove that he sustained an accident that arose out of and in the course of employment. Further, Petitioner's current condition of ill being is not causally related to the alleged 8/3/21 work accident.

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.

JANUARY 24, 2022

Signature of Arbitrator

STATEMENT OF FACTS

Petitioner began working for Respondent, Hennig Inc., in April of 2021. (T. 11). Petitioner worked as a welder. (T. 12). Petitioner was responsible for assembling doors, platforms and stairs for the units manufactured by Hennig Inc. (T. 12).

Petitioner testified that on 8/3/21, at 10:30 AM he was entering a code into the MSC machine, which is the machine that contains work products like grinding disks and sanding disks. (T. 19). Petitioner entered his code and opened the door when his right shoulder dislocated. (T. 20). Petitioner then fell to the ground. (T. 20). Petitioner's supervisor was 10 feet away and assisted Petitioner after he fell. (T. 20). An ambulance was called which brought Petitioner to the Javon Bea Hospital emergency room. (T. 20; P. Ex. C at 23).

At Javon Bea Hospital, Petitioner reported that he was at his computer when he lifted his arm below shoulder level, causing a sudden pop and immediate onset pain. (P. Ex. C at 23). Petitioner then fell to the ground secondary to the pain. (*Id.*). Petitioner had his right shoulder placed back in its socket. (T. 20).

On 8/6/21, Petitioner treated for his right shoulder dislocation at Mercyhealth Perryville Orthopedics. (P. Ex. B at 9). Petitioner reported that he was reaching for something at work when he noticed his shoulder had "popped out." (*Id.*). Petitioner stated that he had not previously dislocated his right shoulder but had previously dislocated his left shoulder multiple times. (*Id.*). Petitioner was instructed to continue using his right shoulder immobilizer. (*Id.* at 10).

Petitioner testified that he experienced five of six shoulder dislocations after 8/3/21. (T. 21). Petitioner's shoulder would dislocate from activities such as standing up. (T. 22). Petitioner did not seek medical treatment after his subsequent shoulder dislocations as he popped his shoulder back into its socket himself. (T. 22).

Petitioner first dislocated his left shoulder when he was 8 to 10 years old while playing football. (T. 23). Petitioner received medical treatment for his first shoulder dislocation. (T. 23). Petitioner testified that he did not dislocate his left shoulder again. (T. 23).

Petitioner testified that he was always truthful and honest with his physicians. (T. 25). Petitioner recalled Dr. Balaram performing a physical examination of his shoulder. (T. 26). Petitioner also recalled answering questions regarding the nature of his injury. (T. 26). Petitioner testified that he was honest and truthful in answering Dr. Balaram's questions. (T. 27). Petitioner told Dr. Balaram that he was removing grindings pads from a machine when he dislocated his shoulder. (T. 29).

Dr. Ajay Balaram is a physician for Hand & Shoulder Associates in Arlington Heights, Illinois. R. Ex. 1 at 6. Dr. Balaram is in his 13th year of clinical practice, having been licensed in 2009. *Id.* Dr. Balaram is board certified in orthopedic surgery in 2015. *Id.* He also has a certificate of added qualification for surgery of the hand. *Id.*

On 10/1/21, Dr. Balaram performed a physical examination of Petitioner's right upper extremity. R. Ex. 2 at 3. On physical examination, Petitioner rotated his right shoulder to forward elevation at 140 degrees, external rotation to 40 degrees and internal rotation to L5. *Id.* Dr. Balaram also took a detailed medical history from Petitioner, including a description of the mechanism of his injury. *Id.* at 2. Petitioner stated that he was reaching into a supply cabinet to remove grinding pads when his right shoulder dislocated. *Id.*

Dr. Balaram diagnosed bilateral chronic recurrent instability associated with both shoulders. R. Ex. 1 at 16. Dr. Balaram opined that Petitioner's alleged mechanism of injury, reaching into a supply cabinet to grab grinding pads, was not a sufficient mechanism to cause a shoulder dislocation without an underlying chronic disorder. *Id.* at 17.

Dr. Balaram further opined that Petitioner's closed reduction was reasonable and appropriate treatment for Petitioner's right shoulder dislocation. *Id.* at 20. Petitioner reached maximum medical improvement 6 weeks after the reported dislocation. *Id.*at 22. All treatment following the closed reduction was causally related to Petitioner's underlying chronic shoulder instability, and not to the alleged work injury. *Id.* at 20-21.

CONCLUSIONS

Regarding Issue (C): Whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent:

Petitioner failed to prove that an accident occurred which arose out of and in the course of his employment with Respondent. Therefore, all claims for compensation are denied.

The Illinois Workers' Compensation Act (the "Act") provides: "To obtain compensation under this Act, an employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment." 820 ILCS 305/1. A petitioner must establish both the "arising out of" and the "in the course of" elements were present to prove a compensable injury. *Univ. of Ill. v. Indus. Comm'n*, 365 Ill. App. 3d 906, 910 (2006). The mere fact that a petitioner was at work or engaged in some work-related activity is not sufficient to support an award under the Act. *Brady v. Louis Ruffolo & Sons Constr. Co.*, 143 Ill. 2d 542, 552 (1991).

Under the Act, an injury is "accidental" only when, "it is traceable to a definite time, place and cause, is unexpected and "without affirmative act or design of the employee." *Int'l Harvester Co. v. Indus. Comm'n*, 56 Ill. 2d 84, 89, 305 N.E.2d 529, 532 (1973). "Development of symptoms of pain, discomfort, stiffness, etc., without an accident does not meet the test." *Id.* The "arises out of" requirement mandates that the injury must have originated from some risk connected with, or incidental to, the employment so that there is a causal connection between the employment and the accidental injury. *Caterpillar Tractor Co. v. Indus. Comm'n*, 129 Ill.2d 52, 58, 541 N.E.2d 665, 667 (1989). "In the course of" employment indicates a time, place, and circumstances requirement, under which the accident must have occurred. *Knox Cty. YMCA v. Indus. Comm'n*, 311 Ill. App. 3d 880, 884–85, 725 N.E.2d 759, 762–63 (3d Dist. 2000).

Petitioner testified that on 8/3/21 he was entering a code into the MSC machine around 10:30 AM. (T. 20). Petitioner was not seated while entering the code. (T. 30). Petitioner testified that he lifted his arm overhead to enter the code, causing a right shoulder dislocation and immediate onset pain. (T. 29). After his shoulder dislocated, Petitioner fell to the floor. (T. 20). However, Petitioner provided multiple conflicting mechanisms of injury and multiple histories regarding his bilateral shoulder instability, demonstrating his lack of credibility.

The evidence demonstrates the following material inconsistencies pertaining to the accident mechanics:

1) At trial, Petitioner testified that he was reaching overhead while standing to enter a code into the MSC machine. (T. 20). After feeling sudden onset pain, Petitioner fell to the ground. (T. 20).
2) On 8/3/21, a few hours after the alleged accident, Petitioner reported to his physician at Javon Bea Hospital that he was reaching forward to enter a code into a computer with his arm below shoulder level. (P. Ex. C at 23). Petitioner then fell to the ground.
3) On 8/6/21, Petitioner reported to his physician at Mercyhealth Perryville Orthopedics that he was reaching forward to grab something when he realized his shoulder was dislocated. (P. Ex. B. at 9). Petitioner did not report falling to the ground.
4) On 10/1/21, when recounting his injury to Dr. Balaram, Petitioner stated that he was reaching onto a storage shelf at shoulder height to grab grinding pads when he felt his shoulder dislocate. (R. Ex. 2 at 2). Petitioner did not report falling to the ground

In addition to the inconsistencies in the alleged accident mechanics, Petitioner was also inconsistent regarding his history of previous shoulder dislocations. Petitioner testified at trial that he first dislocated his left shoulder when he was 8 to 10 years old while playing football. (T. 23). He also testified that this was the only time he had dislocated his shoulder, and he experienced no other left shoulder dislocations. (T. 23). Conversely, on 8/6/21, Petitioner notified his physician that he had experienced left shoulder dislocations "a couple of times previously on the left." (P. Ex. B at 9). Petitioner also informed Dr. Balaram that he had a history of left shoulder dislocations. (R. Ex. 2 at 4-5).

The record is replete with inconsistencies in Petitioner's medical histories provided to medical providers, statements regarding the accident mechanics to his treating physicians and to Dr. Balaram, and under oath before the Commission. Given the variety of different alleged accident mechanics, no one iteration of the accident can be given the credibility necessary for Petitioner to meet his burden on the issue of accident. Therefore, Petitioner cannot satisfy his burden to show an accident arising out of and in the course of employment, and Petitioner's request for benefits is denied.

Regarding Issue (F): Whether Petitioner's current condition of ill-being is causally related to the alleged injury:

In addition to failing to prove a compensable accident, Petitioner failed to prove that his right shoulder condition is causally related to the alleged accident.

An employee's injury is not compensable solely because symptoms arose while the employee was at work, nor is it sufficient that the injury occurred at work, it must be proven that the injury was the result of an accident that was incidental to the employment. *Quarant v. Indus. Comm'n*, 38 Ill.2d 490, 492, 231 N.E.2d 397, 399 (1967); *see also Caterpillar*, 129 Ill.2d at 64, 541 N.E.2d at 670 ("[T]his court is not prepared to adopt the position that whenever an injury is suffered on work premises during work hours it is compensable, regardless of whether the conditions or nature of the employment increased or contributed to the risk which led to the injury.") (citing *Rodriguez v. Indus. Comm'n*, 95 Ill.2d 166, 447 N.E.2d 186 (1983)).

If an employee suffers from a preexisting condition, he must show that his condition was aggravated or accelerated by his employment. *See Caterpillar Tractor Co. v. Indus. Com.*, 215 Ill. App. 3d 229, 241, 574 N.E.2d 1198, 1205 (4th Dist. 1991) (citing *General Electric Co.*, 190 Ill. App. 3d 847 (4th Dist. 1989)).

Dr. Balaram is board certified in orthopedic surgery & has been in practice for over 13 years. Dr. Balaram credibly diagnosed Petitioner with bilateral shoulder instability, based on:

1) Petitioner's previous history of shoulder dislocations, and
2) None of Petitioner's alleged low-energy mechanisms of injury would have been sufficient to cause a shoulder dislocation without a chronic, underlying shoulder condition. (R. Ex. 1 at 17-20).

Dr. Balaram's credibly testified that Petitioner reached MMI 6 weeks after the 8/3/21 shoulder dislocation, and any treatment afterwards was causally related to the underlying shoulder instability. Dr. Balaram's opinions are compelling and uncontroverted by any evidence contained in Petitioner's medical records,

Petitioner's current condition is not causally related to the alleged 8/3/21 work incident and is instead causally related to Petitioner's underlying bilateral shoulder instability. Petitioner's claims for compensation are denied as he has failed to prove that his current condition of ill-being is causally related to the alleged 8/3/21 incident.

Regarding Issue (J): Whether medical services that were provided to Petitioner were reasonable and necessary:

Whether Petitioner's treatment was reasonable and necessary is moot for the reasons stated in Section C.

Regarding Issue (K): Whether Petitioner is entitled to any prospective medical care:

Whether Petitioner is entitled to any prospective treatment is moot for the reasons stated in Section C.

Regarding Issue (L): Whether Petitioner is entitled to any TTD benefits:

Whether Petitioner is entitled to temporary total disability benefits is moot for the reasons stated in Section C.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC020035
Case Name	Patricia Wilson v. Casey's General Store #2267
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0421
Number of Pages of Decision	12
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	James Kelly

DATE FILED: 11/1/2022

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PATRICIA WILSON,

Petitioner,

vs. NO: 18 WC 20035

CASEY'S GENERAL STORE #2267,

Respondent.

DECISION AND OPINION ON REVIEW

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

We affirm the Arbitrator's finding of accident but modify the rationale to clarify that the rainwater on the door handle was not a *per se* hazardous condition. However, the wet door handle *was* a contributing factor in Petitioner's fall, which occurred as she was returning to the store to complete her work duty of taking out the garbage. Therefore, we find that the risk she faced was distinctly due to her employment.

The Arbitrator, relying on *McAllister v IWCC*, 2020 IL 124848, found:

> Petitioner's accident on May 3, 2018, was distinctly associated with her job duties for Respondent, as they were acts that she was reasonably expected to perform incident to her required job duties. The hazardous condition, specifically the wet door handle in the [rainstorm], contributed to Petitioner's fall. *Dec. 6 (unnumbered)*.

Respondent makes several arguments against a finding of accident but relies primarily on *Dukich v IWCC*, 2017 IL App (2d) 1603 51 WC, in support of its position that rain is not a hazardous condition. *R-brief at 12-14*. Respondent claims, "Under *Dukich,* applying *Caterpillar,* accidents caused by rain are not distinctly associated with employment and are properly analyzed as neutral risks, as a matter of law. *Dukich,* ¶36." *R-brief at 14*.

We initially note that *Dukich* was decided before *McAllister*. Second, we believe Respondent misapplies the holding in *Dukich*, which involved an employee who slipped on wet pavement (from rainfall) while on her way to the employer's parking lot to go to lunch. *Dukich*, ¶8. The appellate court found, "The wet pavement upon which the claimant fell was no different from any other wet pavement. There were no defects, holes, depressions, uneven surfaces, or puddles on the pavement's surface. The paved surface was merely wet from the rain" (Id. ¶38), and that her injury "was not caused by a 'hazardous condition' on the employer's premises." Id. ¶41. The *Dukich* decision states:

> The dangers created by rainfall are dangers to which all members of the public are exposed on a regular basis. These dangers, unlike defects or particular hazardous conditions located at a particular worksite, are not risks distinctly associated with one's employment." Id. ¶36.

However, although the *Dukich* court used broad terminology, it is clear that not all accidents caused by rainfall are neutral risks. As a hypothetical example, if a roofer slips off of a roof because the shingles are wet from rain, that would likely be found to be an employment-related risk since it is an example of "particular hazardous conditions at a particular worksite." *Id*.

We find that Petitioner was still in the process of completing a work duty at the time of her accident, which makes this distinguishable from the claimant in *Dukich* who simply slipped on wet pavement while walking to her car for lunch. Further, as the *McAllister* court stated, "employment-related risks include…performing some work-related task which contributes to the risk of falling." *McAllister* at ¶40 (Citation omitted). Therefore, we find that Petitioner taking out the garbage in the rain and falling because her hand slipped off the wet door handle is clearly an employment-related risk because she was still in the process of performing a work-related task.

Additionally, we reject Respondent's argument that, since Petitioner had already thrown the garbage bag into the bin, she somehow reverted back to being a member of the general public. On the contrary, she was still in the process of performing her work-related task. In other words, taking out the garbage required Petitioner to return afterwards. It makes no sense to separate the different phases of the job task as Respondent attempts to do.

Even if we were to apply a neutral-risk analysis, we find that Petitioner's accident would still be compensable because she credibly testified:

> Q. Okay. And what happened on May 3rd, 2018, when you went to do this job?
> A. Like I say, **it was raining very hard. It was a hurried trip out and a hurried trip back in.** *T.15 (Emphasis added).*

Thus, we would find that Petitioner faced a neutral risk that was qualitatively increased by her hurrying to return back to the store.

We next reject Respondent's "personal risk" argument that Petitioner lost her balance due to arthritis in her knees. Even if Petitioner's arthritic knees did contribute to her losing her balance, the evidence indicates that the fall would not have happened unless Petitioner's hand slipped off of the wet door handle while in the process of completing her work task.

Although not mentioned by Respondent, we note there is one piece of medical evidence that conflicts with Petitioner's testimony and the other medical records. On May 3, 2018, Dr. Anderson recorded a history that, Petitioner "was walking on the sidewalk outside the store and tripped and fell, and landed into the parking lot, and she had fallen on her outstretched right arm." *Px3, T.122*. Obviously, this is a different history because it does not mention that Petitioner's hand slipped off a wet door handle and, instead, seems to indicate that Petitioner tripped. Nevertheless, Respondent did not focus on this one inconsistent medical record and did not call Petitioner's supervisor to dispute Petitioner's version of the accident. Therefore, we are unwilling to reverse a finding of accident based on this inconsistent record.

Finally, we address the permanent partial disability analysis and note that the Arbitrator did not assign weights to the five factors as required in §8.1b(b) of the Act, which states, "In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order." We agree with the Arbitrator's analysis of the relevant facts and affirm the award but modify the decision to assign the following weights to the five factors:

(i)	=	No weight
(ii)	=	Significant weight
(iii)	=	Some weight
(iv)	=	No weight
(v)	=	Significant weight

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 2, 2021 is hereby affirmed and adopted with the changes noted above.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $46,300.00. 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.

November 1, 2022

/s/ *Maria E. Portela*

SE/
O: 9/6/22
49

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC020035
Case Name	WILSON, PATRICIA v. CASEY'S GENERAL STORE #2267
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	William Trimble
Respondent Attorney	Paul Dykstra

DATE FILED: 8/2/2021

THE INTEREST RATE FOR THE WEEK OF JULY 27, 2021 0.05%

/s/ Adam Hinrichs, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Peoria**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Patricia Wilson
Employee/Petitioner

v.

Casey's General Store #2267
Employer/Respondent

Case # **18** WC **020035**

Consolidated cases: **N/A**

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 **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Peoria**, on **June 29, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **5/3/2018**, 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 $**14,820.00**; the average weekly wage was $**285.00**.

On the date of accident, Petitioner was **61** years of age, ***single*** with **0** dependent children.

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

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

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

Respondent is entitled to a credit of $**15.76** under Section 8(j) of the Act.

ORDER

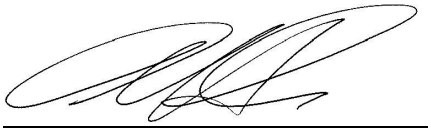
Respondent shall pay Petitioner temporary total disability benefits of $220.00/week for 6 3/7 weeks, for Petitioner's off work period commencing 5/4/2018 through 6/18/2018, as provided in Section 8(b) of the Act.

Respondent shall pay outstanding medical charges, totaling $28,946.07, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC. Respondent shall be given a credit for all payments made under its group health plan pursuant to Section 8(j).

Respondent shall pay Petitioner permanent partial disability benefits of $220.00/week for 71.75 weeks because the injuries sustained caused a 35% loss of use of the Petitioner's right hand, as provided in Section 8(e) of the Act.

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

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



Signature of Arbitrator

AUGUST 2, 2021

FINDINGS OF FACT

Patricia Wilson ("Petitioner") testified that on May 3, 2018, she was employed by Casey's General Store ("Respondent ") and had worked there for approximately eight years. On May 3, 2018, she was working as a donut maker for Respondent, however, her job duties encompassed a broad range of responsibilities relating to the general operation of the store.

Petitioner's job duties included making donuts and breakfast servings. She also did prep work for the next shift, stocked, cleaned, covered the check-out register, and emptied the garbage in the dumpster outside the store. Petitioner testified she usually arrived for her shift at 3:30 a.m. and worked until 11:00 a.m.

The Petitioner testified that there are three entrances/exits at this store: the double doors in front, a service entrance, and an emergency exit. Petitioner testified that she had been instructed that she was not to use the service entrance or emergency exit, as an alarm would go off if either of these sets of doors were opened. Petitioner testified that she was instructed to use only the double doors in the front of the store to enter and exit, including when she took the trash to the dumpster.

Petitioner testified that she did not remember whether it was raining at the time of her arrival at work on May 3, 2018, but did remember that it rained heavily throughout her time at the store that morning. Early in her shift, Petitioner had filled a 60-gallon garbage bag, and was going to take the garbage out to the dumpster. It was raining heavily at the time that she needed to take the garbage out. Petitioner testified she had prior experience with the 60-gallon trash bags ripping if they became overfull, and was afraid that would happen again if she waited to take the garbage to the dumpster.

So, Petitioner took the garbage bag out of the front double doors, into the heavy rain, went to the dumpster with the garbage bag, threw the trash bag away, and hurried back through the rain to the front double doors. Petitioner testified that she grabbed the flat metal plate door handle to open the door, and her hand slipped from the wet door handle. When her hand slipped, Petitioner testified that she stepped back to try and regain her balance, but she was unable to and fell. Petitioner outstretched her hands in order to break her fall. When she tried to push up from the ground, her right wrist bent so that her hand stayed in the same place while her arm moved, and she knew she was injured.

After her fall, two customers helped her into the store. Upon getting in the store, Petitioner reported to her manager Melinda Peters that she had fallen and was injured. Petitioner and Ms. Peters filled out an accident report. Petitioner and Ms. Peters were the only people working at the store. Petitioner testified that she did not want to leave Ms. Peters alone in the store, so she remained there and tried to do her job one handed until another employee arrived. Once another employee arrived, Petitioner drove herself to the Emergency Department at St. Joseph Medical Center.

The records of St. Joseph Medical Center indicate that Petitioner was seen by Dr. Kelley Smith, DO, at the St. Joseph Emergency Department. Dr. Smith took the following history:

> "61-year-old female presents for evaluation right wrist pain after a mechanical fall while walking into work earlier today. Pt works at a gas station, Casey's, and states she was pulling on the handle to the door, the handle was wet and her grip slipped from the handle. Pt states she has severe arthritis in her knees and her balance is not very good. Because she was somewhat leaning into the door in order to step inside after opening it, she lost her balance and began to fall backwards. In an effort to protect her head from hitting the ground, she was able to turn her body and outstretched her right hand in order to break her fall. Pt denies hitting her head or any other physical complaints Complains of R wrist pain over the distal radial aspect of the wrist.

> Rates pain an 8/10 but declined initial pain medication. Reports she takes Tylenol #3 for arthritis pain and had taken one very early this morning and felt she could tolerate the wrist pain without medications. (Px 1, p. 45)

Petitioner testified that she disagreed with the portion of the above note suggesting that at the time of her fall she had Tylenol #3 in her system. Petitioner testified that she did have a prescription for Tylenol #3 for pain in her right knee, where she had balance issues, but she testified she had not taken any the morning of her fall at work. Petitioner testified that she did not fall because of her knee, she fell because of the slip of her hand on the wet door handle.

An X-ray and CT were performed at the OSF Emergency Department. Dr. Smith noted that "Pt's x-ray is consistent with impacted fracture of distal right radius with extension into the radiocarpal joint," and that "Pt's CT scan showed [t]here is a comminuted intra-articular fracture of the distal radius. The fragmentation is more prominent at the posterior aspect of the fracture site with fracture fragments displaced posteriorly. There is a gap at the distal radial articular surface posteriorly measuring 6 mm in the AP dimension and 8 mm in the transverse dimension." (Px 1, p. 48; Px 2) Petitioner was placed into a splint, was discharged, and was to follow up with an orthopedic surgeon. (Px 1, p. 48). Petitioner testified that she followed up with Dr. David Anderson at Orthopedics of Illinois.

Later that day, on May 3, 2018, Dr. Anderson took a history of a work injury in which Petitioner tripped and fell. Dr. Anderson noted that x-rays showed "a comminuted intraarticular right distal radius fracture," and that a CT scan performed at OSF showed a comminuted distal radius fracture." He diagnosed Petitioner with a right distal radius fracture, and recommended surgery. A work note provided by Dr. Anderson stated that "Patient will be off work until further notice due to wrist fracture. Patient is scheduled for surgery on 5/8/2018 and will be off work for 2 to 3 weeks following surgery." (Px 3)

On May 8, 2018, Dr. Anderson performed open reduction and internal fixation of Petitioner's displaced comminuted right distal radius fracture. This included placement of an inner focal K-wire radially and a narrow Acumed Acu-Loc 2 distal radius plate. (Px 4)

On May 21, 2018, Petitioner followed up with Dr. Anderson post-operatively. Dr. Anderson noted that Petitioner was doing well, was in physical therapy, and get a volar splint that day. Dr. Anderson gave Petitioner a work status note indicating "May return to work 5/22/2018. No lifting over 1 lb. No food prep. Must wear splint/brace while at work." (Px 3). Respondent did not accommodate Petitioner's restrictions.

On June 4, 2018, Petitioner followed up with PA-C Shaun Rudicil at Orthopedics of Illinois. PA-C Rudicil noted that "She is hoping to go back to work but cannot do so with her current restrictions." After review of x-rays which showed excellent overall alignment of the fracture and that the hardware was sell-seated and in good position, PA-C Rudicil consulted with Dr. Anderson. After consulting with Dr. Anderson, PA-C Rudicil provided Petitioner with a work note restricting her to no lifting over 5 lbs. and allowing her to remove her splint to wash her hands. (PX 3, p. 16). Respondent did not accommodate Petitioner's restrictions.

On June 18, 2018, Petitioner followed up with FNP-BC David Kieser at Orthopedics of Illinois. Nurse Practitioner Kieser indicated she was to continue occupational therapy, and gave her a note to return to work full duty, no restrictions. Petitioner testified that she participated in physical therapy as ordered by Dr. Anderson, and returned to work full duty.

On July 9, 2018, Petitioner had a final follow-up at Orthopedics of Illinois. FNP-BC Kieser noted that Petitioner was doing well and was working. Nurse practitioner Keiser advised Petitioner to follow up as needed. (PX 6, p. 7).

Petitioner testified that she has less range of motion in her right wrist. She also has trouble twisting her wrist and trouble gripping at certain angles. Petitioner testified that she is right-hand dominant and that she can no longer lift a gallon of milk, or water plants with a watering can with her right hand, although she is able to do these things with her left. Petitioner demonstrated a loss of range of motion, and in particular a loss of ability to rotate her right wrist. Petitioner's testimony is consistent with the records of her physical therapy discharge note. (Px 6). Petitioner testified that she returned to work full duty for Respondent and decided to retire in June of 2020.

CONCLUSIONS OF LAW

With regard to issue C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? The Arbitrator finds as follows:

In *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848, at ¶ 40, the Illinois Supreme Court reiterated, that "examples of employment-related risks include "tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work-related tasks which contributes to the risk of falling." quoting *First Cash Financial Services,* 367 Ill.App.3d at 106. In *McCallister*, the Court also reminded us, at ¶ 36, that "A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties." citing *Orsini v Industrial Comm'n,* 117 Ill.2d 38, 45 (1987).

As part of her job duties, Petitioner was required to take the trash to the store's dumpster through the front double door entrance/exit. The store's 60-gallon trash bag was full, and a heavy rain was falling outside that showed no signs of letting up. Petitioner could not wait out the rain storm to complete her assigned work duties, as she had previous experience with the large 60-gallon trash bags ripping when they were overfull. Petitioner's job duties required her to exit the front entrance of the store, into the rain storm, to discard the trash bag.

After putting the trash bag in the dumpster, the Petitioner hurried back into the only entrance she was allowed to use, and reached for the flat metal plate door handle. The door handle was wet from the ongoing heavy rain. Petitioner's hand slipped off the handle while she was trying to pull the door open. When her hand slipped from the door handle, Petitioner lost her balance, and stepped back trying to regain her balance. When she stepped back, she failed to regain her balance, and fell onto her outstretched hands, injuring her right wrist. The Petitioner's credible testimony is supported by the medical record.

Petitioner's initial medical report at OSF's Emergency Department confirmed that she lost her grip on a wet door handle, leading to her loss of balance, falling, and injuring her right wrist. Dr. Kelley Smith's at the Emergency Department at OSF specifically noted that Petitioner suffered a mechanical fall, indicating that an external force or object contributed to Petitioner's fall.

The Arbitrator finds that Petitioner's accident on May 3, 2018, was distinctly associated with her job duties for Respondent, as they were acts that she was reasonably expected to perform incident to her required job duties. The hazardous condition, specifically the wet door handle in the rain storm, contributed to Petitioner's fall. The Arbitrator finds that Petitioner has met her burden of proof that she sustained an accident arising out of and in the course of her employment for the Respondent.

With regard to issue E: Was timely notice of the accident given to Respondent? The Arbitrator finds as follows:

The Arbitrator finds that Petitioner gave timely notice of the accident to the Respondent. In support of this finding, the Arbitrator relies on Petitioner's credible and unrebutted testimony. Petitioner testified that she immediately reported the accident to her manager, Melinda Peters. Petitioner further testified that she and her manager filled out an accident report that same morning.

With regard to issue F: Is Petitioner's current condition of ill-being causally related to the injury? The Arbitrator finds as follows:

Incorporating the above, the Arbitrator finds the Petitioner has met her burden of proof on the issue of causation.

In support of this finding, the Arbitrator relies on the Petitioner's credible testimony and the medical evidence in the record showing that following her hand slipping from the wet door handle she was pulling, and her subsequent fall, she was diagnosed with a comminuted intraarticular right distal radius fracture, requiring an open reduction and internal fixation. Prior to her accident on May 3, 2018, Petitioner could perform all aspects of her job activities. Following the accident, Petitioner was placed off-work by her treating physician, who prescribed a surgical repair of her injured wrist.

The medical evidence in the record contains a consistent history of a work accident, wherein the Petitioner injured her right wrist, requiring medical and surgical care. Given the record as a whole, the Arbitrator concludes that the Petitioner's current condition of ill-being in her right wrist is causally related to the work accident of May 3, 2018.

With regard to issue 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? the Arbitrator finds as follows:

Incorporating the above, Petitioner's condition of ill-being in her right wrist improved after undergoing Dr. Anderson's prescribed course of medical and surgical care, allowing Petitioner to return to work full duty for the Respondent.

The Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary. The Arbitrator finds that Respondent has not paid all appropriate charges for those reasonable and necessary medical services. The Arbitrator orders the Respondent to pay all outstanding medical charges, totaling $28,946.07, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice Before the IWCC.

Respondent shall be given a credit for all payments made under its group health plan pursuant to Section 8(j) of the Act.

With regard to issue K: TTD benefits in dispute. The Arbitrator finds as follows:

The Petitioner has established that she is entitled to total temporary disability benefits for the period of May 4, 2018, the first day following her work accident, through June 18, 2018, the date she was released to return to work without restrictions. In support of this, the Arbitrator relies on the medical record which establishes that Petitioner was not released to work without restrictions until June 18, 2018. Petitioner's credible and unrebutted testimony that Respondent would not allow Petitioner to return to work with restrictions prior to June 18, 2018, is supported by the record.

With regard to issue L: What is the nature and extent of the injury? The Arbitrator finds as follows:

Pursuant to 8.1(b) of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for all accidental injuries occurring on or after September 1, 2011:

(i) the reported level of impairment pursuant to subsection (a) under the AMA Guides to the Evaluation of Permanent Impairment;
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the medical records.

With respect to subsection (i), the Arbitrator notes that neither party presented an impairment rating under the AMA Guides to the Evaluation of Permanent Impairment. The Arbitrator has considered this factor.

With respect to subsection (ii), the occupation of the employee, the Arbitrator notes that Petitioner returned to work for Respondent in her previous full duty capacity. The Arbitrator has considered this factor.

With regard to subsection (iii), the Arbitrator notes that Petitioner was 61 years old at the time of the accident. The Arbitrator has considered this factor.

With regard to subsection (iv), Petitioner's future earning capacity, the Arbitrator notes that Petitioner has retired from work. The Arbitrator has considered this factor.

With regard to subsection (v), evidence of disability corroborated by the medical records, the Arbitrator finds that as a result of the accident, Petitioner suffered a comminuted intraarticular right distal radius fracture which required an open reduction and internal fixation surgery. Petitioner's testimony that she has suffered permanent weakness and loss of range of motion is supported by the medical record. Petitioner testified that she is right-handed and that she can no longer hold a gallon of milk or water plants with a watering can with her right hand, although she is able to do these things with her left hand. The Arbitrator has considered this factor.

Based on the above factors and the record taken as a whole, the Arbitrator concludes that Petitioner sustained permanent partial disability to the extent of 35% loss of use of the right hand as provided in Section 8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC012688
Case Name	Dora Potts v. Tazewell County Health Department
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0422
Number of Pages of Decision	18
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Kevin Elder
Respondent Attorney	Michael Bantz

DATE FILED: 11/4/2022

/s/ Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse Accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DORA POTTS,

Petitioner,

vs. NO: 20 WC 12688

TAZEWELL COUNTY
HEALTH DEPARTMENT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability (TTD), and permanent partial disability (PPD), and being advised of the facts and applicable law, reverses the Decision of the Arbitrator and finds that Petitioner sustained an injury to her left shoulder on June 24, 2019 that arose out of and in the course of her repetitive work duties. As a result, the Petitioner is entitled to TTD benefits from July 1, 2019 through April 1, 2020, representing 39-1/7 weeks, 12.5% loss of use of the person-as-a-whole, and Respondent is entitled to a credit of $31,806.24 pursuant to Section 8(j) of the Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner began working as a full-time, registered dental hygienist for the Tazewell County Health Department Dental Center on December 1, 2005. (T.11.) She performed x-rays, cleanings, and would seal teeth, which constituted approximately eighty-five percent of her work duties as the sole hygienist on staff. (T.11-12, 20.)

Petitioner used her right hand to clean and pick the patients' teeth as well as operate the air and water tool and would use her left hand to manipulate the mirror. (T.12-14.) She used her left arm to stabilize herself and her left elbow would be bent at a 90-degree angle. (T.14, 17.) Appointments were booked in 30 to 45 minute slots and she would see between 14 to 16 patients per work shift with no break between the patients. (T.20, 30.) Petitioner provided a handwritten list of her duties, which was offered as Petitioner's Exhibit 5. Generally, Petitioner indicated that her arms were elevated between 5 and 40 minutes per patient depending on the procedure being performed. (PX.5.)

Dr. Yolanda Wright-Lowry ("Dr. Wright") is a dentist and was Petitioner's supervisor. She testified on behalf of the Respondent pursuant to subpoena. While she testified that she never saw the Petitioner perform a cleaning as testified, she does not remember how Petitioner cleaned teeth. (T.86.) Dr. Wright stated that the hygienists' elbows should be bent at a 90-degree angle and their arms should be below shoulder level. (T.67-68.) Dr. Wright stated that a hygienist would see approximately 14 patients per work shift and each cleaning would take 30 minutes to perform. (T.75, 79.)

Petitioner first noticed left shoulder issues in January 2019, with no history of left shoulder problems prior to then. (T.33.) She began noticing pain while having her arm elevated at work. (T.34.) Specifically, her shoulder would begin to feel tired at the end of the day and would eventually progress into "full-blown pain" that affected her sleep. (T.32.) Petitioner would have a three-day weekend every week and testified that her shoulder would feel better by Sunday but would begin to hurt again by Tuesday when she returned to work. (T.34.) On April 9, 2019, Petitioner e-mailed her supervisor, Angie Phillips ("Ms. Phillips") due to her increasing left shoulder pain, which would consistently hurt at the end of the workday. (PX.4.)

Petitioner presented to Dr. Jill Wirth-Rissman ("Dr. Wirth") of Unity Point Health on April 11, 2019 for left shoulder pain since February 2019. Petitioner reported some radiating pain down the lateral side of the arm and pain with lifting, pushing and pulling, but denied any injury. Examination revealed pain in the biceps tendon with a positive impingement test. Dr. Wirth diagnosed Petitioner as having acute pain in the left shoulder and left rotator cuff tendinitis and administered a corticosteroid injection in the subacromial and sub-bursal space. The diagnoses were acute pain of the left shoulder and left rotator cuff tendinitis. (PX.3.)

Petitioner underwent an MRI of the left shoulder on May 24, 2019. The impression revealed severe rotator cuff tendinosis, a subtle small full thickness distal supraspinatus tendon tear with no tendon retraction, a subtle labral tear, mild impingement of the rotator cuff by the undersurface of the acromion process, AC joint arthritis without impingement, and mild subacromial subdeltoid bursitis. (PX.3.)

Petitioner presented to Dr. Michael Merkley ("Dr. Merkley") of Midwest Orthopaedic Center on June 24, 2019 for progressive left shoulder pain. Petitioner reported that the two prior corticosteroid injections and physical therapy did not provide long term relief. Dr. Merkley's

examination revealed active forward elevation to 90 degrees before being limited by pain. She had a positive Neers test, a positive Speeds test and a positive Hawkins impingement sign. There was tenderness at the acromioclavicular joint and pain with crossed arm adduction. She had bicipital pain with active compression test. The x-ray revealed subacromial spurring with a type 2 acromion and lateral angulation of the acromion. Dr. Merkley noted that the MRI revealed rotator cuff tendinosis with a significant partial thickness supraspinatus tear. There was subdeltoid bursal fluid and acromioclavicular joint arthrosis present as well. The diagnoses were recalcitrant left shoulder pain, partial thickness rotator cuff tear, acromioclavicular joint arthrosis, subacromial bursitis and biceps tenosynovitis. Work restrictions of no repetitive use of the left arm and 10 pound lifting restrictions were provided to the Petitioner. (PX.2.)

On June 24, 2019, Amy Fox, Administrator for Tazewell County Health Department, e-mailed the Petitioner along with other employees summarizing her conversation with the Petitioner. It was noted that Petitioner needed surgery and she was to avoid repetitive movements. (PX.4.)

Dr. Merkley performed an arthroscopy with subacromial decompression, distal clavicle excision of the left shoulder and arthroscopic rotator cuff repair on August 6, 2019. Dr. Merkley noted that Petitioner had recalcitrant left shoulder pain. (PX.2.)

Petitioner was seen by Brandon Gale, PA-C ("Mr. Gale") of Midwest Orthopaedic Center on April 1, 2020 for her left shoulder. Petitioner reported doing well and indicated that her pain and motion were improving. Mr. Gale advised Petitioner to continue with home strengthening and stretching. Petitioner was released back to work with no restrictions and was to follow-up as needed. (PX.2.)

Dr. Merkley authored a narrative report to Petitioner's attorney on October 30, 2020. Dr. Merkley noted that Petitioner's duties with her left hand, as explained by Petitioner, included repetitive pushing, pulling, reaching and holding tools. He opined that Petitioner's work duties caused her left shoulder to become painful over time, and those repetitive duties were a contributory cause of her left shoulder pain. The work duties, however, were not the cause of her rotator cuff tear. It was Dr. Merkley's opinion that repetitive activities at the shoulder level or, even at the waist level, can result in increased pain in patients who have pre-existing rotator cuff pathology. Dr. Merkley further opined that given the repetitive nature of the work duties, it was reasonable to assume based upon Petitioner's history, that there was a causal relationship between her work duties and her left shoulder pain. (PX.1.)

Petitioner underwent a Section 12 examination with Dr. Lawrence Li ("Dr. Li") of the Orthopedic & Shoulder Center on January 14, 2021. Dr. Li noted that Petitioner's hands and elbows were always below her shoulder. At times, Petitioner had to abduct to 60 degrees to get the mirror in the right position, but she never had to abduct her shoulder beyond 90 degrees. Dr. Li diagnosed Petitioner with a rotator cuff tear, impingement syndrome and AC joint arthritis. Dr. Li opined that the diagnoses were not caused, aggravated or accelerated by Petitioner's repetitive

work duties. Dr. Li disagreed with Dr. Merkley's opinion that repetitive activities without a significant trauma at the waist level would permanently aggravate a shoulder condition. Dr. Li's basis for disagreement was that impingement of the rotator cuff begins at 70 degrees and the amount of force to position a mirror was very low. This was because one cannot exert significant force inside a patient's mouth as that would be painful. Dr. Li stated that Petitioner's shoulder pain could manifest during her job duties as a result of a rotator cuff tear. However, this was not a permanent aggravation, acceleration or causative factor in the development of the tear. This was a temporary aggravation or manifestation of symptoms only. (RX.1.)

Petitioner is currently employed as a paralegal and earns less than what she earned as a dental hygienist. (T.39, 41.) She testified that her current left shoulder condition is better than before the surgery. (T.42.)

The Commission is not bound by the Arbitrator's findings. Our Supreme Court has long held that it is the Commission's province "to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *City of Springfield v. Indus. Comm'n*, 291 Ill. App. 3d 734, 740 (1997) (citing *Kirkwood v. Indus. Comm'n*, 84 Ill. 2d 14, 20 (1981)). Interpretation of medical testimony is particularly within the province of the Commission. *A.O. Smith Corp. v. Indus. Comm'n*, 51 Ill. 2d 533, 536-37 (1972).

An injury is considered "accidental" under the Act if it is caused by the performance of a claimant's job, even though it develops gradually over a period of time as a result of repetitive trauma. *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 529-30, 505 N.E.2d 1026, 106 Ill. Dec. 235 (1987); *Fierke v. Industrial Comm'n*, 309 Ill. App. 3d 1037, 1040, 723 N.E.2d 846, 243 Ill. Dec. 543 (2000). A claimant alleging a repetitive trauma need not prove a specific traumatic injury or a "final, identifiable episode of collapse" during which the claimant's bodily structure suddenly gave way. *Luttrell v. Industrial Comm'n*, 154 Ill. App. 3d 943, 957, 507 N.E.2d 533, 107 Ill. Dec. 620 (1987). An employee who alleges injury based on repetitive trauma must meet the same standard of proof as other workers' compensation claimants alleging "accidental injury"; there must be a showing that the injury is work-related and not a result of the normal degenerative aging process. *Peoria County Belwood Nursing Home*, 115 Ill. 2d at 530; *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 194, 825 N.E.2d 773, 292 Ill. Dec. 185 (2005).

In cases alleging repetitive trauma, the claimant generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability. *Peoria County Belwood Nursing Home*, 115 Ill. 2d at 530; *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 510 N.E.2d 502, 109 Ill. Dec. 634 (1987). Although medical testimony as to causation is not necessarily required, "where the question is one within the knowledge of experts only and not within the common knowledge of laypersons, expert testimony is necessary to show that claimant's work activities caused the condition complained of." *Nunn*, 157 Ill. App. 3d at 477-78; see also *Johnson v. Industrial Comm'n*, 89 Ill. 2d 438, 433 N.E.2d 649, 60 Ill. Dec. 607 (1982).

Cases involving aggravation of a preexisting condition primarily concern medical questions and not legal questions. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 459 N.E.2d 963, 76 Ill. Dec. 828 (1979); *Nunn*, 157 Ill. App. 3d at 478. Where there is evidence of a preexisting degenerative condition, medical opinion evidence is necessary to establish a causal connection between the repetitive trauma injury and the claimant's work duties. *Johnson*, 89 Ill. 2d 438.

The medical testimony in this case supports the conclusion that the Petitioner sustained a repetitive trauma injury arising out of and in the course of her employment. In this case, both Dr. Merkley and Dr. Li agree that Petitioner had a pre-existing rotator cuff tear that was not caused by her work duties. Dr. Merkley, however, stated that Petitioner's repetitive activities at shoulder level or even at the waist level can result in increased pain in patients who have pre-existing rotator cuff pathology. Dr. Merkley further opined that there was a causal relationship between Petitioner's left shoulder pain and the repetitive nature of her duties. Dr. Li agreed with Dr. Merkley on this point, but disagreed only to the extent that Petitioner's duties were not a permanent aggravation, acceleration or causative factor in the tear. In short, Petitioner's work activities constituted a temporary aggravation or manifestation of symptoms.

The Commission is persuaded by Dr. Merkley's opinion and agrees that Petitioner's condition was not the natural progression of her pre-existing condition. Petitioner denied any pre-existing left shoulder issues, and there were no medical records establishing that Petitioner was undergoing any medical treatment to her left shoulder prior to April 2019. Further, there is no evidence establishing that she was unable to perform her job duties prior to June 24, 2019, the date Dr. Merkley first gave Petitioner work restrictions. Petitioner credibly testified that her condition would repeatedly improve while off work only to consistently return when she resumed working a few days later – belying Dr. Li's opinion that Petitioner's condition was a temporary aggravation. While the tear was pre-existing, the evidence establishes that Petitioner's work duties aggravated her condition, which ultimately necessitated the surgery she eventually received. Therefore, the Commission finds that Petitioner established that her condition is causally related to her repetitive work duties.

The Respondent disputed TTD based upon there being no work-related accident. As Petitioner established accident and causal connection, the Commission finds that Petitioner was temporarily and totally disabled from July 1, 2019 through April 1, 2020 and is entitled to TTD benefits for that period.

In her brief, the Petitioner acknowledged that all of her medical bills have been paid by Respondent's self-insured group health insurer. The Petitioner further stipulated that Respondent is entitled to an 8(j) credit of $31,806.24. Therefore, Respondent is entitled to an 8(j) credit of $31,806.24.

Finally, the Commission finds that Petitioner sustained 12.5% loss of the person as a whole for the left shoulder injury pursuant to Section 8(d)2 of the Act. The Commission has considered the five factors under Section 8.1b of the Act:

(i) Impairment Rating: The parties did not offer an impairment rating into evidence. The Commission gives this factor no weight.

(ii) Occupation of Injured Employee: The Petitioner worked as a dental hygienist and now works as a paralegal. She was, however, released back to work full duty as a dental hygienist. Therefore, the Commission assigns some weight to this factor.

(iii) Petitioner's Age: The Petitioner was 51 years old at the time of her injury. She has many work years remaining in which to experience the effects of her injury. Therefore, the Commission assigns some weight to this factor.

(iv) Petitioner's Future Earning Capacity: The Petitioner was released back to full duty work as a dental hygienist. While she testified that she currently works as a paralegal, little evidence was offered establishing that her injury has impacted her future earning capacity. Therefore, the Commission assigns some weight to this factor.

(v) Evidence of Disability: The Petitioner had a pre-existing left rotator cuff tear. She underwent a subacromial decompression, distal clavicle excision and arthroscopic rotator cuff repair. While the Petitioner testified that her current left shoulder condition is better, the medical records confirm her testimony as to some ongoing pain. Therefore, the Commission assigns greater weight to this factor.

In light of the foregoing, with no single enumerated factor being the sole determinant of disability, the Commission finds that Petitioner is entitled to PPD benefits of 12.5% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed January 18, 2022, is hereby reversed for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $606.58 per week for 39-1/7 weeks, from July 1, 2019 through April 1, 2020, that being the period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $545.92 per week for a period of 62.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused 12.5% loss of use of the person-as-a-whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit of $31,806.24 for medical bills paid through its group medical plan pursuant to Section 8(j) of the Act. Respondent shall hold Petitioner harmless from any and all claims or liabilities that

may be made against her by reason of having received such payments only to the extent of such credit.

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.

Under Section 19(f)(2) of the Act, no "county, city, town township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. 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.

November 4, 2022

CAH/tdm
O: 10/6/22
052

/s/*Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/*Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC012688
Case Name	POTTS, DORA v. TAZEWELL COUNTY HEALTH DEPARTMENT
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Kevin Elder
Respondent Attorney	Michael Bantz

DATE FILED: 1/18/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 11, 2022 0.27%

/s/Adam Hinrichs, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **PEORIA**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DORA POTTS
Employee/Petitioner

v.

TAZEWELL COUNTY HEALTH DEPARTMENT
Employer/Respondent

Case # **20** WC **012688**

Consolidated cases: **N/A**

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 **ADAM HINRICHS**, Arbitrator of the Commission, in the city of **PEORIA, ILLINOIS**, on **11/18/2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **06/24/2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**47,323.24**; the average weekly wage was $**909.87**.

On the date of accident, Petitioner was **51** years of age, ***married*** with **0** dependent children.

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

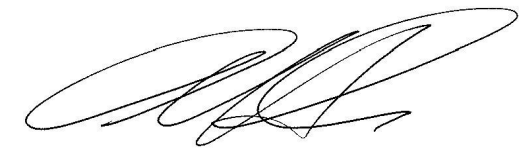
ORDER

Petitioner has failed to prove that she sustained an accident arising out of and in the course of her employment by the Respondent.

Petitioner's claim for benefits under the Act is denied.

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

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



Signature of Arbitrator

JANUARY 18, 2022

FINDINGS OF FACT

Petitioner filed an Application for Adjustment of Claim alleging an accidental injury arising out of and in the course of her employment on June 24, 2019. According to the Application, Petitioner sustained injuries from a repetitive trauma. (Arb. Ex. 1). The Application indicates Petitioner signed the Application on April 20, 2020. The parties proceeded to hearing with the following issues in dispute: accident, causal connection TTD, medical bills and the nature and extent of the alleged injuries. (Joint Ex. 1).

Petitioner testified that she was 53 and began working for Tazewell County in 2005. She worked as a dental hygienist and had an associate's degree. Petitioner described her job duties as doing X-rays, doing cleanings, which were also known as prophylaxis, and doing sealants. T. 11-12. Petitioner is right-handed. T. 12. Petitioner would use her right hand to do the scaling and cleaning and the cleaning process might vary from small child to adult, however, how Petitioner positioned herself would remain the same. T. 13. Petitioner's left arm and hand was used for stabilization of the patient's head and holding a mirror, and she would go around the side of a patient's head rather than over the top of it. T. 14-15. This method of positioning was what Petitioner was taught in school. T. 15.

Petitioner indicated that when she performed cleanings and other work with the patient in the chair, she had a chair pressed up against her chest and that her arms were out 90 degrees from her shoulders and then bent at the elbows and wrists. T. 17-18.

Petitioner testified that about 85 percent of her work was cleaning and sealing. T. 20. Petitioner was the only full-time dental hygienist for Tazewell County for 14 years, from 2005 until 2019. There were substitute hygienists when Petitioner was out sick or on vacation. The number of patients that Petitioner would see would vary, but a heavy day would be 14 to 16 patients. T. 21. A typical day would include between 12 and 14 patients. T. 23. Petitioner would do cleanings in either 30 minutes or 45-minute time slots, and her arm would be up for about half of that time. T. 23-24. The height of the patient would not affect Petitioner's positioning because of the size of the chair. However, a patient's weight might change Petitioner's positioning to get "up and over" a patient's body weight. The patients for the health department clinic were either uninsured or on Medicaid. T. 25.

Petitioner Exhibit 5 was a spreadsheet from Excel that showed what Petitioner's schedule would look like in three different scenarios. T. 26-27. Petitioner would also have to assist dentists with restoration work. T. 28-29. Petitioner worked with Dr. Wright, the dentist for the clinic beginning in 2016. Dr. Wright would have Petitioner perform her scalings, in addition to seeing her own patients. T. 29.

Petitioner testified that she began noticing problems worsening with her left shoulder in January 2019. T. 32. Petitioner had never injured her left shoulder before and never filed a workers' compensation claim. T. 33. Petitioner testified that she worked four days per week and noticed her left shoulder problems while at work and having her arm up. T. 34.

Petitioner sought medical care for her left shoulder, and summarized her medical treatment consistently with the medical records. T. 34-36. Once surgery was recommended, Petitioner emailed her supervisor, Angie Phillips, to discuss the surgery. T. 36-37.

Petitioner went off work for her surgery and never returned to work for the Respondent, testifying that the termination was due to her not being "back to work in time." T. 39. She was not paid any workers' compensation benefits while off of work and was released to full duty on April 1, 2020. T.40.

Petitioner's medical bills were paid by the Respondent's group health. Petitioner now works as a paralegal for Brewer Law Office, earning "substantially less" money. T. 41. Petitioner complained of ongoing limited range of motion, pain with sleeping on her left side, and the need for ongoing use of diclofenac, a prescribved NSAID. T. 41-42.

On cross-exam, the Petitioner testified that she worked accommodated light duty for the last week of June, 2019. T. 52. Petitioner further testified that in the course and scope of her employment, she would not do the kind of exam that would get billed out, but did cleanings, scalings, sealants, took x-rays, reviewed hygiene instructions with patients, assisted other dentists in their duties, administered anesthetics, and worked on infection control. T. 54-55.

Testimony of Dr. Wright-Lowry (Dr. Wright)

Dr. Wright testified at the request of Respondent. Dr. Wright is a dentist, with a Doctorate of Medicine in Dentistry from University of Kentucky College of Dentistry, and was licensed in 2012. T. 57. Respondent's Exhibit 4 is her C.V. T. 58. Dr. Wright grew up near Peoria and recently purchased her own practice. T. 58-59. Dr. Wright testified that she had worked for Respondent from 2016 through 2019. T. 59. The Respondent's dental practice no longer exists. T. 59.

Dr. Wright had worked with 10 to 20 different dental hygienists and is familiar with the job and the duties involved. T. 59. The relationship between dentists and dental hygienist was that of supervisor and employee. T. 60. Dr. Wright worked with Petitioner from 2016 through 2019 and was the only full-time dentist supervising Petitioner. T. 60-61. Angie Phillips was the Clinical Director but did not do any dental work, had no dental specialty, and was not seen on a day-to-day basis at the clinic. T. 61-62.

Dr. Wright testified that Petitioner's characterization of her posture while cleaning was not ideal positioning, and demonstrated that the arms should be lower, with the elbows close to the center of her torso with the hands out about 90 degrees from the elbows. T. 67. The arms were held below shoulder level, which was different from how Petitioner demonstrated her posture. T. 68. That was how dentists and dental hygienists were taught to hold their arms and the chair that was used could move up and down to get the dental hygienist into a higher position if necessary. T. 68. The chair that a patient was in could also move up and down so there was no need to have the patient sitting up too high unless there was an unusual patient that would require sitting up rather than being supine (laying horizontally with the face up). T. 69. Roughly 5% of patients would require a position that was not supine. T. 69-70. The mirror was used to view different areas of the mouth and to pull the cheek

back; it was necessary to move the mirror into different positions throughout the cleaning rather than holding it one spot. T. 70-71.

Petitioner could also take breaks from holding the mirror in the middle of a cleaning and could move and then come back to a position. T. 71-72. Cleanings were scheduled for 40 or 50 minutes and even if many patients were scheduled for a day there was a no-show rate of about 20 percent. T. 72-73. Petitioner would actually end up working with about 10 to 12 patients per day T.73. Dr. Wright testified that she had never had any other dental hygienist that she worked with complain of shoulder injuries from their job. T. 74.

Dr. Wright testified that Petitioner spent less time on her cleanings than the typical dental hygienist; at one point Dr. Wright made a complaint because Petitioner did a cleaning in ten minutes, whereas a cleaning should take at least 30 minutes. T. 74-75. Petitioner would usually take less than 40 minutes. Dr. Wright made complaints about the work behavior of the Petitioner; however, Petitioner was never disciplined. T. 75-76.

Dr. Wright testified that Angie Phillips did the evaluations from Petitioner's Exhibit 5, however, Angie did not work in the same building as Petitioner and did not meet with individual patients. The evaluations were regarding Petitioner's administrative ability and did not assess Petitioner's clinical work. T. 80-81. Dr. Wright's criticisms were regarding Petitioner's cleanings, and the evaluations did not cover the problems that Dr. Wright had complained about regarding Petitioner's work. T. 81-85. Dr. Wright had not seen any hygienists hold their arms up as high as Petitioner demonstrated while doing cleanings, except for patients who could not sit back, and those patients were rare. T. 85.

On cross examination, Dr. Wright testified that, while walking in on Petitioner's cleaning, she did not view Petitioner hold her arms up in the fashion she had described. When picturing how Petitioner would sit, Dr. Wright described it as having the patient nuzzled in between your legs, which is how it was taught in school. The posture was described as Dr. Wright having her elbows down to the middle of her torso just above her hips and the forearms coming out from about a 90-degree angle from the elbows, or also clarified as the elbows being a few inches off to the side from her body and her arms extended beyond 90 degrees; her forearms were parallel to the angle of the floor. (T. 87-89).

Dr. Wright went on testify that while using the mirror, one would have to maneuver and it was important to make the patient move, "versus having you move…" (T. 89-90). It would be possible that one might move in closer to control a mentally disabled child. For an average size adult, the reach-around was going to be minimal versus if a bigger patient was getting treated, then you are having to reach over and work around the size of the patient. (T. 91).

In a typical day, Dr. Wright would be handling her own patients, and would not be observing Petitioner's cleanings, or otherwise watching over Petitioner's work. (T. 91-92). Dr Wright testified that different dental hygienists did things different ways. (T. 92) Dr. Wright had made complaints to Angie Phillips about Petitioner because it was Ms. Phillips job to discipline the dental hygienists, and to handle hiring, firing, scheduling and evaluations. (T. 92-93). Angie Phillips would consult with Dr. Wright before evaluating Petitioner, though there was nothing in the written evaluations to indicate problems with the tasks addressed. (T. 93).

Petitioner filed a complaint against Dr. Wright and Angie Phillips discussed it with Dr. Wright, which upset Dr. Wright. (T. 93).

On re-direct, Dr. Wright testified that larger patients might also require moving the arms out further from the body. Petitioner worked with a lot of older children and adults. (T. 102-103). Fewer than 10% of the patients would be the kind of large patient that would require an arm position further out from the body. (T. 103-104).

Petitioner's Medical Records

On December 17, 2018, Petitioner presented to Unity Point with right shoulder pain. Petitioner reported that she is a dental hygienist and has to position herself in odd positions sometimes. Petitioner underwent an injection and was prescribed home exercises. (PX 3). Petitioner's right shoulder complaints quickly resolved.

On April 11, 2019, after her right shoulder problems resolved, Petitioner presented to Dr. Jill Wirth-Rissman at Unity Point with left shoulder complaints similar to her right shoulder complaints. Petitioner denied any injury and made no reference to work or her work duties. (PX 3, p. 16). She underwent an injection of Kenalog and lidocaine. (PX 3).

On May 13, 2019, Petitioner returned to Dr. Wirth-Rissman and underwent a second left shoulder injection. Again, no reference to Petitioner's work or work duties was indicated. (PX 3).

On May 24, 2019, Petitioner underwent an MRI of her left shoulder at UnityPoint Peoria Proctor, read by Dr. James McGee to show severe rotator cuff tendinosis, small full-thickness distal supraspinatus tendon tear, subtle labral tear, mild impingement of the rotator cuff by the undersurface of the acromion process, AC joint arthritis without impingement, and mild subacromial subdeltoid bursitis. (PX 3).

On June 10, 2019, Petitioner returned to Dr. Wirth-Rissman and underwent a third left shoulder injection. Petitioner was given work restrictions of a lighter work load, with no more than 10 patients a day. (PX 3).

On June 24, 2019, Petitioner presented to Dr. Michael Merkley at Midwest Orthopaedic Center ("MOC") for a surgical consultation. In her MOC intake form Petitioner wrote that her injury began in February of 2019. Under where and how the injury occurred, Petitioner left that section blank. Under, "What activities make it worse," Petitioner wrote, "laying on side or back, arm opp [sic] hanging down." No reference to work, work activities, or holding her arm out was made in that section. Petitioner was asked in the intake form whether, "Because of this problem, I have filed or plan to file: a lawsuit, a workers compensation claim, or neither." Petitioner checked the box by neither and also indicated that there was no workers' compensation dispute. (PX 2, p. 155).

In her presentation to Dr. Merkley on June 24, 2019, Petitioner gave left shoulder complaints from February of 2019 that had not improved, even after a left shoulder injection and physical therapy. Petitioner mentioned that she worked as a dental hygienist. Dr. Merkley recommended surgery. She was restricted from moving more than 10 pounds. (PX 2 p. 160-161).

On August 6, 2019 Petitioner underwent left shoulder surgery with Dr. Merkley. Her post-operative diagnoses were recalcitrant left shoulder pain, acromioclavicular joint arthrosis, and a severe bursal side supraspinatus tendon tear. Surgery consisted of an arthroscopy with subacromial decompression, distal clavicle excision, and rotator cuff repair. (PX 2, p. 111).

Petitioner underwent physical therapy at MOC for her left shoulder from August 22, 2019 through March 4, 2020. (PX 2).

On April 1, 2020, Petitioner was released to return to work full duty. (PX 2, p. 6).

Narrative Report of Dr. Michael Merkley

On October 30, 2020, Dr. Merkley authored a narrative report, summarizing his treatment and providing opinions. Dr. Merkley wrote that his understanding was that Petitioner worked as a dental hygienist for approximately 15 years. He wrote, "Her duties with her left arm as explained to me include repetitive pushing, pulling, reaching, holding tools, etc." Dr. Merkley summarized his treatment from June 24, 2019 onward, and described his surgery on August 6, 2019.

Dr. Merkley provided opinions on whether there was a causal relationship between Petitioner's work for Respondent and the conditions for which she was treated. Dr. Merkley wrote, "It is my opinion within a reasonable degree of medical certainty that Ms. Potts' repetitive work activities were a contributory cause of pain at her left shoulder. While I do not feel that the nature of her duties is the causation of her rotator cuff tear, repetitive activities at shoulder level or even waist level can result in increased pain in patients who have pre-existing rotator cuff pathology. Given the repetitive nature of the reaching pushing, and pulling performed with her left shoulder, it is reasonable to assume that based on the patient history there is a causal relationship of the pain at her left shoulder."

Section 12 Report of Dr. Lawrence Li

On January 14, 2021, Petitioner presented to Dr. Lawrence Li for a Section 12 Examination. Dr. Li authored a report on that same date. In that report he noted that he had reviewed a job description for Petitioner job as a dental hygienist, a summary of the number of patients seen from January 2018 to June 2019, in which he noted that the highest number of monthly patients seen was 160 and the lowest number of monthly patients seen was 92. Dr. Li also reviewed medical record from all relevant providers that Petitioner had sought treatment from, including the MRI report from May 24, 2019 and the operative report from February 4, 2020.

Petitioner had given Dr. Li a history of her work and the development of her shoulder pain, including a description of holding a mirror with her left hand. Petitioner's records revealed that she first sought right shoulder treatment on December 17, 2018 and then began left shoulder treatment on April 11, 2019. Dr. Li performed a physical examination and authored a report.

Dr. Li opined that Petitioner's diagnoses, "were not caused aggravated or accelerated as a result of her alleged repetitive trauma/tasks that she performed at work." (RX 1, p. 3). Dr. Li noted that impingement of the rotator

cuff starts at around 70 degrees and that the amount of force used in positioning a mirror would be low because a mirror is very light. Dr. Li noted that she might feel pain at work, writing that, "shoulder pain can manifest during her job duties as a result of her rotator cuff tear but this would not be a permanent aggravation acceleration or causative in the development of the tear. This would be a very temporary aggravation or manifestation of symptoms." Dr. Li otherwise stated that her treatment was reasonable and necessary but was "unrelated to her alleged work injury." (RX 1).

Other Evidence

Petitioner's Exhibit 4 consists of emails between Petitioner and Angie Phillips, Petitioner's supervisor, as well as administrator Amy Fox. Petitioner notified the employer of her shoulder condition, need for surgery, and missed time from work associated with this injury. Petitioner does not indicate in these emails that she believed her left shoulder injury was related to her work duties.

Respondent's Exhibit 2 is a job description for a Dental Hygienist. The job duties were described as performing prophylaxis, scaling, root planning, administering anesthetics and nitrous oxide, providing radiographs, communicating with patients, checking on patient's comfort, allaying patient anxiety, documenting provided treatment, teaching oral hygiene techniques, providing treatment plans, giving oral exams, recording disease and abnormalities, counseling patients on proper nutrition and oral health, work with receptionists on scheduling, ensure treatment room management and sterilization, and managing records. Page 4 of the job description documentation included the number of patients seen by Petitioner each month from January 2018 through June of 2019. The Arbitrator notes that with the exception of Petitioner's last month, the low was 92 patients seen in a month and the high was 160 patients in a month. A majority of the months involved seeing between 100 and 145 patients in a month. 92 to 160 patients would come out to about 22 to 37 patients a week, given that there are 4.3 weeks in a month.

Petitioner's Exhibit 6 consisted of employment evaluations of Petitioner's work from 2018 through 2019. T. 45. These evaluations were done by Angie Phillips. T. 46. Petitioner generally received the highest scores possible on these evaluations, except one category which the Petitioner indicated was "impossible." T. 47-48.

Respondent's Exhibit 3 is a ledger that documents Respondent's self-insured group health payments, which totaled $31,806.24 in payments, for the purposes of the 8(j) credit.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent:

On April 11, 2019, when Petitioner first presented with left shoulder complaints to Dr. Wirth-Rissman at Unity Point, she denied any injury and made no reference to work or her work duties. (PX 3, p. 16). In her subsequent visits to Unity Point, Petitioner did not mention her job in any way contributing to her left shoulder complaints.

When she later presented to Dr. Merkley on a surgical referral, and was given the opportunity to provide a fresh history to her new treating surgeon, she specifically denied that her complaints were in any way a consequence

of her job duties. In Petitioner's intake form with Dr. Merkley she wrote that her injury began in February of 2019. Under where and how the injury occurred, Petitioner left that section blank. Under, "What activities make it worse," Petitioner wrote, "laying on side or back, arm opp [sic] hanging down." There was no reference to work activities or holding her arm out causing her left shoulder complaints. Petitioner was asked on the intake form whether, "Because of this problem, I have filed or plan to file: a lawsuit, a workers compensation claim, or neither." Petitioner checked the box "neither" and also indicated that there was no workers' compensation dispute. (PX 2, p. 155).

Petitioner signed the Application for Adjustment of Claim on April 20, 2020, approximately three weeks after her MMI date for her left shoulder. This is the first time in the record that Petitioner alleged that her left shoulder diagnoses were related to her work activities.

In Dr. Merkley's narrative report dated October 30, 2020, approximately seven months after Petitioner's MMI date, he reports that "she spent approximately 15 years as a hygienist. Her duties involved repetitive pushing, pulling, reaching, holding tools, etc. Ms. Potts describe (sic) to me that these activities became painful over time at her left shoulder." (PX. 1) In Dr. Merkley's treating records, however, there is no record of Petitioner providing a job description, nor is there a history of her work activities causing pain or other complaints in her left shoulder.

The Petitioner is sophisticated. She was and is a professional in both the medical (dental hygienist) and legal (paralegal) fields, respectively. Petitioner testified that she provided a detailed and accurate history to her medical providers. T. 52. Petitioner testified that she began noticing problems with her left shoulder while at work and having her arm up that worsened in January 2019. T. 32-34. While Petitioner's application and testimony allege a work-related etiology for her left shoulder injury, there is simply no evidence in the treating medical records to support Petitioner's claim.

The Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence that she sustained an accident arising out of and in the course of her employment by the Respondent.

Given this finding, all other issues are rendered moot. Petitioner's claim for benefits under the Act is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC011337
Case Name	William Pearce v. Mach Mining LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0423
Number of Pages of Decision	17
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Kirk Caponi
Respondent Attorney	Julie Webb, Kenneth Werts

DATE FILED: 11/4/2022

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William Pearce,

Petitioner,

vs. NO. 18WC 11337

Mach Mining, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of occupational disease, exposure, disease, employment, causal connection, course of employment, last date of exposure, permanent disability, legal error, evidentiary error, Section 1(d) – Section 1(f), and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 28, 2022, is hereby affirmed and adopted.

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

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

November 4, 2022

SJM/sj
o-9/28/2022
44

/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah J. Baker*
Deborah J. Baker

/s/ *Deborah L. Simpson*
Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC011337
Case Name	PEARCE, WILLIAM v. MACH MINING LLC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Bruce Wissore
Respondent Attorney	Kenneth Werts

DATE FILED: 2/28/2022

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 23, 2022 0.71%

/s/Linda Cantrell, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

WILLIAM PEARCE
Employee/Petitioner

v.

MACH MINING, LLC
Employer/Respondent

Case # **18** WC **011337**

Consolidated cases: _____

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 **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **December 20, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Sections 1(d)-(f) of the Occupational Diseases Act**

FINDINGS

On **September 18, 2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner's earnings were **$54,878.20** and the average weekly wage was **$1,055.35**.

On the date of accident, Petitioner was **63** years of age, ***married*** with **0** dependent children.

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

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

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

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Based on the Arbitrator's findings as to accident and causal connection, permanent partial disability benefits are hereby denied.

The Arbitrator further finds that Petitioner failed to prove he suffered a timely disablement pursuant to Sections 1(e) and (f) of the Occupational Diseases Act.

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

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

FEBRUARY 28, 2022

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

WILLIAM PEARCE,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	**Case No.: 18-WC-011337**
	)	
MACH MINING, LLC,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on December 20, 2021 on all issues. An Application for Adjustment of Claim was filed on April 16, 2018 wherein Petitioner alleges he sustained an occupational disease of his lungs, heart, pulmonary system, and respiratory tracts as the result of inhaling coal mine dust, including, but not limited to, coal dust, rock dust, fumes, and vapors for a period in excess of 30 years. The Application alleges a date of last exposure of September 18, 2017. The issues in dispute are accident, causal connection, nature and extent of Petitioner's injuries, and Sections 1(d)-(f) of the Occupational Diseases Act. All other issues have been stipulated.

TESTIMONY

Petitioner was 63 years old, married, with no dependent children at the time of his last alleged exposure. Petitioner has a high school diploma. He worked in the coal mine for 30 years with the first 18 years being underground. Petitioner testified that in addition to coal dust, he was regularly exposed to and breathed silica dust, roof bolting glue fumes, and diesel fumes. Petitioner last worked in the mine in September 2017 as an Equipment Operator for Respondent at Johnston City. Petitioner testified he was exposed to coal dust on that date. Petitioner testified he was involuntarily terminated on his last day of coal mine employment. Petitioner did not have any employment after leaving the coal mine.

Petitioner started working in coal mining in 1981 for Mine Contractors which was part of Kerr-McGee Coal Mine Company. He started out excavating the slope and worked in mine construction for two years. He was then hired by Kerr-McGee where he ran a diesel ram car which took the coal from the face of the mine to the belt so it could be removed from the mine. Petitioner testified that every five minutes he would be in the area where they were cutting coal which was the dustiest area in the mine. He held that position for two years and switched to pumping water out of the mine and checking air pumps for a couple of years. His next position

was in roof bolting where he would drill a hole in the ceiling of the mine, put glue in the hole, and then insert the roof bolt and spin it into place to help support the top. Petitioner testified that the glue pin would break when the roof bolt was inserted, and the glue gave off an odor that was rather strong. Petitioner worked as a roof bolter for two and a half years. Next, Petitioner worked outby building stoppings, working on the road, and doing whatever needed to be done. The outby position meant his work was not done at the face of the mine, but there was still quite a bit of dust exposure as an outby. His next job was in belt maintenance where he built chutes for transfer points where coal came out from the face and dumped on the main line of the belt. He also built belt extensions so the belt would be closer to where they were mining, and they could get the coal out faster. Petitioner worked in belt maintenance for five or six years. He left Kerr-McGee in 1999. Petitioner testified that when Bob Murray bought the mine, he was one of the 175 to 200 people laid off.

After his layoff from Kerr-McGee, Petitioner attended school at Southeastern Illinois College. He earned Associates degrees in game preserve management and shooting complex management. In 2001, Petitioner went to work in Sebree, Kentucky on a hunting preserve for four years, where he guided hunts and helped with planting crops and food plots. He was the preserve manager the last two years. He then took three or four months off before working at a plastic company in Mt. Vernon, Indiana for ten months. He started working for Respondent in 2005 or 2006 and worked continuously until he left mining. As an Equipment Operator, Petitioner ran the endloader, unloading and loading trucks and loading supplies that were taken underground. His work as an Equipment Operator was on the surface. Petitioner testified that the clean coal pile was right next to the supply yard and when the wind blew, he could not see the prep plant that was 200 feet tall and only 500 or 600 feet away from him.

Petitioner testified that he sometimes noticed breathing difficulties at work when the dust would get heavy. He noticed that it was hard to breathe. He testified that if it got too bad, he would put a mask on, which helped some. Petitioner testified that occasionally he would cough up some black stuff. Petitioner testified that from the time he noticed the coughing and breathing problems until he left the mine, they probably got a little worse. He testified that he still coughs every day and will cough up a little stuff, usually in the morning. He testified that since leaving coal mining up until arbitration, his breathing issues have maybe gotten just a little bit worse. Petitioner testified he does not take any breathing medications. He testified that he notices when he exerts himself a little bit more, he has shortness of breath, but now that he is retired, he does not exert himself as much as he used to. He testified that he did not have any hobbies or other things that he did that caused him problems. Petitioner testified that with gardening he takes his time but if he is using a hoe or something in the garden, he sometimes gets overexerted. He testified that mowing the yard does not bother him because he is sitting. Petitioner testified that Dr. Shannon Rider is his family doctor and he has never talked to her about his breathing problems. Petitioner testified that he is not a current smoker but did smoke cigarettes thirty years ago. He smoked half a pack of cigarettes for three or four years. Petitioner takes medication for diabetes, high blood pressure, and a sleeping pill.

On cross examination, Petitioner testified that he was hired by Respondent on 11/7/05. He testified that he was terminated for something other than black lung. Petitioner testified that he was always honest with his symptoms with his physicians.

Petitioner testified that once or twice while he was employed as a coal miner, he underwent NIOSH x-ray screening for black lung. He testified that after those chest x-rays, they would write to him and tell him what the chest x-ray revealed. Petitioner testified that his only hobby is gardening in the summertime. His garden is 40 feet wide and 100 feet long. He testified that he mows his 3-acre yard. Petitioner testified that he rides a motorcycle from time to time but not as often as he would like because his wife has back problems and cannot ride. Petitioner fishes farm ponds and lakes with a two-man boat and fishes from the bank.

MEDICAL HISTORY

Petitioner's medical records dated prior to his last exposure of 9/18/17 were admitted into evidence. Petitioner treated with his primary care physician at Primary Care Group (PX4). On 11/24/10, Petitioner underwent a nuclear stress test for exertional dyspnea. Risk factors included smoking and obesity. The impression was normal myocardial perfusion. Petitioner was seen on 2/23/11 to establish care. Petitioner's past medical history was hypertension, high cholesterol, arthritis, and insomnia. He also complained of upper epigastric pain. It was noted that Petitioner smoked cigars. His review of systems respiratory was negative for chronic cough. Physical examination of the chest revealed the lungs clear to auscultation with no adventitious sounds. Petitioner's review of systems respiratory was negative for chronic cough or decreased exercise tolerance on 3/23/11 and 10/12/11. Physical examination of his chest on those dates revealed the lungs clear to auscultation with no adventitious sounds. On 10/12/11, Petitioner complained of sleep disorder and was diagnosed with obstructive sleep apnea. Petitioner was seen on 12/29/11 for complaints of cold which had been present for four days. His symptoms included runny nose, cough, headache, sinus pain, and chest and nasal congestion. Review of systems respiratory revealed no cough. Physical examination of the chest revealed the lungs clear to auscultation with no adventitious sounds.

On 5/15/12 and 6/13/12, Petitioner's review of systems revealed he did not suffer from chronic cough or decreased exercise tolerance. His physical examination revealed the lungs clear to auscultation with no adventitious sounds. On 5/15/12 and 10/4/13, it was noted Petitioner smoked cigars. On 10/9/13, his review of systems respiratory was negative for cough or wheeze. Physical examination of Petitioner's chest on that date revealed lungs clear to auscultation with no adventitious sounds.

Petitioner was seen on 3/31/14 for complaints of dry mouth. Review of systems respiratory revealed no difficulty breathing, cough, chronic cough, or decreased exercise tolerance. Petitioner had no difficulty breathing on exertion. Physical examination of the chest revealed the lungs clear to auscultation with no adventitious sounds. Petitioner was seen on 10/13/14 in follow up for his diabetes. Review of systems respiratory was negative for difficulty breathing, cough, chronic cough, decreased exercise tolerance, or dyspnea on exertion. Petitioner also denied sputum production and wheezing. Physical examination of the chest revealed lungs clear to auscultation with no adventitious sounds. His review of systems respiratory and physical examination of the chest remained the same. Petitioner was seen on 11/25/15 for complaints of sleep disorder. Review of systems respiratory was negative for difficulty breathing, difficulty breathing on exertion, snoring, or wheezing. Physical examination

of the chest revealed his lungs were clear to auscultation with no adventitious sounds. The diagnosis was sleep apnea.

Petitioner was seen on 7/5/16 for right foot swelling. Review of systems respiratory was negative for difficulty breathing or cough. Petitioner was seen on 4/13/17 for water blisters on his left leg. Diagnoses included diabetic leg ulcer. Petitioner was seen in follow up on 4/19/17 and physical examination of the chest revealed the lungs clear to auscultation with no adventitious sounds. Petitioner was seen on 8/3/17 and review of systems respiratory was negative for cough, shortness of breath, or wheezing. Physical examination of the chest revealed the lungs clear to auscultation with no adventitious sounds.

Petitioner was seen on 2/13/19 for anorexia and sore throat. Review of systems respiratory was negative for cough or shortness of breath. Petitioner was noted to be a former smoker. Physical examination of the chest revealed the lungs clear to auscultation with no adventitious sounds. Petitioner was seen on 2/19/19 for abdominal pain. He reported losing 30 pounds in the last year or so. His review of systems respiratory was negative for cough or shortness of breath. Petitioner was seen on 3/11/19 for upper respiratory infection that included coughing, sneezing, and head and chest congestion with an onset of 7 days prior. Petitioner was noted to be a former smoker. Review of systems respiratory was positive for cough but negative for shortness of breath. Physical examination of the chest revealed normal effort and no adventitious sounds. Physical examination of the chest revealed the lungs clear to auscultation with no adventitious sounds. Petitioner was seen on 4/15/19 in follow up for his systemic problems. Petitioner was noted to be a former smoker. Review of systems respiratory was negative for cough, shortness of breath, or wheeze. Physical examination of the chest revealed normal effort and breath sounds with no wheeze. His review of systems respiratory was negative for cough and shortness of breath on 6/10/19 and 7/16/19. On 8/13/19, Petitioner reported that his acid reflux was improving, and his abdominal pain was improved. Review of systems respiratory was negative for cough or shortness of breath. Physical examination of the chest revealed the lungs were clear. Petitioner was seen on 9/30/19 for abdominal pain which was noted to be a chronic problem and had been gradually worsening over the past month. Petitioner's review of systems respiratory was negative for cough or shortness of breath. Physical examination of the chest revealed normal effort and breath sounds with no respiratory distress. Petitioner was seen on 10/3/19 at which time his hypertension was noted to be uncontrolled with associated symptoms of malaise/fatigue and peripheral edema. Review of systems respiratory was negative for cough, shortness of breath, or wheeze. Physical examination of the chest revealed normal effort and breath sounds with no wheeze. CT of the abdomen performed on 10/18/19 caught the lung bases and was normal with the exception of mild subsegmental atelectasis. Petitioner was seen on 11/27/19, post cholecystectomy. Review of systems respiratory was negative for cough, shortness of breath, or wheeze. Physical examination of the chest revealed normal effort and breath sounds with no wheeze.

Petitioner was seen on 2/12/20 for continuing abdominal pain. His review of systems respiratory was negative for cough, shortness of breath, or wheeze. Physical examination of the chest revealed normal effort and breath sounds with no wheeze. Petitioner's diagnoses included GERD. Petitioner was seen on 3/27/20 and review of systems respiratory was negative for cough, shortness of breath, or wheeze. Physical examination of the chest revealed normal breath

sounds with no adventitious sounds. Petitioner was seen on 5/26/20 for joint pain in his hips, knees, and shoulders. His review of systems respiratory was negative for cough, shortness of breath, or wheeze. Physical examination of the chest revealed normal effort. Petitioner had no cough, shortness of breath, or wheeze when seen on 7/27/20. Physical examination of the chest revealed normal effort and breath sounds. Petitioner was seen on 11/30/20. Review of systems respiratory was negative for cough, shortness of breath, and wheeze. Physical examination of the chest revealed normal effort and breath sounds.

Petitioner was seen on 1/15/21 for left foot pain. Review of systems respiratory was negative for cough, shortness of breath, or wheezing. Physical examination of the chest revealed normal pulmonary effort. On 2/1/21, Petitioner called the office advising he had a cold and Z-Pak was prescribed. He complained of cough, sneezing, and runny nose. Petitioner was seen on 3/30/21. His review of systems respiratory was negative for cough, shortness of breath, or wheezing. Physical examination of the chest revealed normal breath sounds with no adventitious sounds. Petitioner was seen for pre-op exam regarding left foot tendon repair on 6/23/21. He denied cough or shortness of breath. Physical examination of the chest revealed normal effort and breath sounds with no adventitious sounds. Petitioner denied cough and shortness of breath on 8/9/21. The doctor charted that overall Petitioner had been feeling pretty well.

Medical records of Deaconess Hospital were admitted into evidence. Petitioner was seen on 4/22/18 for a one-year checkup. He complained that he was tired a lot and was using CPAP. (RX4 pp. 9-10). Petitioner was seen on 3/16/09 for follow up concerning his blood pressure. Physical examination respiratory was normal and negative. He was marked as a non-smoker. (RX4, pp. 14-15). Petitioner was seen on 6/30/10 for a refill of his medication for insomnia. Physical examination of the chest showed normal breath sounds with no respiratory distress or wheezing. (RX4, pp. 17-19). Petitioner was seen on 12/20/10 for medication refills. He denied any chest pain or shortness of breath. (RX4, pp. 19-21). Petitioner was seen on 10/14/12 for right knee pain. He was noted to be a former smoker having quit on 1/1/1992. Physical examination respiratory showed the lungs were clear to auscultation with normal respiratory effort. (RX4, pp. 22-24). Petitioner was seen on 2/16/13 regarding right knee pain. Physical examination respiratory continued to show the chest was clear to auscultation with normal respiratory effort. (RX4, p. 25).

On 11/12/18, Petitioner was examined by Dr. Suhail Istanbouly. Dr. Istanbouly testified by way of evidence deposition on 12/14/20. Dr. Istanbouly is board-certified in internal, pulmonary, and critical care medicine, and sleep apnea. He is associated with Southern Illinois Healthcare Hospitals in addition to all local hospitals including, Harrisburg, DuQuoin, Marion, and Sparta. Dr. Istanbouly testified that he considered chronic bronchitis under the umbrella of coal workers' pneumoconiosis (CWP). He testified that Petitioner smoked for a very short period during early adulthood, having smoked seven cigarettes per day for a total of three years before he quit at the age of 27. Dr. Istanbouly testified that this was not a significant smoking history. Dr. Istanbouly testified that Petitioner described a cough during the examination. He reported he had been coughing on a daily basis for more than 10 years and the cough was mild to moderate in intensity, more prominent in the morning, mainly to clear his throat. Dr. Istanbouly testified that the cough was occasionally productive of slight clear yellow sputum. Petitioner admitted that while working in the coal mine the sputum production was prominent and darker. Dr.

Istanbouly testified that when he described it as occasionally productive, he meant that it was productive of sputum mainly every morning but not through the day. Dr. Istanbouly testified that the history of cough described by Petitioner would be sufficient to make a diagnosis of chronic bronchitis. Dr. Istanbouly testified that Petitioner's simple CWP and chronic bronchitis were related to long term coal dust inhalation. He testified that in light of these diagnoses, it would be advisable for Petitioner from a medical standpoint not to work in the coal mines permanently.

Petitioner reported to Dr. Istanbouly mild exertional dyspnea. Petitioner reported he was able to walk up to half a mile without breathing problems. His physical capacity had declined over the past few years which Petitioner attributed to lack of exercise. Dr. Istanbouly testified that this could also be related to Petitioner's CWP and chronic bronchitis. Dr. Istanbouly testified that on Petitioner's spirometry, his FEV1 and FVC were in the range of normal. He testified that the FEV1/FVC ratio of 71% was within normal range per the American Thoracic Society Guidelines but that per the AMA Sixth Edition Guidelines for Disability due to pulmonary disease, an FEV1/FVC ratio less than 75% is considered abnormal.

Dr. Istanbouly testified that CWP requires a tissue reaction in addition to just the deposition of coal mine dust in the lungs, commonly called scarring or fibrosis. Dr. Istanbouly testified that if one has CWP it would be fair to say at the site of the abnormalities there would be an impairment of the function of the lung, whether it is measurable by pulmonary function testing or not. Dr. Istanbouly testified that the gold standard for diagnosing CWP is pathologic review. When he reads an x-ray as being positive for CWP and knows the patient had a sufficient exposure to coal mine dust to cause that disease, those two things combined suffice for Dr. Istanbouly to make a diagnosis of CWP. If Dr. Istanbouly reads the chest x-ray as being negative, it does not necessarily rule out the existence of CWP. Dr. Istanbouly agreed that a recent study had shown that 50% or more of long-term coal miners are found to have CWP at autopsy even though during life it was not found radiographically.

Dr. Istanbouly testified that sputum production helps to substantiate the diagnosis of chronic bronchitis. Dr. Istanbouly testified that if an individual has chronic cough, he makes a diagnosis of chronic bronchitis regardless of sputum production. He testified that if an individual did not tell him that he had a pure, dry hacky cough, then he met the diagnosis of chronic bronchitis.

Dr. Istanbouly testified that Petitioner did not relate to him any problem in completing the duties of his last job at the coal mine. Dr. Istanbouly testified that Petitioner related mild exertional dyspnea. Dr. Istanbouly testified that there are causes for exertional dyspnea other than pulmonary disease, including heart disease and deconditioning. He testified that at the time of his examination Petitioner weighed 296 pounds and had a BMI of 40 which was obese. Dr. Istanbouly was not sure if Petitioner did anything specific to stay in shape after leaving the coal mine. Dr. Istanbouly testified that Petitioner was not taking any breathing medications and had never done so in the past. Dr. Istanbouly testified that Petitioner had no wheezing on the day of his examination. Petitioner's spirometry on that date revealed an FEV1/FVC percent of 94% of predicted. Dr. Istanbouly testified that per the American Thoracic Guidelines Petitioner's spirometry revealed no evidence of obstruction. Dr. Istanbouly testified that with an FVC of 96% of predicted, he could not exclude the presence of a restriction, but it seemed less likely.

Dr. Istanbouly testified that when he met with Petitioner, he was presented with a chest x-ray taken 2/13/18, along with Dr. Smith's interpretation of same. Dr. Istanbouly has not reviewed any other interpretations of chest imaging of Petitioner. Dr. Istanbouly testified that he is neither an A or B-reader of films. He testified that he does not assign profusion ratings to the films he interprets for black lung. When Dr. Istanbouly interprets a chest x-ray for pneumoconiosis, he determines whether the film is positive or negative for same, and if positive, he classifies what he sees as early, moderate, or severe. Dr. Istanbouly classified what he saw on Petitioner's chest x-ray as early pneumoconiosis. Dr. Istanbouly testified that what he saw on Petitioner's chest x-ray was consistent with a 1/0 profusion which is early simple CWP. Dr. Istanbouly testified that a 0/1 is a negative reading for pneumoconiosis. He testified that he was not sure how to distinguish between a profusion of 1/0 and 0/1. He testified that it is the level of intensity of pneumoconiosis. He testified that he has never looked at the standard ILO films to see what the difference is between a 1/0 and a 0/1 profusion. Dr. Istanbouly testified that there is a fairly good correlation between chest x-ray findings of pneumoconiosis and pathologic evidence of same. Dr. Istanbouly testified that his sole diagnosis for Petitioner was simple CWP.

Dr. Henry K. Smith, a board-certified radiologist and B-reader, interpreted chest x-ray of Petitioner dated 2/13/18. Dr. Smith interpreted the chest x-ray as positive for pneumoconiosis, profusion 1/0 with P/S opacities in the bilateral middle and lower lung zones.

Dr. Cristopher Meyer testified by way of evidence deposition on 9/17/19. Dr. Meyer has been a board-certified radiology since 1992 and a B-reader since 1999. Dr. Meyer reviewed a chest x-ray of Petitioner dated2/13/18 and found the film to be quality 1. He testified that other than degenerative spurring of the thoracic spine, the examination was normal. He testified that there were no radiographic findings of CWP.

Dr. Meyer testified that the B-reader looks at the lungs to decide whether there are any small nodular opacities and based on the size and appearance of the small opacities they are given a letter score. He testified that specific occupational lung diseases are described by specific opacity types. CWP is characteristically described by small round opacities. Diseases that cause pulmonary fibrosis, like asbestosis, are described as small linear opacities. Dr. Meyer testified that the distribution of the opacities is also described because different pneumoconioses are seen in different regions of the lung. CWP is typically an upper lung zone predominant process. Idiopathic pulmonary fibrosis or asbestosis is a basilar or linear process. The last component of the interpretation is the extent of the lung involvement or so-called profusion. Dr. Meyer testified that the profusion is basically trying to describe the density of the small opacities in the lung.

Dr. Meyer testified that very rarely is CWP found in the mid and lower lung zones and not in the upper lung zones. Dr. Meyer testified that if he reads an x-ray as positive and the worker had a sufficient history to cause CWP, that would warrant a finding of CWP. Dr. Meyer testified that if he reads a chest x-ray as negative, that would not necessarily rule out that the miner may have pneumoconiosis pathologically. Dr. Meyer testified that there are studies that show that at autopsy as much as 50% of coal miners are found to have abnormalities of CWP when they might not have been apparent radiographically during their life.

Dr. James Lockey testified by way of evidence deposition on 1/12/21. Dr. Lockey is a physician at the University of Cincinnati Medical Center. He completed a pulmonary fellowship in 1978. He is board-certified in internal, pulmonary, and occupational medicine. Dr. Lockey has been a B-reader continuously since 1988. Dr. Lockey conducted a review of medical records and a chest x-ray of Petitioner dated 2/13/18. He testified that for an interpretation of a chest x-ray to be positive for pneumoconiosis there are usually round opacities, profusion category 1/0 which are usually located initially in the upper lung zones. Dr. Lockey testified that in reading a chest x-ray for pneumoconiosis, he first indicates the quality of the film. He indicates the opacity type present, whether it is a round or linear opacity. He testified that different opacities are seen with different disease processes, with the vast majority of circumstances, the opacities found with coal dust exposure are round opacities. Other disease processes, such as asbestosis, have linear type opacities. Dr. Lockey testified that typically the round opacities from coal dust exposure are initially located in the upper lung fields, unlike asbestosis exposure where the irregular opacities are usually located in the lower lung fields. Dr. Lockey testified that he also looks for pleural abnormalities and indicates in his interpretation of the chest x-ray other disease processes that are revealed such as emphysema, cancer, or cor pulmonale. Dr. Lockey testified that a positive interpretation of a chest x-ray for pneumoconiosis begins with a profusion of 1/0. A profusion of 0/1 would technically be negative for disease. Dr. Lockey testified that the distinction between a profusion of 1/0 and 0/1 is a fine distinction that is a point of emphasis on the B-reading course.

Dr. Lockey testified that he was part of the group put together by the American College of Radiology and NIOSH to reevaluate the B-reader course and B-reader examination. As a consequence of that work, a new syllabus was written. Dr. Lockey testified that the syllabus is the instruction manual as to how one proceeds to evaluate and interpret chest films for pneumoconiosis. He testified that the syllabus is something that individuals acquire and study in preparation for taking the B-reading exam. He testified that the syllabus discusses the fine distinction that is made between the profusion of 1/0 and 0/1.

Dr. Lockey testified that under usual circumstances, particularly in low profusion categories, simple pneumoconiosis is not a progressive disease. He agrees with the position taken by the American Thoracic Society that an older worker with a mild pneumoconiosis may be at low risk for working in currently permissible dust levels until he reaches retirement age. Dr. Lockey agreed with Dr. Istanbouly there is a fairly good correlation between chest x-ray findings of pneumoconiosis and pathologic findings. He testified that diffusing capacity is a method to look at the alveolar membrane. In Petitioner's case, the diffusing capacity was normal which would indicate from a clinical perspective there was little or no disruption of that fine membrane that would result in impairment of gas exchange. Dr. Lockey testified that under most circumstances subradiographic pneumoconiosis does not have any clinical significance. He testified that in Petitioner's case his diffusing capacity was normal and his spirometry results were normal. He testified that there was no clinical evidence of any pulmonary impairment. Dr. Lockey testified that the film he reviewed did not demonstrate any changes consistent with pneumoconiosis at profusion category 0/0.

Dr. Lockey testified that the diagnosis of pneumoconiosis did not appear anywhere in Petitioner's treatment records that he reviewed. He testified that CT scans are more sensitive than plain films in detecting the opacities of pneumoconiosis. He stated that the records he

reviewed included a report from a CT of the abdomen and pelvis dated 10/18/19 that caught the lung bases and showed no opacities. There were some bibasilar subsegmental atelectasis which is a common finding, particularly in somebody who has a body mass index reflected in Petitioner. Dr. Lockey testified that atelectasis represents temporary collapse of the small airways and looks like linear scarring. If the person would take a deep breath, atelectasis would resolve.

Dr. Lockey testified that the diagnosis of chronic bronchitis did not appear anywhere in Petitioner's treatment records that he reviewed. He testified that the medical records prior to Dr. Istanbouly's evaluation did not mention symptoms consistent with chronic bronchitis or the diagnosis of chronic bronchitis. Dr. Lockey testified that he is familiar with Table 5-4 of the *AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition*. He testified that to fall in Class 0 impairment, the individual's FEV1/FVC percent or ratio must be greater than the lower limit of normal and/or greater than 75% of predicted. The lower limit of normal for Petitioner in regard to his FEV1/FVC ratio in the spirometry performed by Dr. Istanbouly was 65.17%. Dr. Lockey testified that in that testing Petitioner's FEV1/FVC was 71% so it was above the lower limit of normal. Dr. Lockey testified that Petitioner's FEV1/FVC percent of predicted was 94%. In the later testing at Stat Care, Petitioner's FEV1/FVC ratio was above the lower limit of normal. His ratio was above 100% of predicted. Dr. Lockey testified that Petitioner fell in Class 0 impairment based on the spirometry that was performed on him. Dr. Lockey testified that based on the information he reviewed, Petitioner was capable of performing his normal job task in the coal mine industry or similar job task in a dust free environment.

Dr. Lockey testified that CWP could accurately be described as a tissue reaction to coal mine dust which is trapped in the lungs, called scarring or fibrosis. He testified that whether a coal miner gets CWP is based on his susceptibility to it as well as the amount of dust he has been exposed to. Dr. Lockey testified that scar tissue cannot perform the same function as normal, healthy lung tissue.

Dr. Lockey testified that in studies by Vallyathan and Kuempel, it was indicated that on pathologic review in long term coal miners 90% or more of the miners had simple pneumoconiosis by pathologic review. Dr. Lockey testified that the majority of those miners also had x-ray changes. He testified that a lung can have pathological findings of coal macules that are not evident on the CT scan or chest x-ray. Dr. Lockey testified that a negative B-reading on Petitioner would not rule out that he would not have pathological findings of CWP. Dr. Lockey testified that if he does have pathological findings of CWP, he did not have any impairment related to those findings.

CONCLUSIONS OF LAW

Issue (C): Did an occupational disease occur that arose out of and in the course of Petitioner's employment with Respondent?

All of the physicians interpreted the chest x-ray of Petitioner dated 2/13/18. Dr. Lockey described the protocol for proper reading of a chest x-ray for pneumoconiosis. He testified that profusion is important because that is the determination of whether or not the x-ray is positive or negative. Dr. Istanbouly testified that when he interprets a film for black lung, he determines

whether it is positive or negative and if it is positive, he classifies it as early, moderate, or severe. He does not provide profusion ratings on such films. In Petitioner's case, he characterized what he saw on the chest x-ray as early pneumoconiosis.

Dr. Smith interpreted the chest x-ray as positive for pneumoconiosis, profusion 1/0 with P/S opacities in the bilateral middle and lower lung zones. Dr. Smith, on his B-reading form, did not note any opacities in the upper lung zones. Dr. Meyer and Dr. Lockey testified there were no findings of CWP on chest x-ray. Furthermore, Dr. Meyer and Dr. Lockey testified that CWP is typically an upper lung zone predominant process and that very rarely is CWP found in the mid and lower lung zones and not in the upper lung zones. Dr. Smith's interpretation was not consistent with the general presentation and progression of CWP.

The Arbitrator notes the testimony of Dr. Istanbouly and Dr. Meyer that studies have shown that 50% of coal miners have CWP that was determined at autopsy even though during their life it was not found radiographically. The Commission has rejected reliance on such statistical evidence in the absence of other persuasive, medically accepted evidence establishing a causal connection. *Quinn v. The American Coal Co.*, 20 IWCC 0326, p. 17. The Arbitrator finds that the testimony of the experts that a negative chest x-ray would not rule out pneumoconiosis is not the same as saying that Petitioner in fact suffers from the disease. *Woolard v. The American Coal Co.*, 20 IWCC 0154, p. 17. It is not Respondent's duty to produce evidence that Petitioner did not have coal workers' pneumoconiosis. Rather the issue is whether Petitioner has proven that he does. *Quinn*, 20 IWCC 0326, p. 16.

The Arbitrator finds the opinions of Drs. Meyer and Lockey to be more persuasive and credible regarding CWP than those of Drs. Istanbouly and Smith. The Arbitrator finds Dr. Meyer and Dr. Lockey to be the most credible of the B-readers given that they are not only certified B-readers, but they are also on the ACR Pneumoconiosis Task Force which is engaged in redesigning the B-reading course and exam as well as submitting cases for the training module and exam. The interpretations of Drs. Meyer and Lockey regarding the 2/13/18 chest x-ray are corroborated by the independent interpretation of the CT of abdomen and pelvis performed on 10/18/19, which did not identify any opacities in Petitioner's lung bases as seen by Dr. Smith.

Dr. Istanbouly testified that Petitioner had chronic bronchitis which was related to his long-term coal dust inhalation. The diagnosis of chronic bronchitis was based on the history Petitioner provided to Dr. Istanbouly of coughing on a daily basis for more than 10 years and that the cough was mild to moderate in intensity and was occasionally productive of slight clear yellow sputum. Dr. Istanbouly did not review any treatment records regarding Petitioner. Dr. Istanbouly found that Petitioner's spirometry was within normal range. Dr. Lockey reviewed treatment records for Petitioner and the records were void of any diagnosis of chronic bronchitis. He testified that the medical records prior to Dr. Istanbouly's evaluation did not mention symptoms consistent with chronic bronchitis or the diagnosis of chronic bronchitis. The treatment records did not corroborate the diagnosis of chronic bronchitis made by Dr. Istanbouly.

Based on the medical evidence, the Arbitrator finds Petitioner has failed to prove that he was exposed to an occupational disease that arose out of and in the course of his employment with Respondent.

Issue (F): Is Petitioner's current condition of ill-being causally related to his occupational exposure?

The Arbitrator finds that Petitioner failed to prove that his current condition of ill-being is causally connected to an occupational exposure with Respondent.

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

Based on the Arbitrator's findings as to accident and causal connection, permanent partial disability benefits are hereby denied.

Issue (O) Whether Petitioner proved timely disablement pursuant to Sections 1(e) and (f) of the Occupational Diseases Act?

Petitioner left work at Respondent due to an involuntary termination unrelated to an occupational disease. Petitioner was not taking any breathing medications at the time of Dr. Istanbouly's examination and had never taken breathing medications in the past. There was no evidence that any physician ever restricted Petitioner from work as a result of an occupational lung disease. Dr. Lockey testified that based on his pulmonary function testing, Petitioner would be capable of performing his normal job tasks in the coal mine industry.

The Arbitrator finds that Petitioner failed to prove that he suffered a timely disablement pursuant to Sections 1(e) and (f) of the Occupational Diseases Act.

Linda J. Cantrell, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC030686
Case Name	Joseph Dobyns v. State of Illinois – Illinois Department of Natural Resources
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0424
Number of Pages of Decision	13
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	James Keefe, Jr.
Respondent Attorney	Caitlin Fiello

DATE FILED: 11/4/2022

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Joseph Dobyns,

Petitioner,

vs. NO. 20WC 30686

Illinois Department of Natural Resources,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 29, 2021, is hereby affirmed and adopted.

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

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

Pursuant to §19(f)(1) of the Act, this Decision and Opinion on Review of a claim against the State of Illinois is not subject to judicial review.

Novembe 4, 2022

SJM/sj
o-9/28/2022
44

/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah J. Baker*
Deborah J. Baker

/s/ *Deborah L. Simpson*
Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC030686
Case Name	DODYNS, JOSEPH v. ILLINOIS DEPARTMENT OF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	James Keefe, Jr.
Respondent Attorney	Caitlin Fiello

DATE FILED: 4/29/2021

/s/ Linda Cantrell, Arbitrator
Signature

INTEREST RATE WEEK OF APRIL 27, 2021 0.03%

CERTIFIED as a true and correct copy

pursuant to 820 ILCS 305/14

April 29, 2021

/s/ Brendon O'Rourke

Brendan O'Rourke, Assistant Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **Madison**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JOSEPH DOBYNS
Employee/Petitioner

v.

ILLINOIS DEPARTMENT OF NATURAL RESOURCES
Employer/Respondent

Case # **20-WC-30686**

Consolidated cases: _____

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 **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Collinsville**, on **March 23, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **09/23/2020**, 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 $**59,294.56**; the average weekly wage was $**1,140.58**.

On the date of accident, Petitioner was **51** years of age, ***married*** with **0** dependent children.

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

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

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

Respondent is entitled to a credit of $**any benefits paid** under Section 8(j) of the Act.

ORDER

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's Group Exhibit 5, as provided in §8(a) and §8.2 of the Act, as the Arbitrator finds said bills to be reasonable, necessary, and causally related to the work accident. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that Respondent shall receive a credit for medical bills paid through its group medical plan pursuant to Section 8(j) of the Act. Respondent shall further hold Petitioner harmless from all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

Respondent shall pay Petitioner temporary total disability benefits of $**760.39**/week for the period **9/28/20 through 12/6/20**, representing **10** weeks.

Respondent shall pay Petitioner the sum of $**684.35**/week for a further period of **20.5** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **10% loss of the left hand**.

Respondent shall pay Petitioner compensation that has accrued from **12/3/20 through 3/23/21**, and shall pay the remainder of the award, if any, in weekly payments.

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.

Linda J. Cantrell
Signature of Arbitrator

APRIL 29, 2021

STATE OF ILLINOIS)
) **SS**
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JOSEPH DOBYNS,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 20-WC-30686
	)	
ILLINOIS DEPARTMENT OF NATURAL RESOURCES,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Collinsville on March 23, 2021 on all issues. The issues in dispute are accident, causal connection, medical bills, temporary total disability benefits, and the nature and extent of Petitioner's injuries. All other issues have been stipulated.

TESTIMONY

Petitioner was 51 years old, married, with no dependent children at the time of accident. Petitioner has been employed with Respondent for fourteen years as a Site Tech II performing conservation work. His job duties are hand intensive and required the use of shovels, chainsaws, tractors, excavators, bulldozers, etc. Petitioner testified that on September 23, 2020 he was wrapping a duck blind with his co-worker, Rich Johnson, which is a job duty they perform every year. The duck blind is made of wood and wrapped in chicken wire. It is covered with oak tree branches for camouflage. Petitioner testified the blinds have wasps, yellowjackets, spiders, and snakes.

On 9/23/20, Mr. Johnson was bringing brush to Petitioner when Petitioner told him to wait because he felt a sting on his left hand. He immediately removed his glove and noticed a sting or bite mark on the top side of his hand. His hand was red and began to swell within minutes. Petitioner is right hand dominant.

Petitioner reported the incident the same day to his supervisors, Paul Greeting and Mick Middleton, who told him to keep an eye on it, take Ibuprofen, and update them if his condition changed. Petitioner testified he finished his shift that day and worked the following two days. When he returned to work the following Monday his hand swelled to the point he could not move it and his supervisor ordered him to reported to urgent care. On 9/28/20, Petitioner was

prescribed Prednisone and taken off work. On 10/1/20, his condition had not improved and he was continued off work.

Petitioner testified that on 10/5/20 he returned to urgent care with pain and numbness on the top of his hand. The swelling was reduced by fifty percent and he was prescribed an antibiotic and work restrictions. Petitioner testified Respondent was not able to accommodate his work restrictions and he remained off work. He testified he could not have performed his job duties due to the amount of swelling. He could not grip or move his pinky or ring fingers. He returned to urgent care on 10/8/20 where x-rays were performed and work restrictions were continued which Respondent could not accommodate. On 10/13/20, Petitioner was referred to Dr. Mirly and he was continued on restricted duty. Petitioner testified he previously treated with Dr. Mirly for a right index finger injury a couple of years prior to 9/23/20.

Dr. Mirly ordered an ultrasound and took Petitioner off work. Petitioner testified he could not undergo an MRI due to a heart condition. Petitioner testified that the swelling had improved, but he had pain and numbness on the top of his hand and loss of grip strength. Dr. Mirly ordered physical therapy. Petitioner testified he did not undergo physical therapy because Respondent denied his claim and he did not receive temporary total disability benefits. Dr. Mirly released him and he returned to work the first week of December 2020. Petitioner testified he sought a second opinion with Dr. David Brown on 1/25/21.

Petitioner testified the top of his pinky and ring finger knuckles are completely numb and the numbness extends almost to his wrist. He testified he has lost significant grip strength in his left hand causing him to drop tools. The pain and numbness have affected his gardening and yard maintenance at home. Petitioner testified he had not sustained injuries to his left hand prior to or after 9/23/20. He takes Ibuprofen on a daily basis.

Petitioner called Richard Johnson as a witness. Mr. Johnson is employed with Respondent as a seasonal worker at Baldwin Lake. He testified he regularly worked with Petitioner performing conservation work. Mr. Johnson worked with Petitioner on 9/23/20 wrapping duck blinds with brush which was a job duty they performed every year prior to duck hunting season. Mr. Johnson testified he was dragging brush toward Petitioner on that date when Petitioner told him something bit him on the hand. Petitioner removed his glove and Mr. Johnson observed a big red circle on the top side of Petitioner's left hand that swelled within a few minutes. He told Petitioner to ice his hand because he had no idea what bit him. Mr. Johnson has seen grasshoppers and mosquitoes in the blinds. Mr. Johnson noticed the following day Petitioner's hand remained red and swollen. He denied observing Petitioner having problems with his left hand prior to 9/23/20. Mr. Johnson did not see what insect bit or stung Petitioner's hand. The witness statement Mr. Johnson completed is consistent with his testimony. (RX3).

The first report of injury and supervisor's report of injury reflect that Petitioner was brushing a duck blind and either a spider or insect stung him on the left hand. His hand was swollen. The incident was reported on the day of injury.

MEDICAL HISTORY

On 9/28/20, Petitioner reported to Quality Healthcare Clinic at Respondent's direction. He reported itching and swelling in his left hand starting four days prior when he was working on a duck blind. He described it as a possible bug or spider bite. Physical exam revealed swelling and he was diagnosed with a workplace injury with acute left-hand inflammation. He was prescribed Prednisone, Ibuprofen, and taken off work. Petitioner completed a leave of absence request form for a work-related injury. (R5).

On 10/1/20, Petitioner returned to Quality Clinic. He was kept off work and ordered to continue taking Prednisone. On 10/5/20, Petitioner reported increased swelling in the left hand at the fourth MCP joint and fever over the weekend. He was placed on work restrictions of left-handed work as tolerated and prescribed an antibiotic.

On 10/8/20, Petitioner reported increased pain and swelling in the fourth MCP joint. He also had diarrhea and coughed a streak of blood. X-rays of the left hand revealed moderate soft tissue swelling and moderate scattered osteoarthritis. Petitioner's work restrictions were continued.

On 10/13/20, Petitioner returned to Quality Clinic reporting paresthesia to the left fourth digit, pain at 5 out of 10, and mild swelling. He had nausea with eating. Labs were ordered and he was referred to Dr. Harvey Mirly. Petitioner's labs revealed an elevated sedimentation rate of 13 causing inflammation.

On 10/22/20, Dr. Mirly recorded a history that Petitioner developed pain and swelling in his left hand when brushing a duck blind at work. Physical examination revealed visible swelling over the ring metacarpal head with tenderness to palpation. Dr. Mirly opined a bite injury was certainly possible. It did not appear to be a typical spider bite with central necrosis. He opined a foreign body substance such as a thorn may have caused the inflammatory process. He recommended ultrasound and kept Petitioner off work. The ultrasound was performed on 11/17/20 and revealed mild non-specific subcutaneous edema along the dorsal aspect of the ring finger metacarpal.

Petitioner returned to Dr. Mirly on 11/24/20 and swelling was noted over the dorsal aspect of the ring metacarpal head with tenderness to palpation. Petitioner was able to make a fist. Dr. Mirly did not observe any foreign body on the ultrasound. Secondary to weakness, Dr. Mirly ordered hand therapy and kept Petitioner off work.

On 12/3/20, Petitioner called Dr. Mirly's office explaining his worker's compensation claim was denied. The follow up appointment with Dr. Mirly was cancelled and Petitioner was released from care.

On 1/25/21, Petitioner was examined by Dr. David Brown for a second opinion. Petitioner reported the history of accident, with an acute onset of pain and swelling over the dorsal aspect of his left hand. Petitioner believed it was an insect or spider bite. Current complaints included numbness over the dorsal aspect of the fourth MCP joint and weakness and

pain in the little and ring fingers. Dr. Brown noted no visible swelling and full fluid active range of motion. Grip and pinch strength on the left was reduced compared to the right. Dr. Brown opined based on Petitioner's history he may have sustained an insect bite that caused swelling and pain. He opined there was no structural abnormality that required surgical intervention and Petitioner could work full duty.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

To obtain compensation under the Act, an injury must "arise out of" and "in the course of" employment. 820 ILCS 305/1(d). An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal relationship between the employment and the accidental injury. *Orsini v. Indus. Comm'n*, 117 Ill.2d 38, 509 N.E.2d 1005 (1987). In order to meet this burden, a claimant must prove that the risk of injury is peculiar to the work or that he or she is exposed to the risk of injury to a greater degree than the general public. *Id*. "In the course of employment" refers to the time, place, and circumstances surrounding the injury. *Lee v. Industrial Comm'n*, 167 Ill. 2d 77, 656 N.E.2d 1084 (1995); *Scheffler Greenhouses, Inc. v. Indus. Comm'n*, 66 Ill. 2d 361, 362 N.E.2d 325 (1977). That is to say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003).

Petitioner's injury clearly falls within the definition of an accident within the meaning of the Act. He was performing a task distinctly related to his employment which required him to brush duck blinds. This involved placing oak tree branches with exposures to bees, wasps, spiders, and snakes. While Petitioner did not observe the insect or bug that bit or stung his hand, the evidence overwhelmingly supports that something bit or stung Petitioner's left hand when building or brushing the duck blind. He immediately removed his glove and noticed redness and swelling. His injury was corroborated by his coworker, Richard Johnson. Petitioner immediately reported the injury to his supervisors and he provided a consistent history to his treating physicians. Petitioner's testimony was consistent with the accident reports and medical records.

Based on the credible testimony of Petitioner and treating records, the Arbitrator finds Petitioner sustained his burden of proof in establishing he suffered an accident that arose out of and in the course of his employment with Respondent on September 23, 2020.

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96–97, 197

Ill.Dec. 502, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 66 Ill.Dec. 347, 442 N.E.2d 908 (1982).

The Arbitrator finds Petitioner's testimony credible that he had an immediate onset of pain and swelling in his left hand when he felt a sting or bite while brushing a duck blind. Petitioner was able to perform his job duties without incident prior to his accidental work injury on 9/23/20, which Petitioner described as hand intensive. There was no evidence offered other than the work accident that could reasonably explain Petitioner's sudden onset of redness and swelling in his left hand and his inability to work. There is no history of prior injuries or treatment with respect to Petitioner's left hand. Dr. Mirly and Dr. Brown opined it was reasonable Petitioner suffered from an insect bite or sting due to the sudden onset of symptoms and the job he was performing. Respondent did not offer any medical opinion to contradict the opinions of Petitioner's treating physicians.

Therefore, the Arbitrator finds Petitioner's current condition of ill-being is causally connected to the injury that occurred on September 23, 2020.

Issue (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?

Based upon the above findings as to causal connection, the Arbitrator finds that Petitioner is entitled to medical benefits. Respondent shall therefore pay Petitioner's medical bills contained in Petitioner's Group Exhibit 5, as provided in Section 8(a) and Section 8.2 of the Act, as the Arbitrator finds said bills to be reasonable, necessary, and causally related to the work accident. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that Respondent shall receive a credit for medical bills paid through its group medical plan pursuant to Section 8(j) of the Act. Respondent shall further hold Petitioner harmless from all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

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

The law in Illinois holds that "[a]n employee is temporarily totally incapacitated from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit." *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill. 1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill., 1990) citing *Ford Motor Co. v. Industrial Comm'n*, 126 Ill.App.3d 739, 743, 467 N.E.2d 1018, 81 Ill.Dec. 896 (1984).

The record shows Petitioner was taken off work on 9/28/20 when he reported to urgent care at the direction of Respondent. Petitioner remained off work or subject to restricted duties until he was released from Dr. Mirly's care and returned to work on 12/7/20. The Arbitrator notes that on 11/24/20, Dr. Mirly continued Petitioner off work pending hand therapy treatment. Petitioner was not able to undergo therapy as Respondent denied his claim. Petitioner was

scheduled to follow up with Dr. Mirly's office on 12/10/20, following a course of physical therapy, at which time his off-work status would be revisited. On 12/3/20, Dr. Mirly's office cancelled the follow up appointment of 12/10/20 and released Petitioner from his care due to Petitioner's claim being denied. Petitioner testified that Respondent would not accommodate his light duty restrictions, which was not disputed by Respondent at trial.

The Arbitrator finds Petitioner is entitled to temporary total disability benefits of $**760.39**/week for the period **9/28/20 through 12/6/20**, representing **10** weeks.

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

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

(i) **Level of Impairment**: Neither Party submitted an AMA rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation**: Petitioner returned to full duty work as a Site Tech II for Respondent. Petitioner testified he has pain and numbness in his non-dominant left hand causing him to drop tools while working. The Arbitrator places some weight on this factor.

(iii) **Age**: Petitioner was 51 years old at the time of his injury. He has a considerable number of working years with his disability and performs a hand intensive job. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity**: There is no evidence of reduced earning capacity contained in the record. The Arbitrator places some weight on this factor.

(v) **Disability**: As a result of his work accident, Petitioner testified the top of his pinky and ring knuckles are completely numb and the numbness extends almost to his wrist. He testified he has lost significant grip strength in his left hand causing him to drop tools and negatively affects the performance of his job duties. The pain and numbness have affected his gardening and yard maintenance at home. He takes Ibuprofen on a daily basis. The Arbitrator places greater weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator orders Respondent to pay Petitioner the sum of $**684.35**/week for a period of **20.5 weeks**, as provided in Section 8(e) of the Act, because the injuries sustained caused **10% loss of the left hand.**

Respondent shall pay Petitioner compensation that has accrued from December 3, 2020 when Dr. Mirly released Petitioner from his care, through March 23, 2021, and shall pay the remainder of the award, if any, in weekly payments.

_____Linda J. Cantrell_____
Arbitrator Linda J. Cantrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC026098
Case Name	Patricia B Stewart (Admin of Estate of Leonard G Luers) v. Gilster Mary-Lee Corp
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0425
Number of Pages of Decision	12
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Jason Coffey
Respondent Attorney	Pieter Schmidt, Brian Smith

DATE FILED: 11/7/2022

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PATRICIA B. STEWART,
(ADMINISTRATOR OF THE ESTATE
OF LEONARD G. LEURS, DECEASED),

Petitioner,

vs. NO: 15 WC 26098

GILSTER-MARY-LEE CORPORATION,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 7, 2021, is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. 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.

November 7, 2022

o- 11/1/22
KAD/jsf

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC026098
Case Name	STEWART, PATRICIA B ADMINISTRATOR OF THE ESTATE OF LEONARD G LUERS, DECEASED v. GILSTER-MARY LEE CORP
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Jason Coffey
Respondent Attorney	Pieter Schmidt

DATE FILED: 12/7/2021

THE INTEREST RATE FOR THE WEEK OF DECEMBER 7, 2021 0.10%

/s/ Jeanne AuBuchon, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **MADISON**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
FATAL

Patricia B. Stewart, Administrator of the Estate of Leonard G. Luers, deceased

Employee/Petitioner

v.

Gilster-Mary Lee Corp.

Employer/Respondent

Case # **15** WC **26098**

Consolidated cases:

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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **June 15, 2021**. 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 Decedent's employment by Respondent?

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to Respondent?

F. ☐ Is Decedent's current condition of ill-being causally related to the injury?

G. ☐ What were Decedent's earnings?

H. ☐ What was Decedent's age at the time of the accident?

I. ☐ What was Decedent's marital status at the time of the accident?

J. ☐ Who was dependent on Decedent at the time of death?

K. ☐ Were the medical services that were provided to Decedent reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

L. ☐ What compensation for permanent disability, if any, is due?

M. ☐ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☒ Other **TTD, Funeral Expenses**

FINDINGS

On the date of accident, **8/3/12**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Decedent's death ***is*** causally related to the accident.

In the 48.3 weeks preceding the injury, Decedent earned $**28,289.44**; the average weekly wage was $**585.70**.

On the date of accident, Decedent was **61** years of age, ***single*** with **1** dependent (adult) child.

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

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

Respondent is entitled to a credit of $**62,289.87** under Section 8(j) of the Act.

ORDER

Credits

Respondent shall be given a credit of $**62,298.87** for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $386.56/week for 1 2/7 weeks, commencing 8/3/12 through 8/14/12, as provided in Section 8(b) of the Act.

Fatal

Respondent shall pay $**8,000** for burial expenses to the Petitioner, as administrator of the estate of the decedent, as provided in Section 7(f) of the Act.

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

DECEMBER 7, 2021

PROCEDURAL HISTORY

This matter proceeded to trial on June 15, 2021, pursuant to Section 7 of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment and 2) entitlement to TTD benefits from August 3, 2012, through August 14, 2012. The parties stipulated as to the cause of death of the Petitioner but not to causation as it applied to injuries arising out of and in the course of employment.

FINDINGS OF FACT

At the time of the accident, the decedent, Leonard G. Luers, was 61 years old and had been employed by the Respondent as leadperson. (AX1, PX7) His duties included repairing broken equipment and performing walk throughs of the production floor. (PX7)

Patricia Stewart, the ex-wife of the decedent, was appointed administrator of the decedent's estate. (T. 12, 15) She testified that on August 3, 2012, the decedent's supervisor called her to go to the emergency room at Memorial Hospital in Chester, where she saw the decedent, who was conscious but unable to speak, completely covered in a white substance that she learned was starch. (T. 13, PX1) The decedent was flown by helicopter to St. Louis University Hospital, where he underwent surgery to remove a portion of his brain to stop cranial bleeding. (T. 14-16) The decedent had suffered intercranial hemorrhage, subdural hemorrhage, temporal lobe contusion, right temporal bone fracture, right scapula fracture, fractures to two right ribs and a right pulmonary contusion. (PX2) He was placed on life support, which was later removed, and died on August 14, 2012, from accidental craniocerebral blunt trauma. (T. 16-17, PX2, PX3)

Rose Zoellner, a safety sanitation worker for the Respondent, testified at a deposition December 12, 2019, that when she was summoned to the scene of the accident on August 3, 2012,

she saw the decedent lying in front of a dehydrator with blood on the side of his head. (PX9) Ms. Zoellner stated that after the decedent was taken to the hospital, she investigated the area where the decedent was found and saw a thin coating of starch dust on the dehydrator but no evidence that anyone had been on the dehydrator and disrupted the dust. (Id.) She saw cornstarch on the floor, and had seen it on the decedent's face when she saw him. (Id.) Ms. Zoellner testified that she reviewed surveillance video from the plant and saw the decedent working on a machine in the marshmallow packaging room, then leaving the room and walking up a hall. (Id.) She stated that the decedent had a tool belt while working on the machine in the packaging room but did not take it with him. (Id.) There was no video of the location of the accident. (Id.) She said it was common for the decedent to walk around the facility. (Id.)

The parties stipulated that there was no starch guard or shield in place above the dehydrator at the time of the accident. (T. 5) Ms. Zoellner testified that when she arrived at the accident scene, starch was falling off of a roller on a belt of the dehydrator. (PX9) She said the starch could be slippery. (Id.) Photos of the area where the decedent was found showed what appeared a white, dusty substance on the floor. (PX6) The photos also appeared to show footprints and other areas where the substance was disturbed. (Id.)

Chester Razer, manager and sole operator for Razer Safety and Health Consulting Company, investigated the accident beginning on August 6, 2012, at the request of the Respondent. (RX3, Deposition Exhibit 2) He reviewed the video surveillance and written statements from employees and interviewed employees – none of whom witnessed the accident nor was aware of anyone who did. (Id.) He determined: 1) the decedent's work activities were self-directed, and he had the authority to roam his area of the facility at will to conduct any necessary mechanical or electrical work; 2) during the minutes immediately prior to the accident, the decedent had a

conversation with a foreman and another employee in the supervisor's office, but there was no mention of any issues at or around the dehydrator where the Petitioner was found; 3) also in the minutes before the accident, the decedent was observed looking at an overhead conveyor at the dehydrator by another leadperson, who believed the decedent was trying to correct a localized starch spillage problem; 4) the decedent had not been instructed to conduct any work on or around the dehydrator; 5) no one indicated that there were any items on the floor or on the dehydrator that suggested a loose piece of material struck the decedent; 6) no one indicated or suggested that the decedent was suffering any medical or physical issues during the time leading up to the accident; 7) there was no evidence the decedent had climbed on top of the dehydrator and fell from it; and 8) fall-protection equipment was used when working at extreme heights and from aerial lift baskets. (Id.) Mr. Razer inspected the accident scene and saw starch dribbling from an overhead conveyor to the top of the dehydrator. (Id.) He said that resolving the starch matter was well within normal activity for the decedent. (Id.) Because there were no eyewitnesses nor physical evidence, Mr. Razer reported that he could not determine an exact cause of the accident. (Id.)

Mr. Razer testified consistently with his report at a deposition on March 12, 2019, (RX3) He stated that, based on his investigation, the decedent was in the course of his employment when he died. (Id.)

The Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor investigated the decedent's death and determined that the decedent was working near the front of the marshmallow dehydrator machine when he fell from floor level onto the floor, noting that no evidence was found that the decedent had climbed onto any machinery, ladder or stairs. (PX5)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below.

Issue C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

In order to obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence two elements: 1) that the injury occurred in the course of the claimant's employment and 2) that the injury arose out of the claimant's employment. *McAllister v. Ill. Workers' Comp. Com'n,* 2020 IL 12484, ¶ 32.

The phrase "in the course of employment" refers to the time, place and circumstances of the injury. *Id.* at ¶34. A compensable injury occurs in the course of employment when it is sustained while a clamant is at work or while he or she performs reasonable activities in conjunction with his or her employment. *Id.* In this case, the employees' testimony and written statements, as well as the results of Mr. Razer's investigation provide ample evidence that the decedent was performing reasonable activities in conjunction with his employment. Therefore, the Arbitrator finds that the Petitioner's injury occurred in the course of her employment.

The "arising out of" component is primarily concerned with causal connection. *Id.* at ¶ 36. To satisfy this requirement, it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Id.* The three categories of risk are: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics. *Id.* at ¶38.

A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing: 1) acts he or she was instructed to perform by the employer; 2) acts that he or she had a common-law or statutory duty to perform; or 3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *Id.* at ¶46. The job description for the decedent and witness testimony and written statements all confirm that walking in the area of the dehydrator was an act the decedent was reasonably expected to perform incident to his assigned duties, and, therefore, was a risk distinctly associated with his employment.

Next is the requirement that the risk created a causal connection between the employment and the accidental injuries. It is well within the province of the Commission to draw inferences from undisputed facts to determine whether injury resulted from conduct which unreasonably or unnecessarily increased the risks of injury which attend such employment. *Sears, Roebuck & Co., v. Industrial Com*, 78 Ill.2d 231, 233, 399 N.E.2d 594, 35 Ill.Dec. 528 (1979). The Commission is entitled to draw reasonable inferences from both direct and circumstantial evidence. *Id*. at 234.

The photographs of the accident scene showed cornstarch dust on the floor that can be slippery. The decedent had cornstarch on him. There was no evidence that the Petitioner had any kind of health condition that would have caused him to fall, and the hospital records showed that aside from the injuries he suffered in the fall, there were no other health conditions that could be blamed for the fall. The Arbitrator infers from both direct and circumstantial evidence that the decedent appeared to slip on cornstarch and fall to the concrete floor, causing the fatal injuries.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that the decedent's injuries, which caused his death, had their origin in a risk connected

with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury.

When a claimant is injured due to an employment-related risk, it is unnecessary to perform a neutral-risk analysis to determine whether the claimant was exposed to a risk of injury to a greater degree than the general public. *Steak 'n Shake v. Ill. Workers' Comp. Comm'n*, 216 IL App 3d 150500WC at ¶38. Because the Arbitrator finds that an employment risk was present, no further analysis is necessary.

Thus, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that the decedent's fatal injuries occurred in the course of and arose out of his employment.

Issue O: What temporary benefits are in dispute? (TTD)

According to the Request for Hearing (AX1), the parties dispute temporary total disability benefits for the period of August 3, 2012, through August 14, 2012.

An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990). Obviously, the decedent was totally incapacitated from the time of the accident until his death.

Based on this and the findings above, the Arbitrator finds that the Petitioner, as administrator of the decedent's estate, is entitled to TTD benefits on behalf of the decedent from August 3, 2012 through August 14, 2012.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC026099
Case Name	Derek G Luers (Son of Leonard G Luers Deceased) v. Gilster Mary-Lee Corp
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0426
Number of Pages of Decision	14
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Jason Coffey
Respondent Attorney	Pieter Schmidt

DATE FILED: 11/7/2022

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DEREK G. LUERS,
(SON OF LEONARD LUERS, DECEASED),

Petitioner,

vs. NO: 15 WC 26099

GILSTER-MARY-LEE CORPORATION,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 7, 2021, is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. 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.

November 7, 2022

o- 11/1/22
KAD/jsf

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC026099
Case Name	LUERS, DEREK G. v. GILSTER MARY-LEE CORP
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Jason Coffey
Respondent Attorney	Pieter Schmidt

DATE FILED: 12/7/2021

THE INTEREST RATE FOR THE WEEK OF DECEMBER 7, 2021 0.10%

/s/ Jeanne AuBuchon, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

☐ Injured Workers' Benefit Fund (§4(d))
☒ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☐ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
FATAL

Derek G. Luers
Employee/Petitioner
v.
Gilster-Mary Lee Corp.
Employer/Respondent

Case # **15** WC **26099**

Consolidated cases:

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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **June 15, 2021**. 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 Decedent's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Decedent's current condition of ill-being causally related to the injury?
G. ☐ What were Decedent's earnings?
H. ☐ What was Decedent's age at the time of the accident?
I. ☐ What was Decedent's marital status at the time of the accident?
J. ☒ Who was dependent on Decedent at the time of death?
K. ☐ Were the medical services that were provided to Decedent reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
L. ☐ What compensation for permanent disability, if any, is due?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **8/3/12**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Decedent's death ***is*** causally related to the accident.

In the 48.3 weeks preceding the injury, Decedent earned $**28,289.44**; the average weekly wage was $**585.70**.

On the date of accident, Decedent was **61** years of age, ***single*** with **1** dependent child.

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

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

Respondent is entitled to a credit of $**62,289.87** under Section 8(j) of the Act.

The Arbitrator finds that Decedent died on **8/14/12**, leaving **1** survivor(s), as provided in Section 7(c) of the Act, including **the Petitioner**.

ORDER

Credits

Respondent shall be given a credit of $**62,298.87** for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Fatal

Respondent shall pay death benefits, commencing **August 14, 2012,**, of $**485.80**/week to the Petitioner for a period of eight years, because the injury caused the employee's death, as provided in Section 7 of the Act. If the Petitioner dies before the maximum benefit level has been reached, payments shall cease.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in Section 8(g) of the Act.

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

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

Jeanne L. AuBuchon **DECEMBER 7, 2021**

PROCEDURAL HISTORY

This matter proceeded to trial on June 15, 2021, pursuant to Section 7 of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment and 2) who was dependent on the decedent at the time of death. The parties stipulated as to the cause of death of the Petitioner but not to causation as it applied to injuries arising out of and in the course of employment.

FINDINGS OF FACT

At the time of the accident, the decedent, Leonard G. Luers, was 61 years old and had been employed by the Respondent as leadperson. (AX1, PX7) His duties included repairing broken equipment and performing walk throughs of the production floor. (PX7)

Patricia Stewart, the ex-wife of the decedent, was appointed administrator of the decedent's estate. (T. 12, 15) She testified that on August 3, 2012, the decedent's supervisor had called her to go to the emergency room Memorial Hospital in Chester, where she saw the decedent, who was conscious but unable to speak, completely covered in a white substance that she learned was starch. (T. 13, PX1) The decedent was flown by helicopter to St. Louis University Hospital, where he underwent surgery to remove a portion of his brain to stop cranial bleeding. (T. 14-16) The decedent had suffered intercranial hemorrhage, subdural hemorrhage, temporal lobe contusion, right temporal bone fracture, right scapula fracture, fractures to two right ribs and a right pulmonary contusion. (PX2) He was placed on life support, which was later removed, and died on August 14, 2012, from accidental craniocerebral blunt trauma. (T. 16-17, PX2, PX3)

Rose Zoellner, a safety sanitation worker for the Respondent, testified at a deposition December 12, 2019, that when she was summoned to the scene of the accident on August 3, 2012,

she saw the decedent lying in front of a dehydrator with blood on the side of his head. (PX9) Ms. Zoellner stated that after the decedent was taken to the hospital, she investigated the area where the decedent was found and saw a thin coating of starch dust on the dehydrator but no evidence that anyone had been on the dehydrator and disrupted the dust. (Id.) She saw cornstarch on the floor and earlier on the decedent's face. (Id.) Ms. Zoellner testified that she reviewed surveillance video from the plant and saw the decedent working on a machine in the marshmallow packaging room, then leaving the room and walking up a hall. (Id.) She stated that the decedent had a tool belt while working on the machine in the packaging room but did not take it with him. (Id.) There was no video of the location of the accident. (Id.) She said it was common for the decedent to walk around the facility. (Id.)

The parties stipulated that there was no starch guard or shield in place above the dehydrator at the time of the accident. (T. 5) Ms. Zoellner testified that when she arrived at the accident scene, starch was falling off of a roller on a belt of the dehydrator. (PX9) She said the starch could be slippery. (Id.) Photos of the area where the decedent was found showed what appeared a white, dusty substance on the floor. (PX6) The photos also appeared to show footprints and other areas where the substance was disturbed. (Id.)

Chester Razer, manager and sole operator for Razer Safety and Health Consulting Company, investigated the accident beginning on August 6, 2012, at the request of the Respondent. (RX3, Deposition Exhibit 2) He reviewed the video surveillance and reviewed written statements from employees and interviewed employees – none of whom witnessed the accident nor was aware of anyone who did. (Id.) He determined: 1) the decedent's work activities were self-directed, and he had the authority to roam his area of the facility at will to conduct any necessary mechanical or electrical work; 2) during the minutes immediately prior to the accident, the decedent had a

conversation with a foreman and another employee in the supervisor's office, but there was no mention of any issues at or around the dehydrator where the Petitioner was found; 3) also in the minutes before the accident, the decedent was observed looking at an overhead conveyor at the dehydrator by another leadperson, who believed the decedent was trying to correct a localized starch spillage problem; 4) the decedent had not been instructed to conduct any work on or around the dehydrator; 5) no one indicated that there were any items on the floor or on the dehydrator that suggested a loose piece of material struck the decedent; 6) no one indicated or suggested that the decedent was suffering any medical or physical issues during the time leading up to the accident; 7) there was no evidence the decedent had climbed on top of the dehydrator and fell from it; and 8) fall-protection equipment was used when working at extreme heights and from aerial lift baskets. (Id.) Mr. Razer inspected the accident scene and saw starch dribbling from an overhead conveyor to the top of the dehydrator. (Id.) He said that resolving the starch matter was well within normal activity for the decedent. (Id.) Because there were no eyewitnesses nor physical evidence, Mr. Razer reported that he could not determine an exact cause of the accident. (Id.)

Mr. Razer testified consistently with his report at a deposition on March 12, 2019, (RX3) He stated that, based on his investigation, the decedent was in the course of his employment when he died. (Id.)

The Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor investigated the decedent's death and determined that the decedent was working near the front of the marshmallow dehydrator when he fell from floor level onto the floor, noting that no evidence was found that the decedent had climbed onto any machinery, ladder or stairs. (PX5)

Ms. Stewart testified that in addition to paying child support for the Petitioner herein, the decedent provided financial support for the Petitioner past the age of 18. (T. 18) According to a

Post-Educational Expense Agreement entered into on August 1, 2005, the decedent and Ms. Stewart agreed to share expenses incurred by the Petitioner for college, including but not limited to transportation costs, means, medical insurance and out-of-pocket copays and student loans as may be required. (T. 18-19, PX14) They also agreed to each contribute $475.00 per month toward said expenses and any additional expenses to which they mutually agreed and that the agreement would remain in full force until the Petitioner completed his post-educational and/or all expenses had been paid in full, whichever was later. (PX14)

The Petitioner, who was 34 years old at the time of arbitration, testified that the decedent helped pay for his post-high-school education at ITT Tech in Arnold, Missouri. (T. 21) He said he was unable to finish the program because of health issues, including ulcerative colitis that developed into Crohn's disease. (T. 21-23) The Petitioner also submitted medical records regarding treatment of these conditions from 2007 through the date of his father's death. (PX13) The Petitioner testified that these conditions interfered with his ability to maintain a job or earn income, and his father continued to support him up to the date of the decedent's death. (T. 23-24) The decedent provided the Petitioner with a vehicle and paid the Petitioner's bills, food, gas and medical expenses. (T. 24) The Petitioner said his father gave him about $40 or $50 two to three times per week, and he was dependent on his father's contributions to meet his daily necessities. (Id.) On cross-examination, the Petitioner admitted that he had no documentary evidence of the contributions. (T. 25-26)

Donnie Ray Guethle, a former supervisor at the plant who was a neighbor and friend of the decedent, testified at a deposition on March 3, 2020, that he saw the decedent give the Petitioner $20 or $40 every Friday or Saturday night. (PX11) Lloyd Robertson, a former foreman for the Respondent who was also a neighbor and friend of the decedent, testified at a deposition on March

3, 2020, that he witnessed the Petitioner asking the decedent for financial assistance and the decedent giving the Petitioner cash and checks on a weekly or monthly basis. (PX12)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below.

Issue C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

In order to obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence two elements: 1) that the injury occurred in the course of the claimant's employment and 2) that the injury arose out of the claimant's employment. *McAllister v. Ill. Workers' Comp. Com'n*, 2020 IL 12484, ¶ 32.

The phrase "in the course of employment" refers to the time, place and circumstances of the injury. *Id.* at ¶34. A compensable injury occurs in the course of employment when it is sustained while a clamant is at work or while he or she performs reasonable activities in conjunction with his or her employment. *Id.* In this case, the employees' testimony and written statements, as well as the results of Mr. Razer's investigation provide ample evidence that the decedent was performing reasonable activities in conjunction with his employment. Therefore, the Arbitrator finds that the Petitioner's injury occurred in the course of her employment.

The "arising out of" component is primarily concerned with causal connection. *Id.* at ¶ 36. To satisfy this requirement, it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Id.* The three categories of risk are: 1) risks distinctly associated with

the employment; 2) risks personal to the employee; and 3) neutral risks which have no particular employment or personal characteristics. *Id.* at ¶38.

A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing: (1) acts he or she was instructed to perform by the employer; (2) acts that he or she had a common-law or statutory duty to perform; or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *Id.* at ¶46. The job description for the decedent and witness testimony and written statements all confirm that walking in the area of the dehydrator was an act the decedent was reasonably expected to perform incident to his assigned duties, and, therefore, was a risk distinctly associated with his employment.

Next is the requirement that the risk created a causal connection between the employment and the accidental injuries. It is well within the province of the Commission to draw inferences from undisputed facts to determine whether injury resulted from conduct which unreasonably or unnecessarily increased the risks of injury which attend such employment. *Sears, Roebuck & Co., v. Industrial Com*, 78 Ill.2d 231, 233, 399 N.E.2d 594, 35 Ill.Dec. 528 (1979). The Commission is entitled to draw reasonable inferences from both direct and circumstantial evidence. *Id*. at 234.

The photographs of the accident scene showed cornstarch dust on the floor that can be slippery. The decedent had cornstarch on him. There was no evidence that the Petitioner had any kind of health condition that would have caused him to fall, and the hospital records showed that aside from the injuries he suffered in the fall, there were no other health conditions that could be blamed for the fall. The Arbitrator infers from both direct and circumstantial evidence that the decedent appeared to slip on cornstarch and fall to the concrete floor, causing the fatal injuries.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that the decedent's injuries, which caused his death, had their origin in a risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury.

When a claimant is injured due to an employment-related risk, it is unnecessary to perform a neutral-risk analysis to determine whether the claimant was exposed to a risk of injury to a greater degree than the general public. *Steak 'n Shake v. Ill. Workers' Comp. Comm'n,* 216 IL App 3d 150500WC at ¶38. Because the Arbitrator finds that an employment risk was present, no further analysis is necessary.

Thus, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that the decedent's fatal injuries occurred in the course of and arose out of his employment.

Issue J: Who was dependent on the decedent at the time of death?

Section 7(c) of the Act provides that if no compensation is otherwise payable under Section 7 and the employee leaves surviving any child not entitled to compensation under paragraph (a) but who at the time of the accident was nevertheless in any manner dependent upon the earnings of the employee, there shall be paid to such dependent for a period of eight years weekly compensation payments at such proportion of the applicable rate if the employee had left surviving a widow or widower. (820 ILCS 305/7(c))

Especially in determining questions of dependency, the Act should receive a common-sense and liberal construction. *Obear-Nester Glass Co. v. Industrial Com.*, 398 Ill. 342, 346, 75 N.E.2d 892 (1947). Dependency implies a present existing relation between two persons, where one is sustained by the other or looks to or relies on the aid of the other for support or for reasonable necessaries consistent with the dependent's position in life. *Id*. The decisive test in determining

dependency is whether the contributions were relied upon by the applicant for his means of living, judging by his position in life and whether he was, to a substantial degree, supported by the employee at the time of the latter's death. *Id*. It is not fatal to an applicant's claim that he is dependent even though it appears other means of partial support are available. *Id*. Destitution on the part of the applicant is not a prerequisite. *Id*. at 348.

Based on the Petitioner's medical records and the testimony of the Petitioner, his mother and other witnesses, the Arbitrator finds that the Petitioner suffered from health conditions that prevented him from supporting himself and that he relied upon the decedent to provide for his means of living at the time of his father's death. Therefore, the Petitioner is entitled to dependent benefits pursuant to Section 7(c) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC029313
Case Name	Jimmie T McDonald v. Champaign Unit 4 School District
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0427
Number of Pages of Decision	10
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	John Sturmanis

DATE FILED: 11/7/2022

/s/ Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JIMMIE McDONALD,

Petitioner,

vs. NO: 19 WC 029313

CHAMPAIGN SCHOOL DISTRICT #4,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, nature and extent and wage-differential benefits, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 4, 2021, is hereby affirmed and adopted.

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

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

Based upon the named Respondent herein, no bond is set by the Commission. *820 ILCS 305/19(f)(2)*. 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. Or *820 ILCS 305/19(f)(1).*

November 7, 2022

KAD/bsd
O110122
42

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/*Maria E. Portela*
Maria E. Portela

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC029313
Case Name	MCDONALD, JIMMIE v. CHAMPAIGN SCHOOL DISTRICT #4
Consolidated Cases	No Consolidated Cases
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	John Sturmanis

DATE FILED: 11/4/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 2, 2021 0.06%

/s/Edward Lee, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Sangamon**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jimmie McDonald
Employee/Petitioner

v.

Champaign School District #4
Employer/Respondent

Case # **19** WC **29313**

Consolidated cases:

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 **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **8/16/21**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **8(d)1 wage differential benefits**

FINDINGS

On **9/24/19**, 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 $**58,468.80**; the average weekly wage was $**1124.40**.

On the date of accident, Petitioner was **56** years of age, ***married*** with **1** dependent children.

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

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

The parties stipulate that the Respondent is entitled to credit under Section 8(j) of the Act for any related group medical benefits paid prior to hearing.

ORDER

The Arbitrator finds that the Petitioner's current condition of ill-being is causally related to his employment with the Respondent.

The Respondent shall pay reasonable and necessary medical benefits as set forth in the Petitioner's exhibits, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits, commencing 5/1/2020, of $182.17/week until 8/25/2030 when Petitioner reaches age 67 because the injuries sustained caused a loss of earnings, as provided in Section 8(d)1 of the Act.

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

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

Edward Lee
Signature of Arbitrator

NOVEMBER 4, 2021

FINDINGS OF FACT

The Petitioner is a married high school graduate with 1 dependent. Petitioner has lived in Champaign his entire life. Petitioner has been employed by the Respondent as a custodian for over 26 years.

The Petitioner job duties for the Respondent are very hand-intensive. Petitioner will have to lift heavy objects and is exposed to vibration. Petitioner uses walk-behind snow blowers, industrial floor cleaning machines, and various hand tools. Petitioner has been a custodian for the Respondent for nearly 30 years. Petitioner testified that in the fall of 2019 he began noticing increased symptoms in his right wrist and right elbow.

The Petitioner presented to the Springfield Clinic and Dr. Greatting's PA on 9/24/19. The Petitioner presented with complaints of pain to the right wrist and elbow. The Petitioner did not have any new injuries since he was last seen in March of 2019. However, the Petitioner indicated that his symptoms had progressively worsened over the last several months. The Petitioner described his work as a custodian. The Petitioner had complaints of diffused right wrist pain as well a feeling of pins and needles into the index, middle and ring fingers of the right hand. The Petitioner also complained of burning pain in the left inner elbow that had been present since approximately 2016. An examination was conducted and the Petitioner was sent for an updated EMG Nerve Conduction Study on the right upper extremity. The Petitioner will follow up with Dr. Greatting after the EMG to discuss treatment options. (PX 7)

The 12/10/19 Dr. Gelber performed an EMG on the Petitioner's right upper extremity. This revealed mild right carpal and cubital tunnel syndrome. (PX 7)

The Petitioner followed up with Dr. Greatting on 12/18/19 after his EMG. The Petitioner continued to complain of intermittent numbness and tingling in both his ring and small finger, as well as his thumb, index and middle fingers. These conditions bother him at night and during the day. Symptoms are increased with heavier work activities. The Petitioner described his job as a custodian with the school district in Champaign, Illinois. Dr. Greatting an examination and believed that the Petitioner's symptoms appeared to be coming from recurrent right cubital and carpal tunnel syndrome. A discussion was had regarding potential surgery for these recurrent conditions. The Petitioner wished not to proceed with any further surgery and it was discussed that the Petitioner may need some form of restrictions or limitation to reduce his symptoms moving forward to avoid additional surgery. Dr. Greatting issued work restrictions of no lifting greater than 25 lbs, no snow removal, vacuuming, use of floor cleaning machines, or mopping. (PX 7)

The Petitioner was then seen for an IME by Dr. James Williams on 1/30/20. Dr. James Williams is a board certified orthopedic surgeon practicing at Midwest Orthopedic Center in Peoria. With regard to the Petitioner's job duties and the manifestation date of 9/24/19 Dr. Williams diagnosed the Petitioner with right carpal and cubital tunnel syndrome. Dr. Williams believed that the Petitioner's job duties as a custodian for the Respondent were an aggravation of his pre-existing right carpal and cubital tunnel syndrome. Dr. Williams indicated that if Dr. Greatting and the Petitioner elected to proceed with surgery that he would be at MMI

approximately 3 months after a re-do of the Petitioner's prior carpal and cubital tunnel procedures. Dr. Williams indicated that the Petitioner could return to work a 25 lb restriction and to avoid vibration as well significant impact to avoid aggravating his carpal and cubital tunnel syndrome. If no additional surgery was performed by Dr. Greatting, Dr. Williams believed that these restrictions would be permanent and the Petitioner would be at MMI. (PX 8)

The Petitioner followed up with Dr. Greatting on 4/27/20. The Petitioner continued to complain of recurrent right carpal and cubital tunnel symptoms. However, the Petitioner did report that his symptoms were reduced when he was placed on light duty work. The Petitioner reported that he had been moved from doing work as a custodian to now being placed in a position as a hall monitor. Dr. Greatting noted the Petitioner had a positive Tinels over both his carpal and cubital tunnel area. The Petitioner did have good strength without weakness or atrophy in the radial median and ulnar nerve distributions. At this time Dr. Greatting released the Petitioner with permanent restrictions. The Petitioner's permanent restrictions included no lifting more than 25 lbs with the right upper extremity, no snow removal, no vacuuming, no use of a floor cleaning machine, and no mopping. The Petitioner was at MMI as of 4/27/20. (PX 7)

The evidence deposition of Dr. James Williams was conducted on October 29, 2020. Dr. Williams was hired by the Respondent to perform an IME, which was done on 1/30/20. Dr. Williams took an extensive history from Petitioner, performed a thorough physical examination of Petitioner, and reviewed Petitioner's medical records. Dr. Williams opined that Petitioner job duties as a custodian aggravated Petitioner's pre-existing right carpal and cubital tunnel syndrome. (PX 8)

The Arbitrator notes that Dr. Williams causation opinion in favor of Petitioner is unrebutted and therefore Petitioner has established causation through the testimony of Dr. Williams. The Arbitrator further notes that the Petitioner cannot return to his original job as a custodian with the permanent restrictions issued by Dr. Williams. The Petitioner also cannot return to his original job as a custodian with the permanent restrictions issued by Dr. Greatting.

Petitioner testified that after he was issued permanent restrictions by Dr. Greatting on 4/27/20, he requested accommodation of those restrictions from his employer the same day. The Petitioner was offered a permanent job as a hall monitor. The Petitioner started the hall monitor position shortly thereafter and remains in the hall monitor position to this day. Petitioner testified that he was a full-time custodian for the Respondent up until April 2020. At no time before May 2020 did the Petitioner work full-time as a hall monitor. Petitioner worked as a hall monitor before May 2020 during time periods when he was placed on light duty by his doctors. However, Petitioners full time position was always as a custodian, until May 2020.

The Petitioners final hourly pay rate as a custodian was $31.63 an hour. The Petitioner testified that his hourly pay rate as a hall monitor is $31.63 an hour. (PX 10) Petitioner testified that he worked and was paid 12 months a year in his custodian position. Petitioner testified that he only works and is paid 10 months a year in his new hall monitor position. Petitioner testified he is only paid as a hall monitor during the school year.

Petitioner's 2020 W2 Form was admitted as Petitioner's Exhibit 9. This shows Petitioner earned $61,275 in 2020. (PX 9) This is the best evidence of what the Petitioner would be earning if he was still in his position as a custodian. Petitioners Exhibit 10 is the Petitioner 2020-2021 Salary Statement. This document reveals Petitioner contract limit earnings for the 2020-2021 school year is $47,065.44. (PX 10)

The evidence deposition of Dennis Gustafson was conducted on July 7, 2021. Mr. Gustafson has been a vocational rehabilitation counselor/consultant for 47 years. Mr. Gustafson has a Master of Science in counseling psychology and has been a certified rehabilitation counselor since 1980. Mr. Gustafson met with the Petitioner to conduct a vocational assessment on 5/28/21. Mr. Gustafson took and education and work history from the Petitioner and reviewed relevant medical information regarding Petitioner's permanent restrictions. (PX 12)

Mr. Gustafson noted that Petitioner's former job as a custodian falls into the heavy physical demand level. Mr. Gustafson also noted Petitioner's current job as a hall monitor falls into the light physical demand level. (PX 12)

Mr. Gustafson noted Petitioner's current hourly pay rate as a hall monitor is $31.63. Mr. Gustafson researched the going rates for hall monitors. Per Zip Recruiter the average hourly pay rate for a hall monitor in Illinois is $13.43. Per Salary Expert the average hourly pay rate for a hall monitor in Illinois is $11.00. The national average hourly pay rate for a hall monitor is $16.00. (PX 12) The starting wage of a hall monitor for the Respondent is $13.52 an hour. (PX 10) Based on this, Mr. Gustafson opined that Petitioners current hourly pay rate is substantially inflated. The Arbitrator finds that opinion of Mr. Gustafson to be speculative and not credible. The Arbitrator finds that the Petitioner's wages before and after the injury were substantially governed by the Collective Bargaining Agreement and the Petitioner's longevity of employment with the Respondent.

ORDER

Causation:

The Arbitrator finds that the Petitioner's current condition of ill-being is causally related to his employment with the Respondent.

Medical Bills:

The Respondent shall pay reasonable and necessary medical benefits as set forth in the Petitioner's exhibits, as provided in Sections 8(a) and 8.2 of the Act.

Nature and Extent:

Under the Act, when a claimant sustains a disability, an issue arises concerning what type of compensation he is entitled to receive, a wage differential award (8(d)(1)) or a percentage-of-the person-as-a-whole award (8(d)(2)). 820 ILCS 305/8(d); *Gallianetti v. Industrial Comm'n*, 315 Ill.App.3d 721, 727, 248 Ill.Dec. 554, 734 N.E.2d 482, 487 (2000). The supreme court has

expressed a preference for wage-differential awards. *General Electric Co. v. Industrial Comm'n*, 89 Ill.2d 432, 438, 60 Ill.Dec. 629, 433 N.E.2d 671, 674 (1982). The purpose of a wage differential award under section 8(d)(1) is to compensate an injured claimant for his reduced earning capacity. *Dawson v. Workers' Compensation Comm'n*, 382 Ill.App.3d 581, 586, 320 Ill.Dec. 918, 888 N.E.2d 135, 139 (2008).

Section 8(d)(1) of the Act sets out the two requirements for a wage differential award. Under section 8(d)(1), an impaired worker is entitled to a wage differential award when (1) he is "partially incapacitated from pursuing his usual and customary line of employment" and (2) there is a "difference between the average amount which he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident." 820 ILCS 305/8(d)(1).

The unrebutted evidence presented shows that the Petitioner is partially incapacitated from pursuing his usual and customary line of employment as a custodian. Due to Petitioner"s permanent restrictions, he is now working in a light duty position as a Hall Monitor. Whereas before his injury he was working medium to heavy work as a Custodian. As a Custodian he was earning $61,275.00/year before the injury. After the injury as a Hall Monitor he was earning $47,065.44. The annual difference is $14,209.56 and the weekly difference is $273.26. Two thirds of that is $182.17/week which is the weekly benefit the Arbitrator awards as a wage differencial.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC007158
Case Name	Jacob Borgen v. Costa's Ristorante
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0428
Number of Pages of Decision	11
Decision Issued By	Carolyn Doherty, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Tracy Jones
Respondent Attorney	Kevin Luther

DATE FILED: 11/9/2022

/s/Carolyn Doherty, Commissioner
Signature

DISSENT: /s/Christopher Harris, Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JACOB BORGEN,
Petitioner,

vs. NO: 21 WC 007158

COSTA'S RISTORANTE,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 8, 2022 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $16,600.00. 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.

November 9, 2022
o: 10/06/22
CMD/ma
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

DISSENT

I respectfully dissent from the Majority's opinion and find that Petitioner's accident and his injuries on March 25, 2018 did not arise out of his employment.

The Arbitrator relied in part on *City of Bridgeport v. Ill. Workers' Comp. Comm'n*, 2015 IL App (5th) 140532WC, which I find distinguishable to the present claim. *City of Bridgeport* reinforced the exception to the general rule that idiopathic falls are not compensable unless the employment significantly contributed to the injury by placing the employee in a position increasing the dangerous effects of the fall. *Id.* at ¶ 42. Petitioner's fall in the case at bar is not the same as the employee in *City of Bridgeport* – a water meter reader who suffered a seizure and drowned in an unnatural accumulation of water.

The Court noted that the employee's job duty at the time of the seizure required her to read a water meter located in a rural area, off the road, in a low-lying area of the woods that flooded when it rained. The employee had to walk over and get close enough to the meter in order to read it with the wand. The Court determined that the accident was work-related, stating that the "general public is not routinely exposed to eight-inch-deep floodwater in secluded, low-lying woods." *City of Bridgeport v. Ill. Workers' Comp. Comm'n*, 2015 IL App (5th) 140532WC, ¶ 44. The Court in *City of Bridgeport* emphasized that an employee's resulting injuries (or death) following an idiopathic fall must still be predicated upon the workplace conditions significantly contributing to the injury. *Ervin v. Indus. Comm'n*, 364 Ill. 56 (1936), further illustrates this reasoning.

In *Ervin,* the employee fell into a fire he had built on the employer's premises and died. In concluding that the employee's accident was work-related, the Court noted that the employee was a night watchman at the employer's sawmill. No light or heat was provided at the mill so the employee would occasionally burn a small fire for warmth which was known to the employer's foreman. *Ervin v. Indus. Comm'n*, 364 Ill. 56, 58 (1936). The Court stated that although it was unknown how the employee fell into the fire, he had built the fire for his own health and comfort "in the absence of other facilities furnished him for that purpose." *Id.* at 62. Thus, the Court found that the building and maintenance of the fire were incident to his employment. *Id.* The Court further stated: "Whether some physical ailment brought about the fall is wholly immaterial. Neither was the risk of the fire common to the neighborhoo[d] . . . The fire was a hazard only to those employees rightfully on the premises in the discharge of their duties." *Id.* at 64.

Another example is the employee in *Rockford Hotel Co. v. Indus. Comm'n*, 300 Ill. 87 (1921). The employee's job duties involved removing hot coals and cinders from the furnace and throwing the debris into an ash-pit. He apparently suffered an epileptic episode and fell into the ash-pit where he was severely burned and died. *Id.* at 88-89. The Court determined that the employee's accident was work-related. *Id.* at 89-90. See also *Peoria R. T. Co. v. Indus. Bd.*, 279 Ill. 352 (1917) (Employee sustained a work-related accident after he had a hemorrhage in his brain while operating a switch engine. He fell 12 feet from the engine cab onto an embankment and died).

This onus that "[m]ore is required than the fact that an injury occurred at the employee's place of work" is also highlighted in *Elliot v. Indus. Comm'n*, 153 Ill. App. 3d 238, 244 (1987). The claimant's leg had given way while walking down a flight of stairs in the prison. He twisted his back and fell on his buttocks. *Id.* at 240. The Court noted the claimant's history of back problems that also involved his right leg giving out. The Appellate Court determined that

Petitioner's idiopathic condition caused his fall and there was no evidence that the stair themselves increased the danger of injury.

> The act of walking down the stairs itself does not establish a risk greater than those faced outside of work. (Citation omitted). Claimant could have been walking downstairs in his home or anywhere, and the same injury might have occurred . . . The need to walk down the stairs is not unique to claimant's work. There was no evidence that the stairs themselves were unique to his employment . . ." *Elliot v. Indus. Comm'n*, 153 Ill. App. 3d 238, 244 (1987).

See also *Oldham v. Indus. Com. of Illinois*, 139 Ill. App. 3d 594 (1985) (Employee sustained idiopathic fall and struck head on clean, dry, clay tile floor. The Court stated that a clay tile floor did not constitute a heightened risk and presented no danger unique to her employment); *Prince v. Indus. Comm'n*, 15 Ill. 2d 607 (1959) (Employee sustained a seizure and struck head on concrete floor. The Court considered that the cracks in the floor may have increased the risk of injury but determined that it did not necessarily follow *ipso facto* that the injury arose out of the employment because concrete floors presented no risk or hazard that is not encountered in many places by all members of the public).

Petitioner argues that the condition on Respondent's premises – specifically the unsecured, full-length mirror leaning against the bathroom wall – presented an increased risk of injury. The Petitioner herein was instructed to clean the bathroom at a restaurant open to the public when he suffered an idiopathic seizure and fell through a mirror. There is nothing in evidence demonstrating that Respondent significantly contributed to the injury by placing the employee in a position increasing the effects of the fall. At the time of his injury, Petitioner was not required to traverse any precarious or risky work site nor did his job duties involve handling or being around dangerous or perilous elements. There is also no assertion that the mirror was defective, cracked, in shards, had fallen, or was improperly placed. The mirror in Respondent's bathroom did not present any risk greater than those faced outside of work. Neither party nor the Commission disputes that mirrors are found in bathrooms. There was simply no evidence that the mirror constituted an increased or heightened risk or that it was unique to Petitioner's employment.

For these reasons, I respectfully dissent.

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC007158
Case Name	BORGEN, JACOB v. COSTA'S RISTORANTE
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Tracy Jones
Respondent Attorney	Kevin Luther

DATE FILED: 4/8/2022

/s/Gerald Napleton, Arbitrator

Signature

INTEREST RATE WEEK OF APRIL 5, 2022 1.11%

STATE OF ILLINOIS)
)SS.
COUNTY OF **Winnebago**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jacob Borgen
Employee/Petitioner

v.

Costa's Ristorante
Employer/Respondent

Case # **21** WC **007158**

Consolidated cases: _____

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 **Gerald Napleton**, Arbitrator of the Commission, in the city of **Rockford**, on **2/24/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **3/25/2018**, 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 $**14,040.00**; the average weekly wage was $**270.00**.

On the date of accident, Petitioner was **19** years of age, ***single*** with **0** dependent children.

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

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

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

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

The Arbitrator finds that an accident did occur that arose out of and in the course of Petitioner's employment and that Petitioner's current condition of ill-being is causally related to his injury.

Respondent shall pay for the necessary and related medical bills pursuant to Section 8(a) of the Act and the Medical Fee Schedule in Section 8.2. Respondent is entitled to a credit for sums paid prior to trial.

Arbitrator orders respondent to pay to petitioner 75 weeks of disfigurement benefits at a weekly rate of $220.00 as the claimant suffered disfiguring facial injuries as a result of his accident.

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.

/s/ Gerald W. Napleton

Signature of Arbitrator

April 8, 2022

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JACOB BORGEN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case # 21 WC 007158
	)	Consolidated Case: N/A
COSTA'S RISTORANTE,	)	
	)	
Respondent.	)	

FINDINGS OF FACT and CONCLUSIONS OF LAW

Petitioner testified that he was employed by the respondent and his job duties included making pizzas and cleaning. Petitioner testified that on March 25, 2018, he walked into the restroom at Respondent's premises and suffered a seizure related to his pre-existing epilepsy. Petitioner had suffered from epilepsy since he was a Freshman in High School around the year 2014. Petitioner did not allege that the work environment caused the seizure. Petitioner was not performing any specific work duties in the restroom and was not carrying or holding anything related to his work.

Petitioner testified that the restroom was about 10 feet by 10 feet in the bathroom there was a full-length mirror, approximately 2 feet wide and 5 feet tall, resting on the ground and leaning against the wall. He testified that this mirror had been there the entire six to eight months he had been working there and that the mirror had never been attached to the wall or fixed in any permanent position. Petitioner testified it easily moved physically described it as a thin and cheap mirror. When he had the seizure, Petitioner satisfied that he fell against a mirror that was not attached or secured to the wall. When he had the seizure, he fell landing with his head going through the mirror and getting caught. Petitioner testified that, as he convulsed during the seizure, his head was stuck in the mirror resulting in severe facial lacerations from the jagged pieces of the broken mirror. Petitioner testified that the next thing he remembered was standing by the door to the kitchen when a coworker saw him and called an ambulance.

An ambulance took Petitioner to Swedish American Hospital where a plastic surgeon was called in. His wounds were irrigated, and he received 72 stitches throughout his face to address 16 lacerations some of which noted hanging skin. The emergency room dictation notes document a history of the incident. PX1 p. 16-18. The record documents the following lacerations: 2 centimeter subcutaneous laceration to the eyebrow, .5 centimeter subcutaneous laceration to the eyebrow, .7 centimeter subcutaneous laceration to the eyebrow,.7 centimeters subcutaneous laceration to the eyebrow, one centimeter subcutaneous laceration to the eyebrow, 4 centimeter subcutaneous laceration to cheek on the right side with slap, 1.5 centimeter subcutaneous laceration to the right cheek,.7 centimeter subcutaneous laceration to the right eyelid, 3 centimeter subcutaneous laceration to the right cheek, 2 centimeter subcutaneous laceration to the left nares, 1.5 centimeter subcutaneous laceration to the left nares, two centimeter subcutaneous laceration to the chin, 2.5 centimeter subcutaneous laceration to the chin, 1 centimeter subcutaneous laceration to the chin, 1.5 centimeter subcutaneous laceration to the chin, and 3.5 centimeter subcutaneous laceration to the chin. Id.

After the emergency room visit, he followed up with Dr. Weiskopf, a plastic surgeon, for additional treatment. Petitioner sought treatment on May 22, 2018. PX 2 p. 191. The records note a history was obtained and further note extensive scarring of the face including an extensive trap door deformity, multiple flaps, a flap on his neck, and skin loss on the tip of his nose. It was recommended that he undergo a surgical procedure.

Petitioner underwent surgery on July 5, 2018, that included excision of scar on the forehead, right cheek, and chin with complex repair. He followed up on July 9, 2018. He was seen again three months later on October 16, 2018, and was told to follow up in six months. On April 23, 2019, he was examined, the records of which indicate a "reasonable scar result" from the prior surgery but that the doctor recommended an additional plastic surgery to include a Z-plasty to improve appearance. Petitioner was seen one last time in 2021 wherein the doctor again recommended an additional procedure to improve scar appearance. PX 2 p. 191.

Petitioner declined to undergo the recommended additional surgery. At the time of trial, he had not had any additional medical treatment. Petitioner offered several photographs from the date of accident taken in the hospital by the petitioner. He also offered into evidence several photographs that were taken in 2021, more than three years after the date of accident, documenting the scars. PX3. Petitioner acknowledged and the hospital records corroborate that Petitioner had stopped taking his prescription meds to treat his epilepsy due to unpleasant side effects.

The Arbitrator viewed the disfigurements alleged in person at hearing. Petitioner also introduced photographs showing what Petitioner looked like on the day of the occurrence and several months thereafter. Medical bills submitted into evidence show that Petitioners medical bills have a zero balance.

CONCLUSIONS OF LAW

Regarding Issues C and F, whether an accident occurred that arose out of and in the course of employment with respondent, and whether Petitioner's current condition of ill-being is causally related to the accident, the Arbitrator finds as follows:

"A claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury that arose out of and in the course of his employment." Sisbro, Inc. v Industrial Comm'n, 207 Ill. 2d 193, 203 (2003). The "in the course of" portion of this requirement refers to the time and place of the injury. In this case, Petitioner was in the bathroom at the time of his accident. Meeting the demands of personal health or comfort are acts incidental to employment and are reasonably considered to happen in the course of employment. See Hunter Packing Co. v. Industrial Comm'n (Minock), 1 Ill. 2d 99, 115 N.E.2d 236 (Ill. 1953). Petitioner testified he was working and on the clock at the time of the injury but was using the bathroom. Accordingly, Petitioner's injury occurred in the course of his employment.

The next issue is whether the injury arose out of Petitioner's employment. "The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." Sisbro, 207 Ill. 2d at 203. An injury arises out of employment when the employee was performing acts he was instructed to perform by his employer or acts which the employee might reasonably be expected to perform relating to his assigned duties. Id.

When an injury is alleged to have been caused by some condition on the employer's premise, there "must be a causal connection between the conditions existing on the employer's premises and the injury to the employee, and the accident must have had its origin in some risk connected with or incidental to the employment." Martin v. Kralis Poultry Co., 12 Ill. App. 3d 453, 297 N.E.2d 610 (Ill. App. Ct. 5th Dist. 1973). "Where an employee is exposed by virtue of his employment to a risk to a greater degree than the general public, a resulting injury is considered to have arisen out of his employment." Springfield Sch. Dist. No. 186 v. Industrial Comm'n (DeAngelo), 293 Ill. App. 3d 226, 227 Ill. Dec. 260, 687 N.E.2d 334 (Ill. App. Ct. 4th Dist. 1997).

Falls that result from something internal or inherent to the claimant are classified as "idiopathic falls" and are, generally, not compensable. The exception to this rule is if the employment significantly contributed to the injury by placing the employee in a position that increased the dangerous effects of the fall. See City of

Bridgeport v. Illinois Workers' Comp. Comm'n, 2015 Ill. App (5th) 140532WC (2015); Mytnik v. Illinois Workers' Comp. Comm'n, 2016 IL App (1st) 152116WC (2016); and Elliot v. Industrial Comm'n, 153 Ill.App 3d 238, 244 (1st Dist., 1987).

Petitioner did not allege that his employment caused his seizure in the bathroom. Petitioner admitted that his epileptic seizures were preexisting. It is axiomatic that employers take their employees as they find them. Sisbro, Inc. v Industrial Comm'n, 207 Ill. 2d at 203. Even if an employee has a pre-existing condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it is shown that the employment was a causative factor, not even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being. Id.

Petitioner alleges that the placement of a full-length mirror leaning against a wall from the floor and not affixed or secured into place was an increased risk to which he was exposed. Petitioner claims that had the mirror been secured to the wall, he would not have had his face crash through the mirror and get stuck while he convulsed resulting in numerous facial lacerations. The Arbitrator finds Elliot, Mytnik, and City of Bridgeport cases applicable and persuasive. The placement of the mirror in the bathroom increased the dangerous effects of Petitioner's fall. It is more likely true than not true that if the mirror been properly secured to the wall or not been in the bathroom as it was, then Petitioner's facial laceration injuries would not have occurred. It was this specific condition of the employer's premises that petitioner suffered such injuries to his face.

Respondent cites to cases where compensation was denied where a claimant experienced an idiopathic fall caused by a seizure or syncope attack and injured themselves on defect-free floors or staircases. See Baldwin v. Workers' Comp. Comm'n Ill.App. 4th District (2011), Prince v. Industrial Comm'n 15 Ill.2d 607 (1959), and Oldham v. Industrial Comm'n Ill.App 2nd District (1985). These cases are distinguishable from the matter at issue as they do not involve any defect or location-specific instrumentality that caused injury. Until society perfects zero gravity technology our current and immutable laws of physics require a floor or substrate of some kind to exist which will stop a person from falling. A floor with a hard or semi-hard surface is still a floor. A thin mirror propped up against a wall is not a floor. Floors exist by necessity. Undesirably placed mirrors do not.

For the above reasons, the Arbitrator finds that the petitioner's injury arose out of and in the course of his employment with respondent. Although the fall was caused by a Petitioner's pre-existing epilepsy, and was not, itself, caused by work, the injury to Petitioner's face was due to the placement of the unaffixed mirror in the bathroom at the employer's premises. The mirror ultimately caused Petitioner's injuries and was an increased risk that increased the dangerous effects of his fall.

Regarding issue J whether Respondent is liable for payment of medical expenses, the Arbitrator finds as follows:

Having found that Petitioner's injuries arose out of and in the course of his employment with respondent, the Arbitrator finds that respondent is liable for payment of reasonable and related medical bills less a credit for bills respondent has already paid. As a result his injury, petitioner had to seek medical treatment including an emergency room visit, hospital stay, and treatment with a plastic surgeon. A review of Petitioner's Exhibit 4 shows that all bills were paid prior to trial.

Regarding issue L the Nature and Extent of the injury, the Arbitrator finds as follows:

Petitioner suffered serious and permanent disfigurement to his face as result of the work injury. The trial took place more than six months after the injury occurred. Petitioner submitted photographs that accurately depicted the scarring which the Arbitrator visibly inspected at trial. Section 8(c) of the Act dictates that disfigurement benefits are to be awarded for any serious and permanent disfigurement not to exceed 162 weeks.

The Arbitrator viewed Petitioner's facial scaring from several feet away. Petitioner is a young 21 years old. Petitioner has several visible scars on his face in different locations. The Arbitrator observed numerous facial scars and specifically notes the following noticeable disfigurements: The right side of his forehead has a one-inch scar; a small indentation on the right side of his face; a two-to-three-inch scar on his right cheek; the right side of his chin has a small, shallow, but pigmented indentation; a small scar on the center of his chin; and a one-inch scar along his right eyebrow. Petitioner's facial hair and complexion are light or fair colored making his hyperpigmented scarring plainly visible. The scarring is visible from both sides and the front of his face. The scarring is not covered by facial hair or makeup. The scarring is indented, raised, or sunken depending on the scar. Petitioner reports difficulty when trying to shave without cutting himself. Trial took place 3 years after the injury and the scarring is visible from several feet away. Accordingly, the Arbitrator finds that petitioner suffered 75 weeks of disfigurement as a result of his injury.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC030830
Case Name	Martin Gonzalez v. Federal Signal Corp DBA Vactor Manufacturing
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0429
Number of Pages of Decision	12
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Frederick Glassman
Respondent Attorney	Mark Vizza

DATE FILED: 11/9/2022

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LaSALLE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARTIN GONZALEZ,

Petitioner,

vs. NO: 19 WC 030830

FEDERAL SIGNAL CORP. d/b/a VACTOR MANUFACTURING,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms and adopts the Arbitrator's Decision in its entirety except to correct scrivener's errors on pages two and eight. On page two, paragraph four under the section entitled "Order" the Arbitrator awarded Petitioner "permanent partial disability to the extent of 8% loss of the us(e) of the person as a whole as provided in Section (8)(e) of the Act." The Commission strikes "(8)(e)" and replaces the referenced section with "8(d)2" so that the fourth paragraph under the Order reads as follows: "Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 8% loss of use of the person as a whole as provided in Section 8(d)2 of the Act."

Under the Conclusions of Law, "L. *What is nature and extent of the injury?"* on page eight, the last paragraph, the Commission strikes "8(e)" and replaces the referenced section with "8(d)2" so that the last paragraph on page eight reads as follows: "Following consideration of the testimony and evidence presented at trial, the Arbitrator finds that Mr. Gonzalez sustained an 8% loss of use of the person as a whole, pursuant to Section 8(d)2 of the Act."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 25, 2021, is hereby affirmed and adopted with corrections.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $3,264.85 to OSF Healthcare; $76,778.67 to Orland Park Orthopedics; $30,725.40 to South Chicago Surgical Solutions; $3,918.07 to RX Development; $4,005.30 to Bob Rady Anesthesia; $3,905.00 to Persistent Labs; and $2,704.18 to Persistent RX.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given a credit of $690.29 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $714.48/week for 25 6/7 weeks, commencing April 7, 2020 through October 4, 2020, for a total of $18,474.41, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that based on the above factors, and the record taken as a whole, the Commission finds that Petitioner sustained permanent partial disability to the extent of 8% loss of use of the person as a whole as provided in Section (8)(d)2 of the Act.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. 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.

November 9, 2022
KAD/bsd
O110122

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/*Maria E. Portela*
Maria E. Portela

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC030830
Case Name	GONZALEZ, MARTIN v. FEDERAL SIGNAL CORP D/B/A VACTOR MANUFACTURING
Consolidated Cases	No Consolidated Cases
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Laura Hall
Respondent Attorney	Mark Vizza

DATE FILED: 10/25/2021

THE INTEREST RATE FOR THE WEEK OF OCTOBER 19, 2021 0.06%

/s/ Jessica Hegarty, Arbitrator

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LaSalle)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MARTIN GONZALEZ Case # **19 WC 30830**
Employee/Petitioner

v.

FEDERAL SIGNAL CORP. d/b/a VACTOR MANUFACTURING
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jessica A. Hegarty**, Arbitrator of the Commission, in the city of **Ottawa**, on **August 27, 2021.** After reviewing all the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐

FINDINGS

On **May 29, 2019** 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 $**55,734.64**; the average weekly wage was $**1,071.82.**

On the date of accident, Petitioner was **55** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and **$9,277.46** for other benefits, for a total credit of $**9,277.46**.

Respondent is entitled to a credit of $**690.29** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $3,264.85 to OSF Healthcare; $76,778.67 to Orland Park Orthopedics; $30,725.40 to South Chicago Surgical Solutions; $3,918.07 to RX Development; $4,005.30 to Bob Rady Anesthesia; $3,905.00 to Persistent Labs; and $2,704.18 to Persistent RX.

Respondent shall be given a credit of $690.29 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any provides of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

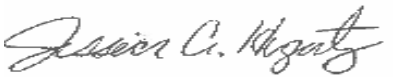
Respondent shall pay Petitioner temporary total disability benefits of $714.48/week for 25 6/7 weeks, commencing April 7, 2020 through October 4, 2020, for a total of $18,474.41, as provided in Section 8(b) of the Act.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 8% loss of the us of the person as a whole as provided in Section (8)(e) of the Act.

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the

date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

OCTOBER 25, 2021

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION
IN THE STATE OF ILLINOIS

MARTIN GONZALEZ,

Petitioner,

Number: 19 WC 30830

vs.

FEDERAL SIGNAL CORP. d/b/a
VECTOR MANUFACTURING

Respondent.

FINDINGS OF FACT

On May 29, 2019, Martin Gonzalez, the Petitioner, was employed by the Respondent. The Petitioner remains employed with the Respondent.

The Petitioner testified he has been employed by the Respondent for nearly 17 years as a welder. (TX 7) His duties include taking big boxes, grinding and welding. (Id) Rick Franklin testified for the Respondent, as he has been Petitioner's supervisor for seven years. (TX 37) Mr. Franklin testified the Petitioner is a reliable, hard worker who does not complain. (TX 37-38) Petitioner testified, while unsure of the exact date, around May 29, 2019, he was moving a part with a crane, walking toward his left, when he tripped over a pallet with doors. (TX 8) The Petitioner tried to hold onto the crane as he fell, but could not, striking the ground with his left knee, right arm, and elbow (Id). Upon striking the concrete floor, the Petitioner rolled. He felt pain all over and was unable to get up. (TX 9) A co-worker, Steve Young, witnessed the Petitioner fall and climbed down from a ladder as he observed the Petitioner was not moving. (TX 30) Mr. Young helped the Petitioner up off the ground and the Petitioner told him he was hurting. (Id)

Mr. Gonzalez testified that in the days after he fell, despite continuing pain to his right shoulder, he did not initially seek medical care and treatment, "I thought it was going to be all right. I thought it was going to be okay". (TX 10-11) The Petitioner repeatedly voiced his ongoing complaints and pain to Roy Snyder, who told him to take some Advil or Tylenol. (Id) He also continued to work full duty. Martin Gonzalez described experiencing pain through the summer of 2019, but not seeking the care of a physician, as Roy Snyder continued to tell him it was going to go away. (TX 13)

Roy Snyder, Respondent's safety manager, testified he could not recall any conversations with the Petitioner in regard to his work injury or subsequent physical complaints. (TX 40-41) On cross-examination, Mr. Snyder admitted he does not direct medical care, but may suggest to an employee they take Advil or use ice, as he is trained in first aid. (TX 42).

By August 15, 2019, the pain to the back of the Petitioner's right shoulder intensified and was interfering with his ability to sleep, driving him to seek the care of Dr. Blair Rhode, a board-certified orthopedic surgeon with Orland Park Orthopedics. (TX 14)

Dr. Blair Rhode testified he initially examined the Petitioner on August 15, 2019, with the Petitioner who reported a history of attempting to step over doors when he fell onto his left knee and right elbow. (PX 5) Dr. Rhode testified a direct blow to the right elbow would cause an upward force to the right shoulder and rotator cuff. (Id) During his examination on August 15, 2019, Dr. Rhode found a positive impingement sign to the right shoulder and prescribed physical therapy, which was performed at Athletico in Ottawa. (PX 3) In regard to the left knee, Dr. Rhode noted the Petitioner experienced pain to the patellofemoral joint with compression, consistent with a patellofemoral contusion. (PX 5)

Petitioner presented to Athletico on August 21, 2019 for initial evaluation. (PX 3) Records from this intake note Petitioner reportedly tripped over a pallet, landing directly on his right elbow at work. He reported pain in the back of his right shoulder which is not getting better. (PX 3)

As Dr. Rhode testified, he continued to treat Petitioner for his work-related right shoulder injury, ordering an MRI of the right shoulder, which demonstrated a full-thickness rotator cuff tear to the supraspinatus. (PX 4, 5) Based upon the Petitioner's continued complaints of pain and worsening condition, Dr. Rhode recommended surgical intervention. (Id). During this period, Dr. Rhode allowed Petitioner to work full duty. Dr. Rhode testified if the Petitioner had requested to be placed on light duty during this period, he would have done so; however, Mr. Gonzalez never requested to be placed light duty or to be taken off work as he treated for his injury. (Id) Dr. Rhode further explained the Petitioner's symptomology continued to worsen as he awaited surgery, specifically noting moderate to significant strength loss to the supraspinatus by December 5, 2020. (Id)

Respondent's IME physician, Dr. Joshua Alpert, conducted an IME of the Petitioner on October 30, 2019. (TX 16, RX 2) The Petitioner testified Dr. Alpert spent approximately five minutes in the examination room and during this period he described how he had been injured at work. (TX 17) Petitioner testified he did not tell Dr. Alpert he did not notice pain to his right shoulder until three weeks after the fall, contrary to the contents of Dr. Alpert's IME report. (Id)

Dr. Alpert testified shoulder surgery would not help Mr. Gonzalez' complaints, as Dr. Alpert deemed the complaints to be cervical in nature; however, Dr. Alpert agreed on cross-examination if Petitioner had resolution of his symptoms after rotator cuff surgery, it is possible the issue was not cervical at all. (RX 2) Dr. Alpert further testified a direct fall to the elbow could be a competent cause and a competent mechanism of injury for a rotator cuff tear. (Id) He also agreed that same mechanism of injury could certainly aggravate a pre-existing asymptomatic tear and cause the tear to become symptomatic. (RX 2)

On April 7, 2020, Dr. Rhode performed an arthroscopic rotator cuff repair to Mr. Gonzalez' right shoulder. (PX 2, 5) At this time, Dr. Rhode took the Petitioner off work. (Id) Dr. Rhode ordered post-surgical physical therapy, which was performed at Orland Park Orthopedics. (Id) The Petitioner was kept off work as he recuperated from surgery, returning to work full duty on October 4, 2020. (Id) Dr. Rhode placed the Petitioner at maximum medical improvement on November 5, 2020. (Id)

At the August 27, 2021 hearing in this matter, the Petitioner testified he has resumed working full duty for the Respondent. He further explained he no longer has problems or complaints in regard to his right shoulder. (TX 19)

Through the date of the hearing, Mr. Gonzalez incurred gross medical bills in the amount of $138,901.86, (OSF Healthcare: $3,799.00; Central Illinois Radiological: $436.00; Orland Park Orthopedics: $76,778.67; South Chicago Surgical Solutions: $30,725.40; Athletico: $11,375.00; RX Development: $5,072.53; Bob Rady Anesthesia: $4,005.30; Persistent Labs: $3,905.00; Persistent RX: $2,704.18; Infinite Strategic Solutions: $100.78) (PX 1). Discounts on bills of $7,545.67 were taken by the providers. (Id). Petitioner's group insurance paid $690.29 towards the gross medical bills (OSF Healthcare: $518.36; Central Illinois Radiological: $171.93). (Id). Of this amount, bills in the amount of $125,301.47 remain unpaid (OSF Healthcare: $3,264.85; Orland Park Orthopedics: $76,778.67; South Chicago Surgical Solutions: $30,725.40; RX Development: $3,918.07; Bob Rady Anesthesia: $4,005.30; Persistent Labs: $3,905.00; Persistent RX: $2,704.18). (Id)

CONCLUSIONS OF LAW

F. Is Petitioner's current condition of ill-being causally connected to this injury?

Petitioner has been employed by the Respondent as a welder for over a decade and was noted to be a reliable and hard-working employee. Both the Petitioner and Steve Young testified that Petitioner tripped and fell over a pallet of doors, striking the ground with enough force that Mr. Young had to assist Petitioner off the ground. The medical providers who treated Petitioner for his injuries following the occurrence, all noted the mechanism of injury, specifically a direct blow to Petitioner's right elbow after tripping over a pallet at work. (PX 2, 3, 5) Dr. Rhode testified based upon the mechanism of injury, the right rotator cuff tear, surgery and all ancillary care were a direct result of the work injury. (PX 5) Respondent's IME physician, Dr. Alpert, opined the rotator cuff tear was a pre-existing condition, however, he also agreed a direct blow to the elbow is a competent mechanism of injury for rotator cuff pathology. (RX 2).

After careful consideration of the credible evidence contained in the record, including the testimony and medical evidence submitted, and without any compelling contradictory evidence or testimony, this Arbitrator finds the Petitioners current condition of ill-being is causally connected to his work-related injury of May 29, 2019.

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?

The medical records evidence that Petitioner sustained serious injuries and ongoing complaints as a result of the fall and the injury sustained on May 29, 2019. (PX 2-5). The Petitioner testified to striking his left knee and right elbow when he fell at work. This mechanism of injury is consistently repeated in his treatment notes from both Dr. Rhode and Athletico physical therapy. (PX 2, 3, 5) Respondent has offered no evidence to dispute the severity of the injuries or the reasonableness or necessity of the medical services provided to Mr. Gonzalez. Following consideration of testimony

and evidence presented, this Arbitrator finds the medical services that were provided to Petitioner were reasonable and necessary.

On the issue of whether the Respondent paid all appropriate charges for all reasonable and necessary medical services, it is found that Respondent has not paid all the medical bills for all reasonable and necessary services. (PX 1) Through the date of the hearing, Mr. Gonzalez incurred gross medical bills in the amount of $138,901.86, (OSF Healthcare: $3,799.00; Central Illinois Radiological: $436.00; Orland Park Orthopedics: $76,778.67; South Chicago Surgical Solutions: $30,725.40; Athletico: $11,375.00; RX Development: $5,072.53; Bob Rady Anesthesia: $4,005.30; Persistent Labs: $3,905.00; Persistent RX: $2,704.18; Infinite Strategic Solutions: $100.78) (PX 1) Discounts on bills of $7,545.67 were taken by the providers. (Id) Petitioner's group insurance paid $690.29 towards the gross medical bills (OSF Healthcare: $518.36; Central Illinois Radiological: $171.93). (Id) Of this amount, bills in the amount of $125,301.47 remain unpaid (OSF Healthcare: $3,264.85; Orland Park Orthopedics: $76,778.67; South Chicago Surgical Solutions: $30,725.40; RX Development: $3,918.07; Bob Rady Anesthesia: $4,005.30; Persistent Labs: $3,905.00; Persistent RX: $2,704.18). (Id)

The Respondent shall hold the Petitioner harmless or repay his group insurance for payments made and pay Petitioner's outstanding, related medical bills pursuant to the fee schedule, as enumerated in Petitioner's Exhibit 1.

L. What temporary benefits are in dispute? (TTD)

It is stipulated that the Petitioner's average weekly wage was $1,071.82 (ARB 1) Petitioner was taken off work by Dr. Rhode from April 7, 2020 through October 4, 2020, and the Petitioner should have been paid TTD for 25 weeks and 6 days while off work for his work injury, or $18,474.41.

L. What is the nature and extent of the injury?

Dr. Rhode testified the Petitioner's mechanism of injury, sustaining a direct blow to the right elbow during a fall at work, is a competent cause of his right rotator cuff pathology. The Respondent's IME physician concurred a direct blow to the right elbow could cause this pathology as well. The injuries sustained by Mr. Gonzalez are a result of the work injury that occurred on May 29, 2019. (PX 2-5)

Section 8.1(b) of the Illinois Workers' Compensation Act ("Act") addresses the factors that must be considered in determining the extent of permanent partial disability for accidents occurring on or after September 1, 2011. 820 ILCS 305-8.1(b). Specifically, Section 8.1(b) states:

> "In determining the level of permanent partial disability, the Commission shall base its determination on the following factors"
>
> (i) The reported level of impairment pursuant to subsection (a);
> (ii) The occupation of the injured employee;
> (iii) The age of the employee at the time of injury;
> (iv) The employee's future earning capacity; and
> (v) Evidence of disability corroborated by the treating medical records.

> No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order."

Pursuant to Section 8.1(b) of the Act, the Arbitrator notes that there has been no AMA evaluation pursuant to 8.1(b)(a) and, therefore, the Arbitrator gives no weight to this factor.

With regard to subsection (ii) of Section 8.1(b)(b), the occupation of the employee, the Arbitrator notes that the records reveal the Petitioner was employed as a welder at the time of the accident and is able to return to work in this capacity. As such, the Arbitrator gives less weight to this factor.

In regard to subsection (iii), Petitioner was 55 years of age at the time of his injury and testified he has no ongoing complaints or issues due to the work injury. As such, the Arbitrator gives less weight to this factor.

With regard to subsection (iv), the Petitioner's future earning capacity, the Arbitrator notes the Petitioner's future earning capacity has not been affected, and, therefore, gives no weight to this factor.

Finally, in regard to subsection (v), evidence of disability corroborated by the treating medical records, the Arbitrator notes the Petitioner sustained an injury that is causally connected to his activities at work, and according to his treating physicians, has received reasonable and necessary treatment. Medical records indicate Mr. Gonzalez underwent a right arthroscopic rotator cuff repair. (PX 2,5) After completing physical therapy, the Petitioner was returned to work full duty, approximately six months after surgery. For the above reasons, the Arbitrator gives greater weight to this factor.

Following consideration of the testimony and evidence presented at trial, this Arbitrator finds that Mr. Gonzalez sustained an 8% loss of the use of the person as a whole, pursuant to Section 8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC031635
Case Name	Manuel Medrano v. Dreyer Transportation/Edward Dreyer & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0430
Number of Pages of Decision	14
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Chelsea Shaw
Respondent Attorney	Will Dimas

DATE FILED: 11/9/2022

/s/Kathryn Doerries, Commissioner

Signature

22IWCC0430

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

☐ Affirm and adopt (no changes)	☒ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
X Modify AWW, TTD/PPD rates, modify medical findings & award, correct scrivener's error	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MANUEL MEDRANO,

Petitioner,

vs. NO: 15 WC 31635

DREYER TRANSPORTATION, INC.,
EDWARD DREYER IN HIS
INDIVIDUAL CAPACITY,
THE ILLINOIS STATE TREASURER
AS EX OFFICIO CUSTODIAN OF THE
INJURED WORKERS' BENEFIT FUND (IWBF),

Respondents.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent, Illinois State Treasurer, as *ex officio* Custodian of the Injured Workers' Benefit Fund (hereinafter referred to as IWBF), and notice given to all parties, the Commission, after considering the issues of causal connection, average weekly wage/benefit rates, temporary total disability (TTD), medical expenses, and permanent partial disability (PPD), 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, herein, affirms the findings of causal connection, the period of temporary total disability, and the award of 30% loss of use of Petitioner's right thumb. However, the Commission modifies the Arbitrator's decision regarding Petitioner's average weekly wage/TTD and PPD benefit rates, and medical expenses.

After a careful review of the evidence, the Commission modifies the Petitioner's average weekly wage (AWW) from $1,100.00 to $625.00, finding Petitioner failed to prove concurrent

employment. Petitioner was hired as a truck driver by Respondent-Employer in 2012. Petitioner testified he earned $625.00 per week and Respondent paid him in cash. Although no documentary evidence was presented, the Commission notes Petitioner's testimony as to his weekly earnings from Respondent-Employer was unrebutted.

Petitioner testified that after he sustained his work accident, Respondent-Employer paid him in cash in the amount of $416.00 for the time period he was unable to work. The Commission notes this amount equates to 66-2/3% of Petitioner's weekly earnings and is consistent with Petitioner's testimony of an AWW of $625.00.

However, the Commission disagrees with the inclusion of Petitioner's tips or earnings from his bartending jobs in the calculation of his AWW. Petitioner testified that as of October 1, 2014, he worked for Respondent-Employer Monday through Friday and tended bar at the Chateau Ritz, a banquet hall in Niles, for twelve years and at La Hacienda in Addison for twenty years. (T.52-54) Petitioner testified he earned $225.00 in tips per shift at the Chateau Ritz. He worked one to three shifts per weekend. Petitioner testified he averaged about $250.00 per shift in tips at La Hacienda in addition to his hourly check. Tips varied from week to week. (T.54-55)

Section 10 of the Workers' Compensation Act provides, in part, that "when the employee is working concurrently for two or more employers and the respondent employer has **knowledge** [emphasis added] of such employment prior to the injury, his wages from all such employers shall be considered as if earned from the employer liable for compensation." 820 ILCS 305/10 (West 2014). There is no evidence in the record that Respondent-Employer had knowledge of Petitioner's bartending jobs. To assume that Respondent-Employer had knowledge of Petitioner's bartending jobs because Petitioner had worked for Respondent for a long period of time would require one to speculate that the subject must have been discussed at some point during that time. An award under the Act cannot be based on mere speculation. *A.O. Smith Corp. v. Industrial Comm'n*, 51 Ill. 2d 533, 536 (1972). As there is no evidence in the record that Respondent-Employer had knowledge of Petitioner's bartending jobs, the Commission finds Petitioner has failed to sustain his burden of proof as to concurrent employment and declines to include any tips or earnings from the bartending jobs in the calculation of his AWW.

The Commission affirms the award of medical expenses however modifies the amount awarded based on the evidence of record. It is unclear how the Arbitrator calculated the award of medical expenses. The following bills were admitted into evidence: Clearing Clinic (MacNeal), charges of $416.00, $416.00 paid by patient via Visa, $0 balance (PXB); Midwest Hand Surgery, balance of $27,875.00 (PXC); RX Development Associates, balance of $68.44 (PXD); and Infinite Strategic Innovations, balance of $20.44 (PXE). The Commission finds Respondent is liable for payment of the aforesaid medical expenses relying on the medical bills admitted into evidence.

The Commission, herein, modifies the Arbitrator's decision under the Order section, striking the entire paragraph regarding medical expenses. It should read, "Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, and as provided in Sections 8(a) and 8.2 of the Act of $27,875.00 to Midwest Hand Surgery, SC, $68.44 to RX Development Associates, and $20.44 to Infinite Strategic Innovations. As to the Occ Health & Immediate Care of MacNeal, Respondent shall pay $416.00 to Petitioner as provided in Section

8(a) and not subject to the fee schedule as that was evidence as paid by Petitioner via Visa."

The Commission, herein, modifies the Arbitrator's decision under the Order section, striking the entire sentence regarding temporary total disability. It should read, "Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 10/2/14 through 11/19/14, 7 weeks at $416.66 per week, for a total amount of $2,916.67."

The Commission, herein, corrects the permanent partial disability rate in the Arbitrator's decision, under the Order section, striking "$660.00" and replacing it with "$375.00".

The Commission, herein, corrects a scrivener's error in the Arbitrator's decision, under Findings of Fact section, paragraph 5, third sentence, striking the name "Ramsey" and replacing it with the name "Ellis".

The Commission, herein, modifies the Arbitrator's decision under the Conclusions of Law section, page five, striking that portion under the "Medical Services" section, beginning with "Accordingly," and ending with "RX Development Associates". It should now read, "Accordingly, Respondent shall pay the following medical expenses, subject to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act; $27,875.00 to Midwest Hand Surgery, SC, $68.44 to RX Development Associates, and $20.44 to Infinite Strategic Innovations. As to the Occ Health & Immediate Care of MacNeal, Respondent shall pay $416.00 to Petitioner as provided in Section 8(a) and not subject to the fee schedule as that was evidence as paid by Petitioner via Visa."

The Commission, herein, modifies the Arbitrator's decision under the Conclusions of Law section entitled, "What Temporary Benefits are in Dispute?" striking the temporary total disability rate of "$733.33" and replacing it with "$416.66" and striking "for total TTD of $5,133.33" and replacing it with "for total TTD of $2,916.67." The Commission further strikes the figure "$2,221.33" in the last sentence, and replaces it with "$4.67".

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 24, 2021, is, otherwise, hereby, affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $416.66 per week for a period of 7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act. (Total TTD $2,916.67.) Respondent shall be given a credit of $2,912.00 for temporary total disability benefits that have been paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $375.00 per week for a period of 22.8 weeks, as provided in §8(e)(1) of the Act, for the reason that the injuries sustained caused 30% loss of use of Petitioner's right thumb.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay reasonable and necessary medical services in the sum of $27,963.88 for medical expenses pursuant to the medical fee schedule, and as provided in §8(a) and 8.2 of the Act, and, further, Respondent shall

pay for reasonable and necessary medical services in the sum of $416.00 to Petitioner as provided in Section 8(a) and not subject to the fee schedule as that was paid by Petitioner via Visa.

IT IS FURTHER ORDERED BY THE COMMISSION that the Illinois State Treasurer as *ex-officio* Custodian of the Injured Workers' Benefit Fund was named as a co- Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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 removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $37,000.00. 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.

November 9, 2022

o- 9/27/22
KAD/jsf

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC031635
Case Name	MEDRANO, MANUEL v. DREYER TRANSPORTATION INC; EDWARD DREYER IN HIS INDIVIDUAL CAPACITY; THE ILLINOIS STATE TREASURER AS CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Kyle Kasmarick
Respondent Attorney	Will Dimas

DATE FILED: 11/24/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 23, 2021 0.07%

/s/Gerald Granada, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF DUPAGE)

☒ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☐ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Manuel Medrano
Employee/Petitioner

v.

Case # **15 WC 31635**

Consolidated cases: **N/A**

Dreyer Transportation Inc; Edward Dreyer in his individual capacity; the ILLINOIS STATE TREASURER as custodian of the INJURED WORKERS' BENEFIT FUND.
Employer/Respondent

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Wheaton**, on **September 30, 2021**. 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: whether the IWBF was a properly named party

FINDINGS

On the date of accident, October 1**, 2014**, Respondent-Employers ***was*** operating under and subject to the provisions of the Act.

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

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-Employer.

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

In the year preceding the injury, Petitioner earned $***57,200.00***, the average weekly wage was $***1,100.00.***

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

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

Respondent shall be given a credit of $2,912.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $2,912.00

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

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, and as provided in Sections 8(a) and 8.2 of the Act of **$229.10** to OccHealth & Immediate Care of MacNeal, **$15,801.77** to Midwest Hand Surgery SC, **$10.87** to Infinite Strategic Solutions, and **$36.41** to Rx Development Associates.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 10/2/2014 through 11/19/2014, in the amount of $5,133.33.

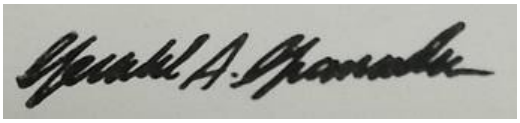
Respondent shall be given a credit of $2,912.00 for temporary total disability benefits that have been paid.

Respondent shall pay Petitioner permanent partial disability benefits of $660.00/week for 22.8 weeks, because the injuries sustained caused the 30% loss of the thumb, as provided in Section 8(e) of the Act.

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund ("IWBF") was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is entered as to the IWBF to the extent permitted and allowed under §4(d) of the Act. In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner pursuant to Section 5(b) and 4(d) of this Act. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund. The Respondent/Employer/Owner/Officer's obligation to reimburse the IWBF, as set forth above, in no way limits or modifies its independent and separate liability for fines and penalties set forth in the Act for its failure to be properly insured.

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 Gerald Granada

NOVEMBER 24, 2021

FINDINGS OF FACT

This case involves Petitioner, Manuel Medrano, who alleges to have sustained injuries while working for Respondent-Employer Dreyer Transportation and Edwin Dreyer on October 1, 2014. The Illinois State Treasurer as Ex-Officio Custodian of the Injured Workers Benefit Fund has also been named as a Respondent in this matter as Petitioner also alleges his employer did not have workers compensation insurance at the time of his injury. At the hearing, no one appeared on behalf of Dreyer Transportation or Edwin Dreyer. Respondent IWBF was represented by the Illinois Attorney General's office, who dispute this case on all issues.

On October 1, 2014, the Respondent-Employer Dreyer Transportation Inc. and Edward W. Dreyer were operating a trucking company in which Petitioner was employed as a driver who, in the course of his employment, would pick up various goods, participate in their loading into his vehicle and deliver them to other companies. Petitioner was hired for this position in 2012 by Edward Dreyer, who was the owner of the company and his supervisor. Petitioner knew what deliveries to pick up and make based on the paperwork Respondent placed within the van and Petitioner would call Edward Dreyer at the beginning of each day to confirm the order in which he wanted the jobs performed. Respondent would also provide Petitioner specific instructions on what do when he would pick up a certain item and what time they had to be delivered. After completing a delivery Petitioner would have to complete Respondent's Waybill, printed with Respondent's name on top, and he would return those to Respondent's office.

On October 1, 2014, Petitioner was working as a driver for Respondent when he was injured when his right thumb was crushed between a crate and forklift as he assisted with loading crates into his work van. After the accident, another individual on the scene called Edward Dreyer, to inform him of the accident and then Mr. Dreyer immediately called Petitioner who told him what happened. On the same day, Edward Dreyer also signed and dated a "WC Treatment Authorization" form from Midwest Hand Surgery, wherein he verified that his "employee MANUAL MEDRANO incurred a work injury on 10/1/2014" and that he was authorizing appropriate medical care "to [that] employee."

Petitioner first sought medical care on the date of the accident at Clearing Clinic aka Occupational Health & Immediate Care of MacNeal, consisting of an emergency office visit, x-ray of his thumb, tetanus shot and ancillary care. Following this care he was referred by the Clearing Clinic to a hand surgeon at Midwest Hand Surgery SC, where he also presented on the same day. There, he initially saw Ramsey Ellis MD who confirmed Petitioner suffered a crush injury to his right thumb resulting in an open distal phalanx fracture with exposed bone and extensive damage to the nailbed of the right thumb. Dr. Ellis performed an operation the day of the injury consisting of an open reduction of the distal phalanx fracture with repair of the soft tissue nailbed injury. The nail bed injury was an extensive injury to the central 80% of the nailbed with a near complete avulsion.

Petitioner followed up with Dr. Ellis approximately seven times including on November 25, 2014, at which time Petitioner's wound had healed but he still had no new nail plate and was tender over the fingertip and had stiffness at the interphalangeal (IP) joint. Dr. Ellis ordered occupational therapy of which Petitioner completed approximately 11 session. He was kept off work completely or with significant restrictions of lifting up to 1 lb by Dr. Ramsey through November 25, 2014. As of December 16, 2014, Petitioner's thumb remained sore and the scar and nail remained sensitive with pain up to 6/10. As of January 3, 2015 and February 10, 2015, Petitioner's nail regrew with a significant deformity and he elected, on Dr. Ellis advice, to proceed with a permanent excision of his nail at that time. That nail bed

revision surgery was delayed several years due at least in part on Respondent's non-payment of medical bills but was eventually performed by Nabil Barakat MD on August 4, 2020. Petitioner followed up with Dr. Barakat multiple times and as of April 19, 2021, Petitioner was experiencing cold hypersensitivity at times and some discomfort in his right thumb and his nail plate regrew with an eponychial fold adhesion.

As of the date of trial, Petitioner has virtually no thumbnail visible on the right thumb, except for a little piece of the thumbnail. The condition of Petitioner's nail causes it to get snagged things like sweaters and dishrags. His right thumb is painful if he bumps it, like when he is wiping down a bar or wiping down the coolers at his bartending jobs. Petitioner's right thumb aches more, and gets stiff and pops in the wintertime, which prevents him from doing activities like shoveling. In warmer weather things like gardening cause Petitioner's right thumb to get stiff and sore. Petitioner experiences right thumb weakness that affects his bartending work and ability to grip even light items.

At the time of his October 1, 2014 injury, and since he was first hired in 2012, Petitioner earned $625 per week working for Respondent. At the time of his injury he was also working two bartending jobs, one at Chateau Ritz in Niles where he has worked for 12 years and one at La Hacienda in Addison where he has worked for 20 years. Petitioner earned $225 per week at Chateau Ritz and $250 per week at La Hacienda in the year before his accident, which was in addition to the hourly amount he would receive at those jobs by check. Petitioner was off work, and temporarily totally disabled, based on the orders and restrictions placed by Dr. Ellis from the date of injury until he returned to work on November 20, 2014.

Respondent Dreyer Transportation Inc. and Edward W. Dreyer were uninsured on the date of accident.

CONCLUSIONS OF LAW

Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

The Arbitrator finds that on October 1, 2014, the Respondent-Employer Dreyer Transportation Inc. and Edward W. Dreyer were operating under and subject to the Illinois Workers' Compensation Act. Pursuant to Section 3 of the Act, the act shall apply to any business or enterprise in which electric, gasoline or other power driven equipment is used in the operation thereof. 820 ILCS 305/3(15) (West 2021). Evidence presented at trial established that the work Petitioner performed for Respondent, and which directly caused his injury, included the use of a cargo van and fork lift, each of which is "electric, gasoline or other power driven equipment." Thus, Respondent is automatically subject to the Act pursuant to subparagraph 9 of Section 3.

Was there an employee-employer relationship?

The Arbitrator finds that there was an employee-employer relationship between Petitioner and Respondent-Employer Dreyer Transportation Inc. and Edward W. Dreyer. There are multiple factors to consider in assessing the nature of the relationship between the parties. Ware v. Indus. Comm'n., 318 Ill. App. 3d 1117, 1122, (1st Dist. 2000). Among these are: (1) whether the employer may control the manner in which the person performs the work; (2) whether the employer dictates the person's schedule; (3) whether the employer pays the person hourly; (4) whether the employer withholds income and social security taxes from the person's compensation; (5) whether the employer may discharge the person at will; (6) whether the employer supplies the person with the needed instrumentalities; and (7) whether the

employer's general business encompasses the person's work. Roberson v. Indus. Comm'n, 225 Ill. 2d 159, 175 (2000). Petitioner testified that he drove a cargo van with the name of Respondent on the side that was provided by Respondent and that he knew what deliveries to pick up and make based on the paperwork Respondent placed within the van. Petitioner testified that he would call Edward Dreyer at the beginning of each day to even confirm the order in which he wanted the jobs performed. Dreyer would tell Petitioner specific instructions on what do when he would pick up a certain item and what time it had to be delivered and the priority of deliveries. After completing a delivery Petitioner would have to complete Respondent Dreyer's Waybill, printed with Respondent Dreyer's name on top, and he would return them to Respondent Dreyer's office. Finally, on the date of Petitioner's accident Edward Dreyer actually signed and dated a "WC Treatment Authorization" form for Midwest Hand Surgery, wherein he verified that his "employee MANUAL MEDRANO incurred a work injury on 10/1/2014" and that he was authorizing appropriate medical care "to the above employee." Based on the undisputed evidence, the Arbitrator concludes that the relationship between Petitioner and Respondent Dreyer was one of employee and employer.

Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? What was the date of the accident?

The Arbitrator finds that an accident did occur that arose out of and in the course of Petitioner's employment by Respondent. An injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties. Caterpillar Tractor Co. v. Industrial Comm'n, 129 Ill.2d 52, 58 (1989). A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties. Id. Petitioner's unrebutted testimony was that he was a driver for Respondent Dreyer, and that in the course of his employment on October 1, 2014 he broke his thumb and injured his nail bed when it was crushed between a crate and forklift as he assisted with crate loading into his work van. Petitioner's unrebutted testimony was that these acts which led to his injury was the type of work that was made up his job duties that he was instructed to perform. Based on these facts, the Arbitrator concludes that Petitioner sustained an accident arising out of and in the course of Petitioner's employment with Respondent Dreyer on October 1, 2014.

Was timely notice of the accident given to Respondent?

The Arbitrator finds that timely notice of the accident was given to Respondent. Under the Act, petitioners are required to provide notice of disablement to their employer's within 45 days. Here, the unrebutted testimony and evidence presented shows that Respondent received notice of the accident on the date it occurred, October 1, 2014. First, Petitioner testified that on the date of the accident another individual on the scene called Edward Dreyer, who is the owner of Dreyer Transportation and Petitioner's supervisor, to inform him of the accident and then Mr. Dreyer immediately called Petitioner who told him what happened. Additionally, the medical records in evidence show that Respondent received notice of the accident from more than one medical provider on the date of loss and actually authorized Petitioner's treatment that day. Petitioner identified Edward Dreyer's handwriting and signature on a form bearing the date of injury wherein Mr. Dreyer verified that Petitioner incurred a work injury. Based on this evidence, timely notice of the accident was given to Respondent.

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 his October 1, 2014 work accident. This finding is based on Petitioner's unrebutted testimony and the medical records and photographs admitted into evidence. Petitioner's testimony at trial and his medical records in evidence show that he suffered a crush injury to his right thumb resulting in an open distal phalanx fracture with exposed bone and extensive damage to the nailbed of the right thumb. On the date of accident he underwent an operation consisting of an open reduction of the distal phalanx fracture with repair of the soft tissue nailbed injury performed by Ramsey Ellis MD of Midwest Hand Surgery. He subsequently underwent a second surgery involving a revision of his thumb nail bed and excision of his thumb nail. Petitioner's medical records and trial testimony regarding his injury and current condition of ill-being are credible, consistent and unrebutted. Aside from the October 1, 2014, injury, no other explanation or intervening injury was presented to account for his pain, weakness, stiffness and other limitations in his right thumb or the condition if his right thumb nail. Therefore the Arbitrator finds that Petitioner's current condition of ill-being in his right thumb is causally related to the work injury at issue.

What were Petitioner's earnings?

The Arbitrator finds that Petitioner presented sufficient, credible evidence establishing that his earnings in the 52 weeks before the accident were at least $57,200 and therefore finds that his average weekly wage is $1,100.00. Petitioner testified that he started working for Respondent in 2012 and made $625.00 per week the entire period of his employment. He further testified that at the time of his injury he was also working two bartending jobs, one at Chateau Ritz in Niles where he has worked for 12 years and one at La Hacienda in Addison where he has worked for 20 years, where he earned on average $225.00 per week at Chateau Ritz and $250.00 per week at La Hacienda in the year before his accident, not including the hourly amount he would receive by check. Petitioner's testimony regarding his earnings was credible and went unrebutted. Based on the foregoing evidence, the Arbitrator finds that Petitioner's average weekly wage at all three jobs was $1,100.00.

What was Petitioner's age and marital status at the time of the accident?

The Arbitrator finds that Petitioner was 39 years old and single with no children at the time of the accident. This is based on Petitioner's unrebutted testimony.

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?

The Arbitrator finds the medical services provided to Petitioner were reasonable and necessary and that Respondent has not paid all appropriate charges for those reasonable and necessary medical services. Section 8(a) of the Act provides, in relevant part, that an employer shall pay for all necessary first aid, emergency treatment, medical, surgical and hospital services reasonably required to cure or relieve the effects of the accidental injury, subject to the fee schedule in Section 8.2. 820 ILCS 305/8 (West 2021). Petitioner offered into evidence Medical Records and Bills from Clearing Clinic aka Occupational Health & Immediate Care of MacNeal for treatment on October 1, 2014, consisting of an emergency office visit, x-ray of his thumb, tetanus shot and medical supplies ancillary thereto. (PXB, pp.4-10). The Arbitrator finds that in light of Petitioner's crush injury, open fracture of his right thumb and extensive nailbed

deformity, all this treatment was reasonable and necessary. Petitioner also offered into evidence Medical Records and Bills from Midwest Hand Surgery SC, for treatment between October 1, 2014 and February 10, 2015, and between March 3, 2020 and April 19, 2021. (PXC, pp.13-121). The treatment contained in these records and bills consist of an initial office visit and surgery to repair Petitioner's open thumb fracture and nailbed deformity on October 1, 2014, and approximately seven follow-up appointments with the surgeon, Ramsey Ellis MD, through February 10, 2015. The records and bills also contain approximately 11 sessions of occupational therapy prescribed by Dr. Ellis which took place between December 12, 2014 and January 13, 2015. Finally, the records contain two pre-operative visits, a nail bed reconstruction operation and approximately eight follow-up appointments with surgeon Nabil Barakat, MD, between March 12, 2020 and April 19, 2021. The Arbitrator finds that in light of Petitioner's crush injury, open fracture of his right thumb and extensive nailbed deformity, as well has his ongoing nail deformity following his initial repair on October 1, 2014, all the medical services provided by Midwest Hand Surgery SC contained in Petitioner's Exhibit "C" were reasonable and necessary, noting further that many of the follow-up visits did not result in physician charges or charges beyond those for things like medical supplies for bandage changes. Petitioner also offered into evidence prescription bills from October 1, 2014 from Rx Development Associates for an antibiotic and from Infinite Strategic Innovations for a pain medication, both prescribed by Dr. Ellis. (PXD; PXE). The Arbitrator likewise finds that these bills and the treatment they represent are reasonable and necessary. Finally, the Arbitrator finds that Respondent has not paid all appropriate charges for all reasonable and necessary medical services identified above. The bills from the Clearing Clinic/OccHealth and Immediate Care of MacNeal, Petitioner's Exhibit B, reflect payment of the full amount of the charges (not subject to any fee schedule reduction) by the Patient. Further, the bills from Midwest Hand Surgery, Petitioner's Exhibit C and Rx Development Associates and Infinite Strategic Solutions, Petitioner's Exhibit D and E reflect no payments at all. Accordingly, Respondent shall pay the following medical expenses, subject to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act: **$229.10** to OccHealth & Immediate Care of MacNeal, **$15,801.77** to Midwest Hand Surgery SC, **$10.87** to Infinite Strategic Solutions and **$36.41** to Rx Development Associates.

What temporary benefits are in dispute?

The Arbitrator finds that the Petitioner was temporarily totally disabled from October 1, 2014 through November 19, 2014. This is based on the Petitioner's unrebutted testimony and the medical evidence that shows Petitioner was taken off work by Dr. Ellis during his medical treatment for his thumb injury. He returned to work on November 20, 2014. Accordingly, the Arbitrator awards Petitioner TTD for the period of October 2, 2014 through at least November 19, 2014, a period of seven weeks, at the TTD rate of $733.33, for total TTD of $5,133.33. However, Petitioner also testified that during this same seven-week period Respondent paid him $416.00 per week, which would entitle Respondent to a credit of $2,912.00. As a result, the Arbitrator finds that after applying this credit Petitioner is awarded a total of $2,221.33 in TTD.

What is the nature and extent of the injury?

Regarding the issue of the nature and extent of the Petitioner's injuries, the Arbitrator applies the factors set forth in Section 8.1b of the Act and notes the following: (i) no AMA rating was introduced into evidence, so the Arbitrator gives this factor no weight; (ii) Petitioner was a delivery driver and bartender who was not found

unable to return these jobs - a factor to which the Arbitrator gives considered weight; (iii) Petitioner was 39 years old at the time of injury - a factor to which the Arbitrator gives some weight; (iv) there was no evidence of future earnings due to this injury, and the Arbitrator gives no weight to this factor; (v) there was evidence of disability which show that the Petitioner sustained a crush injury to his right thumb resulting in an open distal phalanx fracture with exposed bone and extensive damage to the nailbed of the right thumb, requiring two surgical procedures and resulting in an almost complete loss of his thumb nail, hypersensitivity, discomfort, pain and weakness which affect both his every day and work activities - the Arbitrator gives great weight to this factor. Based on the factors above, the Arbitrator concludes the injuries sustained by Petitioner caused a 30% loss of use of the right thumb as a result of the October 1, 2014 work incident.

Whether the Injured Worker's Benefit Fund was properly named as a party in this matter.

The Illinois State Treasurer as ex officio custodian of the Injured Workers' Benefit Fund was named as a party respondent in this matter and was represented at trial by the Illinois Attorney General. Petitioner submitted evidence that Respondent-Employer was not insured at the time of the injury as per the National Council on Compensation Insurance Certificate. (PXA). Further, Petitioner provided sufficient credible evidence that notice of the proceedings were provided to the Respondent-Employer by certified mail. (PXI). Although counsel for the IWBF introduced evidence showing the involuntary dissolution of Dreyer Transportation, Inc. on May 10, 2013, the evidence clearly shows that Edward Dreyer continued to operate as Dreyer Transportation Inc. through at least 2018. Petitioner testified that his work vehicle and Dreyer's place of business contained the logo for Dreyer Transportation Inc. throughout his employment, and produced into evidence a Work Order from 2018 listing Dreyer Transportation and one of its Waybills which included the logo for "Dreyer Transportation, Inc." which he testified was used throughout his employment. (PXG; PXH). Thus, whether Respondent's technical employer was Dreyer Transportation, Inc., or Edward W. Dreyer operating that entity as a de facto corporation and doing business as Dreyer Transportation, Inc., Petitioner's original Application for Adjustment of Claim was appropriately and timely filed listing Respondent as Dreyer Transportation, Inc.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC036563
Case Name	Maricela Gonzales v. Northwest Home Care Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0431
Number of Pages of Decision	23
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Brent Eames
Respondent Attorney	Robert Smith

DATE FILED: 11/10/2022

DISSENT

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☒ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Maricela Gonzales,
Petitioner,

vs. NO: 16 WC 36563

Northwest Home Care, Inc.,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 1, 2021, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION commencing on the second July 15th after the entry of this award, the petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in Section 8(g) of the Act.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. 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.

November 10, 2022
o10/12/22
DLS/rm
46

/s/*Stephen J. Mathis*
Stephen J. Mathis

/s/*Deborah J. Baker*
Deborah J. Baker

DISSENT

I respectfully dissent from the Decision of the Majority. The Majority affirmed and adopted the Decision of the Arbitrator, in which he found that Petitioner proved that a work-related accident, which Respondent stipulated was compensable and caused a condition of ill-being of her right leg, also caused a condition of ill-being of her lumbar spine. The Arbitrator awarded Petitioner medical bills submitted into evidence, 164 weeks of TTD benefits, and found Petitioner permanently and totally disabled as of November 26, 2019. I would have found that Petitioner did not sustain her burden of proving that her work-related accident caused a condition of ill-being of her lumbar spine, denied medical treatment/TTD associated with that alleged condition of ill-being, vacated the permanent and total disability finding, and awarded Petitioner medical, TTD, and PPD benefits based on only her right leg injury.

Petitioner worked for Respondent as a home-health care provider. On October 8, 2016 she slipped on water at a client's home and fell on her buttocks. The parties have stipulated that she sustained a substantial injury to her hamstring. She required three surgeries. The first to reattach the hamstring, the second hamstring repair and neurolysis of the sciatic nerve, and the third for drainage of the incision site because of a MRSA infection.

The Arbitrator found that Petitioner also proved that her alleged lumbar condition of ill-being was causally related to her work accident. In so doing, he noted that the mechanism of injury was consistent with a lumbar injury, she initially complained of low back pain, and he found the opinions of her treating doctors, Dr. Martinez, Dr. Dairyko, and Dr. Patel persuasive. However, those doctors simply opined that Petitioner had a condition of ill-being of her lumbar spine, which was largely based on her subjective complaints. None of Petitioner's treating doctors ever opined that her lumbar condition was causally related to her stipulated work-related fall.

On the other hand, Dr. Butler, a spine specialist, board certified orthopedic surgeon, and board-certified Independent Medical Examiner, found the MRI findings "very unremarkable." Dr. Butler noted that all of the findings in the MRIs pre-dated the accident and there was no evidence that any of the findings were acute in nature. He also noted that whatever pathology found on the MRI reports was present on the left side of her lumbar spine while all of her symptoms were on the right side. Therefore, even if Petitioner had significant pathology in her lumbar spine, her symptoms did not correspond with whatever pathology she had. Because Dr. Butler was the only doctor to specifically opine about the causation of Petitioner's alleged lumbar condition of ill-being and he opined that the condition was not related to her work accident, in my opinion Petitioner did not sustain her burden of proving that her condition of ill-being of her lumbar spine was caused by her stipulated work accident.

The Arbitrator found Petitioner to be permanently and totally disabled despite the fact that no medical professional ever declared her medically permanently disabled from working and he found her job search to have been less than diligent. The FCE and her treating doctors determined she was able to work at a sedentary physical demand level. The Arbitrator, and hence the Majority, based the permanent total disability award solely on the Arbitrator's determination that the opinions of Ms. Belmonte, Petitioner's vocational rehabilitation expert, were more persuasive than those of Respondent's vocational rehabilitation specialist, Mr. Flannagan.

I agree that Petitioner sustained a serious injury to her right leg for which she should receive a substantial permanent partial disability award for the loss of the use of her leg. However, I do not agree that in the absence of any medical determination that Petitioner was permanently and totally disabled, in the absence of a diligent and unsuccessful job search, and in light of conflicting opinions of vocational rehabilitation specialists, that in this particular instance Petitioner sustained her burden of proving she was permanently and totally disabled from any gainful employment. Because of the complexity of the instant case and the fact that the Arbitrator did not assign any relative degree of disability to Petitioner's leg condition and alleged lumbar condition, I would have vacated the TTD, medical, and permanency awards and remanded the matter back to the Arbitrator for determination of these issues in light of the reversal of his finding that the work accident caused a condition of ill-being to Petitioner's lumbar spine.

d-10/12/12
DLS/dw
46

/s/ *Deborah L. Simpson*
Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC036563
Case Name	GONZALES, MARICELA v. NORTHWEST HOME CARE, INC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Brent Eames
Respondent Attorney	Mallory Zimet

DATE FILED: 12/1/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 30, 2021 0.09%

/s/Stephen Friedman, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **DuPage**)

☐ Injured Workers' Benefit Fund (§4(d))
☒ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☐ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Maricela Gonzales
Employee/Petitioner

v.

Northwest Home Care, Inc.
Employer/Respondent

Case # **16** WC **036563**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Wheaton**, on **October 26, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **October 3, 2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**8,814.12**; the average weekly wage was $**273.73**.

On the date of accident, Petitioner was **48** years of age, ***single*** with **1** dependent child.

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

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

Respondent shall be given a credit of $**21,966.24** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**21,966.24**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **$253.00**/week for **164** weeks, commencing **10/04/16** through **11/25/19**, as provided in Section 8(b) of the Act. Respondent shall be given a credit of **$21,966.24** for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,838.00 to Adventist Glen Oaks Hospital; $777.00 to IL Emergency Medical Specialists; $57.00 to Elmhurst Radiologists; $5,017.00 to Elmhurst Memorial Healthcare; $682.58 to Scheck and Siress Prosthetics Orthotics; $437.00 to DuPage Medical Group; $50,795.78 to ATI Physical Therapy; $896.00 to Northwestern Medicine; $2,380.00 to The Pain and Spine Institute; $3,105.00 to Premium Healthcare Solutions; and $1,700.16 to Physiopartners as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for payments made and adjustments made.

Respondent shall pay Petitioner permanent and total disability benefits of $**273.73**/week for life, commencing **11/26/2019**, as provided in Section 8(f) of the Act. Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in Section 8(g) of the Act.

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

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

/s/ Stephen J. Friedman **DECEMBER 1, 2021**
Signature of Arbitrator

Statement of Facts

Petitioner Maricela Gonzales testified in Spanish through an interpreter. Petitioner testified she does speak English, but that she has a lot of difficulty understanding many words. She was born in Mexico and moved to America when she was 8 or 10 years old. She went to school through the 3rd grade in Mexico. When she arrived in the United States, she went to school in Los Angeles until her father pulled her out in the 8th grade at 13 years old. She took care of her sister's children. She returned to Mexico at 15 years old and came back to the United States at 19 years old. She came to Chicago and attempted to return to school at Triton College taking courses in English, Spanish, and math. She also attempted to enroll at Harold Washington College in 1995. She did not receive a high school diploma or GED.

She obtained employment as a janitor in 1992, cleaning one floor with 250 offices. She had to vacuum, clean telephones, floors, washrooms, and take out garbage. She held this job until 2004. She next worked at Navy Pier. She ran a train ride for little children and worked in store. She would arrange the merchandise and help customers. Petitioner disagreed she was a cashier. The owner was always there. Beginning in 2010, she worked for Auntie Anne Pretzels. Petitioner denied that she used a cash register, just made bread. She would make the bread, bake it, and then put the toppings on it. At both Navy Pier and Auntie Anne she interacted with customers in both English and Spanish. Petitioner testified that she also did periodic factory assembly-type work. She worked in factory putting frozen food into boxes. It was heavy. She testified she had to grab heavy barrels and take them to a machine so they could be filled with paint. She never held a supervisory or managerial position.

Petitioner testified she began employment with Respondent in July 2012 to perform home health care. She would arrive at the client's home to help them. She would take them to doctor's appointments or shopping, help them shower or bathe, put them in or out of bed, manage medication. She would do food preparation and house cleaning. She was physically able to do anything she wanted to without pain. Prior to October 3, 2016, she had never suffered any significant injury to her lower extremities or back.

Petitioner testified that on October 3, 2016, she was working in a client's home in Addison, Illinois. She was cleaning the second floor bathroom. She went downstairs to get some things that she needed. While walking down a long hall, she saw the person she was caring for outside in the yard. As she got to the corner by the kitchen, she slipped and fell. Her right leg went up and she heard a cracking sound. Then she fell backward on her butt and her right leg went all the way to the right. As she tapped her hand, there was water splashing. She testified that she fell on the water. Her clothes were wet. She screamed in pain and about 30 minutes later the client came in and asked what happened. She called an ambulance which took her to Adventist Hospital. The Addison Fire Protection District records confirm that they were called to a residence on October 3, 2016. Petitioner advised she fell and felt a tear in the right thigh. The report notes that she was sitting next to a wet spot on the floor (PX 1). Petitioner was seen at Adventist Glen Oaks Medical Center (PX 2). Petitioner history was that she injured herself after slipping and falling on water. She complained of burning sensation in her right thigh and stated that pain was acute and became worse with movement. X-rays of the right femur were negative. X-rays of the right knee noted a small osteophyte in the medial compartment. Petitioner was diagnosed with a right hamstring injury. Petitioner was prescribed muscle relaxants, Norco, and crutches (PX 2). Petitioner testified that she was restricted from work and advised to follow up with her primary physician.

On October 10, 2016, Petitioner saw her primary care physician, Dr. Ricardo Martinez complaining of severe pain in her right thigh and lower back from slipping and falling at work. Dr. Martinez notes an October 7, 2016

MRI showed DJD and disc herniations or protrusions at L4-L5 and L5-S1. He notes a past history of disc herniation. Dr. Martinez diagnosed a quadriceps strain, lumbar strain, and herniated lumbar intervertebral disc. Dr. Martinez prescribed Ibuprofen and hydrocodone-acetaminophen and referred Petitioner to physical therapy PX 5, p 12-30). On October 19, 2016, Petitioner reported continued pain but slowly improving (PX 5, p 31-45). On November 4, 2016, Dr. Martinez ordered an MRI of her right thigh (PX 5, p 52). The MRI performed November 10, 2016 demonstrated a full-thickness tear of the conjoint tendon of the semitendinosus and biceps femoris with 6 cm retraction and associated muscular strain, and a semimembranosus tendinopathy at the ischial tuberosity attachment (PX 7, p 38). After reviewing the results of the Petitioner's MRI on November 18, 2016, Dr. Martinez referred Petitioner for consultation with an orthopedic surgeon (PX 5, p 85).

Petitioner saw orthopedic surgeon, Dr. Gregory Dairyko, on November 18, 2016 (PX 5, p 101). Petitioner advised she sustained an injury six weeks preceding her visit. Dr. Dairyko noted the MRI showed 6cm retracted conjoined proximal hamstring tendon in the posterior thigh. Dr. Dairyko concluded that Petitioner was a candidate for a right open hamstring repair surgery. He noted that the surgery would be more technically difficult due to the amount of retraction of the tendons and the possible scarring near the sciatic nerve (PX 5, p 108). On November 23, 2016, Dr. Dairyko performed a right proximal hamstring repair and neurolysis of the sciatic nerve. The operative report noted that significant time was taken to identify the proximal hamstring musculature through the scar tissue as well as identify the sciatic nerve carefully and dissect it away from the hamstring musculature (PX 5, p 154-155). Petitioner was restricted from working if her work required strenuous activity with her legs. She was advised to use crutches and wear a brace. She was weight bearing as tolerated for eight weeks (PX 7, p 113). Discharge instructions were also given in Spanish (PX 7, p 114).

Petitioner saw Dr. Dairyko postoperatively on November 29, 2016 (PX 5, p 189). Dr. Dairyko noted mild swelling about the left posterior proximal medial thigh, but otherwise, the incision was healing appropriately. She had full range of motion and light touch was intact. Dr. Dairyko recommended Petitioner continue wearing a brace for 3 more weeks and to begin physical therapy (PX 5, p 190). Petitioner began physical therapy at Athletico on December 6, 2016 (PX10, pg. 163). On December 20, 2016, Dr. Dairyko removed a prominent suture from Petitioner's incision and applied Steri-Strips. He prescribed Norco for pain and recommended continued physical therapy (PX 5, p 195).

On December 31, 2016, Petitioner went to the Emergency Department of Elmhurst Hospital complaining of tenderness in her right thigh and yellow-greenish discharge The physician cleaned Petitioner's incision and prescribed new antibiotics and advised Petitioner to follow up with Dr. Dairyko (PX 7, p 133-157). On January 3, 2017, Dr. Dairyko noted Petitioner tested positive for MRSA. He recommended surgical drainage of the right posterior thigh incision (PX 5, p 199-202). On January 4, 2017, Dr. Dairyko performed the drainage of Petitioner's wound at Elmhurst Hospital (PX 7, p 173-174). Petitioner was given IV antibiotics and discharged from the hospital on January 5, 2017. She was advised to follow up with Dr. Martinez and Dr. Dairyko and given a prescription of Bactium and Norco (PX 7, p 176-179). On January 11, 2017, Petitioner returned to the emergency room of Elmhurst Hospital because of drainage from the incision site. It was notes she was not taking her Augmentin. Dr. Hoenig recommended Petitioner take a 10-day-course of Bactium and Augmentin antibiotics and advised Petitioner to follow up for further evaluation and treatment (PX 7, p 274-300). On January 13, 2017, Dr. Dairyko indicated that there was no more drainage coming out of the incision. The wound is healing. Petitioner should continue taking her antibiotics (PX 5, p 313-314). Dr. Martinez noted the wound was completely closed on February 2, 2017 (PX 5, p 380).

Petitioner testified that after the second surgery she continued to experience severe pain in her right thigh even with continued physical therapy. She testified she was unable to move or go to the bathroom without the assistance of her son. She cried every time she had to use the washroom because sitting down produced severe pain. Petitioner advised physical therapy that walking continues to get easier (PX 10, p 117); she has been walking a lot more (PX 10, p 113); she is feeling better since her last session (PX 10, p 111). She also reported that she may be doing too much around the house (PX 10, p 115). The therapist notes that she is making nice progress (PX 10, p 109).

On February 24, 2017, Petitioner advanced complaints in the right knee to Dr. Martinez (PX 5, p 391). On February 28, 2017, Petitioner rated her pain as 10 out 10 and complained of numbness and tingling in her right thigh and pain radiating down into her toes (PX 5, p 398). Dr. Dairyko continued to restrict Petitioner from work and stated that Petitioner would benefit from a consultation with the pain management specialist. Dr. Dairyko ordered a stat ultrasound of Petitioner's right leg which was negative for deep vein thrombosis. Petitioner was to remain off work and return in 6 weeks (PX 5, p 398). X-rays of the knees noted mild osteoarthritis in the left knee and moderate tricompartmental osteoarthritis in the right knee (PX 5, p 408). Petitioner continued physical therapy and follow up with Dr. Martinez (PX 5, p 404-431, PX 10).

Petitioner saw Dr. Dairyko on April 4, 2017 (PX 5, p 432-438). She indicated that she had to stop physical therapy because it was not approved by the Respondent's worker's compensation carrier. Petitioner rated her pain as 8 out of 10 and complained of numbness in her vagina, pain radiating from the inner aspect of the upper thigh down to her lower leg, and constant pain in her right knee. She told Dr. Dairyko that she fell at the gym. Dr. Dairyko recommended physical therapy, stating that the physical therapy was medically necessary for the Petitioner to regain the strength in her right leg. Dr. Dairyko also recommended an MRI of Petitioner's right knee and an X-ray of her lumbar spine (PX 5, p 432-438). Petitioner returned to physical therapy from April 12, 2017 through May 3, 2017. The evaluation at that time reported continued inability to perform multiple functions (PX 10, p 56).

On April 20, 2017, Petitioner had an Independent Medical Examination with Dr. Matthew Lawrence Jimenez at Illinois Bone & Joint Institute (RX 1, Ex. 2). Dr. Jimenez recorded numbness in Petitioner's posterior perianal region, anterior thigh, medial groin, medial perineum, and region over labia majora. He noted that Petitioner moved with a limp and had atrophy to her right hamstring and right quadriceps muscle. Dr. Jimenez concluded that Petitioner would not be able to return to her work as a caregiver, stating that sedentary duty work was more appropriate. He recommended additional physical therapy and an FCE (RX 1, Ex. 2).

On May 2, 2017, Petitioner told Dr. Dairyko that she tried to perform some exercises at her local gym. Dr. Dairyko noted the right knee MRI revealed intra-meniscal degeneration of the medial meniscus with a small undersurface tear, 8mm articular cartilage defect of the lateral femoral condyle, 1.4 cm articular cartridge defect of the medial femoral trochlea, and 3mm articular cartilage defect at the superior median ridge of the patella. Dr. Dairyko diagnosed the Petitioner with osteoarthritis of the right knee. He recommended physical therapy for Petitioner's right knee and hamstring (PX 5, p 440- 443). On June 2, 2017, Dr. Dairyko continued to restrict her from work, and recommend physical therapy and to consult pain management (PX 5, p 446).

Petitioner participated in physical therapy at ATI from July 18, 2017 through October 12, 2017 (PX 11, p 418-609). On October 13, 2017, Dr. Dairyko recommended she begin work conditioning (PX 5, p 511), which was performed October 25, 2017 through November 28, 2017 (PX 11, p 422-424). On December 1, 2017, Dr. Dairyko stated that Petitioner has plateaued in work conditioning and recommended a functional capacity

evaluation (PX 5, p 518). The December 18, 2017 FCE at PhysioPartners restricted Petitioner to the Sedentary Level of Work (PX 12). On January 26, 2018, Dr. Dairyko released Petitioner to return to Sedentary work in accordance with Petitioner's FCE restrictions. He indicated that Petitioner could not tolerate work in a bent-over position at the lumbar spine and would be unable to perform repetitive rotation activities while sitting. He found that Petitioner reached maximum medical improvement discharged her to return as-needed (PX 5, p 533). Dr. Dairyko saw Petitioner on February 2, 2018 and told her she would benefit from seeing a pain management physician (PX 5, p 543).

On July 31, 2018, Petitioner saw pain specialist Dr. Udit Patel with Pain & Spine Institute (PX 13). Petitioner complained low back pain and radiating pain in the right leg which started after the accident on October 3, 2016. She reported being treated for low back pain 15 years ago with PT and injections and her pain resolved. Dr. Patel's examination noted back pain, joint stiffness and limb pain. Neurological exam was positive for paresthesia of the right lower extremity. Dr. Patel ordered an MRI of Petitioner's lumbar spine and prescribed Gabapentin and LidoPatches (PX 13, p 4-7). Petitioner underwent a lumbar spine MRI on August 11, 2018, which noted straightening of the lumbar spine, disc desiccation at L4-S1 level, G1 retro of L5 over S1, L3-4 1-2 mm protrusion, L4-5 3mm protrusion with effacement of the thecal sac (PX 14). On August 14, 2018, Dr. Patel referred Petitioner to physical therapy and recommended a consultation with a plastic surgeon for the scar pain (PX 13, p 8-10).

Petitioner testified that the case manager directed her to Dr. Sumanas Jordan, a plastic surgeon with Northwestern Medicine. Petitioner had her initial consultation and examination with Dr. Jordan on October 4, 2018 (PX 15, p 338-343). Petitioner complained of pain at the proximal aspect of her scar, pain that was electric in nature and caused difficulty sitting and walking. Dr. Jordan suspected that the painful scar could be a neuroma, but could not make any conclusive findings without review of Petitioner's operative reports (PX 15, p 343). On October 10, 2018, Dr. Jordan stated that before proceeding with a surgical approach, she needed objective evidence to corroborate that the surgery was necessary and ordered an ultrasound (PX 15, p 334-336). On November 8, 2018, Petitioner saw Dr Patel for her back and right knee pain (PX 13, p 12-15). Dr. Patel noted her ongoing physical therapy with only short term relief. He recommended a consultation with an orthopedic specialist for her knee pain (PX 13, p 15). The November 26, 2018 ultrasound revealed the soft tissue thickening in the posterior aspect of the upper right thigh between the semitendinosus muscle and sciatic nerve (PX15, pg. 303). On December 6, 2018, Dr. Jordan stated that the ultrasound provided evidence of fibrosis abutting the sciatic nerve and recommended right sciatic neurolysis and scar revision. Dr. Jordan ordered an EMG (PX 15, p 290).

Petitioner was referred to see Dr. Gordon W. Nuber at Northwestern to address complaints knee pain and swelling, and had her initial evaluation with Dr. Nuber on December 27, 2018 (PX 15, p 277-280). Dr. Nuber found good range of motion, tenderness, and increased pain with a Steinman test. Her knee was stable. X-rays noted mild arthritic changes. Dr. Nuber recommended an MRI of the knee (PX 15, p 279-280). Petitioner declined the MRI scheduled of the knee due to complaints in the lower leg (PX 15, p 263). On January 24, 2019, Petitioner followed up with Dr. Nuber, who requested an MRI of the Petitioner's right knee and also right calf (PX 15, p 252). He restricted the Petitioner from work (PX 15, p 254).

On January 24, 2019, Petitioner reported worsening symptoms. Dr. Jordan noted the EMG/NCV was within normal limits, but given the worsening symptoms and ultrasound finding proposed a right sciatic neurolysis and scar revision (PX 15, p 249). On February 12, 2019, Petitioner underwent right sciatic neurolysis and posterior thigh scar revision. The surgical findings noted dense scar surrounding sciatic nerve and tendon

repair (PX 15, p 162). Petitioner saw Dr. Jordan post-operatively reporting a change in her pain to a tingling and incisional pain. She was advised to return to physical therapy on March 14, 2019 (PX 15, p 118-144).

On February 26, 2019, Petitioner was examined by Dr. Jesse Butler pursuant to Section 12 (RX 3, Ex 2). Dr. Butler reviewed Petitioner's medical records and conducted a physical examination. He also reviewed a video surveillance report from September 2, 2017 which reported Petitioner performing exercises at a fitness center and walking without difficulty. He did not review any actual video surveillance. Dr. Butler noted that Petitioner's medical records identify significant issues with the right lower extremity as a result of her work injury. Dr. Butler diagnosed degenerative disc disease at L4-5 based upon the MRI studies. He opined that Petitioner's symptoms relate to her leg issues. She has no back injury. Her lumbar findings are not traumatic. He states Petitioner's symptoms do not correlate with her lumbar diagnosis. He opined that Petitioner was suffering from solely degenerative changes in her spine which are not related to the October 3, 2016 work accident. She does not require therapy, injections, or other treatment for the lumbar spine. She is at maximum medical improvement and needs no work restrictions for her lumbar spine (RX 3, Ex. 2).

On April 11, 2019, Petitioner reported to Dr. Jordan that she was able to increase the level of her physical activity following the sciatic neurolysis, although she still continued to experience numbness in her right thigh area. Physical therapy helped increase her range of motion. Dr. Jordan noted no point tenderness, but rather diffuse hypersensitivity. Petitioner's physical therapy was increased to 4 times per week (PX 15, p 107). On April 30, 2019, Dr. Nuber again recommended the MRI of the knee, as well as an MRI of the right tibia/fibula to confirm whether she was a surgical candidate (PX 15, p 102). The May 11, 2019 MRI of the right knee demonstrated no discrete tear of the meniscus, but chondral defects throughout the knee (PX 15 p 82). The May 11, 2019 MRI of the right tibia demonstrated no abnormalities (PX 15, p 76). On June 13, 2019, Dr. Nuber noted chondral damage, but notes Petitioner is convinced the pain is from not her knee. Dr. Nuber referred Petitioner to Dr. Vehniah Tjong for an assessment of her hamstring symptoms (PX 15, p 59). On June 26, 2019, Petitioner saw Dr. Tjong, for an assessment of her hamstring. (PX 15, p 38). His examination noted that firing right hamstring tendon muscle junction was 80% weaker than the left and decreased sensation to touch along Petitioner's entire posterior aspect of the right thigh. Dr. Tjong opined that another orthopedic surgery was not necessary, and he recommended physical therapy for continued strength training. He stated that in terms of nerve damage, likely in the sciatic neurolysis there were some small skin nerves that tracked that area that may have been compromised. Dr. Tjong recommended Petitioner consult with her plastic surgeon and pain management physician to help manage ongoing nerve injuries, but opined that no more orthopedic treatment would be required pertaining to the hamstring (PX 15, p 38).

On June 27, 2019, Petitioner told Dr. Jordan that physical therapy helped her to increase the level of physical activity. She still has some numbness and pain but overall is improving. Petitioner can maintain activity for 3 hours but then is in considerable pain in her right leg and back. Petitioner reports she cannot lift more than 10 pounds without pain. Dr. Jordan recommended continued physical therapy and home exercises. Dr. Jordan noted that Petitioner suffered from numbness prior to surgery, and she would be likely to remain numb in the distribution of the posterior femoral cutaneous nerve (PX 15, p 30). On June 28, 2019, Dr. Jordan authored a letter releasing Petitioner to return to work without restrictions, but recommended Petitioner does not work more than four hours per day for five days per week. Dr. Jordan noted in the letter that the Petitioner continued to experience decreased muscle strength in her right lower extremity which resulted in an altered gait, and she agreed with the recommendations as outlined by the FCE report and Dr. Dairyko that the Petitioner should follow up with a pain specialist to manage ongoing complaints of pain (PX 18, R. Ex. 1).

On August 1, 2019, Petitioner saw Dr. Jordan accompanied by her prior workers' compensation counsel. (PX 15, p 23) Petitioner testified that she asked her former attorney to accompany her to this medical appointment, because she did not understand everything Dr. Jordan was telling her pertaining to her work restrictions. Petitioner testified that the attorney did not give Dr. Jordan any directions pertaining to Petitioner's return to work restrictions. Dr. Jordan released the Petitioner to full-time work with a sedentary restriction, indicating Petitioner could not lift more than 10 pounds (PX 15, p 23). Dr. Jordan assisted Petitioner with obtaining a handicapped parking permit (PX 15, p 17). Petitioner saw Dr. Jordan for the last time on November 25, 2019 (PX 15, p 1-2).

On September 26, 2019, Petitioner returned to Dr. Patel (PX 13, p 21-23). Petitioner complained pain in her low back, inner thighs, and right posterior leg. She stated it was worse than the last visit. She notes the scar surgery and reports her original pain is better, but she feels a different kind of pain. Dr. Patel notes his prior recommendation for a facet injection. Petitioner now says she has completed treatment for the thigh and wants to address the lower back. Examination notes paraspinal tenderness and decreased range of motion limited by stiffness and pain. Straight leg raise, strength, and sensation are intact. Facet Loading and Faber Test are positive. Dr. Patel recommended referral to orthopedic surgery (PX 13, p 23). On October 22, 2019, Dr. Patel again recommended referral to orthopedic surgery (PX 13, pg. 25-26). On November 14, 2019, Petitioner saw Dr. Dairyko (PX 8, p 16). Petitioner complained of numbness about the posterior right thigh and radicular pain about the right leg. On examination, he found negative straight leg raise, no pain with extension and mild pain with flexion. He told her that she would benefit from seeing a pain management doctor and was to follow up only on as-needed basis (PX 8, p 16). Petitioner testified that Dr. Dairyko explained to her that her leg was very damaged, and she would always struggle with her leg and that there was nothing else he could do for her. On December 24, 2019, Dr. Patel states Petitioner has axial pain. A diagnostic medial branch block/facet injection would help diagnose the generator of pain (PX 13, p. 30). Petitioner did not proceed with the injections.

On March 17, 2020, Petitioner saw Dr. Jimenez for a second independent medical examination (RX 1, Ex. 3). Dr. Jimenez reviewed treating records since his earlier April 20, 2017 examination. Physical examination noted some paraspinal muscle spasm, but full range of motion in the lumbar spine and both knees. Motor and sensory examination were normal. Petitioner did not have a limp or atrophy of the lower extremities. Petitioner had full range of motion in the right hip, knee, and ankle. He diagnosed a right knee contusion and strain as well as a right hamstring tear. He opined that Petitioner is completely healed and at maximum medical improvement. She can return to work full duty without restrictions. Dr. Jimenez stated that Petitioner is complaining of right hip, knee, and lumbar pain without evidence of organic pathology. He states he reviewed surveillance which showed Petitioner is able to exercise and perform daily activities. She was able to bend, stoop, stand, and carry heavy objects. Dr. Jimenez opined that the neurolysis performed was not medically necessary (RX 1, Ex. 3).

On December 4, 2020, Petitioner went to Emergency room of the Adventist Bolingbrook Hospital complaining of increased pain for the last 2 days especially when weight bearing or walking (PX 16). The doctor noted her symptoms were not radicular. He diagnosed an acute exacerbation of her chronic pain. Petitioner was discharged with crutches and instructed to follow up with her orthopedic doctor (PX 16). On December 11, 2020, Petitioner saw Dr. Dairyko (PX 8). Dr. Dairyko confirmed that the Petitioner was not a surgical candidate, and explained that Petitioner will probably continue to have numbness in her right thigh. He recommended physical therapy and advised Petitioner to follow up on as-needed basis (PX 8).

Dr. Dairyko testified by evidence deposition on February 12, 2020 (PX 17). Dr. Dairyko testified Petitioner did not complain about her low back when he first saw her. He testified that when he recommended surgery for the Petitioner's right proximal hamstring rupture, he knew the surgery would be more technically difficult given the fear that the proximal hamstring normally lies just to the left of the sciatic nerve in the thigh. Given the amount of time that had passed since the initial injury, it would be probable that the torn tendon and the nerve would be encased in scar tissue which would make it difficult to immobilize the tendon as part of surgery. On November 23, 2016, Dr. Dairyko performed a right proximal hamstring tendon repair, as well as neurolysis of the sciatic nerve. Dr. Dairyko testified that there was a significant amount of scar tissue around the sciatic nerve where the hamstring had ruptured, so he had to be very careful in dissecting out the sciatic nerve and excising the scar tissue to attempt to avoid post-operative pain. Dr. Dairyko testified to the second surgery on January 4, 2017 for an incision and drainage. He testified that Petitioner continued to complain of 6/10 pain and numbness. He explained that her symptoms were explained by the nerves in her thigh becoming injured during her injury and the subsequent repair (PX 17).

Dr. Dairyko recommended the FCE in December 2017 given the plateauing of the Petitioner's recovery. Based upon his review of the FCE report, Dr. Dairyko believed that the permanent physical restrictions of sedentary work as outlined in the report were medically reasonable permanent physical restrictions for the Petitioner. He released her with said permanent restrictions as of January 26, 2018. Dr. Dairyko testified that these permanent physical restrictions are consistent with the Petitioner's subjective complaints of pain. He reaffirmed that Petitioner was at maximum medical improvement on February 2, 2018. Dr. Dairyko testified that when the Petitioner followed up with him for a recheck on or about November 14, 2019, nothing had changed with the Petitioner's hip pain and complaints. She had numbness in the posterior thigh and radicular pain coming from her back. He recommended Petitioner see a pain management doctor for her radicular pain (PX 17). Dr. Dairyko testified that Petitioner's work accident of October 3, 2016 caused the Petitioner's condition of ill-being in her hip. The mechanism of Petitioner's injury was a competent mechanism of injury for the ruptured hamstring because when Petitioner slipped, she had forced a sudden extended position of her right leg. Petitioner's work accident was a causative or aggravating factor in the permanent physical restrictions. All treatment which he provided to the Petitioner was medically reasonable and necessary (PX 17). Dr. Dairyko testified that Petitioner spoke English with him (PX 17).

Dr. Jordan testified by evidence deposition on June 14, 2021 (PX 18). Dr. Jordan testified that she first saw Petitioner on October 4, 2018. She performed a focus exam of Petitioner's lower extremities. It was her opinion that the focalized area of the pain was around Petitioner's post-operative scar. An ultrasound was recommended to look for any intervenable cause of Petitioner's ongoing pain complaints. The ultrasound confirmed a dense fibrosis or dense scar abutting the sciatic nerve, which Dr. Jordan opined could be the source of her ongoing pain complaints. Dr. Jordan ordered an EMG as part of the nerve evaluation to see if there was a frank injury to the nerve. The EMG was normal. Dr. Jordan performed sciatic neurolysis and scar revision surgery on Petitioner's right thigh on February 12, 2019. Dr. Jordan noted that Petitioner's sciatic nerve was densely encased in the scar tissue, which confirmed Dr. Jordan's preoperative diagnosis. During the course of surgery, Dr. Jordan also attempted to look for an injury to the posterior femoral cutaneous nerve, but she was unable to identify that nerve given all the scar tissue (PX 18).

Dr. Jordan testified about the letter which she authored on June 28, 2019 (PX 18, Resp. Ex 1). She testified Petitioner requested the letter to have documentation to get more therapy approved. Dr. Jordan testified that the statement that the Petitioner could return to full duty work as of July 1, 2019 was based upon a conversation with the Petitioner regarding her job duties. The 4 hour restriction was based upon Petitioner's

statement that she fatigued. Dr. Jordan testified about the presence of the Petitioner's prior workers' compensation lawyer at the August 1, 2019 appointment. Dr. Jordan does not recall having any conversations with the lawyer, aside from the lawyer requesting documentation regarding the Petitioner's work restrictions. Dr. Jordan testified that the lawyer being present at the appointment had no impact on any medical treatment rendered, nor opinions provided related to her care of the Petitioner. The lawyer's presence had no impact on Dr. Jordan's decision to release the Petitioner with the ten pound lifting restriction. She testified that nobody would ever influence her medical decisions. Dr. Jordan testified that as of August 1, 2019, she placed a sedentary work restriction upon the Petitioner which included no lifting greater than ten pounds. These restrictions were based upon the Petitioner's reports of what she was capable of doing. Dr. Jordan does not recall modifying these restrictions following this August 1, 2019 appointment. She testified that Petitioner was doing better that compared to before she saw her. She was improved overall (PX 18).

Dr. Jordan testified that the handicapped parking permit which she provided was medically reasonable and appropriate. She recommended continued follow-up appointments with a pain management specialist for chronic right leg pain given her opinion that the Petitioner had reached the limits of what could be provided from a surgical standpoint. Petitioner was discharged from care in November 2019 (PX 18). Dr. Jordan testified that from the time Petitioner first saw her through the time she was discharged from care, Petitioner experienced numbness up and down along the back of her thigh that represented the distribution of the posterior femoral cutaneous nerve that she looked for, but could not locate during surgery. Dr. Jordan testified that she suspects an injury to the posterior femoral cutaneous nerve either during the initial injury, or during one of the subsequent surgeries (PX 18). Dr. Jordan testified that the October 3, 2016 accident was a causative factor in the Petitioner's current condition of ill-being for which she provided treatment. The work accident was a causative factor in the permanent work restrictions which continue to be placed upon the Petitioner to date. The medical treatment she provided has been reasonable and causally connected to the subject work accident (PX 18).

Dr. Butler testified by evidence deposition on July 21, 2020 (RX 3). Dr. Butler testified that he reviewed medical records and a report of surveillance with photographs. He did not review any video. He opined that the diagnosis was degenerative changes or arthritis at L4-5 with some left-sided nerve compression. He opined this was not causally related to the accident. He testified that none of the findings on the October 7, 2016 MRI correlated to Petitioner's symptoms. Petitioner's subjective complaints correlate with her hamstring injury and the subsequent surgery performed. The findings were pre-existing. He found no significant difference in the August 11, 2018 MRI findings. He opined that the treatment to her thigh was related the recommendation for pain management, physical therapy for her lumbar injury, and the recommendation for facet injections were not related to the injury at work. Dr. Butler opined that Petitioner did not suffer an injury to the lumbar spine as a result of her accident. He opined that the injections were not reasonable regardless of causation. He has no specific issues with the other treatment consisting of therapy and medication for her subjective complaints. Her complaints were related to the hamstring tear, subsequent surgeries, and the complications from her surgical procedures. Petitioner did not require work restrictions for her lumbar spine (RX 3). Dr. Butler testified that the surveillance was part of his conclusion, but the MRI findings and medical records clearly point to a hamstring injury. It did not affect his causation opinion. The surveillance highlighted that there may be somewhat of a disconnect between Petitioner's reports of pain and dysfunction and what is actually occurring. The surveillance report did influence his opinions regarding the Petitioner's ongoing impairment (RX 3).

Dr. Jimenez testified by evidence deposition on June 14, 2021 (RX 1). Dr. Jimenez testified that he first saw the Petitioner on April 20, 2017. He stated that she suffered from tremendous, permanent sensory loss. Dr.

Jimenez testified that the evidence points primarily towards the surgery causing these sensory issues, which is a known complication of a hamstring repair. Dr. Jimenez opined that the Petitioner would require a permanent, sedentary restriction after his initial assessment (RX 1).

Dr. Jimenez testified that he saw the Petitioner for a repeat examination on March 17, 2020. Dr. Jimenez opined that, given the negative EMG findings, the nerve neurolysis and scar revision performed by Dr. Jordan was not medically necessary, nor causally connected to any injury. He testified that Petitioner had no evidence of a damaged nerve. No foot drop or atrophy. Dr. Jimenez testified that the sensory issues were not a main complaint of the Petitioner at the time of his updated examination. He testified that he never asked the Petitioner specific questions regarding sensory loss. Rather, he asked only open ended questions. It was "debatable" whether he should have asked the Petitioner questions regarding her complaints of peri-labial, genital perineal, and perianal sensory loss. He did not consider the sensory nerve complaints. Dr. Jimenez testified that the Petitioner had healed more, since his prior examination, and her mind, body, and soul had all improved. Dr. Jimenez opined that the Petitioner had reached maximum medical improvement, and she required no work restrictions (RX 1). Dr. Jimenez testified that he reached his decision that Petitioner required no work restrictions, at least in part, as a result of his review of surveillance. He testified he reviewed a surveillance report. He does not recall actually viewing any surveillance footage (RX 1).

Petitioner testified she attempted to find a different job within her restrictions in the fall of 2019. Her son assisted her. PX 20 is a listing of 18 jobs she applied for. The document reflects one entry for July 29, 2019, and the remainder during the period from August 23, 2019 through September 16, 2019. She applied for jobs in sales and as a cashier (PX 20). She testified that her son helped by telling her the words to write. Petitioner uses her phone translator to help her with English. She stopped looking for jobs when her doctor told her that she was not going to improve.

Laura Belmonte testified by evidence deposition on January 13, 2021 (PX 19). Ms. Belmonte was employed as a certified rehabilitation counselor with Vocomotive since May of 2019. As part of her duties as a certified rehabilitation counselor Ms. Belmonte interviews and evaluates injured workers to determine whether they are employable and if so, in what capacity. Ms. Belmonte is also responsible for creating rehabilitation plans for injured workers whom she considers employable. Ms. Belmonte testified that she evaluated Petitioner on January 15, 2020, and prepared a vocational evaluation report on February 27, 2020. As part of Petitioner's evaluation, Ms. Belmonte reviewed the vocational evaluation report prepared by her colleague, Lisa Helma on April 11, 2018. Ms. Belmonte testified that although she agreed with the findings included in the report prepared by Ms. Helma, the report did not influence Ms. Belmonte's opinions during the vocational evaluation of the Petitioner. Ms. Belmonte evaluated the Petitioner in person. Ms. Belmonte noted that Petitioner took medications that caused fatigue. She had difficulty performing daily tasks due to pain in her right leg and back without taking any pain medications. Petitioner has been restricted to sedentary work. Petitioner does not have a GED or a high school diploma and is a very poor speller in English. Ms. Belmonte concluded that Petitioner was a low-educated and unskilled worker and only 1 percent of jobs within the current labor market would be available for the Petitioner within the work restrictions issued by Petitioner's medical providers (PX 19).

Ms. Belmonte testified that Petitioner's ability to communicate in English is important both verbally and in writing given her sedentary work restrictions. She has concerns regarding Petitioner's basic ability to write an email given her issues with writing and spelling in English. Ms. Belmonte conducted a transferable skills analysis utilizing a computer program, and her work history including only unskilled or low-skilled jobs. She concluded that the Petitioner does not have any transferrable skills. Ms. Belmonte testified that Petitioner is

considered somebody who is approaching advanced age, and therefore would have difficulty adjusting to any new jobs (PX 19).

Ms. Belmonte testified that in this case, the Petitioner is a low-educated and unskilled worker without a high school diploma or GED. She has difficulty spelling, per her subjective report and as seen in her job search records which were reviewed. Petitioner is not a fluent English reader or writer, and has only worked in unskilled or low semi-skilled positions. Petitioner is facing job seeking with sedentary physical restrictions, which is the lowest physical demand level outlined by the United States Department of Labor, and only one percent of jobs within the current labor market are unskilled sedentary roles. She opined that Petitioner lost her preinjury occupation, and she does not have access to any alternative occupations due to all of the factors in her report, but especially given her lack of education, lack of written communication skills in English, lack of skilled work experience, lack of transferable skills, her residual functional capacity of the sedentary level (PX 19).

Ms. Belmonte testified that a cosmetologist would not be a sedentary position. She testified that Ms. Helma did not test typing skills in 2018. She testified that Petitioner would be categorized as limited education rather than marginal. Vocomotive provides GED classes, computer training, and English courses. Ms. Belmonte testified that her opinions were based upon a permanent sedentary restriction. If the restrictions were changed, this could lead to a different opinion. Cashier work would be categorized as light duty requiring lifting up to 20 pounds and standing all day. She might have placed somebody in a sedentary position as a cashier, under special circumstances. Gate guard usually required a high school diploma. Ms. Belmonte testified that Vocomotive has a very high placement rate. She does not take it lightly to find someone permanently disabled (PX 19).

Eric Flanagan testified by evidence deposition on February 8, 2021 (RX 2). Mr. Flanagan is a certified vocational rehabilitation counselor. He testified he prepared a Labor Market Research report in December 2020. He did not interview Petitioner. He testified he reviewed the FCE, records of Dr. Jordan, the report of Dr. Jimenez dated March 17, 2020, and the Vocomotive reports from 2018 and 2020. His report used a sedentary restriction. His Transferable Skills Analysis found 4 matches: telephone solicitor, order clerk, manicurist, and fingernail former. Telephone solicitor and order clerk were considered good matches. He testified that order clerk sometimes is not a sitting job. He also identified 4 light duty category jobs because many may be fully sedentary. These were office helper, office clerk, mail clerk, and admin clerk (RX 2, Ex. 2).

Mr. Flanagan also performed a Labor Market Survey for jobs available within an hour of Petitioner's home. He identified 13 jobs currently available (RX 2, Ex. 2). He testified that Petitioner had the customer experience needed for the RoomPlace. They did not require a GED. Some jobs list qualifications as preferred, but would still consider other candidates. He testified that from his review of the documents, he felt Petitioner had "basic computer skills." He noted Petitioner took online courses for CNA, which he felt qualified as basic computer skills. Mr. Flanagan testified that there are courses for GED in English and Spanish. These can be self-paced. He testified that Petitioner would be a candidate for vocational rehabilitation. This would include developing a resume, interview skills training, help in identifying jobs, and supervision of any retraining. Mr. Flanagan opined that a stable job market exists for Petitioner with a wage of $10 to $17 per hour (RX 2).

Mr. Flanagan testified he was not asked to perform a vocational assessment in this case. That can include an interview of the candidate. It would include the background information, medical and work history, skills, and TSA, not include the labor market survey. He testified that by not meeting with Petitioner he may have missed

some subjective context, but does not think it was impactful on the opinion he rendered. All of the opinions which Mr. Flanagan provided were based upon his inference that the Petitioner can communicate fluently in English. Mr. Flanagan stated he assumed Petitioner was fluent in English based upon the Vocomotive reports. He did not speak with her or see anything that she had written (RX 2).

Petitioner testified that prior to the subject accident of October 3, 2016, her physical health was very good, and she did not have any difficulty performing her work duties. She now continues to experience constant pins and needles pain in her right leg. The area on her right thigh where the surgeries were performed remains numb, swollen, and produces a burning sensation when touched. She continues to experience numbness in her right lower extremity, including across her labia, causing weakness in her right lower extremity. She is afraid it will give out. Petitioner testified that she cannot walk fast, cannot run, cannot dance, and cannot wear high heel shoes. She experiences difficulty going up and down stairs, working out at the gym, grocery shopping, and participating in social events with her friends. Petitioner continues to perform at-home exercises for her right hip, uses a TENS unit, and take over-the-counter medications. Petitioner testified that her son, Andre, assists her with performing these activities of daily living.

Andre Araburo testified that Petitioner is his mother. He has lived with her his whole life. He testified that before October 3, 2016, Petitioner was a fitness nut. She would jog or go to the gym. She was very active. Petitioner knows some English, but she has trouble understanding and talking. He would help her with any paperwork. He testified that he now does the housework Petitioner used to do. Just going up and down stairs is a problem for her. She is always in pain. He helps her out with groceries, laundry, everyday chores, even walking. In 2019, he helped her with looking for employment. He looked up jobs on the internet and helped her with writing it on the computer in English. He does not believe she had any interviews. He testified that Petitioner does not have advanced typing or computer skills.

Conclusions of Law

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

A Workers' Compensation Claimant bears the burden of showing by a preponderance of credible evidence that his current condition of ill-being is causally related to the workplace injury. *Horath v. Industrial Commission*, 449 N.E.2d 1345, 1348 (Ill. 1983) citing *Rosenbaum v. Industrial Com.* (1982), 93 Ill.2d 381, 386, 67 Ill. Dec. 83, 444 N.E.2d 122). The Commission may find a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by an accident. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 182, 457 N.E.2d 1222, 1226, 75 Ill. Dec. 663 (1983). However, expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and his condition of ill-being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63, 442 N.E.2d 908, 911, 66 Ill. Dec. 347 (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839, 639 N.E.2d 886, 892, 203 Ill. Dec. 327 (1994). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000).

Petitioner sustained an undisputed accident on October 3, 2016. She was transferred to the emergency room by ambulance with immediate complaints. There is no dispute that the hamstring tear in her right leg was

caused by the accident. Respondent has disputed the causal connection of Petitioner's symptoms and treatment to the lumbar spine and offered the opinions of Dr. Butler in support of this denial.

The Arbitrator notes that Petitioner's description of her mechanism of injury is consistent with an injury to the low back. She underwent an MRI of the lumbar spine within days of the accident and advanced low back complaints to Dr. Martinez at her first post-accident visit on October 10, 2016. Dr. Martinez diagnosed a quadriceps strain, lumbar strain, and herniated lumbar intervertebral disc. While Petitioner admitted prior back treatment many years earlier, her testimony that that condition was resolved, and she had no such problems immediately before the injury. No medical evidence of recent past care was offered. While treatment by Dr. Dairyko and Dr. Jordan focused on the hamstring tear and subsequent infection and nerve issues, Petitioner was consistently recommended to follow up with pain management for back pain and radicular symptoms. Although there was delay, in part due to the lack of authorization for treatment, Petitioner did see Dr. Patel beginning July 31, 2018. She underwent an additional MRI and conservative care. Dr. Butler's opinion that there was no lumbar injury focuses primarily on the degenerative nature of the MRI findings and his negative examination findings. His opinions are also influenced by the surveillance report he reviewed.

It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07, 459 N.E.2d 963, 76 Ill. Dec. 828 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041, 721 N.E.2d 1165, 242 Ill. Dec. 634 (1999). Expert testimony shall be weighed like other evidence with its weight determined by the character, capacity, skill, and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Commission*, 309 Ill. 91, 138 N.E. 211 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, 960 N.E.2d 587, 355 Ill. Dec. 705.

Having heard the testimony and reviewed the medical evidence, the Arbitrator finds the opinions of Dr. Martinez, Dr. Dairyko, Dr. Jordan, and Dr. Patel persuasive. The Arbitrator notes that Petitioner has had no further treatment, other than a single emergency room visit and follow up office visit with Dr. Dairyko since her release by Dr. Jordan on November 25, 2019. The Arbitrator's causation opinion does not specifically address any claim for any additional future medical treatment which may be claimed following the date of maximum medical improvement as further discussed below in the Arbitrator's finding with respect to Temporary Compensation.

Based on the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that her current condition of ill-being is causally connected to the accidental injury sustained on October 3, 2016.

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

Under §8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses

incurred were reasonable. *City of Chicago v. Illinois Workers ' Compensation Commission,* 409 Ill. App. 3d 258,267 (1st Dist., 2011). Based upon the Arbitrator's finding with respect to Causal Connection, reasonable and necessary medical bills for treatment of Petitioner's conditions of ill-being would be related.

Petitioner has submitted total medical bills as part of the treating medical exhibits. The bills are listed on Arb. Ex. 1 as follows:

(1) Adventist Glen Oaks Hospital ($1,838.00)
(2) IL Emergency Medical Specialists ($777.00)
(3) Elmhurst Radiologists ($57.00)
(4) Elmhurst Memorial Healthcare ($5,017.00)
(5) Scheck and Siress Prosthetics Orthotics ($682.58)
(6) DuPage Medical Group ($437.00)
(7) ATI Physical Therapy ($50,795.78)
(8) Northwestern Medicine ($896.00)
(9) Pain and Spine Institute ($2,380.00)
(10) Premium Healthcare Solutions ($3,105.00)
(11) Physiopartners ($1,700.16)

Respondent offered its payment log as RX 5 which reflects payments made to many of the listed providers. The Arbitrator has reviewed the medical records and bills and notes that many of the bills show payments and adjustments or have zero balances. The bills claimed have not been adjusted for fee schedule. The Arbitrator has reviewed the treatment records for the submitted billing and in accordance with the finding with respect to Causal Connection, finds the bills are for reasonable, necessary, and causally related treatment. In so finding, the Arbitrator incorporates his prior findings with respect to the treatment for the lumbar spine. The Arbitrator notes that Dr. Butler did not have criticism of the conservative lumbar treatment performed consisting of therapy and office visits. He disputed the need for injections. The Arbitrator also finds the opinions of Dr. Jordan more persuasive that those of Dr. Jimenez with respect to the reasonableness of the neurolysis performed.

In making this finding, the Arbitrator expressly makes no finding with respect to any future treatment which has been or may be recommended for the pre-existing degenerative conditions in Petitioner's lumbar spine or right knee.

Based upon the record as a whole, the Arbitrator finds that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,838.00 to Adventist Glen Oaks Hospital; $777.00 to IL Emergency Medical Specialists; $57.00 to Elmhurst Radiologists; $5,017.00 to Elmhurst Memorial Healthcare; $682.58 to Scheck and Siress Prosthetics Orthotics; $437.00 to DuPage Medical Group; $50,795.78 to ATI Physical Therapy; $896.00 to Northwestern Medicine; $2,380.00 to The Pain and Spine Institute; $3,105.00 to Premium Healthcare Solutions; and $1,700.16 to Physiopartners as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for payments and adjustments made.

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

Temporary compensation is provided for in Section 8(b) of the Workers' Compensation Act, which provides, weekly compensation shall be paid as long as the total temporary incapacity lasts, which has interpreted to

mean that an employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. The dispositive test is whether the claimant's condition has stabilized, i.e., reached MMI. *Sunny Hill of Will County Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003).

Based on the Arbitrator's findings with respect to Causal Connection and Medical above, Petitioner was under active treatment for her causally related conditions of ill-being through her last visit with Dr. Jordan on November 25, 2019. Petitioner was either totally restricted from work or on work restrictions which precluded her from returning to her employment with Respondent during the entire period from the date of accident through November 25, 2019. No offer of modified work was made by Respondent. Despite the FCE performed in December 2017, Petitioner had additional work ups for her knee and lumbar spine and the additional surgery by Dr. Jordan. The Arbitrator notes that the medical work ups in this matter involved overlapping symptoms that could be attributed to multiple possible sources. The Arbitrator finds Petitioner reached MMI on November 25, 2019.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proved by a preponderance of the evidence that she is entitled to Temporary Total Disability from October 4, 2016 through November 25, 2019.

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

An employee is totally and permanently disabled when he is unable to make some contribution to industry sufficient to justify the payment of wages. *A.M.T.C. of Illinois, Inc., Aero Mayflower Transit Co. v. Industrial Comm'n*, 77 Ill. 2d 482, 487 (1979). If, as in this case, a claimant's disability is of such a nature that he is not obviously unemployable, or there is no medical evidence to support a claim of total disability, the burden is upon the claimant to prove by a preponderance of the evidence that he fits into an "odd lot" category; that being an individual who, although not altogether incapacitated, is so handicapped that he is not regularly employable in any well-known branch of the labor market. *Valley Mould & Iron Co. v. Industrial Comm'n*, 84 Ill. 2d 538, 546-47 (1981). A claimant ordinarily satisfies his burden in one of two ways: (1) by showing diligent but unsuccessful attempts to find work, or (2) by showing that, because of his age, skills, training, and work history, he will not be regularly employed in a well-known branch of the labor market. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 544 (2007). Once a claimant establishes that he falls within an "odd lot" category, the burden shifts to the employer to prove that the claimant is employable in a stable labor market and that such a market exists. *Id.*

Petitioner is not medically totally disabled. Petitioner's treating medical providers, Dr. Dairyko and Dr. Jordan, agree that she is capable of working within the sedentary physical demand level, with lifting up to 10 pounds and restrictions on prolonged standing, walking, and bending. Dr. Jimenez initially agreed with Petitioner's release to sedentary work. His subsequent release to unrestricted duty based upon video surveillance that was not offered into evidence is unpersuasive. Dr. Butler's opinion on Petitioner's work ability, limited to the lumbar spine and also based on the video, which was not offered into evidence, is also unpersuasive. The Arbitrator finds that Petitioner is capable of working in the sedentary physical demand level based upon the preponderance of the medical evidence. To qualify as permanently totally disabled, Petitioner would need to prove an odd lot theory.

Petitioner's offered job search was contained in the job logs in PX 20. The Arbitrator finds that this limited job search over a few weeks does not qualify as a diligent but unsuccessful attempt to find work. While the Arbitrator recognizes Petitioner's frustration and challenges in this effort as described in her testimony and that of her son, the Arbitrator finds that this limited search, in both number of contacts and short duration, is not a good faith effort.

Petitioner has also offered the opinion of Ms. Belmonte that Petitioner is totally disabled. Respondent has offered the opinion of Mr. Flanagan that there is a stable job market for Petitioner. Expert testimony shall be weighed like other evidence with its weight determined by the character, capacity, skill, and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Commission*, 309 Ill. 91, 138 N.E. 211 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, 960 N.E.2d 587, 355 Ill. Dec. 705. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S*., 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87, 274 Ill. Dec. 284 (2003).

The Arbitrator finds the opinion of Ms. Belmonte, based upon 2 interviews with Vocomotive and her personal meeting with Petitioner, establishes that Petitioner falls within an "odd lot" category. The Arbitrator notes that Mr. Flanagan did not actually meet with Petitioner and his report includes assumptions as to her English fluency, computer literacy, and job history that are not completely in accordance with her testimony and the understanding of Ms. Belmonte who did interview her in person. The Arbitrator finds his listing of available jobs and job classifications include expectations and accommodations that are not persuasive. To expect an individual whose jobs have been at the lower end of social interaction to be hired as a receptionist for a professional office does not seem reasonable. Further, Mr. Flanagan discusses additional training or classes that would be necessary or desirable to make Petitioner more employable, further emphasizing her limited options at the time of his evaluation. No evidence was offered that any of these options were proposed by Respondent or offered to Petitioner despite almost a year passing between the preparation of his report and trial in this matter. Having reviewed the evidence and observed the Petitioner, the Arbitrator finds the opinions of Ms. Belmonte more persuasive and finds that the testimony of Mr. Flanagan failed to meet Respondent's shifted burden to prove that the claimant is employable in a stable labor market and that such a market exists.

Based upon the record as a whole and the Arbitrator's finding with respect to Temporary Compensation, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that she is permanently and totally disabled effective November 26, 2019.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC016437
Case Name	Aryha'Storm Lopez v. Express Jet Airlines Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0432
Number of Pages of Decision	13
Decision Issued By	Deborah Baker, Commissioner

Pro Se Petitioner	Aryha'Storm Lopez
Respondent Attorney	

DATE FILED: 11/10/2022

/s/ Deborah Baker, Commissioner

Signature

22IWCC0432

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse Causation	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ARYHA'STORM LOPEZ, formerly known as Demetria Finley,

Petitioner,

vs. NO: 14 WC 16437

EXPRESS JET AIRLINES INC.,

Respondent.

DECISION AND OPINION ON REVIEW

This matter comes before the Commission pursuant to Petitioner's timely filed Petition for Review of the Decision of the Arbitrator. Therein, the Arbitrator found Petitioner's current condition is not causally related to her work accident; the Arbitrator denied Petitioner's claim for additional temporary disability benefits and denied permanent partial disability benefits. Notice having been given to all parties, the Commission, after considering all issues and being advised of the facts and law, makes the following findings of fact and conclusions of law.

PRE-ARBITRATION PROCEDURAL HISTORY

On May 13, 2014, an Application for Adjustment of Claim was filed alleging Petitioner sustained injuries to her "right hand, fingers, and body" on April 22, 2013 while working for Respondent, Express Jet Airlines Inc. Petitioner was represented by Katz, Friedman, Eisenstein, Johnson & Bareck. The matter was thereafter assigned to Arbitrator Charles Watts. On February 11, 2015, Spiegel & Cahill entered its appearance as counsel for Respondent.

On December 6, 2018, Counsel for Petitioner filed a Motion to Withdraw as Attorney of Record. Arbitrator Watts granted the motion on February 8, 2019.

On July 15, 2019, the matter proceeded to hearing before Arbitrator Watts. Petitioner was unrepresented and she presented her claim *pro se*. While there is a dearth of medical records in the transcript, the Commission has gleaned the details of Petitioner's treatment history from the §12 record reviews submitted by Respondent; specifically the August 8, 2017 report by Dr. Steven

Doores includes a detailed summary of Petitioner's treatment from 2013 through 2016. The following evidence was adduced at arbitration.

FINDINGS OF FACT

Petitioner testified that she was employed as a flight attendant for Respondent, Express Jet Airlines Inc.. The parties stipulated that Petitioner sustained an accidental injury on April 22, 2013. Arb.'s Ex. 1. Petitioner, who testified in the narrative, explained that the accident happened while working a flight. The plane was approximately 20 minutes from landing at Chicago O'Hare airport, and she was securing the galley cart when the incident occurred:

> As I was putting [the soda cans] up, a full tray smashed my right hand, my complete right hand. It was kind of crooked. So, like, the left side of it, the left side of the cans was on two fingers a lot more. So two of my fingers held a lot more pressure than my entire hand. T. 6.

Petitioner was unable to extricate her fingers on her own, and two passengers had to help dislodge the jammed drawer. Petitioner's hand was "smashed down for a while. I would say about five minutes or so." T. 7. Once the plane landed, Petitioner contacted her supervisor who sent her to the airport clinic. T. 7.

The next day, Petitioner presented to University of Illinois at Chicago Medical Center – O'Hare and was evaluated by Dr. Linda Forst. Resp's Ex. 3. Dr. Forst memorialized that Petitioner's fingers "got smashed" while working as a flight attendant. On examination, Dr. Forst observed Petitioner's right index finger was "stuck in swan-neck deformity position"; the doctor also noted swelling at the proximal interphalangeal ("PIP") joint as well as tenderness and a "large bump." Petitioner's right middle finger was tender to palpation over the PIP joint, swollen, and range of motion was limited, with only 30 degrees of flexion. Upon reviewing X-rays, Dr. Forst diagnosed a crush injury to the right index and middle fingers likely with tendon damage. Dr. Forst referred Petitioner to Dr. Gordon Derman, a Chicago hand surgeon; applied a splint; prescribed Vicodin and Ibuprofen; and authorized Petitioner off work. Resp.'s Ex. 3. Upon discharge from the clinic, Petitioner returned to her home in the Houston area. Resp.'s Ex. 3. At trial, Petitioner testified that she made several requests to treat her work-related injury in Houston, but Respondent required her to continue treatment in Chicago. T. 19, 59.

On April 26, 2013, Petitioner flew to Chicago for the evaluation with Dr. Gordon Derman. T. 8. The August 8, 2017 record review reflects that Dr. Derman documented a history of impact injuries to the "radial lateral aspect" of the right index finger as well as the side of the middle finger. Examination findings included swelling along the ulnar side of the index finger, significant pain in the index finger with an inability to flex or extend the digit due to pain, and mild swelling but full range of motion of the middle finger. X-rays revealed "a significant area of pathology" on the ulnar side of the index finger identified as an opacification measuring four by two millimeters, and Dr. Derman indicated it was difficult to ascertain whether this represented a bone fragment, calcification, ligamentous type injury, or a foreign body. Dr. Derman recommended a Caban wrap as well as continued splinting and imposed modified duty restrictions. Resp.'s Ex. 1, T. 8. The parties stipulated that Petitioner was off work and entitled to Temporary Total Disability benefits as of April 26, 2013. Arb.'s Ex. 1.

The August 8, 2017 record review reflects that when Petitioner followed up with Dr. Derman on May 3, 2013, she reported continued pain and swelling with minimal improvement. Upon reviewing updated X-rays, Dr. Derman concluded the calcification could be an inflammatory reaction. Dr. Derman referred Petitioner to a sports medicine specialist, administered a cortisone injection, re-splinted her fingers, and directed that she remain under modified duty restrictions. Resp.'s Ex. 1, T. 10.

Pursuant to Dr. Derman's referral, Petitioner consulted with Dr. Mark Cohen on May 15, 2013. According to the August 8, 2017 record review, Petitioner gave a history of overall worsening pain and function since the April 22, 2013 injury with limited benefit from the injection provided by Dr. Derman. Dr. Cohen noted there was obvious swelling in Petitioner's right index finger, most significant at the PIP joint; the finger was resistant to active or passive flexion; and X-rays demonstrated calcification about the collateral ligament. Dr. Cohen recommended continuing with conservative care in the form of Caban taping, splinting, therapy, and an oral prednisone taper, and referred Petitioner back to Dr. Derman, who ordered the recommended therapy. Resp.'s Ex. 1, T. 12.

On May 24, 2013, Dr. Derman performed a manipulation under anesthesia of Petitioner's index finger; the August 8, 2017 record review documents that following the procedure, Petitioner's range of motion was improved but her pain and swelling were unchanged. Resp.'s Ex. 1. Over the next several weeks, Petitioner continued to fly to Chicago for weekly follow-up appointments with Dr. Derman as well as to attend physical therapy. Resp's Ex. 1.

The August 8, 2017 record review reflects that on July 23, 2013, Petitioner attended a §12 examination with Dr. Richard Egwele at Respondent's request; Dr. Egwele's office is located in Calumet Heights so Petitioner traveled from Houston to Chicago. T. 12-13. Dr. Egwele memorialized that Petitioner reported pain rated at 9/10, burning and tingling sensation, stiffness, and weakness of the right index finger. Visual inspection of the right index finger revealed fusiform swelling, mild shiny skin, and diffuse pale reddish coloration. On further examination, the doctor noted extreme sensitivity to light touch as well as stiffness of the interphalangeal joints, with active range of motion of the PIP joint at 20 to 30 degrees compared to 0 to 110 degrees on the contralateral side. Dr. Egwele's assessment was minor traumatic dystrophy of the right index finger causally related to the work incident. The doctor opined the treatment to date had been reasonable and necessary, and he recommended further treatment to include one or more stellate ganglion blocks, as well as further hand therapy, which he warned may last several months. Resp.'s Ex. 1.

At trial, Petitioner testified that the claims representative advised her that a request for the ganglion block recommended by Dr. Egwele was submitted for approval, however, the procedure was not authorized. T. 15. From August 2013 through April 2014, Petitioner underwent an extensive course of physical therapy at Dr. Derman's direction. According to the August 8, 2017 record review, Petitioner experienced transitory episodes of improved range of motion, but her overall complaints of pain, swelling, and stiffness continued. Resp.'s Ex. 1. At the hearing, Petitioner testified that her hand condition began to worsen:

> My hand began to grow like a knot on it…So December of 2013, my hand started scaling. It started looking kind of like a snake hand or something. My fingers, the two index fingers, my right pointer finger and my middle finger, my middle finger

> would turn black and get really big. My [right] pointer finger, bone would protrude on the inner part of my finger. It would stick into my middle finger. T. 17-18.

The August 8, 2017 record review reflects that on May 2, 2014, Petitioner presented to Dr. Derman for a re-evaluation and she reported persistent pain in the index finger as well as a "bump" on the ulnar side of her index finger which was putting pressure along the middle finger. Dr. Derman obtained updated X-rays and identified signs of arthritic changes on the ulnar side of the PIP joint, but no other problems of significance. Dr. Derman ordered further therapy, prescribed Gabapentin, and indicated that if Petitioner's symptoms persisted, a referral to the pain clinic would follow. When Petitioner returned to Dr. Derman on May 16, 2014, her complaints were unresolved; Dr. Derman advised he had nothing more to offer for treatment and recommended a pain clinic evaluation. Resp.'s Ex. 1.

Petitioner testified she wanted to transfer her care to local physicians in Houston, so she made a request to Respondent's claims representative but was refused; as such, Petitioner continued to incur travel and lodging expenses for treatment for her work-related accident: "I was responsible for flight payments from Houston to Chicago for every doctor's appointment that I had here. I was responsible for every flight benefit and hotel, for every physical therapy that I had in Chicago while I was living in Houston, Texas, at the time." T. 19.

The August 8, 2017 record review reflects that on July 16, 2014, Petitioner presented to Rush Pain Center and was evaluated by Dr. Timothy Lubenow. Dr. Lubenow noted Petitioner's symptoms included waxing and waning edema, change in color in her first two fingers and forearm, increased sweating, decreased range of motion, decreased functionality, shiny skin, numbness, as well as pins and needles pain. Dr. Lubenow documented numerous objective findings on examination: decreased wrist range of motion and strength; decreased muscle bulk in her right fingers; a swan neck deformity as well as flexion contracture in the metacarpal phalangeal ("MP") joint of her right index finger; flexion contracture of the PIP joints of her second, third and fourth fingers; allodynia over her fingers and outward dorsum of the hand up to her wrist; 0/5 motor power of her first and second fingers and 4/5 motor power of her third and fourth fingers; significant temperature difference between her right and left upper extremities; and a positive Tinel's sign on the right. Dr. Lubenow's assessment was complex regional pain syndrome ("CRPS") of the right upper extremity. The doctor referred Petitioner for an EMG and possible stellate ganglion blocks, prescribed pain medications, and recommended a psychological evaluation and pain management counseling. Resp's Ex. 1.

On July 22, 2014, Petitioner attended a second §12 examination at Respondent's request, this time with Dr. Jay Pomerance. Resp's Ex. 2. In his report, Dr. Pomerance documented examination findings of subjective altered sensation along the palmar aspect of index and middle fingers; extreme sensitivity to light touch with Petitioner becoming tearful when the index finger was touched; Petitioner held her index finger in an extended posture and moved it only at the level of the MP joint which had full motion; her middle finger was held in a semi-flexed posture and she achieved about 50 degrees of PIP and distal interphalangeal joint motion but had normal range of motion at the MP joint; and atrophy at the volar pulp of the index finger. Resp.'s Ex. 2. Dr. Pomerance concluded Petitioner's symptoms were related to her work accident, but he could not identify an anatomic diagnosis responsible for her complaints. Dr. Pomerance disagreed with the CRPS diagnosis, explaining it does not occur in just a segment of a body part, and he observed that, "The present posturing would make one need to consider a conversion reaction within the

differential diagnosis." Resp.'s Ex. 2. Dr. Pomerance concluded further treatment options were dependent upon first making a correct diagnosis and he offered two diagnostic approaches:

> Since her subjective symptoms are out of proportion to examination and radiographic findings, one could consider a psychiatric evaluation in order to rule in or rule out a conversion reaction. That is an area out of my field of expertise. An additional option would be for her to undergo a stellate ganglion block. However, if this is done, there should be skin temperature sensors placed in order to ensure sympathetic input is interrupted and a Horner's sign should also be confirmed. If after a stellate ganglion block is completed and verified, there is no improvement in symptoms, this would effectively rule out complex regional pain syndrome as a diagnosis and one would then need to consider nonanatomic causes of current symptoms. Resp.'s Ex. 2.

Dr. Pomerance further opined that Petitioner was limited to sedentary-light duty pending the outcomes of the recommended diagnostic workup. Resp.'s Ex. 2.

On September 24, 2014, Petitioner presented to Rush Pain Center and underwent a stellate ganglion block at the hands of Dr. Adam Young; Dr. Young's post-procedure note was admitted into evidence as an attachment to Dr. Pomerance's §12 report. Resp.'s Ex. 2. The Commission observes the procedure was completed consistently with the protocol proposed by Dr. Pomerance. Dr. Young noted that Petitioner did not report great relief from the stellate ganglion block, and Toradol was administered post-procedure. Dr. Young provided a prescription for Norco and renewed her prescriptions for Tramadol, Mirtazipine, and Topamax. Resp.'s Ex. 2.

Dr. Young's post-procedure report was forwarded to Dr. Pomerance for his review. On November 1, 2014, Dr. Pomerance authored an addendum to his §12 report and explained the unsuccessful outcome of the stellate ganglion block refuted the CRPS diagnosis. Resp.'s Ex. 2. Dr. Pomerance then reiterated his belief that there may be a psychological component to Petitioner's condition: "This is outside of my area of expertise but one may wish to consider further treatment options in that area." Resp.'s Ex. 2.

At trial, Petitioner testified that beginning in November 2014, there were attempts to return her to work; however, due to multiple administrative issues, Petitioner never obtained the necessary clearance. T. 20-22. Petitioner remained off work and Respondent stipulated that she remained entitled to TTD benefits for that period. Arb.'s Ex. 1.

On May 8, 2015, Petitioner attended a repeat §12 examination by Dr. Pomerance at Respondent's request. Upon examining Petitioner and reviewing the medical records, Dr. Pomerance again opined that CRPS had been ruled out and reiterated his recommendation for psychological/psychiatric intervention to address what appeared to be a conversion reaction. Dr. Pomerance further concluded Petitioner was limited to the sedentary-light duty category and unable to return to work as a flight attendant. Resp.'s Ex. 2.

The record reflects Respondent thereafter forwarded surveillance video to Dr. Pomerance and requested the doctor author an addendum based solely on his review of two video clips. The Commission observes the surveillance video provided to Dr. Pomerance was not offered into evidence. As the Commission was denied the opportunity to assess the video, we assign no weight

to Dr. Pomerance's September 18, 2015 addendum.

At trial, Respondent claimed Petitioner's entitlement to TTD benefits ended as of November 12, 2015. Arb.'s Ex. 1. Petitioner's medical benefits were terminated at that time as well, and Petitioner testified she ultimately obtained medical insurance through Texas Health and Human Service ("THHS"), though she was unable to get income assistance because she was still listed as Express Jet Airline Inc.'s employee. T. 33. Petitioner explained that through THHS, she receives some treatment at a hospital and is seen by the resident who is there on that day. T. 91.

The August 8, 2017 record review reflects that on February 19, 2016, Petitioner presented to the hospital and was evaluated by Dr. Shazia Amina. Petitioner complained of spasm, deformity, weakness, and numbness in her right hand. On examination, Dr. Amina noted Petitioner's right hand was deformed in flexed position. Dr. Amina referred Petitioner to plastic surgery and recommended additional diagnostic workup. Resp.'s Ex. 1. X-rays performed on February 23, 2016 demonstrated fixed flexion contracture of the fingers without acute bony abnormality. Resp.'s Ex. 1.

According to the August 8, 2017 record review, Petitioner returned to see Dr. Lubenow on March 30, 2016. Dr. Lubenow memorialized that Petitioner's right hand complaints included chronic pain, increased hypersensitivity, increased nail and hair growth, and increased pain with changes in temperature and pressure. On examination, the doctor noted third through fifth digit flexion contractures and extension contractures, no range of motion of the right hand digits, shininess over the dorsum of the hand, diminished sensation to cold and pinprick, and swelling in the dorsum of her hand. Dr. Lubenow again assessed Petitioner with CRPS of the right upper extremity, and he prescribed Gabapentin. Resp.'s Ex. 1.

The August 8, 2017 record review reflects that on April 14, 2016, Petitioner was evaluated by Rolandalin Ross, N.P., through THHS. Petitioner reported worsening right hand pain. After examination revealed tenderness to palpation, N.P. Ross referred Petitioner to pain management and prescribed vitamin D. Resp.'s Ex. 1.

The next treatment indicator in evidence is a July 7, 2016 work status report authored by Lisa Patton, F.N.P., of THHS. This reflects Petitioner was restricted to modified duty, limited use of the right hand. Pet.'s Ex. 4.

On July 25, 2017, Dr. Steven Doores performed a §12 examination and record review at Respondent's request; as referenced above, Dr. Doores documented his findings in an August 8, 2017 report, attached to which are photographs of Petitioner's hands taken during the July 25, 2017 examination. Dr. Doores opined that Petitioner sustained contusions of the right second and third fingers in the April 22, 2013 work accident, and those contusions had fully resolved. The record reflects Respondent forwarded the 2015 surveillance video to Dr. Doores for his review and Dr. Doores placed significant weight on the video in forming his opinions. The Commission reiterates that we were not given the opportunity to independently review the video, and we are therefore unable to assess the credibility and reliability of Dr. Doores's conclusions.

At the hearing, Petitioner testified that Respondent subsequently notified her that she had a full duty release, so she contacted Express Jet Airlines Inc. as well as the insurance carrier trying to return to work. T. 44-45. Petitioner explained Express Jet Airlines Inc. did not put her back on

the schedule and Sedgwick subsequently sent her paperwork with suggestions on filing for Social Security Disability. T. 45. Petitioner testified she thereafter continued her job search efforts, which she started in 2015. T. 98. She has submitted applications to Express Jet Airlines Inc. as well as multiple other airlines for open positions in customer service, flight training, supervisor, crew tracker, and maintenance. T. 99-100. Petitioner explained her job search efforts have been hindered by Express Jet Airlines Inc.'s refusal to verify her employment history to prospective employers. T. 100-101.

The remainder of the medical evidence in the record is in the form of work status reports provided by various THHS physicians. On June 26, 2018, Dr. Hossein Masoomi imposed modified duty restrictions of no lifting or heavy work with the right hand. Pet.'s Ex. 4. On October 30, 2018, Dr. Paul Deramo indicated Petitioner could return to work but she had not regained work-related function of her hand. Pet.'s Ex. 4. On December 10, 2018, Dr. Amina authored a "To whom it may concern" letter stating that Petitioner "is cleared for her surgery." Pet.'s Ex. 4.

At trial, Petitioner described her current symptoms:

> The easiest way, it feels asleep all the time, like, pins, like, an aggravating, burning type of feeling. If you ever had something asleep, like, it is an ache, an annoying, aching feeling. It spasms. It just depends on weather. If it is cold, forget about it. I have to cover it. If it is too hot, sometimes it will swell. If I fly too much, fluid will build in it. It gets discolored. Again, it gets a scaly look to it out of the blue…these two, my index finger and my middle finger, I can't move these. They don't extend. T. 59-60.

Petitioner testified she has experienced severe financial hardships as a result of the work accident. In addition to her primary employment as a flight attendant, Petitioner also braided hair and worked as a hand model, but she has been unable to return to any of those jobs since her undisputed accident. T. 54, 65, 67. She lost the house she owned in Houston and now lives with friends. T. 66-67. Her car was repossessed in 2015. T. 76. She has borrowed money from family and friends and is indebted to several people. T. 72.

Petitioner offered into evidence a group exhibit of photographs taken of her right hand from 2013 through 2019. Pet.'s Ex. 3. The Commission notes the photographs reveal a large bump protruding from the side of her index finger, swelling, as well as changes in skin texture.

POST-ARBITRATION PROCEDURAL HISTORY

The Decision of the Arbitrator was filed on October 1, 2019. Petitioner filed a timely Petition for Review on October 15, 2019.

On April 20, 2020, Petitioner filed a petition pursuant to Section 20 of the Act. Thereafter, there were several continuances on the Section 20 motion. In addition, the matter had to be re-assigned after the originally assigned Commissioner's term ended. Ultimately, Petitioner paid for preparation of the transcript so that her claim could move forward.

On April 1, 2021, Counsel for Respondent filed a Motion to Withdraw as Attorney of Record representing that they were unable to get in contact with Respondent. Commissioner Baker

granted the motion on June 24, 2021. The Commission observes that notices for all future Review call dates were mailed directly to Express Jet Airlines Inc., yet neither Respondent nor any representative or attorney for Respondent ever appeared at the Commission after June 24, 2021.

Once the transcript was prepared, it was forwarded to Arbitrator Watts for authentication as provided in Section 19(e) of the Act. *820 ILCS 305/19(e)*. The authenticated transcript was filed with the Commission on March 23, 2022.

On May 17, 2022, Petitioner presented an oral motion for an extension of time to file her Statement of Exceptions and Supporting Brief and Commissioner Baker granted the motion orally the same day. On May 18, 2022, Commissioner Baker entered an Order granting the motion and setting a revised briefing schedule: Petitioner's Statement of Exceptions and Supporting Brief was due June 17, 2022, and Respondent's Response Brief was due July 5, 2022. The Order was mailed to Petitioner and Express Jet Airlines Inc. via Certified Mail Return Receipt Requested, and the Commission received confirmation that both parties accepted delivery of the Order.

On June 16, 2022, Petitioner filed her Statement of Exceptions and Supporting Brief. Petitioner also filed "Supporting Documents," consisting of 10 PDF files. The Commission observes only one page of one of the files was submitted into evidence at arbitration and pursuant to Section 19(e), our review is limited to the evidence adduced at trial: "In all cases in which the hearing before the arbitrator is held after December 18, 1989, no additional evidence shall be introduced by the parties before the Commission on review of the decision of the Arbitrator." *820 ILCS 305/19(e)*. As such, we have not considered the additional evidence submitted by Petitioner that was not initially submitted into evidence at trial. Express Jet Airlines Inc. did not file a Response Brief.

On August 10, 2022, the Commission set this matter for in-person oral arguments in Chicago on September 14, 2022. Notices were sent via Certified Mail Return Receipt Requested. Petitioner accepted delivery on August 13, 2022; Express Jet Airlines Inc. accepted delivery on August 15, 2022.

On September 14, 2022, oral arguments were held before Commission Panel B. Petitioner appeared in person and presented argument on her own behalf, but Express Jet Airlines Inc. failed to appear. The Commissioners[1] viewed Petitioner's right hand during oral arguments. The right fingers were contorted and appeared to be locked in a "claw-like" shape with the fingers being close together. Petitioner held her hand behind her back for the majority of her oral argument. The Commission notes that Petitioner's right hand looked very similar to the photographs offered into evidence by both Petitioner (Petitioner's Exhibit 3) and Respondent (Respondent's Exhibit 1).

CONCLUSIONS OF LAW

I. Causal Connection/Maximum Medical Improvement

A finding of causal connection can be based upon direct or circumstantial evidence and the reasonable inferences which can be drawn from such evidence. *Gano Electric Contracting v.*

[1] Commissioners Deborah J. Baker and Deborah L. Simpson presided over oral arguments. 50 Ill. Admin. Code §9050.10.

Industrial Commission, 260 Ill. App. 3d 92, 96 (4th Dist. 2004). "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. Industrial Commission*, 93 Ill. 2d 59, 63-64 (1982).

The Commission observes there is no evidence that Petitioner had any right hand or finger problems prior to her undisputed work injury. On April 22, 2013, as Petitioner was securing the galley cart for landing, her right hand got "smashed" and wedged against a jammed galley tray. Petitioner's hand was trapped for several minutes before two passengers came to her aid and freed her hand. When Petitioner was seen at the airport clinic, Dr. Linda Forst observed Petitioner's index finger was "stuck in swan-neck deformity position"; the doctor further noted a "large bump," swelling, and decreased range of motion of the index and middle fingers. Resp's Ex. 3. Dr. Forst diagnosed crush injuries to the right index and middle fingers with a likely tendon injury and deemed the injury significant enough to warrant evaluation by a hand surgeon, Dr. Gordon Derman. Resp.'s Ex. 3. On May 24, 2013, Dr. Derman performed a manipulation under anesthesia of Petitioner's index finger; this produced some gains in range of motion but did not improve Petitioner's pain and swelling. Petitioner thereafter underwent extensive conservative treatment, including several months of occupational therapy, until Dr. Derman ultimately concluded he had done all he could for Petitioner and transferred her care to Dr. Timothy Lubenow at the Rush Pain Center. At the July 16, 2014 consultation, Dr. Lubenow noted the swan-neck deformity first observed by Dr. Forst was still present, and Petitioner had also developed flexion contractures in the MP joint of the index finger and the PIP joints of the second, third and fourth fingers; Dr. Lubenow further noted allodynia, decreased digit strength, and significant temperature differences in the upper extremities. Dr. Lubenow diagnosed Petitioner with CRPS and recommended further diagnostic workup along with a psychological evaluation and pain management counseling and prescribed pain medications. Resp's Ex. 1. The Commission emphasizes that although there was subsequent disagreement between the treating physicians and Dr. Pomerance as to whether Petitioner suffers from CRPS or a conversion reaction, the evidence clearly demonstrates progressively worsening contractures and deformities in Petitioner's fingers:

- on February 19, 2016, Dr. Amina observed the right hand was deformed in flexed position;

- on February 23, 2016, Dr. Hubbell indicated the X-rays demonstrated fixed flexion contracture of the fingers; and

- on March 30, 2016, Dr. Lubenow noted flexion and extension contractures that eliminated range of motion of the digits. Resp.'s Ex. 1.

Moreover, Petitioner's testimony of increasing difficulties is consistent with the records and was unrebutted. Having analyzed Petitioner's testimony and having further observed Petitioner as she presented her claim at oral argument, the Commission finds Petitioner credible. The Commission finds the chain of events establishes that Petitioner's current condition of ill-being remains causally related to the undisputed April 22, 2013 accidental injury.

The Commission further finds that Petitioner reached maximum medical improvement as of April 14, 2016. The Commission observes the April 14, 2016 note by N.P. Ross is the last

complete treating note detailed in the transcript. The remainder of the THHS/Harris Health System records contains only work status reports which fail to document the interval history, examination findings, medical assessments, or treatment rendered. Therefore, while it appears Petitioner continued to treat for her right hand after April 14, 2016, the Commission finds there is insufficient medical documentation to establish the specifics of the treatment provided or whether it was reasonable and necessary under the Act. We further note that Petitioner testified a surgery has been recommended, however we are unable to determine from the record what the precise surgical procedure is, and as such, are unable to determine whether it is reasonable and necessary. Regardless, the Commission finds the chain of events establishes that Petitioner's current condition of ill-being remains causally related to the undisputed April 22, 2013 accidental injury.

II. Temporary Disability

On the Request for Hearing, Petitioner alleged entitlement to Temporary Total Disability ("TTD") benefits from April 26, 2013 through July 15, 2019, the date of the hearing, while Respondent claimed Petitioner was temporarily and totally disabled from April 26, 2013 through November 12, 2015. Arb.'s Ex. 1. Consistent with our determination that Petitioner has reached maximum medical improvement, the Commission finds Petitioner established entitlement to TTD benefits through April 14, 2016.

The Commission finds Petitioner was temporarily and totally disabled from April 26, 2013 through April 14, 2016, a period of 155 weeks. The parties stipulated that Petitioner's average weekly wage is $659.45, which yields a TTD rate of $439.63. Therefore, the Commission finds Petitioner entitled to TTD benefits of $439.63 per week for 155 weeks.

III. Permanent Disability

The Commission finds Petitioner's right hand injury has reached a state of permanency. Petitioner's work accident occurred after September 1, 2011; therefore, Section 8.1b is applicable. Section 8.1b(b) requires permanent partial disability be determined following consideration of five factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. *820 ILCS 305/8.1b(b)*.

Section 8.1b(b)(i) – impairment rating

Neither party submitted an impairment rating. As such, the Commission assigns no weight to this factor and will assess Petitioner's permanent disability based upon the remaining enumerated factors.

Section 8.1b(b)(ii) – occupation of the injured employee

Petitioner's pre-accident occupation was flight attendant. Following her work-related injury, Petitioner was placed under restrictions for her dominant right hand, which the Commission finds preclude her from returning to her pre-accident occupation. The Commission finds Petitioner lost access to her usual and customary employment as a flight attendant. We further note that Petitioner had concurrent employment as a hand model and braiding hair, and she is similarly

unable to resume those occupations. This factor weighs heavily in favor of increased permanent disability.

Section 8.1b(b)(iii) – age at the time of the injury

Petitioner was 33 years old on the date of her accidental injury. The Commission notes Petitioner is a relatively young individual and will have to live with the residual deficits for many years. This factor weighs heavily in favor of increased permanent disability.

Section 8.1b(b)(iv) – future earning capacity

No direct evidence of Petitioner's future earning capacity was submitted into evidence. The Commission notes, however, that Petitioner's inability to return to her pre-accident occupations necessarily entails a loss of access to the earnings associated therewith. In addition, despite engaging in a self-directed job search for nearly four years, Petitioner has been unable to secure new employment. The Commission finds this weighs in favor of increased permanent disability.

Section 8.1b(b)(v) – evidence of disability corroborated by treating medical records

Petitioner testified that she has lost the ability to move the fingers on her right hand. The photographs in evidence along with the detailed medical treatment review corroborate that Petitioner has profound contracture deformities in the fingers of her dominant hand. Resp.'s Ex. 1. Most significantly, the Commissioners observed the contracted and fixed state of Petitioner's fingers during oral arguments.

Based on the above, the Commission finds Petitioner suffered a loss of career as a result of her work-related injury. We further find Petitioner sustained a 35% loss of use of the person as a whole, and her permanent partial disability began to accrue as of April 15, 2016, the day after she reached maximum medical improvement.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's current right hand condition of ill-being is causally related the undisputed accidental injury on April 22, 2013.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $439.63 per week for a period of 155 weeks, representing April 26, 2013 through April 14, 2016, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall have a credit of $52,342.15 for TTD benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $395.67 per week for a period of 175 weeks, commencing on April 15, 2016, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 35% loss of use of the person as a whole.

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 $75,000.00. 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.

November 10, 2022

/s/ *Deborah J. Baker*

DJB/mck

O: 9/14/22

/s/ *Stephen J. Mathis*

43

/s/ *Deborah L. Simpson*

22IWCC0433 00WC000000 INTENTIONALLY LEFT BLANK

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC016284
Case Name	Daney Saucedo v. Zara
Consolidated Cases	
Proceeding Type	Petition for Penalties
Decision Type	Commission Decision
Commission Decision Number	22IWCC0434
Number of Pages of Decision	6
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Edward Czapla
Respondent Attorney	Miles Cahill

DATE FILED: 11/15/2022

/s/Maria Portela, Commissioner

Signature

22IWCC0434

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DANEY SAUCEDO,

Petitioner,

vs. NO: 18 WC 16284

ZARA USA, INC.,

Respondent.

DECISION AND OPINION ON PETITION FOR PENALTIES AND ATTORNEY FEES

This matter comes before the Commission on Petitioner's "Petition for Penalties and Attorneys' Fees," (hereafter "Petition") filed on August 22, 2022. A hearing was held before Commissioner Maria Portela on October 4, 2022, in Chicago, Illinois and a record was made.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1) On August 23, 2019, an arbitration hearing was held in this matter and a decision was issued on March 5, 2020.

2) On March 25, 2020, Respondent filed a timely Petition for Review of the Arbitrator's decision.

3) On May 24, 2022, the Commission issued its Decision and Opinion on Review, which affirmed in part, corrected clerical errors, reduced the permanency [PPD] award to 22.5% of Petitioner as a whole under §8(d)2 of the Act, and stated, "Although we affirm the Arbitrator's medical award, we hereby modify the Decision to reflect the parties' stipulation and grant Respondent credit for all payments made." *5/24/22 Dec. at 1*. The Decision also contained the following order:

> 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.

Id. at 3.

4) On or about June 23, 2022, Respondent's insurance carrier issued check #CN20208443, dated "06/23/22" in the amount of $40,356.34 made payable to Petitioner's attorney. *Petition at ¶7, attached exhibit*.

5) On June 29, 2022, Respondent's attorney sent a letter to Petitioner's attorney stating, in part:

> **I have attached a copy of the payments made in this matter to the medical providers as well as the total TTD payments** to Ms. Saucedo. In terms of the calculation of total TTD and permanency, my calculations equate to a dollar amount of $75,543.03 less the TTD credit paid of $36,128.33. Based on the Arbitrator's entry of the award, **I've also calculated a total amount of interest due of $398.08. I will be requesting that the employer prepare a check in the amount of $39,414.07 in satisfaction of the TTD and permanency amounts**.
>
> The Commission has awarded all payments of the medical expenses outlined in the Arbitrator's order based upon Exhibits 1-7. I do not note any actual bills being contained in one exhibit but **have copied the medical bills in this matter and forwarded them to the claims representative for a Fee Schedule review pursuant to the terms of the Commission award**. If your office has conducted any Fee Schedule review relating to the value of the bills, I would appreciate you forwarding it to my attention. If no previous review of these bills has been conducted, we would need to have the bills subject to a Fee Review Audit in order to identify the amounts that should be payable in this matter as part of our satisfaction of the decision of the Commission. **As soon as there is any status report concerning the completion of the Fee Schedule Audit, I will contact your office regarding the net amount due after the payments identified in the attached medical payment ledger**.

R-Brief at Ex. B (Emphases added). We note that Respondent's attorney's letter indicates that a copy of both the medical payments and TTD payments that had been made were attached to the letter. However, although the TTD payments appear to be attached to Respondent's Response brief as Exhibit C., there does not appear to be a copy in evidence of the medical payment ledger referenced in that letter.

6) Petitioner's Petition represents that Petitioner's attorney received the $40,356.34 check on July 18, 2022, but that "The amount of the check does not reflect the award of benefits and interest entered by the Commission. Moreover, the amount of the check does not satisfy the award of medical expenses awarded." *Petition at ¶7*. We note the Petition does not include a specific dollar amount of any alleged underpayment.

7) In Petitioner's Reply brief, she alleges that the Commission's Decision awarded $26,364.54 in temporary total disability (TTD) plus $49,172.63 in permanency benefits. *P's Reply Brief at ¶1*. Petitioner also argues, "The parties stipulated at hearing to a TTD credit of **$19,347.03** as reflected in the Arbitration Decision" and that "The Commission Decision did

not address Respondent's TTD credit of **$19,347.03**." *Id. at ¶2 and 3 (Emphases in original)*. Petitioner argues:

> Therefore, the amount of the TTD and Permanency benefits awarded to Petitioner totals **$56,190.14** ($26,364.54 - $19,347.03 = **$7,017.51 + $49,172.63 = $56,190.14**) along with the medical expenses Px.1 - Px.7. Respondent mistakenly claims a TTD credit of $36,128.33 which is unsupported by the Record on Review. Respondent's Exhibit C was not offered into evidence at the hearing and is inadmissible hearsay. Moreover, the parties stipulated to a credit of **$19,347.03**.

Id. at ¶5 (Emphases in original).

8) The Petition alleges, "Petitioner's counsel notified Respondent of the underpayment of the Petitioner's award of benefits but no further benefits were issued." *Petition at ¶8.* However, the Petition does not indicate the date of this notification.

9) Respondent's Response brief includes the previously mentioned Exhibit C, which is purported to be a printout of TTD payments made to Petitioner from April 2, 2018 through August 17, 2020. Some of these payments were made prior to the August 23, 2019 arbitration hearing and some were made after the hearing, with a long gap between a check issued on February 14, 2019 and the next one on January 23, 2020. *R-Brief at Ex. C*.

10) On August 24, 2022, Respondent's attorney sent a letter in response to Petitioner's Petition that had been filed on August 22, 2022. This letter states:

> I understand that your office has filed a petition arguing that medical expenses are currently unpaid in this matter. I had previously contacted your office regarding a request for a review and calculation of any amounts of unpaid medical expenses that you are claiming under the Fee Schedule Analysis. For your review, I have attached a copy of my letter of June 29, 2022. I also have enclosed, with this letter, a breakdown of the expenses that had been paid in this matter and would appreciate you providing me with an indication of any amounts under the Fee Schedule you claim are currently unpaid. Upon receipt of that information, I would be happy to review it with my client in order to determine if any amounts can be payable.
>
> I also note your claim regarding the purported underpayment of permanency in this matter. In the event that your office has any calculation associated with the purported underpayment, or amount claimed to be due, I would appreciate you forwarding that to my attention. It is clear that your client had received benefits totaling $36,128.33 during the pendency of her Worker's Compensation claim, an amount that exceeded the Commission's award of $26,364.40. I would appreciate you forwarding any claimed amount, in terms of an underpayment, so I can review that in advance of the setting of any hearing before the Commission.

R-Brief at Ex. D.

11) On September 8, 2022, Respondent's attorney sent the following letter to Petitioner's attorney:

> This letter is intended to confirm the date of the hearing that has been set for October 4, 2022. As I had indicated to the Commissioner, I have requested your review of the matter in order to provide me with a breakdown of any medical expenses you are claiming as due or past due under the Award to subject to the Fee Schedule.
>
> You also indicated that I had miscalculated the amount due for the award during our meeting with the Commissioner. I previously contacted you concerning a request that you review the matter in order to provide me with any information concerning the claimed underpayment that you will be making as it relates to the permanency and TTD awarded by the Commission. Upon receipt of that information, [I'd] be happy to review it in order to determine if any claimed underpayment can be satisfied prior to the October 4, 2022 date.

R-Brief at Ex. D.

Based on a thorough review of the evidence and pleadings, the Commission finds that Respondent has not engaged in any unreasonable or vexatious behavior, under §19(k) of the Act, regarding the payment of the award; nor has Petitioner proven an unreasonable delay under §19(l) of the Act.

This is not a question of whether Respondent should be held to the terms of its stipulation regarding how much it had paid in TTD benefits at the time of the hearing. Rather, this is a question of whether Respondent is entitled to credit for TTD benefits that it paid *after* the arbitration hearing. We find the answer to this question is clearly in the affirmative because it was only possible for Respondent to stipulate to payments that had been made up to the date of the stipulation. It would be illogical to find that Respondent was bound to that pre-arbitration stipulation regarding payments it eventually made after the arbitration hearing. We find that to hold otherwise would discourage respondents from paying any additional benefits after a stipulation and hearing. We also do not believe Petitioner should be entitled to a windfall payment simply because Respondent made additional TTD payments while the case was pending on Review before the Commission. Therefore, we reaffirm the order in our previous Decision which states, Respondent is entitled to "credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury."

We also note that Petitioner's attorney did not dispute that Petitioner had, in fact, received the additional TTD payments and, instead, argued "This is not the forum for denying or affirming the receipt of that allegation for payment of benefits." *10/4/22 Transcript at 10*. We find that Petitioner has not sustained the burden of proof regarding any alleged underpayment of the PPD or TTD portion of the award.

Regarding the medical award, we are unable to determine what payments were made because there is no medical payment ledger in evidence relating to this Petition. Although we are not finding that it is Petitioner's responsibility to perform a Fee Schedule analysis, she does still have the burden to prove that a bill was not satisfied or that there was an underpayment pursuant to the Fee Schedule in §8.2 of the Act. Petitioner has not submitted any currently outstanding

statements or bills from any medical providers; nor has she alleged a specific dollar amount of any underpayment on which to base an award of penalties and attorneys' fees. Therefore, under the circumstances present in this case, we find Respondent's actions were reasonable and not vexatious and we decline to award penalties and fees.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's "Petition for Penalties and Attorneys' Fees" is hereby denied.

No bond is required for the removal of this cause to the Circuit Court by Respondent because no award was made. 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.

November 15, 2022

/s/ *Maria E. Portela*

SE/

R: 10/4/22

49

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC004220
Case Name	Myriam Fortineaux v. University of Illinois - Chicago
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0435
Number of Pages of Decision	28
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Jose Rivero
Respondent Attorney	Brad Antonacci

DATE FILED: 11/16/2022

/s/ Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
X Correct scrivener's errors, correct TTD rate, add PPD rate	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MYRIAM FORTINEAUX,

Petitioner,

vs. NO: 17 WC 04220

UNIVERSITY OF ILLINOIS-CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, 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.

The Commission, herein, corrects a scrivener's error in the Arbitrator's decision, Order section, for the temporary total disability rate, to strike "$257.35", to replace with "$285.95".

The Commission, herein, in the Arbitrator's decision, Order section, to add the permanent partial disability rate of "$257.35/week".

The Commission, herein, corrects a scrivener's error in the Arbitrator's decision, page 14, second paragraph, second sentence, to strike "center", to replace with "sent her".

The Commission, herein, corrects a scrivener's error in the Arbitrator's decision, page 15, last paragraph, first sentence, to strike "paid", to replace with "date".

The Commission, herein, corrects a scrivener's error in the Arbitrator's decision, under "Conclusions", Issue (F), page 17, third paragraph, first sentence, to insert "fail to support" after "chiropractors".

The Commission, herein, corrects a scrivener's error in the Arbitrator's decision, under "Conclusions", Issue (J), page 18, second paragraph, first sentence, to strike "2018", to replace with "2017".

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 11, 2022, is, otherwise, hereby, affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $285.95 per week for a period of 4-4/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act. (Total TTD $1,307.20).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $257.35 per week for a period of 10 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the 2% loss of use of Petitioner's person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services provided to Petitioner by University Health Services, University of Illinois Hospital & Health Services. Further, Respondent shall pay reasonable and necessary medical services provided to Petitioner by Dr. Chekka of Premier Pain & Spine for February 10, 2017, only, and the cervical MRI pursuant to the medical fee schedule, and as provided in §8(a) and 8.2 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.

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.

November 16, 2022

o-10/18/22
KAD/jsf

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC004220
Case Name	FORTINEAUX, MYRIAM v. UNIVERSITY OF ILLINOIS-CHICAGO
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Jose Rivero
Respondent Attorney	Brad Antonacci

DATE FILED: 1/11/2022

THE INTEREST RATE FOR THE WEEK OF JANUARY 11, 2022 0.27%

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MYRIAM FORTINEAUX Case # **17 WC 004220**
Employee/Petitioner

v. Consolidated cases: _____

UNIVERSITY OF ILLINOIS - CHICAGO
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on 8/24/21. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?

J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

K. ☒ What temporary benefits are in dispute?

☐ TPD ☐ Maintenance ☒ TTD

L. ☒ What is the nature and extent of the injury?

M. ☐ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☒ Other Credit due Respondent for overpayment of benefits.

FINDINGS

On **1/18/2017**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**22,303.32**; the average weekly wage was $**428.91**.

On the date of accident, Petitioner was **60** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**16,109.36** for medical benefits, for a total credit of $**16,109.36**.

Respondent is entitled to a credit of $**0** under §8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services provided to Petitioner by University Health Services, University of Illinois Hospital & Health Systems, Dr. Chekka of Premier Pain & Spine for February 10, 2017 only, and the cervical MRI, as provided in §8(a) of the Act and adjusted in accord with the Medical Fee Schedule provided in §8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $**257.35/week** for **4 &4/7 weeks**, commencing **1/19/2017** through **2/20/2017**, as provided in §8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits to the extent of **2%** loss of a person-as-a-whole, 10 weeks, pursuant to §8(d)2 of the Act.

Respondent is entitled to a credit for an any overpayment of benefits.

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

JANUARY 11, 2022

Myriam Fortineaux v. University of Illinois - Chicago
17 WC 004220

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were: ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD; ***L:*** What is the nature and extent of the injury?; ***N:*** Is Respondent due any credit?

STATEMENT OF FACTS

Petitioner Myriam Fortineaux worked for Respondent University of Illinois at Chicago ("UIC") for nearly 20 years as a lab assistant for a nutrition class. Her duties entailed grocery shopping, putting groceries away, setting up the lab for a cooking class, and cleaning up after class. On January 18, 2017, Petitioner was cleaning under a table. As she was coming up from underneath the table, she hit the middle of her back on the table causing her to fall to the floor. She believed she lost consciousness. She had to be helped up. She had pain in the middle of her back. She notified her supervisor, Emily, immediately. She also completed an accident report.

Petitioner testified that she was taken to the "company clinic", University Health Services ("UHS"), that day. She was placed off work and was treated there through Feb 7, 2017. Petitioner testified that she then sought a second opinion from Dr. (Kiran) Chekka on February 10. Dr. Chekka referred her to The Bone and Joint Clinic, where she had physical therapy and trigger injections in her back. She also had an MRI.

Petitioner testified that she was treated by Dr. Chekka and at Bone and Joint Clinic through June 30, 2017. She was off work while treating with Dr. Chekka and at Bone and Joint Clinic. She never returned to work. She testified that she was fired. She also testified that she never received benefits while she was off work.

Petitioner testified that she still has complaints in her neck and back despite her treatments. She testified that physical therapy provided her with some limited relief. When she had the injections, she felt instant relief but then her pain would return.

Petitioner testified that she is now retired. She further testified that she is not the person she used to be. She enjoyed her job. She enjoyed her grandkids. Now her neck, arms, and back hurt so much that her activities of daily living are greatly limited. She also has tingling in her face. She has pain when she sits in church and looks up to God.

On cross-examination Petitioner identified Respondent's Exhibit #7, her injury report.

Petitioner further testified that she had had neck and back pain before her work accident on January 18, 2017. She acknowledged that she told the IME physician that she had had chronic back pain since 2001 but then admitted that she had been treated at the University of Illinois for back pain in 1999 and for neck pain in 2006. She further acknowledged that she had had multiple MRIs and X-rays for neck and back pain before January 2017.

On further cross-examination Petitioner admitted that she had sustained injuries to her neck, upper back, and shoulders in a motor vehicle accident in 2008 and had complained of pain radiating into her arms and tingling in her arms in 2009. She added that she had received physical therapy for her neck and back in 2011, and for her low back in 2012 and 2014. She had physical therapy for back, neck, and leg pain in 2015. Petitioner further admitted that she had ongoing neck and back complaints and physical therapy in 2016. She was still symptomatic in November 2016 but did not follow recommendations for further physical therapy at that time.

Petitioner admitted that the symptoms she complained of from her work accident on January 18, 2017 were the same sort of symptoms she had had before then. She further admitted that she had been working with lifting restrictions before her January 2017 work accident.

Petitioner did not remember being scheduled for a follow-up appointment at University of Illinois for February 13, 2017. She did remember being advised to report to University Health Services for an appointment on March 14, 2017 or that she might be discharged. She did not report for that scheduled appointment. Petitioner further testified that she did not provide work status notes from any physician after the beginning of February 2017.

Petitioner did not recall any improvement from her symptoms with physical therapy through June 2017. She has not received any additional medical treatment for her symptoms since June 30, 2017 and had no scheduled appointments at the time of trial.

On redirect examination Petitioner testified that she was working full duty when she had her accident on January 18, 2017. On recross-examination she admitted that she was working with restrictions on that date.

Emily Jordan, Director of Kinesiology and Nutrition Department at the Physical Therapy Department at the University of Illinois, testified on behalf of Respondent. Ms. Jordan testified that prior to the accident Petitioner made pain complaints to her about her hands once every several months. She identified Respondent's Exhibit #5 as Petitioner's job description as a "Foods Lab Helper." The job description accurately

describes the physical demands of Petitioner's job in 2017. She also testified that Petitioner had been working with restrictions before January 18, 2017, which had been accommodated. She testified that Petitioner had participated in establishing the accommodations.

Petitioner's job duties involved grocery shopping and setting up the food lab, so each station of the cooking class had the necessary supplies. Petitioner then cleaned up after the cooking class. Petitioner was also responsible for organizing the pantry. Petitioner did grocery shopping once a week but had to set up the food lab every day.

Ms. Jordan identified Respondent's Exhibit #8, the injury report that she prepared. She noted that Petitioner had been cleaning underneath the table and that when she stood up and she hit her back on the underside of the table. She did not note that Petitioner reported that she had fallen to the ground or lost consciousness.

Ms. Jordan testified she attempted to contact Petitioner by phone in February and March, trying to determine if Petitioner intended to return to work after missing her February 13, 2017 appointment. She wrote to Petitioner on March 9 in which she noted that Petitioner missed a follow-up appointment at University Health Services (UHS) February 13, 2017 (RX #10). Petitioner was required to report to UHS for an appointment on March 14, 2017, otherwise her absence would be considered unexcused, unauthorized, and unpaid. Ms. Jordan testified that UIC policy requires employees to return to work or make an appointment at UHS for determination of whether they can return to work.

Petitioner came to Ms. Jordan's office on March 14, 2017. Petitioner complained of pain and reported that she did not appear at UHS for the March 14 appointment. Ms. Jordan testified that she instructed Petitioner to attend the UHS appointment and further testified that she was willing to develop modified work duties per restrictions set by UHS.

Petitioner left Ms. Jordan a voicemail on March 15, 2017 stating that she did not attend the March 14 appointment but was rescheduled for March 16, 2017. Ms. Jordan contacted UHS and learned that Petitioner had not attended either appointment. She then suggested that Petitioner be terminated. She testified that Petitioner would have been accommodated for light duty restrictions.

Ms. Jordan identified her April 5, 2017 letter to Labor and Employee Relations to initiate Petitioner's discharge (RX #11). She set forth the timeline of events and contacts leading to the recommendation for termination.

On cross-examination Ms. Jordan confirmed that Petitioner's initial treating doctor was with University Health Services but that she did not know who the treating doctor was. Ms. Jordan added that she did not know whether Petitioner received treatment at UHS.

Ms. Jordan and Petitioner's counsel engaged in an extended exchange regarding whether her contact with UHS to schedule appointments for Petitioner amounted to *ex parte* communication. She reiterated that she only spoke to a scheduler but did not

remember who she spoke with. Ms. Jordan confirmed that she never got permission from Petitioner to contact her doctors. Ms. Jordan also confirmed that she did not know anything about Petitioner's Workers' Compensation claim. Petitioner was terminated because she did not report to work or go to the UHS to be cleared to return to work.

Orthopedic surgeon Dr. Ryon Hennessey performed a §12 IME of Petitioner August 7, 2017. In his September 29, 2017 report on the IME Dr. Hennessy cited his review of Petitioner's medical records as well as his findings on a clinical examination (RX #2).

Dr. Hennessy reviewed Petitioner's University of Illinois Health Systems ("UIHS") radiology reports 2007 through 2016, including: April 12, 2007 X-ray of the neck, October 10, 2007 X-rays of the cervical spine and left shoulder, October 21, 2008 X-ray the cervical spine, March 6, 2010 MRI of the cervical spine, August 13, 2015 X-ray of the lumbar spine, August 17, 2015 MRI of the lumbar spine, and March 11, 2016 X-ray of the cervical spine. Dr. Hennessy also reviewed Petitioner's UIHS records from January 18 through February 2, 2017, which included X-ray reports from January 26 and physical therapy notes from February 7 through February 24, 2017. He reviewed Petitioner's records from Premier Pain & Spine from February 10 through May 15, 2017. He reviewed Petitioner's May 22, 2017 records from Petitioner's primary care physician, Dr. Ryan Bolton. Lastly, Dr. Hennessy reviewed the reports of Petitioner's February 20, 2017 cervical MRI and February 20, 2017 head CT.

During the history portion of the IME Petitioner denied neck pain or cervical radiculopathy prior to January 18, 2017. When prompted by reference to her records Petitioner defaulted to not being able to remember prior cervical problems or treatment. Specifically, she did not remember having a cervical MRI before January 18. Petitioner did acknowledge that she had had some low back pain that radiated to the right trochanteric area prior to January 18, 2017. Dr. Hennessy noted she had poor recollection of the rationale or reasons for the multiple tests for her cervical spine. Petitioner also acknowledged that she had the chronic low back pain since 2001.

In describing her accident on January 18, 2017 Petitioner reported that she was cleaning under a table on her hands and knees. When she stood up, she hit her upper back. She believed she also hit her head and lost consciousness. Petitioner reported that she developed a headache two days later and that she felt lumps on her head. Dr. Hennessy noted that the UIHS January 18 clinical note documented complaints of neck and upper back pain but did not document a head injury or loss of consciousness. The first documented report of head trauma and loss of consciousness was to Dr. Chekka on February 10, 2017.

Petitioner told Dr. Hennessy that her lawyer, Mr. Rovero [*sic*], told her not to return to the University of Illinois for treatment. She also reported that Mr. Rovero referred her to Dr. Cheka at Premier Pain & Spine.

Dr. Hennessy summarized Petitioner's care at University of Illinois Health Systems and Premier Pain. He also noted Petitioner's complaints to Dr. Bolton, her primary care physician, on May 22, 2017. Petitioner complained of a minor trauma in March 27 when she was helping her grandson get dressed and noted a bruise. She also complained of lower extremity cramping for the previous three years as well as cervical spine stiffness and tingling which she related to her January 18, 2017 work accident. She complained of numbness and tingling on the right side of her face from that accident. On examination she had multiple pressure points diffusely over her back, chest, shoulders, and flanks.

At the IME Petitioner complained of headaches of the right of submittal area radiating along the right temple to the four head with numbness and tingling. She stated her cervical spine pain was getting worse, gesturing to the right neck and right trapezial area greater than the left. She had radicular pain over the lateral triceps stopping at the elbow, right greater than left. She complained of hands and fingers tingling which was equal on the right and left. Petitioner also complained that her thoracic spine pain was getting worse which was equal and radiating around to her breasts. Petitioner also complained that her lumbar spine pain was getting worse. She had right and left lumbosacral pain going to the right buttocks and hamstrings and to the back of the right knee. She denied the left buttock or hamstring pain. She also denied numbness or tingling in the feet.

On physical examination Petitioner demonstrated give way strength testing in both upper and lower extremities. She eventually demonstrated 5/5 motor strength with no deficits in both the upper and lower extremities. She had withdrawal to light touch to the cervical, thoracic, and lumbar spine, as well as the trust he zeal area, despite no objective findings. Range of motion testing of the cervical and lumbar spines was done with great effort to the point of exaggeration. Bilateral straight-leg raise was negative. She could heel and toe walk. Petitioner squatted less than halfway which was suggestive of exaggeration. Cervical range of motion was performed with great effort and was diminished, as was lumbar range of motion.

Dr. Hennessy diagnosed a temporary thoracic contusion and cervical strain, assuming the accuracy of Petitioner's history of the accident. Dr. Hennessy found little evidence to support a diagnosis of concussion syndrome based on the lack of documentation of complaints of headache prior to February 7, 2017. Dr. Hennessy did not believe Petitioner had a significant lumbar injury since there were no documented complaints for almost 3 ½ weeks, despite multiple provider visits. He concluded that Petitioner had not sustained a lumbar spine injury. Dr. Hennessy also found no medical evidence to support any relation of Petitioner's bilateral shoulder complaints, as well as bilateral hip complaints, to the January 18, 2017 work accident. He noted Petitioner's out of proportion complaints and also questioned her ability to accurately recall her medical history.

Dr. Hennessy noted that Petitioner had pre-existing degenerative changes in her cervical spine and her lumbar spine. He did not believe the January 18 accident exacerbated, aggravated, or accelerated either condition. He opined Petitioner sustained thoracic spine contusion and a possible cervical strain. He further opined that Petitioner had reached MMI on February 20, 2017 and that she could return to full duty work without restrictions.

Dr. Hennessy added that Petitioner's treatment at University of Illinois health services was reasonable and necessary, including physical therapy. He also agreed that Dr. Chekka's second opinion was reasonable but found urine toxicology screening was unnecessary. He noted that no further medical care was necessary to treat Petitioner's work injuries. Dr. Hennessy found no evidence that the topical creams and patches provided any benefit to Petitioner. He added that the cervical MRI was reasonable and necessary but that trigger point injections, or an epidural injection were not necessary. Dr. Hennessy further opined that it was reasonable for Petitioner to remain off work up to the February 20, 2017 MRI, which failed to objectify her symptoms.

Dr. Hennessy wrote an addendum report October 4, 2017 upon review of additional medical records (RX #3). He reviewed films of Petitioner's April 12, 2007 cervical spine X-ray, October 10, 2007 cervical spine X-rays, March 6, 2010 cervical spine MRI, November 3, 2016 cervical spine X-rays, and the February 20, 2017 cervical spine MRI. Dr. Hennessy noted progression of Petitioner's degenerative cervical spine noted on this imaging. The review of these images did not change his opinions from September 29, 2017.

Dr. Ryon Hennessy evidence deposition December 13, 2017, RX #1

Dr. Hennessy testified that he is a board-certified orthopedic surgeon. He testified from his September 29, 2017 and October 4, 2017 reports. He reviewed his findings on his review of Petitioner's medical records and his clinical examination on August 7, 2017.

Dr. Hennessy reiterated his diagnoses of thoracic contusion and temporary cervical strain. He repeated his opinion that those conditions were causally related to the accident of January 18, 2017. He opined that Petitioner's lumbar spine pain and headaches were not causally related to the accident because they were first noted in the medical records almost 3 ½ weeks after the accident. He stated that Petitioner's cervical and thoracic conditions resolved at the time of her cervical spine MRI, February 20, 2017, adding that there was nothing in that imaging that objectified Petitioner's subjective complaints. He testified that Petitioner was then at MMI and could return to full duty work. He further opined that Petitioner did not require any further medical care for her accident injuries beyond February 20, 2017.

Dr. Hennessy further opined that Petitioner's medical care and treatment at University Health Services and at University of Illinois Hospital & Health Sciences System

was reasonable and necessary to treat Petitioner's injuries. He added that seeking a second opinion from Dr. Chekka was reasonable, as was the February 20 cervical MRI. He further added that trigger point injections and an epidural injection were not necessary.

Dr. Hennessy noted that Petitioner had pre-existing cervical degenerative changes noted in MRIs in 2010 and 2016. Petitioner had a history of cervical pain dating to 2007 as well as treatment for neck pain in 2016. Dr. Hennessy also took note of Petitioner's history of chronic low back pain with imaging and treatment in 2015 and 2016. He also noted that Petitioner's subjective complaints were out proportion with her objective clinical signs.

On cross-examination, Dr. Hennessy admitted that despite placing Petitioner at MMI on the day of the cervical MRI scan, Petitioner was not pain free. He explained that her pain complaints were not supported by the MRI findings and therefore not important to whether Petitioner was at MMI. He reiterated his opinion that the injection performed was not necessary, although it possibly was reasonable. He admitted that Drs. Chekka and Mehta, as pain specialists, treat pain, which is a subjective complaint. Dr. Hennessy admitted that the records he reviewed did not show therapeutic treatment for neck pain prior to January 18, 2017, only diagnostics.

Petitioner's job description, Respondent's Exhibit #5 was admitted in evidence.

Respondent's Exhibit #7, Petitioner's Report of Injury dated January 18, 2017 was admitted in evidence. Petitioner reported that she injured the left side of her back when she hit her back got up from cleaning a table leg. There was no mention of her striking her head.

Respondent's Exhibit #8, Ms. Jordan's Report of Injury dated January 26, 2017 was admitted in evidence. Ms. Jordan noted the date of accident was January 19. She noted that when Petitioner went to stand up before she got out from underneath a table, she hit her back on the table. The only part of the body marked as being affected was the back. There was no notation that Petitioner reported that she had hit her head.

Respondent's Exhibit #9, Respondent's counsel' May 5, 2017 letter to Petitioner's counsel requesting off-work slips for the alleged period of TTD was admitted in evidence

Respondent's Exhibit #10, a March 9, 2017 letter from Ms. Jordan to Petitioner regarding missed appointments at University Health Services and the scheduling of a March 14, 2017 appointment, previously identified by Ms. Jordan, was admitted in evidence.

Respondent's Exhibit #11, and April 5, 2017 memo to labor and employee relations from Ms. Jordan regarding her recommendation of the discharge of Petitioner from employment, previously identified by Ms. Jordan, was admitted in evidence.

Medical Records

University Health Services ("UHS"), PX #1

Petitioner January 18, 2017 presented with complaints of a neck or upper back problem which occurred at work. She complained of 5-6/10 pain. The on examination there was mild bit line tenderness over the thoracic spine and tenderness with point tenderness in the left thoracic paravertebral muscles. Her gait was normal. She was assessed with contusion and pain in the thoracic spine. She was advised to alternate Tylenol and ibuprofen and to apply ice packs to the affected areas. Petitioner was excused from work until reevaluated on January 20.

Petitioner returned to UHS on January 23, 2017 with continued complaints of pain and spasm. She complained of aching 6–7/10 pain. The findings on examination were as before. Straight-leg testing was normal. Petitioner was advised to continue with Tylenol but Carisoprodol was added for spasm. Petitioner was again kept off work.

Petitioner returned by January 26, 2017 with continued complaints of pain and spasm in the left back/flank. Pain continued at 6–7/10. Findings on examination were unchanged. X-rays of the thoracic spine were normal but for noting decreased bone density. Petitioner was advised to continue with Tylenol but Carisoprodol was discontinued and Tramadol was added. Petitioner was excused from work until January 30, at which time she could return to modified duty work with 5-pound and other restrictions.

Petitioner was seen again at UHS on February 2, 2017. Her presentation and complaints were unchanged although there was marked tenderness to palpation even with light touch over thoracic paraspinals. Tramadol was discontinued and Medrol Dosepak was prescribed. Petitioner was referred for physical therapy. 5-pound lift/carry restrictions were continued as was no bending/stooping/reaching. Frequent position changes were also continued. Petitioner was advised to return for Workers' Compensation follow-up on February 13.

University of Illinois Hospital & Health Sciences System ("UIHS"), PX #2

Petitioner was evaluated for physical therapy on February 7, 2017. Her chief complaint was upper back pain. She struck her back while cleaning a table at work on January 18, 2017. Petitioner gave a history of chronic back pain since 2001 and physical therapy for her back "last year." The physical therapist noted the evaluation was abbreviated due to Petitioner arriving 20 minutes late and also due to "exquisite thoracic pain" limiting most cervical/thoracic/GH movements. Petitioner complained of 5/10 pain over T2 to L5 and between the shoulders. She also complained of headache over the right temple. Widespread guarding was noted. Cervical and thoracic ranges of motion

were limited and painful. Although Petitioner's prognosis was good for successful therapy barriers included widespread hyperalgesia suggestive of sensitization.

There were no further physical therapy clinical notes. However, there is a February 23, 2017 note regarding Petitioner's no-show the day before. A note dated February 24, 2017 documented a telephone conference with petitioner where she explained her attorney suggested she stop treatment at UIC due to a conflict of interest and that the attorney would take care of where she would receive treatment. Petitioner apologized "for how things turned out."

Premier Pain & Spine ("Premier Pain")/Dr. Kiran Chekka, PX #3

Petitioner presented to Dr. Chekka of Premier Pain on February 10, 2017 with complaints of "whole body pain", headaches, neck pain, low back pain, and bilateral upper and lower extremity pain. Petitioner gave a history of being underneath the table on January 18, 2017 and as she got up, she struck her head and mid back. Dr. Chekka noted she "most likely" lost consciousness. She has had chronic headache and numbness and tingling in peripheral nerve type distribution on the right greater than left. She also had "very significant neck and low back pain with radiation of symptoms into bilateral upper extremities and some are radiation in the bilateral lower extremities." Petitioner described a negative experience with physical therapy from her "work doctor."

On examination there was grossly restricted and painful cervical and lumbar motion. Upper and lower extremity motor strength was 5/5 throughout. There were tender trigger points throughout paracervical and paralumbar musculature. Dr. Chekka assessed "1. myalgia (primary), 2. low back pain, 1) chronic headaches, 2) possible postconcussion headache syndrome, 3) cervical radiculopathy, 4) lumbar radiculopathy, 5) myofascial pain, 6) low back pain, and 7) neck pain."

Dr. Chekka recommended high-complexity urine toxicology testing to multiple medications without noting what the medications were or an assessment of Petitioner's risk of dependency Petitioner had been taking. He noted that Petitioner required a high-risk protocol without documenting the basis for that assessment. He discontinued all prior medications and ordered Flexeril and Mobic. He also started physical therapy from another practitioner. Dr. Chekka recommended a cervical MRI to assess for possible degenerative changes and a head CT to rule out intracranial pathology. He also recommended trigger point injections. There was no note for work status.

Petitioner returned to Premier Pain on May 15, 2017 when she saw Dr. Arpan Patel. Petitioner had had trigger point injections approximately one month before. She reported that they did not help improve her symptoms. She continued to have pain in her low and mid-thoracic regions as well as tingling in the right side of her head. She rated her pain6/10. It was noted a cervical CT on February 22 showed foraminal stenosis with

osteophytes at C5-6 and C6-7. There were disc bulges at C4 as well as C5-6. The February 20 head CT was normal.

Petitioner's complaints and examination were essentially unchanged. Dr. Patel recommended repeat trigger point injections and physical therapy. Dr. Patel also ordered continued Mobic and added a prescription for tizanidine. Dr. Patel also ordered another high-risk protocol of drug testing without documenting the basis for that assessment or Petitioner's risk of dependency. There was no note for work status.

Bone and Joint Clinic, PX #4

Petitioner presented to chiropractor Dr. Thomas Dzielawski were complaints with her neck, mid back, and lower back. Petitioner gave a history of a work-related accident January 18, 2017 which she was cleaning underneath a table and hit her back under the table as she was getting up. Petitioner reported that her employer center to a doctor who diagnosed back sprain. She then went to Dr. Chekka on her own. Petitioner reported that she had never injured those same areas before and that she performed her work "on an equal basis with others her age."

Petitioner reported 7/10 neck pain which extremely interfered with her work and social activities. She stated her problems began as a direct result of her work accident. Petitioner complained of 7/10 mid back pain which she stated was a direct result of her work accident. Petitioner also reported 6/10 low back pain which she stated was directly related to her work accident. Petitioner did not disclose her history of chronic low back pain since 2001 or her history of physical therapy for neck and back pain.

After an extensive chiropractic examination Dr. Dzielawski diagnosed lumbar sprain, cervical sprain, and disorder of back. He prescribed a regimen of chiropractic care three times a week for four weeks. He further recommended that petitioner refrain from activities that cause pain, wearing a heavy backpack, performing manual labor, running, and prolonged standing. There was no statement regarding work status.

Petitioner returned to Dr. Dzielawski on February 17 and 20, 2017 for therapy. She was seen for further therapy by chiropractor Dr. Fayez Ather on February 23 and 28, March 2, 9, and 16, 2017. Petitioner was treated by Dr. Iwonia Bialon-Wnek March 17, 2017. She saw Dr. Ather again for treatment March 20 and 23, 2017.

Dr. Amit Mehta, M.D. saw Petitioner on March 23, 2017 for follow-up. He noted Petitioner head CT was negative for any acute findings. He noted that the cervical MRI showed foraminal stenosis and osteophytes at C6-7 with a tiny disc protrusion at C3-4 and a broad-based protrusion at C4-5. Petitioner complained of occasional headaches but most of her symptoms involved neck pain radiating into the shoulders and arms. She reported medication provided slight help but that she had stopped those medications.

On examination Petitioner was neurologically intact. She had tenderness over the cervical spine as well as pain with range of motion. She had pain with range of motion of bilateral extremities and diffuse tender trigger points. Dr. Mehta the noted increased radicular complaints with numbness and tingling as well as shooting pains into the shoulders and arms. The doctor recommended an epidural injection at C6-7 and continued physical therapy. The doctor also noted Petitioner should be off work as it would be "detrimental to herself or anyone else around her."

Petitioner returned to Dr. Ather for further chiropractic care on March 28 and 29 2017. She saw Dr. Dzielawski again on April 5 and 12, 2017. Dr. Ather saw Petitioner again April 6, 13, and 20, 2017.

Dr. Mehta saw Petitioner again on April 20 for follow-up after a cervical injection about one week before. There was no clinical or operative report relating to the injection within PX #4. Dr. Mehta noted Petitioner had had an initial work-related injury involving her neck and head. She was complaining of headaches from 2 to 3 times a day. She was also complaining of tingling in both upper extremities with decreased range of motion in the cervical spine. On examination she demonstrated 4/5 strength in the upper extremities and limited range of motion in the cervical spine. The doctor recommended continued conservative care including physical therapy as well as topical creams and patches. The doctor also recommended Petitioner to continue to be off work.

Petitioner continued with chiropractic care with Drs. Ather and Dzielawski through April, May, and June 2017. Her last visit with Dr. D Zaleski on June 30, 2017 noted decreased trigger points in the neck and less trigger points over the lower back. However, she still had moderate points over the mid back. Petitioner still demonstrated muscle weakness in the neck and the lower back as well as taut fibers over the neck, mid back, and lower back. As before, none of the treating chiropractors noted Petitioner's work status.

University of Illinois Hospital & Health Systems ("UIHS"), RX #4

Petitioner's care and treatment UIHS spanned a period from 1985 through July 2018. The records document Petitioner's complaints of chronic low back pain since 1985 and neck pain since 2006.

Petitioner's first documented complaints of chronic low back pain and leg pain paid from November 4, 1985. In November 1999 she complained of chronic back pain for the previous two years. She received physical therapy for low back pain and diffuse body pain from August through November 2006. She presented to the Emergency Department October 20, 2006 after involvement in a motor vehicle accident complaining of neck and right shoulder pain. She presented to the Emergency Department again on October 10, 2007 when she was diagnosed with cervical sprain/strain. X-rays and demonstrated cervical spine spondylosis.

Petitioner was seen again in October and December 2008 for complaints of neck pain. A cervical spine X-ray October 21 demonstrated degenerative changes. Petitioner presented again with complaints of chronic neck pain in December 2009, also with complaints of pain radiating into the left and right arms. She was diagnosed with spondylosis at C2-3 and C5-6. A cervical spine MRI March 6, 2000 and demonstrated multilevel degenerative changes.

Petitioner was evaluated for physical therapy for low back pain June 21, 2011. She reported this was her "first episode of low back pain." He underwent a course of physical therapy in June and July 2011. Petitioner returned with complaints of back pain for two years on March 19, 2012. She was back again in July and October 2014 with complaints of chronic back pain. Petitioner had a course of physical therapy for low back pain and intermittent complaints of neck pain from March through August 2015. Lumbar X-rays and an MRI August 2015 demonstrated multilevel degenerative changes.

A March 11, 2016 cervical spine X-ray demonstrated degenerative changes. Petitioner began a course of physical therapy for her low back from August through November 2016. She also received therapy to her thoracic and cervical spines. She continually voiced pain complaints for her low back, shoulders, and upper and lower extremities. Her care plan on November 30, 2016 was noted as "continue plan of care."

Petitioner's physical therapy evaluation on February 7, 2017 was documented (see also PX #1). She was referred for a diagnosis of thoracic spine contusion. She gave a history of chronic back pain since 2001 and back physical therapy "last year." Petitioner also complained of occasional right temple headaches but did not report a head trauma from her work accident on January 18. There were no documented complaints of low back pain. Petitioner's no-shows for therapy appointments were also documented.

Petitioner returned May 22, 2017 with complaints of cervical spine pain since a workplace injury in January 2017. She also complained of tingling in her face. The last clinical note was dated July 12, 2018, when Petitioner was diagnosed with diffuse musculoskeletal pain, neck pain, back pain, and leg pain. There was no note reporting a history of pain since a work accident on January 18, 2017.

CONCLUSIONS OF LAW

F: Is Petitioner's current condition of ill-being causally related to the accident?

The evidence supports a finding that Petitioner sustained a contusion to her thoracic spine and a temporary strain to her cervical spine that were causally related to the work accident on January 18, 2017, as diagnosed by Dr. Hennessey in his IME. The evidence does not support a finding that Petitioner sustained a concussion or any injury to her lumbar spine or any permanent aggravation to her pre-existing degenerative

condition of her cervical spine or any of the other complaints voiced to her physicians or at trial.

The Arbitrator finds the causation opinions of Dr. Hennessey persuasive and credible. Dr. Hennessey made a thorough review of Petitioner's long history of pre-existing low back and neck complaints, as well as imaging and therapy for those complaints. In addition, Dr. Hennessey conducted a thorough clinical examination at the IME. Dr. Hennessey's causation opinions are supported by the compelling evidence of Petitioner's chronic low back complaints dating from 1985 through November 2016, as well as evidence of Petitioner's long-term degenerative cervical spine complaints from 2008 onward.

Petitioner argues that the chain of events supports a finding of injury to her neck with radiating pain to her arms, to her back with pain radiating into her legs, and continuing headaches. The Arbitrator notes that none of Petitioner's treating physicians, Drs. Chekka or Mehta, or the treating chiropractors, offer clear-cut opinions of causation for any of their diagnoses. Further, the Arbitrator does not find any of the diagnoses of any these healthcare providers to be reliable, inasmuch as none of them documented Petitioner's long history of neck and low back complaints or medical intervention for those complaints.

In addition, Drs. Chekka or Mehta and the treating chiropractors the accuracy and reliability of petitioner's subjective complaints and history. The evidence demonstrated that petitioner was not a reliable historian or credible witness. Despite petitioner's long history of neck and back complaints she did not disclose this history to those healthcare providers. In addition, Petitioner at first denied any history of prior neck complaints or medical care for neck complaints to Dr. Hennessy and then defaulted to not remembering when challenged with her actual history. Petitioner demonstrated a phenomenally poor memory or was in fact untruthful.

The evidence supports a finding that Petitioner's current complaints are, more likely than not, attributable to her underlying pre-existing degenerative conditions in her cervical spine and her lumbar spine.

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?

The Arbitrator found Dr. Hennessey's causation opinions to be reasonable and persuasive. For the reasons stated above the Arbitrator also finds Dr. Hennessey's opinions regarding the reasonableness and necessity of care provided to Petitioner were also reasonable and persuasive and adopts the same here.

The evidence supports a finding that the initial care provided at University Health Services was necessary to assess and treat petitioner's causally related injuries. In addition, the evidence supports a finding that the initial evaluation by Dr. Chekka for a second opinion was also reasonable and necessary, as was the cervical MRI.

The Arbitrator particularly adopts Dr. Hennessey's opinions that any medical care or intervention following February 20, 2018 was neither reasonable nor necessary. The arbitrator takes particular note of Dr. Hennessey's opinions regarding the unnecessary urine toxicology testing without a documented basis for that testing. The Arbitrator also notes that Petitioner's A1C, a standard lab test for diabetics, was tested. There was no documentation on Petitioner's A1C having any relevance to her claimed injuries.

Respondent is entitled to a credit for benefits previously paid.

K: What temporary benefits are in dispute? TTD

Petitioner was placed off work by University Health Services on January 18, 2017. She was placed on modified work on January 30, 2017. Petitioner did not return to work despite Emily Jordan's testimony that Petitioner's restrictions would have been accommodated. Even so, Dr. Hennessy opined that Petitioner was at MMI by February 20, 2017 and could return to full duty work then.

The Arbitrator has previously found that Dr. Hennessy's opinions were reasonable and persuasive. The Arbitrator now adopts Dr. Hennessy's opinion regarding MMI and Petitioner's ability to return to full duty work. Therefore, the Arbitrator finds that Petitioner proved she is entitled to temporary total disability benefits from January 29 through February 20, 2017, 4 & 4/7 weeks of benefits.

L: What is the nature and extent of the injury?

Petitioner's permanent partial disability was evaluated in accord with §8.1b of the Act:

i) No AMA impairment rating was admitted in evidence. The Arbitrator cannot give any weight to this factor.

ii) Petitioner was employed as a food lad assistant. Her job included grocery shopping, lab preparation, and lab clean-up. The job required lifting and carrying bags of groceries and putting the groceries away, as well as bending and stooping when cleaning up the lab. The Arbitrator gives great weight to this factor.

iii) Petitioner was 60 years old at the time of her accident. She had a statistical life expectancy of approximately 27 years. She has had chronic neck and back pain which will affect her for the remainder of her life, but the Arbitrator found that such complaints are not related to her work accident. The Arbitrator gives little weight to this factor.

iv) Petitioner was terminated from her employment after she reached MMI and has since retired. Petitioner was working with restrictions before her accident. There was evidence that any restrictions relating to her accident injuries would have been accommodated but that Petitioner did not attempt to return to work within those related restrictions. In light of the failure to prove any impairment of earning capacity the Arbitrator gives great negative weight to this factor.

v) Petitioner had a long and extensive history of complaints and medical intervention before her work accident for the same sort of complaints she has made since her accident. Petitioner was disingenuous at her IME and in testifying about this history which undermines the credibility of her claims for permanency. Accordingly, the Arbitrator gives great negative weight to this factor.

The Arbitrator weighed all the evidence, including the above five factors, and has found that Petitioner proved she sustained injuries on January 18, 2017 that cause a 2% loss of a person-as-a-whole, 10 weeks of benefits.

N: Is Respondent due any credit?

Respondent is entitled to a credit for any and all medical or other benefits previously paid.

Steven J. Fruth, Arbitrator — Date

STATE OF ILLINOIS)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

)SS.

COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MYRIAM FORTINEAUX Case # **17 WC 004220**
Employee/Petitioner

v. Consolidated cases: _____

UNIVERSITY OF ILLINOIS - CHICAGO
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **6/25/2021 & 8/24/2021**. 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

B. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?

J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

K. ☒ What temporary benefits are in dispute?

☐ TPD ☐ Maintenance ☒ TTD

L. ☒ What is the nature and extent of the injury?

M. ☐ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☒ Other Credit due Respondent for overpayment of benefits.

FINDINGS

On **1/18/2017**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**22,303.32**; the average weekly wage was $**428.91**.

On the date of accident, Petitioner was **60** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**16,109.36** for medical benefits, for a total credit of $**16,109.36**.

Respondent is entitled to a credit of $**0** under §8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services provided to Petitioner by University Health Services, University of Illinois Hospital & Health Systems, Dr. Chekka of Premier Pain & Spine for February 10, 2017 only, and the cervical MRI, as provided in §8(a) of the Act and adjusted in accord with the Medical Fee Schedule provided in §8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $**257.35/week** for **4 &4/7 weeks**, commencing **1/19/2017** through **2/20/2017**, as provided in §8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits to the extent of **2%** loss of a person-as-a-whole, 10 weeks, pursuant to §8(d)2 of the Act.

Respondent is entitled to a credit for an any overpayment of benefits.

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

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC021659
Case Name	James Doerschuck v. State of Illinois – Pinckneyville Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0436
Number of Pages of Decision	9
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 11/17/2022

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

James Doerschuck,
Petitioner,

vs. NO: 20 WC 21659

Pinckneyville Correctional Center,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 3, 2022, is hereby affirmed and adopted.

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

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

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

November 17, 2022
d11/9/22
DLS/rm
046

/s/ *Deborah L. Simpson*
Deborah L. Simpson

/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC021659
Case Name	DOERSCHUCK, JAMES v. PINCKNEYVILLE CORRECTIONAL CENTER
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 6/3/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 1, 2022 1.58%

/s/ Jeanne AuBuchon, Arbitrator

Signature

CERTIFIED as a true and correctcopy pursuant to 820 ILCS 305/14

June 3, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **WILLIAMSON**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

JAMES DOERSCHUCK
Employee/Petitioner

v.

PINCKNEYVILLE CORRECTIONAL CENTER
Employer/Respondent

Case # **20** WC **21659**

Consolidated cases: _____

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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Herrin**, on **January 21, 2022**. By stipulation, the parties agree:

On the date of accident, **7/23/20**, 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 $**53,604.06**, and the average weekly wage was $**1,030.85**.

At the time of injury, Petitioner was **40** years of age, ***married*** with **0** dependent children.

Necessary medical services and temporary compensation benefits have been **or will be** provided by Respondent.

Respondent shall be given a credit of $**any paid** for TTD, $**n/a** for TPD, $**n/a** for maintenance, and $**n/a** for other benefits, for a total credit of $**any paid**.

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 $**618.51**/week for a further period of **132.59** weeks, as provided in Section **8(d)2 and 8(e)** of the Act, because the injuries sustained caused the **25% loss of Petitioner's body as a whole as to his cervical spine and the 3% loss of Petitioner's left arm as to his left elbow.**

Respondent shall pay Petitioner compensation that has accrued from **9/21/21** through **1/21/22**, 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.

Jeanne L. AuBuchon

Signature of Arbitrator

JUNE 3, 2022

PROCEDURAL HISTORY

This matter proceeded to trial on January 21, 2022, on all disputed issues. The sole issue in dispute is the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

The Petitioner was 40 years old and employed by the Respondent as a corrections officer at Pinckneyville Correctional Center when, on July 23, 2020, he was attempting to put handcuffs on a combative inmate to lock him up for refusing to abide by COVID protocol. (AX1, T. 10-12) They were on a stairway landing when the inmate took a swing at him. (T. 12) The Petitioner stepped in to grab the inmate and they ended up on the stairs, with the Petitioner landing on his back, hitting his neck and elbow. (Id.) The inmate landed on top of the Petitioner, grabbed his testicles, punched him in the side and stomach and bit him in the chest. (Id.)

After the incident, the Petitioner went to SSM Health Express Clinic, where Nurse Practitioner Nicole Lewis examined the Petitioner and found joint swelling and decreased range of motion of the left elbow, bite marks and exposure to HIV. (PX3) NP Lewis ordered an X-ray of the left elbow, Tdap vaccine and a hepatic function panel and prescribed medications. (Id.) The elbow X-rays showed soft tissue swelling and a possible incomplete avulsion. (Id.) On July 26, 2020, the Petitioner went to the emergency department at SSM Health Good Samaritan Hospital and reported a worsening headache that was causing photophobia. (PX4) Head and neck CT scans were normal. (Id.) The Petitioner was diagnosed with a scalp contusion and neck strain. (Id.)

On July 26, 2020, the Petitioner saw Dr. Matthew Gornet, an orthopedic surgeon at The Orthopedic Center of St. Louis and reported right-sided neck and trapezius pain, headaches and left elbow pain. (PX6) Dr. Matthew Ruyle performed a cervical MRI on July 27, 2020 and found

disc protrusions at C3-4, C4-5, C5-6 and C6-7, with the protrusion at C5-6 and C6-7 being larger. (PX8) Dr. Gornet read the MRI as showing large acute-appearing disc injuries at C5-6 and C6-7, with C6-7 being bilobular with large acute fragments. (Id.) Dr. Gornet recommended a steroid injection at C6-7, physical therapy and medication. (Id.) The Petitioner underwent physical therapy at Apex Physical Therapy from July 30, 2020, through August 26, 2020 for a total of 11 visits. (PX13) He continued to report neck pain and headaches during his therapy. (Id.) On August 13, 2020, he underwent an interlaminar epidural steroid injection at his right C6-7 performed by Dr. Helen Blake, a pain management specialist at Pain & Rehabilitation Specialists of St. Louis. (PX9, PX10)

The Petitioner testified that the physical therapy and injection helped his symptoms temporarily. (T. 13-14) He returned to Dr. Gornet on August 27, 2020, and reported continued symptoms. (PX6) On September 8, 2020, Dr. Gornet performed a two-level disc replacement at C5-6 and C6-7. (PX6, PX12)

The Petitioner testified that right before the surgery, he had numbness, tingling, pain and severe migraines. (T. 14) He said that after the surgery, his symptoms improved significantly. (T. 14-15) He reported these improvements at follow-up visits with Dr. Gornet. (PX6) However, he reported he was still having neck discomfort and headaches, and Dr. Gornet warned that they may be related to some adjacent cervical levels (C3-4 and C4-5). (Id.) The Petitioner underwent another round of physical therapy from January 12, 2021, through February 23, 2021, for a total of 18 visits. (P13). Although he reported improvement, the Petitioner still was experiencing neck pain – especially with quick head movements – as well as migraines one to two times per week, disturbed sleep and difficulty with driving and looking up. (Id.)

On March 18, 2021, Dr. Gornet gave the Petitioner a full-duty release beginning April 1, 2021, and changed his medications. (PX6) Dr. Gornet placed the Petitioner at maximum medical improvement on September 23, 2021. (Id.)

As to his current condition, the Petitioner testified that his elbow was fine most of the time, but he had a hard time putting it on things and standing up. (T. 16-17) He said he gets a little sharp pain, but other than that, it's manageable. (T. 17) He said his neck has its ups and downs – stiffness and limited range of motion turning his head to the left and headaches if he turns to quickly. (Id.) He goes to a chiropractor to increase his motion, gets acupuncture and takes an prescription and over-the-counter anti-inflammatories and an occasional muscle relaxer. (T. 17, 21.) He said he experiences headaches once or twice a week, depending on his physical activity. (T. 18) The Petitioner, a former weightlifter, stated that any type of weightlifting aggravated his cervical symptoms, that he can't run anymore because it gives him migraines, that he can't do pushups because it's bad for his neck, and that he can't do incline bench presses or pullups anymore. (T. 18, 24) He said he has a hard time sleeping and uses a special pillow. (Id.) He said he gained 41 pounds because of the limitations on his exercising. (T. 19) He said he has difficulty with tasks that require overhead movements. (Id.)

CONCLUSION

Issue 10: What is the nature and extent of the Petitioner's injury?

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning

capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** Neither party submitted an AMA rating. Therefore, the Arbitrator uses the remaining factors to evaluate the Petitioner's permanent partial disability.

(ii) **Occupation.** The Petitioner continues to work as a corrections officer and is subject to the same physical demands as prior to the accident. The Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 40 years old at the time of the injury. He has many work years left during which time he will need to deal with the residual effects of his injuries. The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity.** There was no evidence of limitation of the Petitioner's earning capacity. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner's testimony and corroboration by the medical records showed that he continues to have problems with headaches, neck pain and stiffness and sensitivity in his elbow. He still treats with a chiropractor to improve his range of motion, undergoes acupuncture for pain and takes medications. As a weightlifter and runner, the Petitioner is unable to continue these activities as he had before the accident. The Arbitrator puts significant weight on this factor.

Based on the foregoing evidence and factors, the Arbitrator finds that the Petitioner sustained serious and permanent injuries that resulted in the 25% loss of use of the body as a whole for his cervical injuries and 3% loss of his left arm for his elbow injury.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC000516
Case Name	Jason Fedro v. Petroleum Service Group LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	22IWCC0437
Number of Pages of Decision	17
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Thomas Paris
Respondent Attorney	Kenneth Smith

DATE FILED: 11/18/2022

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JASON FEDRO,

Petitioner,

vs. NO: 20 WC 516

PETROLEUM SERVICE GROUP, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causation, notice and medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but makes several clarifications as outlined below.

We affirm the Arbitrator's denial of accident and specifically note that the October 28, 2019 medical record, dated five days after the alleged accident, makes no mention of a specific event involving Petitioner climbing stairs at work as the cause of his back and right leg pain. We find this consistent with the November 11, 2019 medical record which clearly states there was "no inciting event." Although Petitioner testified that the shift-change report he completed on the morning of October 24, 2019 indicated that he and his co-worker had less than normal production, he did not testify that he included any information about an alleged injury while climbing locomotive stairs. *T.66-73*.

Additionally, Jose Hernandez, one of Petitioner's co-workers who worked on opposite shifts, testified that he remembered Petitioner "saying that he hurt himself, and he didn't get certain things done throughout the night. I just don't recall exactly how the injury happened."

T.113. Later, Mr. Hernandez testified "I know he hurt his back but I don't know where" and "I don't remember exactly when he told me he hurt his back. I know he said he was in pain, but I don't know the whole situation." *T.115.* Finally, we find the testimony of Petitioner's supervisor, Zach Huvila, to be persuasive in regard to Petitioner's denying that his sciatica was work related and Petitioner not giving him a history of injuring his back while he was going up some steps leading into the locomotive. *T.142, 143, 153*.

Ultimately, we agree with the Arbitrator that Petitioner has not met his burden of proof that his low back condition is causally related to any event that occurred at work on October 23, 2019. Therefore, we strike the sentence in the second paragraph on page 12 that begins with "While it is more likely than not…." In the next sentence, we replace the reference to "1/23/19" with "10/23/19." We also strike the section regarding Notice on page 12 of the decision since this, along with all other issues, is moot.

Lastly, we correct a few scrivener's errors. On page 5, in the second sentence of the last paragraph, we change the phrase "worsened as the right went on" to "worsened as the night went on." (*Underlines added here for clarification*.) On page 6, in the third sentence of the last paragraph, we correct "wok injury" to "work injury." In the second full sentence on page 9, we change "Ach" to "Zach."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 30, 2021 is hereby affirmed and adopted with the clarifications noted above.

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 the removal of this cause to the Circuit Court by Respondent because no award was made. 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.

November 18, 2022

/s/ *Maria E. Portela*

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

SE/
O: 9/27/22
49

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC000516
Case Name	FEDRO, JASON v. PETROLEUM SERVICE GROUP, LLC
Consolidated Cases	No Consolidated Cases
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Thomas Paris
Respondent Attorney	Kenneth Smith

DATE FILED: 9/30/2021

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 28, 2021 0.05%

/s/ Paul Cellini, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **WILL**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

JASON FEDRO
Employee/Petitioner
v.
PETROLIUM SERVICE GROUP, LLC
Employer/Respondent

Case # **20** WC **00516**

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 **Paul Cellini**, Arbitrator of the Commission, in the city of **Kankakee**, on **July 23, 2021**. 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 _____

FINDINGS

On the date of accident, **October 23, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident ***was not*** given to Respondent.

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

In the year preceding the injury, Petitioner earned $**45,302.40**; the average weekly wage was $**MOOT**.

On the date of accident, Petitioner was **33** years of age, ***single*** with **2** dependent children.

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

Respondent shall be given a credit of $**26,354.00** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**26,354.00**.

Respondent is entitled to a credit of $**N/A** under Section 8(j) of the Act.

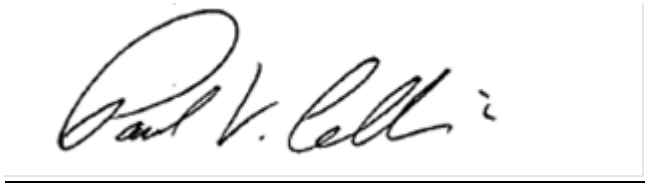
ORDER

The Arbitrator finds that the Petitioner failed to prove that he sustained accidental injury arising out of and in the course of his employment with Respondent on October 23, 2019. The Petitioner had also failed to prove that timely and proper notice of the alleged accident was provided to Respondent pursuant to Section 6(c) of the Act.

All other issues are moot

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

SEPTEMBER 30, 2021

STATEMENT OF FACTS

In approximately January 2019, Petitioner began working as a locomotive engineer/switchman for Respondent (PSG), which involved running a railyard for Respondent's contractor, Ineos Styrolution (hereinafter, "Ineos"), a manufacturer of plastic products. Petitioner worked twelve hour shifts and would rotate between day and night shifts every two weeks, working three days one week and four days the next. He testified he was hired at $19.20 per hour and received a raise to $19.80 in June or July 2019. Petitioner testified he underwent training for both switchman and locomotive duties, initially with his old partner (Pierre) and his supervisor, Zach Huvila. Petitioner would work with a partner, mainly performing sorting and spotting of outbound and inbound railcars, moving them with the use of a locomotive. On the night shift, they would sort inbound trains, separate connected dirty hopper cars, spot them and clean them. The switchman on the ground would provide direction to the locomotive driver in performing this process. Other night shift duties included rearranging the yard and organizing cleaned cars for day shift. He and his teammate/partner, Anthony Stein-Rojas, would switch off on the locomotive and switchman positions each shift.

Petitioner identified the photo in Px1 as the locomotives used in the railyard, the one on the right being the newer model. The depicted stairs on each end of the locomotive are also the non-visible side of the locomotive. Petitioner testified that the step up to the first locomotive stair was a little less than 2' above ground level, and that the next steps up have rises that are roughly the height of three typical residential stairs. He agreed these were estimates as he had not actually measured the stairs. He testified he would use the locomotive stairs between 50 and 75 times per shift.

To clean one of the four-compartment "hopper" railcars, one person would go on top and blow out stuck product with a long hose, while the bottom person would open the bottom hatches to suck out the remaining product. Petitioner testified this involved bending over to use a long hose to spray the walls clean of loose product on the top, and kneeling, "hunching over" or sitting on a bucket to suck out product via valves on the bottom. The caps on top and valves on the bottom sometimes would stick, requiring tools like a sledgehammer and/or having to jerk them open. Petitioner testified they also would operate a forklift, on average two to three times per shift, typically to haul large crates of rubber onto a flatbed to a designated placed in the plant, where it is broken down to make plastic. Petitioner and his partner would rotate the top and bottom hopper cleaning jobs each shift.

Respondent's locomotives have four camera views: within the cab, the opposite side of the locomotive from what is depicted on the locomotive on the right in Px2, the stairway on the opposite side of the locomotive, and above the coupling area. Petitioner testified one of the camera views was trained on the stairs he was using at the time he alleges he was injured on 10/23/19. The locomotive driver can view each of these camera views from inside of the cab, as they involve blind spots. Petitioner testified that Zach told him the cameras were always recording for safety purposes. Petitioner didn't know how long the Respondent saved the video recordings and had no knowledge of how to access the video recordings from the hard drive, but he testified that Zach has asked him to retrieve a hard drive of these recordings before.

Petitioner would complete a daily report at the end each shift, describing the work activities that were performed, including how many cars were cleaned on the overnight shift and how often he met with the shift supervisor, "Bob" or "Nick." The report also had a space to note any other concerns or relevant notes. The reports would be handed in to the shift supervisor, in person or by dropping it in their inbox, and a copy would be given to Zach. Petitioner testified he would also verbally let them know if there were any problems or issues that came up. He did not keep copies for himself. Safety at the yard was important to Respondent, and employees are supposed to notify Respondent and/or rectify anything they see that could result in injury. He did

note that much of the railyard was covered in large rocks, and that a Kubota ATV was therefore used to traverse it.

According to his testimony and his time sheet (Px2), Petitioner worked from 6 p.m. on 10/23/19 (Wed) to 6 a.m. on 10/24/19 (Thurs), as well as during this same time period from 10/24/19 to 10/25/19. When he would arrive for a shift, the workers on the prior shift would let the incoming shift know what happened that day and what work to expect during their shift, including if Ineos needed any hopper cars spotted or if any rubber needed to be hauled. Respondent submitted additional time sheets which show that Jose Hernandez and Jason Wheatley, the workers on the opposing shift, worked the 6 a.m. to 6 p.m. shifts on 10/23/19 and 10/24/19. (Px2; Rx1).

After starting his 10/23 to 10/24 shift, around 9:15 pm, Ineos called for Petitioner and Anthony to perform their first spot movement of a railcar. It was Petitioner's turn to operate the locomotive, and he used the newer model that day. Petitioner testified that as he was going to go up the locomotive stairs, with his hands on the railings, he put his left foot up to the first step and, as he was going up to the second step, he felt a sharp, excruciating pain in his back. It felt like someone had punched him in the back. The pain was constant and radiated up his back and down his right leg. He indicated he'd never felt similar pain before. After moving the car and putting the full ones away, he testified that he told Anthony that he tweaked or pulled his back and felt sharp pain. Petitioner continued to work, but at a "subpar" level, and his pain progressively got worse as the night went on. By the end of the night, due to his pain, they had cleaned only 3 or 4 cars, while the normal average was 8 to 10 cars. While they normally would haul 8 to 24 cars filled with rubber per shift, he hauled none and Anthony only hauled a small amount. Petitioner testified he discussed his back condition with Anthony numerous times that night.

Petitioner testified that supervisor Zach generally worked from 5:30 a.m. to 3 p.m., and therefore is typically present for the morning shift change but was not there on this particular morning of 10/24/19. The "C" shift that punched in on the morning on 10/24/19 were Jose Hernandez and Jason Wheatley. When they changed shifts that morning, Petitioner testified he told them that he didn't know exactly what he did but that he hurt his back and wasn't able to get the normal number of cars cleaned or rubber hauled. Jose and Jason indicated it was no problem, as he and Anthony normally did a good job. In his shift report that morning, Petitioner indicated his less-than-normal activities. He testified he also told the shift supervisor, which may have been Bob or Nick, and provided him with the shift report. Petitioner testified he went home after work, took a hot shower and some Advil and tried to sleep. When he awoke at 3:30 p.m., he made his lunch and went back to work. On 10/24/19, Petitioner arrived at work between 5:15 and 5:30 p.m. On this shift change, he testified that Jose asked him how he was feeling while Jason was present, and he indicated he was very stiff but would do his best, noting it was difficult to leave the job since the work goes on constantly all day and it's a two-man job. He testified he was not productive at all during the 10/24 to 10/25 shift, and Anthony again hauled a lot of the rubber alone. He was unable to walk after he had been working for about 60 to 90 minutes that shift. His shift report again reflected his lack of productivity. When he got off work on the morning of the 25th, he testified he went in and again reported he and Anthony didn't get many cars cleaned. Petitioner testified he specifically told Zach that he had been going up the locomotive steps to do his inspection the prior night on his Wednesday shift and felt a pull in his back that got worse and worse. He advised Zach he would have told him about his injury the prior day when it happened if Zach had been at work. Zach advised him to rest since Petitioner was scheduled off work until Monday (10/28/19), and if he got worse to seek medical treatment. He also advised Petitioner that his father in law was a chiropractor and that he could see him.

Petitioner was supposed to return to work on the day shift Monday morning (10/28/19) but ended up calling off work that day around 4:30 a.m. because "I couldn't get out of bed." He went to Advanced Urgent Care in Orland Park and saw Dr. Alzien. He testified he told the doctor what happened, acknowledging he may have

reported the onset to be Thursday and not Wednesday, as his shift had straddled these dates. The 10/28/19 report of Dr. Alzein indicates Petitioner reported "hard" back pain radiating to the right hip and leg and difficulty ambulating due to right foot numbness. The progress report states: "The patient reports while at work on Thursday he felt a sharp pain to the right buttock. The patient states by the end of the shift he was barely able to walk." Petitioner also reported a gout attack, and the Arbitrator notes Petitioner was seen for a gout problem in the left foot on 7/12/19. Dr. Alzein diagnosed acute right sided sciatica and radiculopathy and ordered a lumbar MRI. Medication was prescribed and Petitioner was held off work pending MRI review and follow up. (Px3; Rx3).

On 10/29/19, Petitioner received a lumbar injection at Dr. Alzein's office. The MRI was performed on 11/4/19, reflecting L4/5 and L5/1 disc herniations causing moderate foraminal and spinal stenosis, severe at right L5/S1 foramen. At 11/5/19 follow up, it was noted the MRI showed L4/5 and L5/S1 posterior disc herniations causing moderate foraminal and central canal stenosis. Petitioner was referred to "pain specialist/spine surgeon", the back was again injected, and medications were continued. The Arbitrator notes the doctor's plan states:

> "Refer to PT
> Refer to pain specialist
> Refer to spine surgeon." (Px3).

Petitioner testified that Dr. Alzein referred him to pain management physician Dr. Malhotra, who reviewed the MRI, noted a herniated disc, performed three injections and ultimately referred Petitioner to surgeon Dr. Sampat. Petitioner testified he also has seen "a couple" of physicians at the request of the Respondent.

On 11/11/19, Dr. Malhotra's history states: "Onset of pain is 10/24/19. First such event, no inciting event. He is currently off work due to pain (Locomotive engineer – mainly standing/walking)." Dr. Malhotra recommended Petitioner remain off work and undergo epidural injections. These were performed at right L5/S1 on 11/14/19 and 11/27/19. Petitioner reported limited relief with the initial injection and therapy was instituted. Petitioner reported no relief following the second injection, and the 12/11/19 report indicates Petitioner remained off work. Medications were continued and he was referred to an orthopedic surgeon. On 1/9 and 1/23/20, the reports indicate Petitioner "has had evaluation with recs for MCD per Dr. Pannu" and Petitioner was awaiting reevaluation with MCD. Petitioner was continued off work. (Px4).

Petitioner was examined at Respondent's request by surgeon Dr. Templin on 2/11/20. Petitioner reported that upon ascending steps on a locomotive at work, which had a rise of about a foot and a half, he developed severe right gluteal pain which worsened as the right went on and extended into the right leg. Interestingly, Dr. Templin goes on to state that the 10/28/19 report from Dr. Alzein's office stated that Petitioner had been injured 4 days earlier while ascending the locomotive stairs. The Arbitrator notes that no such history was noted in the report other than that Petitioner developed pain while at work. Dr. Templin's exam reflected significantly limited lumbar range of motion and findings consistent with weakness f his right dorsiflexors consistent with right L5 radiculopathy. His review of the MRI films noted no significant neural compression with degeneration at L4/5, but a large extruded herniated disc at L5/S1 that was severely impinging the right L5 nerve root. He opined that, based on the stated history, this herniation was related to the alleged work accident and that Petitioner's symptoms were consistent with the findings. He noted there was significant degeneration at L5/S1, and that obesity was a contributor to this. Noting Petitioner reported little to no relief with injections, Dr. Templin recommended either a far lateral decompression surgery for the right L5 nerve root, or a lumbar fusion with resection of the facet joint to decompress. (Px6).

On 2/24/20, Dr. Malhotra noted the ortho visit was awaiting "medical clearance/litigation/IME." The 3/23/20 and 4/21/20 visits were telehealth due to Covid, and Petitioner noted he'd had an "IME" with Dr. Templin, who recommended fusion surgery. With Dr. Malhotra's 3/23/20 report, the history that began to be reported by the doctor was: "First such event. He reports pain in relation to working where he was doing inspection in the railyard and suffered pains while going up the second step and noted a sharp onset of pain which caused him to stumble down the first step." Petitioner was awaiting surgical approval from workers compensation. Petitioner's last visit with Dr. Malhotra was 5/20/20 (telehealth), and the report notes that Petitioner's fusion surgery was being delayed by medical clearance/litigation/covid pandemic." Petitioner remained off work. (Px4).

Petitioner testified he underwent laminectomy surgery with Dr. Sampat on 7/22/20, but that he did not have relief. He testified that Sampat was within the chain of his first choice of physician. The 7/22/20 operative report notes right sided decompressive laminectomy from L4 to S1 was performed. Dr. Sampat's 7/29/20 report notes Petitioner's leg symptoms were almost completely resolved. On 8/7/20, Petitioner reported that a pre-surgery foot drop was markedly improved. Petitioner's medications were to be determined by Dr. Malhotra. On 8/14/20, physical therapy was prescribed. The therapy records note significant ongoing pain and ongoing foot drop. It was noted Petitioner acknowledged he was not very compliant with his home exercise. Given how heavy Petitioner's job was, Dr. Sampat continued Petitioner off work. (Px5).

On 11/3/20, Petitioner reported he still had significant low back and buttock pain that sometimes radiated into the upper lumbar spine with bending, lifting and twisting. Noting x-ray showed persistent L5/S1 degenerative disc disease, Dr. Sampat ordered an updated MRI. It was noted that Petitioner had reduced his smoking and his weight. 11/11/20 MRI impression was: 1) global L3/4 bulge with left-sided protrusion and osteophytes, similar to the prior exam, noting the protrusion may be causing L3 radiculopathy with moderate/severe left foraminal stenosis, unchanged from prior films; 2) global L4/5 bulge with a superimposed protrusion contributing to moderate central canal stenosis mildly worse than prior films with unchanged mild bilateral neuroforaminal stenosis; 3) global right greater than left L5/S1 bulge with central protrusion possibly causing right L5 radiculopathy while the protrusion might be causing bilateral S1 radiculopathy, and severe right and moderate left foraminal stenosis was not significantly changed. Congenital spinal canal narrowing was also similar to prior films. (Px5).
After reviewing the MRI on 11/24/20, and noting Petitioner had significant ongoing radicular symptoms, and that he worked in a railyard and couldn't live with the symptoms. Dr. Sampat recommended the options of decompression versus decompression and fusion, and Petitioner opted for the latter. (Px5). Dr. Sampat performed surgery on 2/3/21, involving L4 to S1 anterior and posterior fusion with caging and plating. Petitioner's large body habitus at 280 pounds was noted to be a complication. (Px7).

Petitioner testified that he underwent physical therapy, and that he currently performs a home exercise program to the best of his ability. Petitioner testified he continues to see his pain doctor Dr. Malhotra on a monthly basis, and the pain is being managed with medication. He testified he last saw Dr. Sampat on 6/25/21 and is to follow up in February 2022. He continues to see Dr. Malhotra monthly, mainly for medication therapy. The records of Dr. Sampat and Dr. Malhotra after 2020, other than the operative report, were not noted in the evidentiary record.

Petitioner acknowledged on cross-examination that he was aware work accidents were to be reported to Respondent at the time they occur but denied learning during training that an incident or accident report was to be completed, that he would be required to see the company doctor or required to take a drug test. All he was told was to report it to the shift supervisor or Zach. However, further testimony was unclear to the Arbitrator whether Petitioner acknowledged the need to take a drug test in a wok injury situation or in a work "accident" situation, such as when Anthony hit a semi-truck wall with the back of a forklift. This involved property

damage, noting Anthony was not injured. Petitioner testified he never completed an accident report for Respondent, testifying he specifically told Zach he felt a "punch" in his back while going up the locomotive steps on the prior shift, and that he would have told him at the end of the prior shift had Zach been present. He testified that when he told Zach about his injury all he was told was to see a doctor if it got worse, and he never asked the Petitioner to complete an accident report. Petitioner denied telling Zach that his sciatica was acting up, and he never told him he wasn't hurt at work. As to missing work on 9/24 and 9/25/19, Petitioner testified he did tell Zach he had injured his left elbow when he tripped on a stair while carrying in groceries at home. He did previously tell Zach he injured himself in September 2019 working on his patio, and did tell him about a day where he tripped on a stair and landed on his left elbow. He denied ever telling Zach or Anthony that he fell backwards onto his back in September: "Never once."

Petitioner acknowledged that the accident date was amended by his attorney prior to trial and agreed that this plan did not occur until after Petitioner reviewed his time slips. Petitioner agreed that prior to the alleged accident date he had used the locomotive stairs thousands of times, and there was nothing about how he did it that day that was different from any other time. He agreed that while a camera was trained on the stairs he was using on the alleged accident date, he could not say if the incident had been recorded or not. All he can say is where the cameras were pointed based on seeing the video in the cab. He could not say when or whether a recording is occurring. Petitioner testified that when the shift change occurred on the morning of 10/24/19, after he was injured, with Anthony present, he apologized to Jose and Jason about how little they had completed because he had tweaked or pulled something in his back the night before.

As to the Voya request for reasonable accommodation form (Rx2) for a leave of absence via short terms disability, Petitioner testified that Respondent's Human Resources advised him to get this completed after he reported his injury as work related "so I don't lose my job", and that Dr. Malhotra then dealt directly with Voya, the Respondent's short term disability insurer. He went to Voya because HR told him to after he explained what happened, and this is despite saying it happened at work.

Respondent submitted the documentation for the Voya plan, titled: "Medical Injury Form Related To An Accommodation Request". Dated and signed by Dr. Malhotra on 11/22/19, the document notes that the Petitioner "has requested time away from work that may qualify under the American's With Disabilities Act as a reasonable accommodation." Dr. Malhotra indicated that Petitioner needed work restrictions related to his lumbar condition, that his impairment would likely last months, but that he was likely to improve to be able to return to work, though it was not clear if he would ultimately need work restrictions. (Rx2).

Petitioner testified he has reached out to Anthony regarding this matter and has not received a response. He agreed he and his attorney spoke to Jose Hernandez the week prior to the hearing, asking if he remembered their discussion, noting it would be hard to remember something from two years prior. He believed he last spoke to Zach in December 2019 or January 2020, and that the morning of October 25th was the only time he told Zach it was a work injury.

Petitioner testified on redirect that when he reported the injury to his elbow that occurred at home, he called Zach and told him because the elbow swelled up and he couldn't bend it. Zach told him he had someone to replace him for the night and to let him know how it went after that and let him know if he ended up seeking treatment. Petitioner didn't think he took more than one day off for that injury. As to having sciatica, he testified he didn't really know what it was prior to the alleged accident, and denied ever treating for sciatica before that date. He could not say where any accident reporting forms would be located at Respondent's facility "guessing" thy would be done via the computer. While he believed his request for short term disability from Voya had initially been approved, he didn't believe he followed up on it and denied ever receiving any short-term

disability benefits. Petitioner had no knowledge of whether any other Respondent employees had to fill out accident/incident reports for work injuries.

Jose Hernandez testified at the hearing. He indicated he was still a Respondent employee at that time but was in the process of being hired by Ineos. He testified that he and Petitioner had worked on different shifts. As to whether the Petitioner reported during a shift change that he had been injured the night before, Jose testified: "I remember him saying that he hurt himself, and he didn't get certain things done throughout the night. I just don't recall exactly how the injury happened." He testified the Petitioner told him he had been injured the night before and didn't get his work done throughout the night, but he didn't say exactly what happened, though Jose believed it involved a back injury. He could not recall how much the Petitioner actually had done that night or whether it was normal or not. Both Jason, his shift partner, and Anthony were present when Petitioner said he was injured. He could not recall if Zach was present. He could not recall whether the Petitioner was injured or not when he came in for his next shift – "It's been so long. It's almost two years." Jose testified that the steps up to enter the locomotive were higher than a normal step, and that the initial step up would be below his knee while standing at ground level. On cross-examination, Mr. Hernandez testified that his understanding, via training, was that a work injury was to be reported to Respondent the same day it happens, a statement of what occurred was to be completed, and this would be turned in to Zach or the shift supervisor. Any witnesses would also be asked to complete a statement. He could not recall if Petitioner ever said he injured himself at work and could not recall if he ever stated that he got hurt walking up locomotive stairs.

Respondent's Site Supervisor, Zach Huvila, testified that Respondent, a logistics services company, provided services to a mix of companies including Ineos. This involved the shipping and receiving of rail cars, warehouse services (unloading/loading of trucks with various materials), spotting and cleaning rail cars. Acknowledging yard workers worked in rotating 12-hour shifts, he testified Petitioner had worked at his facility for about a year prior to October 2019 and he was Petitioner's supervisor. Petitioner's duties would have included operating locomotives, for which Zach would have been trainer, including safety training. He represented that safety was very important to the Respondent and that expectations are set with new hires in this regard. Employees are also trained to report any work injuries directly to the supervisor, to Zach and to their Ineos supervisor, no matter how small the injury, and Petitioner underwent this training. The Ineos supervisor is ultimately in charge of the plant, and an Ineos supervisor is always on-site. Once reported, the injury would be run up the chain of command, and an incident report and a drug test would be obtained and the injured worker would be sent to Respondent's company clinic at that time, Ridge Road Immediate Care in Minooka.

Zach testified that the video on locomotives is automatically recorded, with up to 5 days of video stored. After that, they are automatically erased if the hard drive isn't pulled to save the data. He was never asked to pull video from the day Petitioner alleges he was injured, so it no longer existed after 5 days. Cameras are not trained on the stairs n the end of the locomotive where the cab is located, but ae trained on the stairs at the other end. He testified that the stairs up to the locomotive had rises that were greater than that of an average stair, noting the rise from the first to the second step was between 12" and 14", while the ground to the first stair would vary based on the type of ground but likely a little larger than the rise of the other stairs. The stair heights were the same on the old and new locomotives. Based on his review of timecards, Petitioner worked the 10/23/19 to 10/24/19 shift (Wednesday night to Thursday morning), as well as the 10/24/19 to 10/25/19 shift (Thursday night to Friday morning). He was working with Anthony at that time and would have been relieving Jose and Jason.

Zach testified that Anthony is no longer a Respondent employee. When Zach came into work on the morning of 10/25/19, he saw the Petitioner and noticed he was limping. He asked if he was okay, and Petitioner indicated he was and: "I said he let me know if it was sciatica going on, and the first thing I asked was that work related",

and Petitioner responded "No, nothing like that." They discussed how the shift went, he told Petitioner to get some rest over the weekend and he recommended his father-in-law, who is a chiropractor. Ach testified that at no point did the Petitioner indicate he hurt himself at work two days before and never gave a history of injuring his back at work or while walking up locomotive stairs. Had he done so, Zach testified he would have gotten hold of Shawn Youngquist, his own supervisor, who would have in turn called his supervisor, Fred Tackett. Petitioner also would have been referred for a drug test at the company clinic, which did not occur. He also would have contacted HSC manager, Robert Franks, and asked Petitioner to provide a statement, after which they would have filled out a form to advise the company he had a work injury. He testified he would not have advised any specific doctor to Petitioner had he reported a work injury. Zach testified that the hearing was the first time he was hearing that Petitioner was alleging that he hurt himself on locomotive stairs. He testified that Petitioner then stopped coming into work, never calling or indicating an accident happened at work. His first knowledge that Petitioner was claiming a work injury was through Respondent's Human Resources (Kelly). He believed he did then speak to Petitioner a week or two after that, when Petitioner called him to see how everything was going, and he again stated nothing about a work injury. The onsite Ineos supervisors in October 2019 were Robert Elliot and "Nicholas", and Zach testified that neither of these supervisors ever indicated that Petitioner had made a work injury claim. He was not familiar with Petitioner's short-term disability documents (Rx2).

Questioned on cross-examination, Zach agreed he generally worked from 5:30 a.m. to 3 p.m., but indicated he could not recall if he had been working on the morning of 10/24/19 or not. He testified that if an employee reports a work injury, they do not complete an accident report form but rather are asked to write down what happened on a blank piece of paper, which then goes into Zach's report. Any witnesses would also be asked to provide a statement, the injury location would be investigated, and all involved personnel would discuss if any remedial measures would be needed.

Petitioner called in prior the start of his 6:00 a.m. shift on 10/28/19 shift (Monday) indicating he couldn't come in because he was injured. Zach reiterated that, on 10/25/19, Petitioner reported that he had sciatica. He again testified that he specifically asked Petitioner if the condition was work-related, and Petitioner denied that it was. He also did not report a work injury when they spoke on 10/28/19. Therefore, Zach didn't investigate further on either 10/25 or 10/28/19 as to whether Petitioner was hurt at work. He could not recall if Anthony was present when he talked to Petitioner on the morning of 10/25/19, or if he ever discussed Petitioner's injury with Anthony, and he had no knowledge if anyone else contacted Anthony about it. Zach testified that at the time of the hearing, Anthony was working for Ineos, and that he could "reach out" to him to ask about Petitioner, despite agreeing he had been aware Petitioner was claiming a work injury for some time. Zach testified Petitioner returned to work for one shift on 11/2/19. He agreed he probably has asked Petitioner to retrieve a hard drive video from a locomotive in the past but couldn't say for sure. He testified he would be the one to download video from the hard drive. He never compared Petitioner's work log reports from 10/23 and 10/24 with his prior work in terms of how much was accomplished.

The Arbitrator notes that the time sheet records submitted into evidence by Respondent appear to indicate that Zach Huvila worked on 10/24/19 from 5:30 a.m. until 2:32 p.m., and from 5:31 a.m. to 1:33 p.m. on 10/25/19. (Rx1).

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The initial question based on Respondents defense, before even getting to the issues of "arising out of" and "in the course of" the employment, is whether the 10/23/19 actually occurred as Petitioner testified. After weighing the totality of the evidence presented in this matter, the Arbitrator finds that the Petitioner failed to prove by a preponderance of the evidence that he suffered a work-related injury on 10/23/19.

The Petitioner initially alleged an accident date of 10/24/19 per the Application for Adjustment of Claim (Arbx2). Prior to hearing, the Arbitrator granted Petitioner's motion to amend the accident date to 10/23/19 instanter. While this is often done as a matter of conforming to the proofs, in this case it seems quite relevant given the issues that are at play. The Petitioner testified that he was working the overnight shift the week of October 21st, 2019. His time sheets indicate that he worked from 6 p.m. to 6 a.m. on shifts which ran from 10/23 to 10/24/19 (Wednesday into Thursday) and from 10/24 to 10/25/19 (Thursday into Friday).

The Petitioner testified that he injured himself at approximately 9:15 p.m. on 10/23/19 when he was attempting to ascend locomotive stairs during his initial inspection prior to moving train cars. He testified that he was not aware that an accident report had to be prepared for any work accident. His supervisor, Zach Huvila, testified that employees are trained to report accidents immediately to their supervisor (Zach), as well as the on-site Ineos supervisor, which at that time was either Bob or Nick. It is undisputed that Petitioner did not report the accident either at the time it occurred, on 10/23/19, or at the end of his shift on 10/24/19. Petitioner testified he handed in a shift report the morning of 10/24/19, which he indicated contained a space to report anything that he felt needed to be provided to his superiors. He testified that his work performed that shift was significantly less than normal, and that this was indicated in the report, but did not testify that he indicated he injured himself at work on that shift in the report. Petitioner testified that Zach was not present at work on the morning of 10/24/19. The Arbitrator notes that the time sheets presented by Respondent indicate that Zach was, in fact, at work at 6 a.m. on 10/24/19 (see Rx1). While Petitioner testified to Bob and Nick being supervisors, he never testified that he reported a work injury to either of these people. Zach indicated these individuals are supervisors for Ineos, which basically run the railyard, and that Respondent employees are advised that work injuries must be reported to one of these individuals as well as himself. Petitioner testified only that he reported to Bob on the morning of 10/24/19 that he did not complete his normal workload that day. He never testified that he informed Bob that he had sustained a work injury.

The Petitioner testified that on the morning of 10/25/19, after another low productivity work shift, he reported to Zach that he injured himself the night before and would have informed him the prior morning if Zach had been present at work. Again, the Arbitrator notes that it appears that Zach was, in fact, present on 10/24/19. Additionally, it seems very odd to the Arbitrator that the Petitioner would not have had Zach's cell phone number or some other simple method of contacting him about any work issues when Zach was not present on-site. Zach testified that while the Petitioner did indicate on 10/25/19 that he had back pain but testified that Petitioner did not report a specific injury and specifically denied that he was hurt at work in response to a direct question in this regard. Petitioner and Zach agreed that Zach recommended his father in law, a chiropractor, if Petitioner felt he needed treatment. He further testified that he would not have recommended any doctor to Petitioner if he had indicated he was injured at work. This does make sense to the Arbitrator.

Testimony was elicited from Petitioner indicating that a video camera was trained on the locomotive stairs Petitioner was using when he alleges he was injured, and that a video tape of this should have therefore existed. However, Zach testified that the video is only stored for five days before being erased, and nothing had been

reported to him, i.e. a work accident, that would have led him to pull the hard drive and obtain the video data within five days of 10/24/19.

Petitioner testified that he reported the injury to Zach on the morning of 10/25/19, following his 10/24 to 10/25/19 shift, as he was present at that time, and that he told Zach exactly how he was injured on the stairs. This is disputed by Zach. He testified that the Petitioner stated nothing more than that his back hurt and he had some sciatica. This is what we call a "he said she said" type of situation. One party is not testifying accurately. Zach testified that had he been notified of a work injury, he would have obtained a statement from Petitioner, obtained any witness statements, investigated the scene and sent Petitioner to the company clinic for a drug test. This did not occur in this case. Zach testified that he specifically asked Petitioner if he had injured himself at work, and that he specifically denied that he injured himself at work. Zach's testimony that Respondent employees, via training, knew that a work injury was to be reported to Respondent the same day it happens, a statement of what occurred was to be completed, and this would be turned in to Zach and the shift supervisor. This testimony is consistent with the testimony of Jose Hernandez. It is difficult for the Arbitrator to believe that Petitioner was not aware that he would need to prepare a statement of what occurred had he reported a work injury. His testimony seemed to push the idea that a video existed of the incident and, since the Respondent had possession of such video and did not produce it at hearing, this negatively impacts the Respondent's credibility. However, while it is true that Petitioner testified he did not know how long Respondent saved the locomotive videos, he never indicated that he requested that Zach pull the video when they spoke on 10/24/19. Jose Hernandez testified that the Petitioner indicated he hurt his back the prior night when the 10/24/19 shift change took place, but he also testified that Petitioner never said what happened or how he hurt his back.

Petitioner initially sought treatment on the following Monday morning, when he had been scheduled to return to work on the day shift after being scheduled off work over the weekend, 10/28/19. However, that initial report from Advanced Urgent Care states: "The patient reports while at work on Thursday he felt a sharp pain to the right buttock. The patient states by the end of the shift he was barely able to walk." Nothing was indicated as to how this pain began or created the onset. The remainder of the records from this facility do not indicate anything about any specific incident at work. The next place he treated was with Dr. Malhotra, and his initial report states: "Onset of pain is 10/24/19. First such event, no inciting event. He is currently off work due to pain (Locomotive engineer – mainly standing/walking)." Again, no specific incident was reported per the records. The first reference the Arbitrator was able to find regarding a specific incident on the locomotive stairs was the Section 12 visit to Dr. Templin on 2/11/20. As noted above, interestingly, Dr. Malhotra's records starting on 3/23/20 begin to note a new history: "First such event. He reports pain in relation to working where he was doing inspection in the railyard and suffered pains while going up the second step and noted a sharp onset of pain which caused him to stumble down the first step."

The testimony of Anthony Stein-Rojas would have been very helpful in this case. While arguably the Respondent had some level of control over Anthony, given he was their employee, it also is true that Petitioner indicated he unsuccessfully reached out to Anthony, and it was acknowledged that Anthony was an Ineos employee at the time of the hearing. This information cuts both ways in the Arbitrator's view, as Petitioner could have called him as a witness to support his story, and Respondent could have called him to dispute the story. That said, it is the Petitioner's burden to prove his case. Additionally, if Zach testified truthfully that he first learned at the hearing that Petitioner claimed his injury occurred while going up the locomotive steps, it is unclear what may have been discussed by Respondent with Anthony if the Respondent had no detail as to how the accident allegedly occurred. Given the lack of formal discovery, and that the case number for this matter indicates the filing was likely in January 2020, it seems likely that Petitioner was therefore represented by counsel by the time the report of Dr. Templin was obtained reflecting the noted history of accident. At that

point, there would be no discovery mechanism in workers compensation that would have allowed Respondent to obtain a statement from Petitioner as to what occurred.

The accident determination in this case was difficult, as the Petitioner did not appear to lack credibility during his testimony. However, the Arbitrator believes that the evidence in the case which supports the Petitioner's testimony regarding what occurred does not outweigh the evidence which questions what occurred and when. The problem is that many things that appear to be commonly done by the Respondent at the time of the reporting of a work injury did not occur here. There was no accident statement obtained. Petitioner had the opportunity to report his injury to either Nick or Bob. There doesn't seem to be any way for Respondent to have known, other than of course Petitioner's testimony that he reported to injury to Zach, how the Petitioner claims he was injured until he saw Dr. Templin in late February 2020. Petitioner did testify that he told the shift supervisor Bob "that -- again I just apologized. I told him we didn't get as much done." He did not testify that he reported he hurt his back at work, or that he hurt it while going up the locomotive stairs. While there were status reports Petitioner prepared on 10/24 and 10/25/19 after his shifts that could have indicated a work injury had occurred, and such reports likely were in the Respondent's possession, the Petitioner never testified that he indicated a work accident in these reports. Zach's testimony disputes Petitioner's version of their discussion. It makes sense to the Arbitrator that Zach would have likely not advised Petitioner to see his chiropractic father-in-law if the case involved a work accident. Zach testified that he would have obtained an accident statement, interviewed witnesses and investigated the scene of the incident had Petitioner reported a work injury. He would have needed to run it up the chain of command, with investigations that would have been. There just does not seem to be much reason for Zach not to have started this process had the Petitioner reported a work injury as he alleges.

There is a possibility that neither party initially believed that walking up steps of the locomotive constituted a compensable work accident and that is why there was no initial accident report or specific history of the mechanism of injury reported by medical personnel until over three months after 10/23/19. However, this would be pure speculation, as this is not what was testified to by either Petitioner or Zach. While it is more likely than not that the Petitioner developed back pain at work during his 10/23 to 10/24/19 shift, he has not shown, in the Arbitrator's view, by the preponderance of the evidence, that how he alleges this occurred was ever reported to the Respondent prior to the 2/11/20 report of Dr. Templin almost four months after the alleged accident occurred. The Arbitrator finds that this case simply involves a failure to prove a compensable accident occurred on 1/23/19.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the same findings noted in the "Accident" section, above, the Arbitrator finds that the Petitioner failed to prove that timely notice of the accident was provided within the requisite time required by Section 6(c) of the Act, 45 days.

As noted above, the Arbitrator has determined that the Petitioner failed to prove that he sustained a compensable accident on 10/24/19. While he did testify to the incident, the evidence presented at the hearing leads the Arbitrator to conclude that it is not more likely than not that the incident occurred as Petitioner described. Also as noted above, one of the key factors is it appears that the Respondent did not learn about the mechanism of injury Petitioner describes until seeing Dr. Templin on 2/11/20.

The Arbitrator finds that the Petitioner has failed to prove that timely notice of the alleged 10/23/19 accident was provided to Respondent within 45 days, as required by Section 6(c) of the Act.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings that the Petitioner failed to prove a compensable accident on 10/23/19, this issue is moot.

WITH RESPECT TO ISSUE (G), WHAT WERE THE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings that the Petitioner failed to prove a compensable accident on 10/23/19, this issue is moot.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings that the Petitioner failed to prove a compensable accident on 10/23/19, this issue is moot.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings that the Petitioner failed to prove a compensable accident on 10/23/19, this issue is moot.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings that the Petitioner failed to prove a compensable accident on 10/23/19, this issue is moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC022076
Case Name	Rosa Noriega v. IMEX Global Solutions
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	22IWCC0438
Number of Pages of Decision	13
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Eric Witter
Respondent Attorney	Aukse Grigaliunas

DATE FILED: 11/21/2022

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify: Section 8(j) Credit	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROSA NORIEGA,

Petitioner,

vs. NO: 21 WC 22076

IMEX GLOBAL SOLUTIONS,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the Decision of the Arbitrator with respect to the award of Section 8(j) credit. The Request for Hearing form at Arbitrator's Exhibit 1 indicates the parties' stipulation that the "[r]espondent shall receive a credit for all bills paid" as it relates to credit allowed under Section 8(j) of the Act. The Decision of the Arbitrator ordered that Respondent is entitled to a credit of "$ to be shown" under Section 8(j) of the Act. The parties agreed that Respondent is entitled to a Section 8(j) credit in the amount of $7,998.00. As such, the Commission modifies the Decision of the Arbitrator to indicate that Respondent is entitled to a credit in the amount of $7,998.00 under Section 8(j) of the Act.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated June 10, 2022 is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent 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 removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $16,600.00. 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.

November 21, 2022
o: 11/17/22
CMD/jjm
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC022076
Case Name	Noriega, Rosa v. IMEX Global Solutions
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Eric Witter
Respondent Attorney	Aukse Grigaliunas

DATE FILED: 6/10/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 7, 2022 1.71%

/s/ Rachael Sinnen, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Cook**)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Rosa Noriega
Employee/Petitioner

v.

IMEX Global Solutions
Employer/Respondent

Case # **21** WC **22076**

Consolidated cases: _____

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 **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **March 23, 2022**. 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 _____

FINDINGS

On the date of accident, **6.8.21**, 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 $**25,436.32**; the average weekly wage was $**489.16**.

On the date of accident, Petitioner was **46** years of age, **married** with **3** dependent children.

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**to be shown (short term disability benefits)** for other benefits, for a total credit of $**to be shown**.

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

ORDER

Respondent to pay Petitioner directly for the following outstanding medical services from Orthopedic Specialties / Dr. Metzger ($1,043.61) and DPT ($5,107.74) pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent to pay Petitioner directly for 41 2/7 weeks of TTD benefits (6.8.21 through 3.23.22) at a minimum weekly rate of $440.00.

Respondent shall approve and pay for physical therapy for Petitioner's left wrist, right open carpal tunnel release surgery and necessary post-operative care as prescribed by Dr. Metzger as provided in Section 8(a) and 8.2 of the Act.

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

JUNE 10, 2022

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Rosa Noriega,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 21WC22076
IMEX Global Solutions	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on March 23, 2022, in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing. Issues in dispute include accident, notice, causation, unpaid medical bills, temporary total disability ("TTD") benefits, penalties, and prospective medical. Arbitrator's Exhibit "Ax" 1.

On June 8, 2021, Petitioner Rosa Noriega was employed with Respondent in the mail room. She worked for Respondent for almost three years since October of 2018 (Trans. Pg. 10). Petitioner works as a "sorter" or "packer", and she worked 5 days a week from 4:00 AM to 12:00 PM (Trans. Pg. 11-15). She gets two 10-minute breaks and a 30-minute lunch break (Trans. Pg. 15-16). Her duties require her to pick up books and magazines behind her from the floor, place, and sort them on a table in front of her, bundle them into groups, and place them into overhead bins or compartments corresponding with the alphabet (Trans. Pg. 11-14, 22-23). Petitioner would empty roughly 40 bankers' boxes worth of books and magazines throughout the workday (Trans. Pg. 18). The books and magazines would vary in thickness from very thin to up to two inches (Trans. Pg. 19). After organizing the books and magazines she would create labels for them and bundle them together with a machine or sometimes with rubber bands (Trans. Pg. 21). She would open the boxes with a blade or, most frequently, break open with her hands (Trans. Pg. 21). The bundles weighed about the same as a gallon of milk (Trans. Pg. 23).

After her work shift, Rosa's wrists would become tired and swollen (Trans. Pg. 27-28). She started wearing bandages on her wrists while at work in May of 2021(Trans. Pg. 28). She never experienced pain in her hands and wrists prior to working for Respondent (Trans. Pg. 28). She has no history of diabetes, no history of injury or trauma to her wrists or hands and no family history of carpal tunnel syndrome (Trans. Pg. 30). She has never been a smoker and only drinks occasionally (Trans. Pg. 32).

Petitioner's primary care physician is Dr. Alejandra Campos (Trans. Pg. 28). She went to see Dr. Campos on June 8, 2021, due to pain, inflammation and swelling in her hands (Trans. Pg. 34, 38). Dr. Campos gave Petitioner a note to take her off work until June 14, 2021(Trans. Pg. 33-34, Px 2 Pg. 4). She returned to Dr. Campos on June 11, 2021, with the same pain and symptoms and she gave her another note taking her off work until June 21, 2021 (Trans. Pg. 34-35, Px 2 Pg. 5). Petitioner gave both of notes to her supervisor, Celso, and told him of the issues she was having with her hands when she left work early on June 7, 2021, and again on June 8, 2021 (Trans. Pg. 33-37). Dr. Campos referred her to a hand specialist, Dr. Paul Metzger (Trans. Pg. 39).

Petitioner first saw Dr. Metzger on June 18, 2021, complaining of pain in the wrists (Trans. Pg. 39-40). Dr. Metzger took a history that provides, "Patient has not been able to do any lifting required of her job because of her symptoms" (Px 3 Pg. 6). Petitioner described her work activities to Dr. Metzger who took her off work and diagnosed her with carpal tunnel syndrome (Trans. Pg. 40-42). Dr. Metzger prescribed an EMG for her wrists, an MRI for her neck, and performed injections to each wrist with zero relief (Trans. Pg. 41-43, Px 3 Pg. 9). Dr. Metzger indicated "her symptoms are work related because her work requires a lot of lifting and use of her hands and wrists" (Px 3 Pg. 9). On December 1, 2021, Petitioner underwent left open carpal tunnel release surgery (Trans. Pg. 43-44, Px 3 Pg. 18). She is currently undergoing physical therapy for her left wrist and still seeing Dr. Metzger (Trans. Pg. 46). Once her left wrist heals, she will undergo the same surgery and care to her right wrist (Trans. Pg. 46).

Petitioner underwent a Section 12 medical exam with a Dr. Peter Hoepfner on November 4, 2021 (Trans. Pg. 46-47). She testified that Dr. Hoepfner never asked her the manner in which she grasps items at work (Trans. Pg. 50). She further testified that she uses a lot of strength grasping items at work and she must forcefully grasp items "all the time" with both hands at work (Trans. Pg. 50, 55). Petitioner testified she agreed with the Job description report regarding sorting and grouping magazines by postal code and grouping them (Trans. Pg. 50-51). However, she disagreed with the characterization she only bundled and carried 10-15 magazines together. She testified she carried around 20 magazines (Trans. Pg. 56). She also disagreed as to how long during the day and the distance she must carry things (Trans. Pg. 56-58).

Dr. Hoepfner testified he was sent Petitioner's medical records on October 21, 2021 and he reviews those prior to his Section 12 exam (Rx 1 Pg. 26-27). However, he doesn't know when he drafted his report (Rx 1 Pg. 25-27). Respondent provided him with a job duties report prior to his exam (Rx 1 Pg. 29-30). He doesn't know thick or heavy the magazines are that Petitioner dealt with (Rx 1 Pg. 33-34). He did not review any videos of Petitioner working or of any other workers of Respondent doing the tasks she did. (Rx 1 Pg. 37). He did not recall if she showed him, physically, what she did at work (Rx 1 Pg. 57). Dr. Hoepfner diagnosed Petitioner with bilateral cervical radiculopathy in addition to bilateral carpal tunnel syndrome (Rx 1 Pg. 19-20). He opined that her condition was related to her gender and weight rather than her activities at work because there is a study that indicates obese people have a four times greater risk of carpal tunnel syndrome than those of normal body weight (Rx 1 Pg. 20-21). To cause carpal tunnel syndrome, an employee must deal with "extreme or even more vigorous squeezing and gripping" as well as flexion and extension of the wrist in a sustained fashion and deal with 35 to 50 pounds of weight (Rx 1 Pg. 35-36).

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her a credible witness. Petitioner was wearing a glove on her left hand due to sensitivity in her wrist. The Arbitrator watched as Petitioner mostly used her right hand to gesture while her left hand remained still on her lap. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

Issue C, whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124848, ¶ 34. A compensable injury occurs 'in the course of' employment when it is sustained while he performs reasonable activities in conjunction with his employment. Id.

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." Id. at ¶ 36. To determine whether a claimant's injury arose out of his employment, the risks to which the claimant was exposed must be categorized. Id. The three categories of risks are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." Id. at ¶ 38. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform,

or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." Id. at ¶ 46.

The Arbitrator finds that Petitioner's accident arose out of and the course of her employment with Respondent. Petitioner credibly testified to her job duties and the mechanism of how she used her hands/wrists to perform those duties.

Issue E, whether timely notice of the accident was given to Respondent, the Arbitrator finds as follows:

Pursuant to Section 6(c) of the Act, a claimant is required to give notice to his or her employer within 45 days of a work-related accident. 820 ILCS 305/6(c). The failure to give the statutorily required notice is a bar to recovery under the Act. Silica Sand Transport, Inc. v. Industrial Comm'n, 197 Ill. App. 3d 640, 651, 554 N.E.2d 734, 143 Ill. Dec. 799 (1990). Notice to agents of the employer (i.e. supervisors or foremen) can constitute notice to the employer. See McLean Trucking Co. v. Industrial Comm'n, 72 Ill. 2d 350, 354, 381 N.E.2d 245, 21 Ill. Dec. 167 (1978).

The purpose of the notice requirement is to enable the employer to investigate the employee's alleged industrial accident. White v. Illinois Workers' Compensation Comm'n, 374 Ill. App. 3d 907, 911, 873 N.E.2d 388, 313 Ill. Dec. 764 (2007). Giving notice of an injury is insufficient if the employer is not apprised that the injury is work related. Id. Because the legislature has mandated a liberal construction on the issue of notice, if some notice has been given, although inaccurate or defective, then the employer must show that it has been unduly prejudiced. Eileen Farina v. State Farm Mutual Insurance, 2014 Ill. Wrk. Comp. LEXIS 205, *9-10, 14 IWCC 210; See Gano Electric Contracting v. Industrial Comm'n (Moore), 260 Ill. App. 3d 92, 631 N.E.2d 724 (4th Dist. 1994).

The date of injury in a repetitive trauma claim is the date in which the injury manifests itself, meaning the date on which both the injury and its causal link to the employee's work became plainly apparent to a reasonable person. Durand v. Industrial Comm'n (RLI Insurance Co.), 224 Ill. 2d 53, 65, 862 N.E.2d 918, 924 (2006). Courts have typically set the manifestation date on either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities. Durand, 862 N.E.2d at 929. Here, the parties stipulate that the date of accident is June 8, 2021. See Ax 1.

The Arbitrator finds timely notice was given to Respondent. Petitioner testified credibly regarding her work activities and the use of her hands and wrists. Petitioner's medical records confirm her history of accident, her injuries, and the relation to her work. She further testified she gave doctor's notes to her supervisor, Celso, and told him of the issues she was having with her hands when she left work early on June 7, 2021. She testified she told him again on June 8, 2021.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the

sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "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. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

An employee who alleges an injury based on a repetitive trauma theory must still meet the same standard of proof as other claimants alleging an accidental injury. There must be a showing that the injury is work related and not the result of a normal degenerative aging process. Peoria County Belwood Nursing Home v. Industrial Com., 115 Ill. 2d 524, 530, 505 N.E.2d 1026, 1028 (1987). The claimant need only prove that some act or phase of employment was a causative factor of the resulting injury. Three "D" Discount Store v. Industrial Com., 198 Ill. App. 3d 43, 49, 556 N.E.2d 261, 265 (4th Dist. 1989). Although medical testimony as to causation is not necessarily required, where the question is one within the knowledge of experts only and not within the common knowledge of laypersons, expert testimony is necessary to show that claimant's work activities caused the condition complained of. Nunn v. Industrial Com., 157 Ill. App. 3d 470, 477-78, 510 N.E.2d 502, 506-07 (4th Dist. 1987)

The Arbitrator finds that Petitioner's condition of ill-being is causally related to her employment with Respondent. Dr. Hoepfner's opinions are based on his understanding of Petitioner's work duties, which did not match her credible testimony. Petitioner testified credibly regarding the degree to which she must use her hands and wrists and the degree of grasping that she must do throughout the day. Dr. Hoepfner opined that Petitioner's gender and weight were the cause of her condition. While Petitioner's gender and weight might be relevant factors, applicable case law states that her work duties need not be the sole cause of her condition, simply a causative factor. The Arbitrator relies on the opinions of Petitioner's doctor, Dr. Metzger, who documented in the records that her symptoms are work related.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Section 8(a) of the Act states a Respondent is responsible "…for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See Gallentine v. Industrial Comm'n, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

Dr. Metzger indicated "her symptoms are work related because her work requires a lot of lifting and use of her hands and wrists" Petitioner's treatment to be reasonable and necessary and finds

that Respondent has not paid for said treatment. As such, the Arbitrator orders Respondent to pay Petitioner directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act:

- Orthopedic Specialties (Dr. Metzger) - $1,043.61
- DPT (Physical Therapy) - $5,107.74

The parties stipulated that Respondent shall receive a credit for any bills already paid. See Ax 1.

Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

The Arbitrator relies on the opinions of Petitioner's treaters including Dr. Metzger, who recommended that Petitioner undergo a right open carpal tunnel release surgery once her left wrist heals. Petitioner is currently in physical therapy post her left open carpal tunnel release surgery in December 2021.

Respondent shall approve and pay for physical therapy for Petitioner's left wrist, right open carpal tunnel release surgery and necessary post-operative care as prescribed by Dr. Metzger as provided in Section 8(a) and 8.2 of the Act.

Issue L, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Westin Hotel v. Indus. Comm'n, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm'n, 138 Ill.2d 107, 118 (1990).

Relying on the opinions of Petitioner's medical treaters, the medical records and Petitioner's testimony, the Arbitrator finds Respondent liable for 41 2/7 weeks of TTD benefits (6.8.21 through 3.23.22) at a minimum weekly rate of $440.00 to be paid directly to Petitioner.

The parties stipulated that Respondent shall receive a credit for any short-term disability paid. See Ax 1.

Issue M, whether penalties or fees should be imposed upon Respondent, the Arbitrator finds as follows:

The Arbitrator declines to impose penalties based on the opinions of Respondent's Section 12 examiner.

It is so ordered:

Arbitrator Rachael Sinnen

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC007644
Case Name	Edward Green v. State of Illinois - Logan Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0439
Number of Pages of Decision	10
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Bradley Defreitas

DATE FILED: 11/21/2022

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MC LEAN)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Edward Green,

Petitioner,

vs. NO: 17 WC 7644

State of Illinois Logan Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 25, 2022, is hereby affirmed and adopted.

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

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

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

November 21, 2022
MP:yl
o 11/17/22
68

/s/ *Marc Parker*
Marc Parker

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC007644
Case Name	GREEN, EDWARD v. LOGAN CORRECTIONAL CENTER
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Bradley Defreitas

DATE FILED: 5/25/2022

THE INTEREST RATE FOR THE WEEK OF MAY 24, 2022 1.53%

/s/ Kurt Carlson, Arbitrator
Signature

CERTIFIED as a true and correctcopy pursuant to 820 ILCS 305/14

May 25, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **McLean**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Edward Green Case # **17** WC **007644**
Employee/Petitioner
v.
Logan Correctional Center
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Bloomington**, on **February 28, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☒ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **January 17, 2017**, 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 $**106,600**; the average weekly wage was $**2,050.00**.

On the date of accident, Petitioner was **57** years of age, ***single*** with **0** dependent children.

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

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

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

Respondent is entitled to a credit of $**any benefits paid** under Section 8(j) of the Act.

ORDER

BASED ON THE DECISION BELOW RESPONDENT SHALL PAY $977.65 PER WEEK TO PETITIONER UNDER HE REACHES 67 YEARS OF AGE (APRIL 19, 2026). THIS AWARD IS TO BEGIN FROM THE DATE OF TRIAL.

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.

Kurt A. Carlson

Kurt A. Carlson

MAY 25, 2022

Edward Green v Logan CC 17-WC-7644

Statement of Facts-

Petitioner was the only witness at trial and he testified in regards to his injury, his treatment, and his job search efforts. The issue in dispute at hearing were whether Petitioner is entitled to maintenance from September 1, 2021 through the date of trial (February 28, 2022) and the nature and extent of the injury. This case was previously tried before Arbitrator Rowe-Sullivan on a 19(b) petition for maintenance and vocational rehabilitation. The Arbitrator in that trial ordered that the back maintenance be paid and that Respondent approve a vocational rehabilitation plan for Petitioner which it did. Petitioner subsequently went back to school for an electrician tech but he dropped out mid-semester due to his continued pain.

Testimony of Ed Green

Petitioner testified that he was injured while working for Respondent on January 17, 2017 where he was employed as a stationary engineer at Logan Correctional Center. He subsequently underwent a four level disc replacement by Dr. Matthew Gornet. TX at 11. He was then given permanent restrictions which included no lifting greater than 25 pounds occasionally, alternate between sitting and standing, no repetitive bending, no repetitive lifting, and no overhead work. Id at 12-13.

Petitioner testified he started a job search on April 23, 2018 and that went all the way through June 30, 2021. Id at 14. Petitioner testified that he went to school for heating and cooling before also going to school to be a stationary engineer which included "two years of training which was comprised of electrical, boiler…[i]t was four courses to get the training but it was a two-year course in St. Louis." Id at 16. He further testified that he received a boiler operator class 1 license that is still active.

Petitioner testified as to his work history as well. He testified that he was the chief engineer at Gateway Regional Medical Center in Granite City before working at Logan and that he was there for 9 years. Id at 18. Before Gateway he was a maintenance supervisor at Cerro Copper in Sauget and an assembly line worker for General Motors in Wentzville before that. Id at 18-20. He also previously worked for Terminal Railroad as a track laborer and Ober Nester Glass as a stacker packer.

Petitioner described his issues while going to school at Southwestern Illinois College. He described that the constant looking from the keyboard to his professor caused pain in his neck. He did note that he was allowed to alternate sitting and standing as Dr. Gornet recommended. During the second course that Respondent sent Petitioner to he still had issues with the lab work.

Petitioner testified that he continued to look for jobs after June 30, 2021 but said that every time someone calls he has to go into his disability. However, he then testifies that

the last job he applied to "was in June. Let me see, well, it was—let me see, probably September/October; September or October." Id at 32.

On cross-examination Petitioner testified that Dr. Gornet did not stop him from continuing his electronic technology certificate program. He also agreed that the last job log he submitted was June 30, 2021. Id at 42. He further claimed that he continued applying for jobs in July and August but that he did not bring the job logs with him. After further questioning Petitioner agreed that he stopped with job logs in June of 2021.

The Arbitrator's Findings on Issues:

As an initial matter the Arbitrator notes Petitioner has the burden of proving all of his case by a preponderance of the evidence. Chicago Rotoprint v. Industrial Comm'n, 157 Ill.App.3d 996, 1000, 509 N.E.2d 1330, 1331(1st Dist. 1987).

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

Petitioner has claimed maintenance benefits for the time period of September 1, 2021 through February 28, 2022, the date of the hearing. Respondent terminated benefits as of August 31, 2021 because Petitioner stopped his job search as of June 30, 2021. Petitioner agreed during testimony that he did not submit any job logs after June 30 despite still being paid by Respondent.

The Act states, "[T]he employer shall also pay for treatment, instruction, and training necessary for the physical, mental and vocational rehabilitation of the employee, including all maintenance costs." 820 ILCS 305/8(a). The Commission Rules on vocational rehabilitation include the following, "[a]n empoyer's vocational rehabilitation counselor…shall prepare a written assessment of the course of medical care and…vocational rehabilitation required to the return the injured work to employment." 50 ILAC § 9110.10. An employee's self-initiated and self-directed job search…may constitute a "vocational-rehabilitative program" under section 8(a). *Roper Contracting v. Industrial Comm'n*, 349 Ill. App. 3d 500, 506 (2004).

Here, Respondent paid for the approved plan from England and Co. which included education at Southwestern Illinois College. Respondent continued to pay maintenance even when Petitioner dropped out of that course in April of 2021. Petitioner continued to turn in job logs to justify his maintenance. However, Petitioner stopped turning in job logs as of June 30, 2021. Respondent continued payment of maintenance benefits through August 31, 2021. If Petitioner had continued his self-guided job search logs then maintenance would be awarded. However, since Petitioner voluntarily stopped, without any direction from a doctor or otherwise, then maintenance is not appropriate.

Due to the foregoing, maintenance benefits are not awarded.

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

Petitioner indicated that he was seeking either an odd-lot permanent and totally disabled ruling or a wage differential ruling.

"A person is totally disabled when he cannot perform any services except those for which no reasonably stable labor market exists. Conversely, if an employee is qualified for and capable of obtaining gainful employment without seriously endangering health or life, such employee is not totally and permanently disabled." *Valley Mould & Iron Co. v. Industrial Com.*, 84 Ill.2d 538, 546 quoting *E.R. Moore Co. v. Industrial Com.*, 71 Ill.2d 353, 361-362. The Commission should consider the extent of claimant's injury, the nature of his employment, his age, experience, training and capabilities when arriving at a determination of an award for permanent and total disability. *E.R Moore Co. v. Industrial Com.*, 71 Ill.2d 353. "[C]laimant ordinarily satisfies his burden of proving he is not capable of obtaining gainful employment by showing either: (1)…diligent but unsuccessful attempts to find work; or (2) that based upon his age, experience, training and education, he is unable to perform any but the most unproductive tasks for which no stable labor market exists." *Alano v. Industrial Comm'n*, 282 Ill.App.3d 531, 534-535.

In the instant case Petitioner is precluded from returning to his previous position as a stationary engineer due to the permanent restrictions that his treating physician gave him. Petitioner did not complete either vocational rehabilitation program that Respondent paid for him to attend. In the second program he dropped out without advice of his doctor. England and Co. noted in their latest report that Petitioner could work in the light level of employment to potentially perform security or clerical work. This work is within Petitioner's restrictions and as such is a potential stable labor market for him to seek employment in. There are no expert opinions presented that show Petitioner is totally disabled.

Petitioner also did not satisfy the requirement to perform a diligent but unsuccessful attempt to find work. His vocational rehab plan was interrupted multiple times by Petitioner stopping due to his pain levels. The latest time was not due to doctor's orders or from new restrictions. Petitioner simply told the vocational rehab counselor that he was done with classes.

Based on the foregoing and the record in its entirety, the Arbitrator has determined that Petitioner has not proven that he is permanently disabled. Now, the analysis turns to Petitioner's claim for a wage different under Section 8(d)(1) of the Act.

For Petitioner to qualify for a wage differential award until Section 8(d)(1) he "must prove (1) partial incapacity which prevents him from pursuing his "usual and customary line of employment", and (2) an impairment of earnings. 820 ILCS 305/8(d)(1). "A claimant must prove his actual earnings for a substantial period before his accident…in the event he is unable to return to work, he must prove what he is able to earn in some suitable employment. *Smith v. Indutrial Comm'n*, 719 N.E.2d 329, 333.

Here, Petitioner satisfies both requirements for a wage differential award. First, Petitioner has shown by the medical records that he is prevented from returning to his usual and customary line of employment which was as a stationary engineer. His previous work experience was all related to that profession so that can be considered his usual and customary line of employment. Second, Petitioner has demonstrated an impairment of earning. His earnings with Respondent

were $106,000 per year which is approximately $51.25 per hour. The labor market survey from England and Co. finds that he can work in the light level of work and that he can be expected to make $14.59 per hour. This meets the requirement to show an impairment of earning as there is a difference of $36.66 per hour between Petitioner's wage with Respondent and his current capabilities.

Based on the record and the law, the Arbitrator awards Petitioner a wage differential under Section 8(d)(1) of the Act. Petitioner is not currently employed but England and Co. indicated that his average earnings would be $14.59/hour which is an average weekly wage of $583.60. Petitioner previously made $51.25 per hour with Respondent which is an average weekly wage of $2,050. The difference between the two is $1,466.40 and two-thirds of that is $977.65. Respondent shall pay $977.65 per week to Petitioner until he turns 67 years of age which is April 19, 2026.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC004829
Case Name	Melissa Aldridge v. Avenue Stores LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) and 8(a) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0440
Number of Pages of Decision	15
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Steven Seidman
Respondent Attorney	Nicholas Rubino

DATE FILED: 11/21/2022

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Melissa Aldridge,

Petitioner,

vs. No. 20 WC 004829

Avenue Stores, LLC,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT TO §19(B) AND §8(A)

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 24, 2022, is hereby affirmed and adopted.

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

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $500.00. 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.

November 21, 2022

MP/mcp
o-11/17/22
068

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC004829
Case Name	ALDRIDGE, MELISSA v. AVENUE STORES, LLC
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Steven Seidman
Respondent Attorney	Nicholas Rubino

DATE FILED: 5/24/2022

THE INTEREST RATE FOR THE WEEK OF MAY 24, 2022 1.53%

/s/ Rachael Sinnen, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Cook**)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(A)

Melissa Aldridge
Employee/Petitioner

v.

Avenue Stores, LLC
Employer/Respondent

Case # **20** WC **4829**

Consolidated cases: _____

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 **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **2.24.22**. 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 _____

FINDINGS

On the date of accident, **5.30.19**, 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 $**n/a**; the average weekly wage was $**670.50**.

On the date of accident, Petitioner was **45** 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 shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**7,700.68** for other benefits, for a total credit of $**7,700.68**.

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

ORDER

Respondent shall pay to Petitioner directly the outstanding medical services of $481.00, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent shall approve and pay for decompression of the ulnar nerve across the right elbow with anterior submuscular transposition and necessary post-operative care as prescribed by Dr. Kalainov as provided in Section 8(a) and 8.2 of the Act.

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

MAY 24, 2022

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Melissa Aldridge	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 20WC4829
Avenue Stores, LLC	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on 2.24.22 in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing under Section 8(a) of the Illinois Workers' Compensation Act "Act." Issues in dispute include causation, unpaid medical bills and prospective medical. (AX 1.)

Petitioner's prior medical history and job duties

Petitioner Melissa Aldridge was 45 years old on May 30, 2019. (AX1.) Petitioner had been working for Respondent since November 2006. (T 9.) She was working for Respondent as a store manager. (T 10.) It was a specialty clothing store for plus-sized women. (T 16.)

Petitioner's job duties included overseeing the store, taking care of the customers, cleaning, restocking, housing, and keeping the backroom organized. (T 15.) The backroom was a very small space with shelves that they used to store boxes of extra hangers. (T 16.) Each box of hangers was ordinarily the weight of a small child, which Petitioner estimated at 20 pounds. (T 17.)

Petitioner is right-hand dominant. (T 10.) Prior to May 30, 2019, she had had treatment to her right hand or arm only once: in 1996-97, she had bilateral wrist pain from repetitive motions caused by factory work. (T 10-11.) She wore braces for three months. (T 11.) Afterwards, Petitioner had no other medical treatment to her right arm or hand. (T 11.)

Petitioner's alleged work accident of May 30, 2019

On May 30, 2019, Petitioner was working in the backroom, stacking boxes of hangers onto the backroom shelves. (T 18.) One week prior, the store was flooded by rainwater, waterlogging the existing boxes and necessitating repacking the store's excess hangers into new boxes. (T 18.)

There were excess metal clothing racks ("fixtures") stored against the wall in the backroom; these protruded out beyond the edge of the shelves, making it difficult for Petitioner to access the shelves from the ground. (T 19-20.) In order to get a box of hangers up onto the shelf, Petitioner placed a ladder over the racks with the ladder's top flush against the lower shelves. (T 20.)

Petitioner picked up a box of hangers off the floor, intending to place the box atop the ladder and then slide it onto the empty spot on the adjacent shelf. (T 22.) There were some gray lockers to the right of where Petitioner had placed the ladder. (T 20, 22.) Petitioner lifted the box onto the top of the ladder, above the top of her own head, a little more than 5'5" above the floor. (T 39.) As she placed the box onto the top of the ladder, the box began to wiggle, and she lost control of it. (T 22.) Petitioner reflexively reached out to catch the box, twisting her forearm palm-up. (T 22-23.) The box ricocheted off the ladder and the lockers, striking the middle of Petitioner's right forearm, Petitioner's right shoulder, her right breast, and then finally her left arm in succession before falling to the floor. (T 23.)

Petitioner screamed; her right arm was throbbing. (T 24.) Petitioner's assistant appeared and asked if Petitioner was okay. (T 24.) Petitioner called her district manager to report the incident. (T 24.) Within 20 minutes, Petitioner's fingers had started tingling; she called her district manager again to report that she would be seeking medical treatment at the emergency room. (T 24.)

Petitioner's medical treatment

Later that same day, Petitioner went to the emergency department at Community First Medical Center. (PX2; T 24-25.) Petitioner complained of right arm pain and numbness after being struck with a box. (PX2 13.) During triage, Petitioner complained of pain all the way up to her right shoulder after a box of hangers fell on her at work. (PX2 14.) She also reported numbness in the middle finger of her right hand. (PX2 14.) Pain to touch rated 6/10. (PX2 14.)

On examination, Petitioner was tender to palpation in the right upper arm. (PX2 13.) X-rays of the forearm and humerus did not reveal any acute bone injury; the provider opined that they were consistent with a contusion to the ulnar nerve and to the arm more generally. (PX2 13, 15.) Petitioner was diagnosed with contusion of the right upper extremity; she was discharged with instructions to follow up with her doctor or at the emergency room if symptoms worsened. (PX2 13.) She was told that she had nothing broken, that she would be fine, and that she should take Tylenol. (T 25.)

Over the weeks that followed, Petitioner's right arm pain was increasing; she began to notice the fingers on her right hand going to sleep with no pressure on her arm at all. (T 26.) Her ring finger and pinky kept tingling and falling asleep on their own. (T 26-27.) In early June, Petitioner reached out to the person handling her workers' compensation claim to ask if she was allowed to see a doctor of her own. (T 27.)

Subsequently, Petitioner sought treatment at Northwestern Medicine. (PX5.) She complained of pain in her elbow, wrist, and shoulder, and was scheduled to see Dr. Guido Marra in July. (T 27.) As a specialist, it took a long time to get an appointment with him. (T 27-28.)

On July 9, 2019, Petitioner presented to Dr. Marra complaining of right shoulder and right elbow pain following an accident where a box fell onto her at work on May 30, 2019. (PX5 267.) Petitioner reported paresthesia going from her right elbow into her pinky and ring finger. (PX5 267.)

On physical examination, Dr. Marra observed tenderness to palpation around the biceps insertion just proximal to the olecranon, with a positive Tinel's sign over the cubital tunnel and a positive flexion compression test with paresthesia traveling down into her right pinky and ring finger. (PX5 267.) Dr. Marra diagnosed Petitioner with a right elbow radial collateral ligament sprain and a cubital tunnel condition. (PX5 267.) He wrote: "Appears that she may have a small tear in the radial collateral ligament." (PX5 268.) Dr. Marra prescribed a course of 6 weeks of physical therapy for Petitioner's right elbow symptoms as well as night splinting to address her cubital tunnel symptoms. (PX5 267, 69.)

On August 12, 2019, Petitioner had her initial evaluation for outpatient physical therapy. (PX5 236.) Petitioner complained of constant pain in her right elbow at 5/10, numbness and tingling from her elbow down to her right hand, and lesser amounts of pain in her right shoulder. (PX5 236.) Petitioner was assessed with functional limitations of not lifting/carrying, unable to vacuum, avoiding overhead reaching, and interrupted sleep due to waking up from the pain. (PX5 236.) Additionally, Petitioner had been placed on a 20-pound weight restriction for work. (PX5 236.) Petitioner was assessed as possessing signs and symptoms consistent with the referring diagnosis. (PX5 238.)

Petitioner continued to attend physical therapy. (PX5 189-229.)

On September 3, 2019, she followed up with Dr. Marra complaining of continued paresthesias from her right elbow into her pinky and ring finger. (PX5 175.) She reported that these symptoms had not improved with physical therapy. (PX5 175.) On physical examination, Petitioner had positive Tinel's phenomena over the course of her ulnar nerve, a positive elbow flexion test, and numbness in her pinky and ring finger. (PX5 175.) Dr. Marra assessed Petitioner with ulnar neuritis; he recommended that she under an EMG. (PX5 175.)

Petitioner finished her course of physical therapy. (PX5 130-58.)

On November 5, 2019, Petitioner underwent an EMG test. (PX5 105.) The study findings were abnormal, providing electrodiagnostic evidence of a right median mononeuropathy at or above the wrist consistent with mild to moderate carpal tunnel syndrome. (PX5 107.)

Three days later, Petitioner called for her EMG test results. (PX5 102.) She was given the option of a referral to a hand specialist. (PX5 102.) Petitioner testified that she didn't hear from anyone at the hospital for some time, and that she resumed treating with Dr. Marra after confirming that treatment would still be covered for her under Workers' Compensation. (T 29.) She testified that she was continuing to suffer from the same symptoms into January 2020. (T 29.)

On February 23, 2020, Petitioner was involved in an automobile accident. (T 12.) It was Sunday and unusually warm; Petitioner was walking to Starbucks when she reached North Avenue. (T

12.) As she was crossing the street, a car struck her. (T 13.) Petitioner's left arm was badly dislocated, her left wrist was crushed, and the tip of her right arm where it met the shoulder was broken. (T 13; PX5 29.)

On May 26, 2020, Petitioner returned to Dr. Marra reporting continued pain at 5/10 in the back of her right elbow with paresthesias down into her forearm, pinky, and ring finger. (PX5 59.) She continued to exhibit a positive Tinel's sign over the ulnar nerve. (PX5 59.) Petitioner was tender to palpation over the medial epicondyle and had positive pain with flexion. (PX5 59.)

Dr. Marra diagnosed Petitioner with cubital tunnel syndrome without acute nerve compression. (PX5 59.) Dr. Marra administered a corticosteroid injection and recommended a nocturnal extension splint, with follow-up in 6 weeks. (PX5 59.)

On July 9, 2020, Petitioner returned to Dr. Marra with continued right elbow pain, worse with activity, as well as paresthesias into her ring finger and pinky. (PX5 42.) Petitioner reported that the steroid injection from their prior visit had only provided three hours of relief. (PX5 42.) Petitioner again was positive for Tinel's sign upon examination. (PX5 42.) Dr. Marra opined that Petitioner had failed non-operative treatment; he referred her to Dr. David Kalainov for operative management. (PX5 42.)

On July 15, 2020, Petitioner presented to Dr. Kalainov. (PX5 29.) She reported continued right elbow pain and numbness into her pinky and ring finger. (PX5 29.) Petitioner related her history of injury: she was at work on May 30, 2019 when a box of hangers weighing approximately 20 pounds fell onto her arm as it was twisted. (PX5 29.) Dr. Kalainov reviewed Petitioner's history of treatment. (PX5 29.)

On physical examination, Dr. Kalainov elicited right elbow pain with palpation over the cubital tunnel and inferior margin of the lateral epicondyle. (PX5 31.) A Tinel's sign was elicited with percussion over Petitioner's right elbow cubital tunnel; no such sign was elicited with identical testing on the left arm. (PX5 32.) A Durkan median nerve compression test was positive over the right wrist. (PX5 32.)

Dr. Kalainov diagnosed Petitioner with ulnar neuropathy of the right elbow, median neuropathy of the right wrist, and medial epicondylitis of the right elbow. (PX5 32.) Dr. Kalainov stated that "symptoms of ulnar neuropathy at the elbow could occasionally develop in the absence of a confirmatory electrodiagnostic study." (PX5 32.) Given the chronic nature of Petitioner's hand symptoms and the electrodiagnostic study findings, Dr. Kalainov recommended that Petitioner pursue surgery. (PX5 32.)

On June 4, 2010, Petitioner underwent a Section 12 examination with Dr. Craig Philips. (RX1.) Petitioner reported that she is right-handed. (RX1.) Petitioner complained of pain in her right elbow, worse with carrying and worse at night, as well as occasional numbness and tingling shooting from her elbow down to her hand. (RX1.)

Petitioner related her history of injury: she was stacking boxes at work when the box slipped and struck her right forearm. (RX1.) Petitioner stated that she felt her arm twist with the impact and

that the box fell to the floor. (RX1.) Petitioner noticed immediate pain in her right forearm and numbness in her right hand. (RX1.) Petitioner stated that her right shoulder was doing okay; there was no pain at rest, and pain at 3/10 with movement. (RX1.)

On examination, Petitioner was positive for Tinel's signs in her right arm, positive for mild tenderness over her volar right wrist, and tender over the medial right elbow as well as the posterior aspect of the elbow around the triceps insertion. (RX1.) Examination of her neck produced no Spurling's signs. (RX1.)

Dr. Philips opined that Petitioner had sprained her right elbow; he stated that he did not understand how a contusion to the forearm could cause traumatic cubital tunnel syndrome. (RX1.) He opined that Petitioner's history was consistent with the medical records he reviewed. (RX1.) He felt that Petitioner might be magnifying her symptoms but opined that Petitioner's need for treatment in her right elbow and right hand was nonetheless causally related to her work accident. (RX1.) He opined that Petitioner's motor vehicle accident of February 2020 did not appear to have affected her right elbow or wrist. (RX1.) He recommended a right elbow MRI. (RX1.) He opined that Petitioner was not at MMI but that she could work without restrictions. (RX1.) He opined that a cubital tunnel release surgery would be an appropriate treatment if Petitioner chose not to live with her symptoms. (RX1.)

Petitioner followed up with Dr. Kalainov on June 30, 2021. (PX7 87.) Petitioner complained of no change in her right hand or right elbow symptoms since her previous visit. (PX7 87.) She reported that elbow splinting had proven more bothersome than beneficial (PX7 87.) On physical examination, Dr. Kalainov's findings were unchanged from the prior visit. (PX7 87-88.) Dr. Kalainov reiterated his previous diagnoses and again recommended surgery: decompression of the ulnar nerve across the right elbow with anterior submuscular transposition. (PX7 88.) Dr. Kalainov opined that Dr. Phillips's recommendation of a right elbow MRI was reasonable to consider. (PX7 88.) Dr. Kalainov ordered a right elbow MRI scan to evaluate Petitioner's medial-sided elbow pain for tendon abnormalities and ulnar neuropathy. (PX7 88; PX6.)

Petitioner underwent the scan on July 10, 2021. (PX6.) The MRI revealed biceps insertional tendinosis, edema surrounding the anterior band of the ulnar collateral ligament proximally, and both edema and hyper signal of the ulnar nerve within the cubital tunnel. (PX6.) The radiologist, Dr. Ali Serhal, opined that these results were suggestive of ulnar neuropathy, mild triceps insertional tendinosis without a high-grade tear, and a low-grade sprain of the ulnar collateral ligament anterior band. (PX6.)

On July 14, 2021, Petitioner returned to Dr. Kalainov once more. (PX7 61.) Petitioner's symptoms and physical examination remained unchanged. (PX7 61-62.) Dr. Kalainov reviewed the MRI. (PX7 62.) He again diagnosed Petitioner with ulnar neuropathy of the right elbow, medial epicondylitis of the right elbow, and median neuropathy of the right wrist. (PX7 62.)
On September 9, 2021, Dr. Philips authored an addendum to his Section 12 report. (RX2.) He opined that Petitioner did not have medial epicondylitis and that a contusion to the dorsal mid-forearm did not cause cubital tunnel syndrome. (RX2.) He opined that Petitioner's treatment to date had been appropriate. (RX2.) He opined that Petitioner would benefit from an ulnar nerve transposition surgery, but that it would not be causally related to the work accident. (RX2.) He

opined that Petitioner was at MMI and that she had no residual injuries from the work accident. (RX2.) He opined that Petitioner could return to work as long as she avoided pressure over the posterior medial aspect of her elbow or repetitive flexion/extension of the elbow beyond 90 degrees. (RX2.)

Testimony of Dr. Kalainov

On November 16, 2021, Dr. Kalainov testified at an evidence deposition. (PX7.) Dr. Kalainov is an orthopaedic surgeon with a subspeciality in hand surgery. (PX7 3.) He went to medical school at Johns Hopkins. (PX7 2.) Dr. Kalainov is board certified and has been so since 1999. (PX7 3.) Dr. Kalainov treats patients with upper extremity issues. (PX7 3.)

Dr. Kalainov testified that his diagnoses of Petitioner had remained unchanged. (PX7 5.) He testified that the most pertinent finding on Petitioner's MRI of July 10, 2021 was edema and hyper signal of the ulnar nerve and the cubital tunnel suggestive of ulnar neuropathy, and then a low-grade sprain of the ulnar collateral ligament anterior band. (PX7 4.)

Dr. Kalainov testified to a reasonable degree of medical and orthopedic certainty that Petitioner's accident of May 30, 2019 was a cause or contributing factor to Petitioner's elbow conditions, meaning both her ulnar neuropathy and medial epicondylitis. (PX7 5.) Dr. Kalainov testified that he reached this opinion based upon the fact that Petitioner's right elbow symptoms only first developed immediately following the work accident and based upon the fact that her right arm was twisted during that accident. (PX7 5-6.) Dr. Kalainov testified that the MRI showed a sprain of the ligament on the inside of Petitioner's elbow; he testified that the impact from the box could have twisted Petitioner's elbow outward and thereby compressed or stretched the ulnar nerve, producing her cubital tunnel symptoms. (PX7 6.)

Dr. Kalainov's records incorporated electronic records from her primary care physician showing that she had previously received treatment for neck pain and arthritis in her hands. (PX7 7.) However, Dr. Kalainov testified that arthritis and swelling in Petitioner's hands bilaterally in 2016 would not affect his opinions. (PX7 9.) Dr. Kalainov also testified that he actually performed physical exams on Petitioner's neck during his treatment of Petitioner and that he did not find any issues at the neck level. (PX7 7.) Dr. Kalainov testified that he is compulsive about checking patient records, and that he didn't find anything in the system indicating a radicular component to Petitioner's prior neck pain, either. (PX7 7-8.) Dr. Kalainov testified that his opinion would not be changed by Petitioner having a gap in treatment between October 2019 and February 2020; Petitioner endorsed new symptoms in her right arm following her work accident, so even if she suffered worsened symptoms following the car accident, the car accident would merely represent an exacerbation of her work-accident-related symptoms. (PX7 9.) Dr. Kalainov testified that Petitioner's obesity could be a causative factor for her carpal tunnel syndrome, but that excessive weight is not a known causative factor for cubital tunnel syndrome. (PX7 10.) Dr. Kalainov testified that it didn't matter precisely where on her right arm the box struck her, as an impact on her hand, her forearm, or even her upper arm could lead to twisting of the right arm. (PX7 10.) He testified that the twisting was more important for his causal opinion than the impact itself. (PX7 10.)

Asked about the EMG negative for cubital tunnel neuropathy, Dr. Kalainov explained that carpal tunnel and cubital tunnel syndrome can each develop in up to 15 percent of people in the absence of a positive nerve study. (PX7 10.) He testified: "You do not have to have a positive nerve study to have cubital tunnel syndrome or carpal tunnel syndrome." (PX7 10.) The fact that the study was negative does not impact Dr. Kalainov's opinion. (PX7 10-11.)

Testimony of Dr. Philips

On January 5, 2022, Dr. Philips testified at an evidence deposition. (RX3.) Dr. Philips had no independent recollection of Petitioner at his deposition; he testified from his report and addendum, possessing no other notes. (RX3 3-4.) He testified that a contusion to the dorsal forearm at the top of the forearm should not cause pain in the back of the elbow. (RX3 6, 9.) Dr. Philips testified that the ulnar nerve is shielded on the inside of the elbow; thus, "to get a traumatically-induced cubital tunnel syndrome, one needs to bump the nerve or stretch the nerve." (RX3 11.) Dr. Philips testified that Petitioner does need surgery for her ulnar nerve because of damage to her ulnar nerve. (RX3 14.) Dr. Philips testified that Petitioner had no symptoms and no history of cubital tunnel syndrome before her work accident; he opined that Petitioner most likely "developed cubital tunnel syndrome based upon idiopathic traumatic causes so, in other words, the canal is too tight for her, and she developed symptoms." (RX3 14.) Dr. Philips testified that idiopathic cubital tunnel syndrome was nonexistent prior to Petitioner's accident and temporally appeared after the accident. (RX3 14.)

Petitioner's current condition

Petitioner is not currently working; she has not worked since August 30, 2019, when Respondent went out of business. (T 8-9.)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "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. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

In this case, Petitioner did not suffer from cubital tunnel or right medial epicondylitis prior to her accident. Prior to May 30, 2019, Petitioner had not had treatment to her right hand or arm since 1997. (T 11.) Both Dr. Kalainov, Petitioner's treating physician, and Dr. Philips testified that her right upper extremity symptoms only arose with her work accident.

Further, Dr. Kalainov testified that Petitioner's accident of May 30, 2019 was a cause or contributing factor to Petitioner's elbow conditions (both her ulnar neuropathy and medial epicondylitis). (PX7 5.) Dr. Kalainov testified that he reached this opinion based upon the fact that Petitioner's right elbow symptoms only first developed immediately following the work accident and based upon the fact that her right arm was twisted during that accident. (PX7 5-6.) Dr. Kalainov testified that the MRI showed a sprain of the ligament on the inside of Petitioner's elbow; he testified that the impact from the box could have twisted Petitioner's elbow outward and thereby compressed or stretched the ulnar nerve, producing her cubital tunnel symptoms. (PX7 6.)

Dr. Philips opined that a contusion on the top of the forearm could not produce cubital tunnel syndrome. The Arbitrator finds the opinions of Dr. Kalainov to be more credible than those of Dr. Philips. Dr. Kalainov credibly testified that forceful twisting of Petitioner's arm from the impact of a falling 20-pound box could compress or stretch the ulnar nerve. Dr. Philips even testified that traumatically induced cubital tunnel syndrome could result from a stretched nerve. (RX3 11.)

The Arbitrator finds that Petitioner's current condition of ill-being (right cubital tunnel syndrome and medial epicondylitis) is causally related to her work accident of May 30, 2019.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Section 8(a) of the Act states a Respondent is responsible … "for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See Gallentine v. Industrial Comm'n, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

Having found Petitioner's condition of ill being causally related to her work accident, the Arbitrator further finds that Petitioner's treatment was reasonable and necessary. Dr. Philips, Respondent's own expert, opined that Petitioner's treatment had been appropriate. (RX1.)

Petitioner has submitted exhibits showing remaining outstanding bills of $481.00 and the Arbitrator finds that Respondent has not paid for said treatment.

As such, the Arbitrator orders Respondent to pay Petitioner directly for outstanding medical services of $481.00, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

Having found Petitioner's condition of ill-being causally related to her work accident, the Arbitrator further finds that Petitioner is entitled to prospective medical care.

Dr. Kalainov recommended decompression of the ulnar nerve across the right elbow with anterior submuscular transposition. (PX7 88.) Respondent's own expert, Dr. Phillips, also opined that Petitioner would benefit from an ulnar nerve transposition surgery. (RX2.)

Respondent shall approve and pay for decompression of the ulnar nerve across the right elbow with anterior submuscular transposition and necessary post-operative care as prescribed by Dr. Kalainov as provided in Section 8(a) and 8.2 of the Act.

It is so ordered:

Arbitrator Rachael Sinnen

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC004789
Case Name	Daniel Dotlich v. Village of Hoffman Estates
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0441
Number of Pages of Decision	28
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Rich Hannigan
Respondent Attorney	Paul Schumacher

DATE FILED: 11/21/2022

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Daniel Dotlich,

Petitioner,

vs. NO: 15 WC 4789

Village of Hoffman Estates,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 29, 2022, is hereby affirmed and adopted.

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

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

Under Section 19(f)(2), no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. 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.

November 21, 2022

MP:yl
o 11/17/22
68

/s/ *Marc Parker*
Marc Parker

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC004789
Case Name	DOTLICH, DANIEL v. VILLAGE OF HOFFMAN ESTATES
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	25
Decision Issued By	David Kane, Arbitrator

Petitioner Attorney	Rich Hannigan
Respondent Attorney	Paul Schumacher

DATE FILED: 3/29/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 29, 2022 1.05%

/s/ David Kane, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **COOK**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Daniel Dotlich
Employee/Petitioner

v.

Village of Hoffman Estates
Employer/Respondent

Case # **15** WC **04789**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **David Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **February 24, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **February 24, 2022**, 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 $**95,316.00**; the average weekly wage was $**1,833.00**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **2** dependent children.

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

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

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

Respondent is entitled to a credit of $**127,611.42** under Section 8(j) of the Act.

ORDER

Petitioner sustained permanent partial disability to the extent of 22.5% loss of use of man as a whole pursuant to §8(d)(2) of the Act for the operated right hip and 12.5% loss of use of man as a whole pursuant to §8(d)(2) of the Act for the lumbar spine injuries.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, per Petitioner's Exhibit 11 as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit of $127,611.42 for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent is liable for the TTD period of April 23, 2019 through December 5, 2019, or 32 and 3/7 weeks.

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

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

David A. Kane

Signature of Arbitrator

MARCH 29, 2022

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATOR DECISION

Daniel Dotlich Case #: 15 WC 04789
Employee/Petitioner

v.

Village of Hoffman Estates
Employer/Respondent

Arbitrator's Findings of Facts and Conclusion of Law

I. Findings of Facts

Petitioner testified that he had been employed by the Village of Hoffman Estates for 15 years as a firefighter and EMT when on December 8, 2014 he was injured at work. He testified that his job duties include moving hoses, performing CPR, climbing ladders, fighting fires, washing the trucks and rigs, (TX 10-11). He testified that on December 8, 2014, he was behind a firetruck trying to deploy a hose from the hose bed when the driver accelerated forward, abruptly pulling him forward. He felt pain in his low back initially. He finished the fire fight, then after returning to the station. He presented to Alexian Brothers emergency room who diagnosed a lumbar strain and gave him Flexeril and Norco and returned to work on modified duty. (PX1, p 2). He returned to Alexian Brothers medical group on December 16, 2014 and reported that he was feeling somewhat better but the return to modified work duties aggravated his pain. Lumbar x-ray was normal. He was prescribed tramadol and discontinued Norco, and returned to work on modified basis and an MRI was ordered. (PX1, p 3). On December 23, 2014, Petitioner reported having pain when he stands for

a long time, when he gets up from bed, and reports spasms at night. (PX2, p 9). He can return to work with a 50-pound lifting restriction and no repetitive bending. (PX3, p 13). MRI of the lumbar spine showed mild loss of water content in the lumbar spine, disc bulges and facet hypertrophy for canal and foraminal stenosis especially at L3-L4. The findings are eccentric to the left and patient's symptoms are along the right side. (PX3, p47-48).

Petitioner then followed up at Lake Cook Orthopedics with Dr. Perlmutter on January 5, 2015. He reports working as a fire fighter and injuring his back when he was unrolling a hose from the truck when the driver began to drive and he was jerked. He had no prior injury to his low back. Assessment is lipoma of the skin and subcutaneous tissue and a lumbar sprain/strain. He is prescribed medication for the lipoma and a steroid injection. If the pain returns after the injection, they will consider excision. (PX3, pp 39-41). He followed up with Dr. Perlmutter on January 19, 2015 and notes that the injection helped a lot but he is getting uncomfortable again. The lipoma was aggravated by the injury. Petitioner is given work restrictions of 50 pounds lifting and no kneeling, bending, twisting, climbing and he should not stand for long periods of time. Physical therapy is ordered. (PX3, pp33-34). He sought physical therapy at Cary Physical Therapy that same day. On February 10, 2015 he reported increasing pain and he was not responding well to manual or exercise based treatment at physical therapy. (PX4, pp15-17). Eventually, on February 19, 2015, Dr. Perlmutter recommended excision of the lipoma, which was performed on March 17, 2015. (PX3, pp 29-30).

At the request of Respondent, Petitioner saw Dr. Coe for an examination under Section 12 of the Act on March 25, 2015. Dr. Coe takes a history from the Petitioner who reports he attempted to hold a portion of a hose when the truck moved forward and jerked him. He completed the fire response and returned to the station and reported his symptoms and was referred for treatment. He reviewed medical records and noted patient complains of pain at the right lumbar lipoma incision site. Dr. Coe concludes the sprain/strain injury aggravated the pre-existing asymptomatic lipoma causing localized persistent right-sided low back pain and spasm of the underlying muscles. Conservative treatment has resulted in limited improvement. He had surgery for excision of the lipoma and his recovery continues. Dr. Coe anticipates full recovery 4 to 6 weeks followed by full duty without restriction. He finds causal connection between the surgery and the injury of December 8, 2014. It is based upon an aggravation of a pre-existing condition. His current complaints and examination are related to the lipoma excision surgery.

On March 30, 2015, Petitioner followed up with Dr. Perlmutter who noted he was doing well following the excision but was still sore and that was aggravated by bouncing around in the truck and bending and twisting. (PX3, p 24). On April 15, 2015, Dr. Permutter saw Petitioner again and noted the excision improved his pain quite a bit. He did have some activity related discomfort across the low back. Petitioner noted he would very much like to return to work. (PX3, p 21). On June 10, 2015, Petitioner followed up again with Dr. Perlmutter. He noted that Petitioner is back working full-time, and some training exercises were very uncomfortable for him, and he is not yet back to 100 percent. He did not go to physical

therapy because he did not have the time. Dr. Perlmutter told Petitioner to continue his exercises and as long as he is not having horrible leg pain, weakness he should continue to give himself more time and he can continue to work without restrictions. (PX3, p 19). On March 9, 2016, Petitioner returned to see Dr. Perlmutter complaining of deep-seated pain that is worse with activity. He has a positive thigh thrust and his FABER was positive on the right side. Pelvis x-rays showed some irregularity on the right side in the sacroiliac joint. Dr. Perlmutter thought he might be having some sacroiliitis and a right SI joint injection was recommended for therapeutic and diagnostic purposes. (PX3, pp 17-18). On March 23, 2016, Petitioner complained of right sided buttock pain in the area of his posterior superior iliac spine. Initially Dr. Perlmutter thought this was due to a painful lipoma in the area. However, his pain has persisted despite excision of that lipoma. He will perform a therapeutic and diagnostic SI joint injection today. (PX3, pp 12-13). Dr. Perlmutter also ordered another round of physical therapy. (PX3, p 8). The plan for physical therapy included hip flexor strengthening, sacral mobilizations as well as core strengthening. (PX4, p 25).

On June 27, 2016, at the request of Respondent, Petitioner saw Dr. Mash for an examination pursuant to Section 12 of the Act. Dr. Mash noted a history of injury of December 8, 2014. He reviewed Dr. Perlmutter's records and the MRI. He noted Petitioner continues to complain of pain on the right side of the low back. He's been diagnosed with SI joint difficulty. A prior SI joint injection several months ago provided temporary improvement when injected with lidocaine with cortisone did not provide long-lasting improvement. Several sessions of physical therapy appeared to provide

some improvement but was discontinued at the direction of the insurance company. Weber examination was positive. He then reviews the medical records and Dr. Coe's evaluation. He indicates that the patient's prognosis is guarded. An SI joint injection would be appropriate and should be done fluoroscopally. In hindsight this appears to be most likely an SI joint injury. He can continue working as a firefighter. He would also be a candidate for 3 to 4 weeks of physical therapy.

On August 24, 2016, Dr. Perlmutter ordered another SI joint injection and indicated that surgery will be necessary to get to MMI. (PX 3, p 6-7). Petitioner undergoes an SI joint injection on September 19, 2016. (PX3, p 4). Dr. Perlmutter then ordered an MRI for petitioner's sacroiliitis. (PX3, p 2). The MRI showed mild multilevel facet degenerative changes. (PX5, p 2-3).

Dr. Mash again examined Petitioner on March 15, 2017. He notes Petitioner had a good response to the September 19, 2016, SI joint injection but a poor response over time. He finds treatment to be necessary and related. He notes that Petitioner continues to work as a firefighter although in pain. Because he can work Dr. Mash does not believe he is a candidate for sacroiliac arthrodesis. "Frankly, in a patient who is able to continue working in a very heavy physical demand occupation as a firefighter, I do not believe that arthrodesis is indicated. If he reduced his physical demand level his symptoms would either minimize or disappear eliminating the need for SI arthrodesis." Dr. Mash does not recommend further treatment and he can either live with the problem and continue working as a firefighter or change occupation and reduce the physical demand level. A functional capacity evaluation would be appropriate if he

decides not to be a firefighter. He should be considered at maximum medical improvement.

At the request of his attorney, Petitioner saw Dr. Benjamin Domb on January 22, 2018. (PX 6). In his report, Dr. Domb notes history of injury of December 8, 2014 when the patient was attempting to deploy a two and a half inch hose from the hose bed of the fire truck when the truck accelerated pulling him approximately 20 to 30 feet. He reviews Lake Cook Orthopedic records, Dr. Coe's records, and Dr. Mash's section 12 reports. Petitioner told him that after accident he had the immediate onset of right low back and SI joint pain. He finished putting the fire out and returned to the firehouse and later presented to Alexian Brothers medical group emergency room department where he was diagnosed with lumbar strain/sprain. On date of examination patient states the pain is localized to the area of the SI joint with radiation to the most anterior portion of the groin. He has had lumbar spinal evaluations and two separate SI joint injections both of which temporarily improved his symptoms. Dr. Domb opined that patient likely has two separate conditions. One is sacroiliac dysfunction due to possible right intra-articular hip pathology likely labral pathology. He was asymptomatic regarding the hip and spine and SI joint prior to the injury therefore the injury is causally related to the right SI, low back and posterior hip pain. Dr. Domb recommends MRI arthrogram to rule out labral pathology versus other intra-articular hip pathology. He also recommends an intra-articular right hip diagnostic injection. For restrictions he should do activities and work duties as tolerated. (PX6, pp 1-7).

Petitioner testified that the gap in treatment between April 16, 2018 and February 4, 2019 was due to the fact that depositions were being taken and

the issue of who would pay for Dr. Domb's treatment was at issue. (TX p 23).

On February 4, 2019, Dr. Domb took over Petitioner's treatment. He took a history from Petitioner that he sustained a work injury on December 8, 2014 while working as a firefighter deploying a fire hose and a fire truck moved abruptly pulling and dragging him forward. He recites history of treatment. He has yet to have a workup of his hip. In January 2018, his doctor's office opined that patient's symptoms were likely related to both SI joint dysfunction and possible hip pathology. Petitioner continues to struggle with low back pain and SI joint and C distribution hip pain. In the hip he reports associated painful snapping both anteriorly and posteriorly. Assessment is right hip pain following work related injury in 2014. Given the temporal onset of symptoms and mechanism of injury it is reasonably medically certain that the patient's current condition is related to the injury described. Possible labral pathology versus avascular necrosis versus other derangement. He has SI joint dysfunction. He will continue with conservative measures which include rest, ice or heat and nonsteroidals. He should have physical therapy for right hip. He will follow-up next week for SI joint injection. Dr. Domb prescribes an MRI. (PX6, pp 9-12). Petitioner began another course of physical therapy at Cary PT. Petitioner followed up again on February 13, 2019 and Dr. Domb administers a cortisone injection into the right hip. A physical exam 30 minutes post injection showed improvement of pre-injection hip pain and improved groin pain. Dr. Domb then prescribed an MR arthrogram. (PX6, pp 13-16). The arthrogram showed tear of the interior glenoid labrum and subchondral cyst formation anterior lateral aspect of acetabulum. There is cam type

femoroacetabular impingement at the anterior aspect of the femoral head neck junction. There is superficial greater trochanteric bursitis. There is small non-ossifying in fibroma junction of the femoral neck and greater trochanter not clinically significant. (PX6, p 17-18). On February 28, 2019, Petitioner followed up again with Dr. Domb. Dr. Domb noted that Petitioner had a diagnostic injection two weeks ago with temporary improvement in symptoms. His groin pain went from sharp, stabbing pain to a dull ache. He notes continued significant pain in groin and posterior hip with activity. Assessment is right hip pain following a work-related injury in 2014. He has right hip labral tear in the setting of incidental FAI. Since he's failed to improve, and had exhausted conservative measures, he is a good candidate for right hip arthroscopy with labral repair versus reconstruction, femoroplasty and possible acetabuloplasty, capsular release versus pliication and microfracture. (PX6, pp 19-21). Following a preoperative physical on April 9, 2014, Petitioner undergoes an arthroscopic labral reconstruction using allographs, iliopsoas bursectomy, acetabuloplasty, subspine decrompression, femoroplasty, capsurlorrhaphy, loose body removal, fluoroscopic supervision. (PX6, pp 27-30). When Petitioner followed up on May 7, 2019, he had a noticeable improvement in pain and will remain off work and use a brace and crutch for six weeks. Physical therapy and work conditioning is indicated as well. (PX6, p 31-34). Use of a stationary bike two hours pr day for eight weeks was also recommended. (PX6, p 35).

In mid-July, 2019, while in physical therapy, Petitioner was having leg pain and numbness and his physical therapist referred him to Illinois Spine Institute for evaluation. (PX4, p 118).

On July 17, 2019, Petitioner is seen by Dr. Brindise at Illinois Spine Institute for evaluation of left leg pain and numbness. He is referred by therapist. He notes pain and back began in December 2014 while at work as firefighter. He is being seen for suspected possible right sacroiliac dysfunction. More recently he had right hip labral tearing and underwent right hip arthroscopy 3 to 4 months ago. Approximately one week ago after he completed a session of therapy directed towards the right hip when he noted pain which he localized on the left side of the low back as well as radiating down the left leg which he notes to the anterior thigh and proximal aspect of the interior shin. Dr. Brindise reviewed MRIs of the lumbar spine. Assessment is radiculopathy lumbar region and low back pain and Dr. Brindise prescribes a Medrol dose pack. Dr. Brindise also prescribes MRI of lumbar spine. (PX7, pp 92-94). MRI of the lumbar spine shows degenerative disc disease and moderate left and mild right neural foraminal stenosis L3 – 4 secondary to disc bulging and facet hypertrophy. There is mild to moderate bilateral neural foraminal stenosis L4 – five. Findings have slightly progressed compared to prior exam. (PX7, pp 55-56). Petitioner followed up with Dr. Brindise again on July 22, 2019. Petitioner reported that the Medrol dose pack helped him considerably. He no longer requires the use of crutches and is ambulating with a cane. He continues to localize the pain to the left side of the low back as well as radiating down left leg to the anterior thigh and proximal aspect of the anterior shin. He has mild numbness about the anterior aspect of the knee and proximal shin. Today his pain is 1– 2 out of 10. Assessment is radiculopathy lumbar region and low back pain. He is recovering from right hip surgery. Approximately a week ago after therapy he noticed pain in his back radiating down left leg. He was started on Medrol dose pack. He is had repeat MRI which shows

left far lateral L3 – 4 disc herniation impinging the exiting left L3 nerve root which seems to have progressed somewhat since 2017. His symptoms could be related to the L3 radiculopathy. He will continue physical therapy 2 to 3 times a week for four weeks. If pain persists, they will consider epidural steroid injection. (PX7, pp 25-27).

While he was treating with Dr. Brindise for his lumbar spine, he continued to follow up with Dr. Domb after his hip surgery. On September 6, 2019, Dr. Domb noted increased right sided low back pain that increases with activity. The groin pain was improving. Dr. Domb ordered more physical therapy and kept Petitioner off work. (PX6, pp 36-38). On October 3, 2019, Dr. Domb noted continued improvement with Petitioner's hip as well as continued right sided back pain. Physical therapy is continued. (PX 6, pp 39-41). On October 24, 2019, Petitioner reported to Dr. Domb that his hip is doing well but he continues to have low back pain. Dr. Domb recommended more physical therapy and restrictions of: Intermittent restrictions: sendentary and moderate as tolerated at physical therapy and 0-10 pounds, full restriction to heavy 50-100 pounds. Intermittent restrictions from standing and sitting. Full restriction of stooping, kneeling, repeated bending, climbing a ladder. Intermittent restriction on operating an automobile. Full restriction medium and heavy-duty vehicle. (PX6, pp 42-44). On December 5, 2019, Dr. Domb again sees Petitioner for his right hip. Petitioner reports that his hip is doing well, and he only has intermittent groin pain. His strength has significantly increased with physical therapy. Dr. Domb recommended another 4 weeks of physical therapy and activities as tolerated. (PX6, 45-47).

Petitioner saw Dr. Brandise again on September 9, 2019. The doctor notes a history of on and off leg pain since December 2014 after work injury. Dr. Brandise notes anterior thigh numbness it could be related to an L3 radiculopathy. Overall leg pain has resolved. He is improving slowly. He will continue with physical therapy. If pain returns, they will consider epidural steroid injections targeting left L3 – 4 transforaminal region. He will follow-up in 2 to 3 months. (PX7 85-87). On November 5, 2019, Dr. Brandise sees Petitioner for reevaluation. He is continuing physical therapy. He reports that left leg pain and numbness has nearly completely resolved at least 95%. Primary complaint continues to be right-sided low back pain which he describes as muscular/myofascial in nature and near the previous surgical site for his lipoma removal. Pain is similar from even prior to surgery and has been there since his work-related injury. Dr. Brandise reviews prior MRIs of the lumbar spine. Assessment is radiculopathy in the lumbar region and low back pain. This has been on and off since December 2014 after a work-related injury. Currently he is complaining of persistent myofascial spinal pain. With pressure, this point tenderness will radiate pain laterally towards the right iliac crest. He will continue with physical therapy. He will be evaluated for trigger point injection. (PX7, pp 82-84). On November 11, 2019, Petitioner undergoes trigger point injections into the right lumbar paraspinal area. (PX7, pp 80-81).

On December 6, 2019, Petitioner's Captain, Brian Raymond, cleared him to work full duty.

On December 31, 2019, Petitioner undergoes a diagnostic right superior cluneal nerve block. (PX7, p 77). Petitioner then returned to Illinois Spine Institute on August 27, 2020 and sees Dr. Graf. Petitioner reports that he

had right hip surgery in the form of labral repair from work injury. He reports that 2 and a half weeks ago he was holding a patio umbrella in the left arm and then was laterally flexing to pick up the umbrella base and his pain increased. It is in the low back to the left hip and left groin to the anterior knee with numbness and paresthesia in the left anterior shin. Pain is 5/10. It is increased with sitting. He has positive straight leg raise on the left. Assessment is low back pain with radiculopathy. Dr. Graf prescribes MRI of the lumbar spine. (PX7, p 74-75). The September 1, 2020, MRI showed L3 – 4 partial disk dehydration, broad-based bulge and protrusion which extends laterally on the left into the left foramen. Encroachment on the left nerve root and effacement of the left epidural fat within the left foramen. (PX7, pp 96-97). Petitioner again followed up with Illinois Spine Institute and Petitioner's symptoms overall were unchanged. Dr. Graf reviews the MRI of the lumbar spine which shows disc degeneration at L3 – 4. There is a left lateral disc herniation with foraminal stenosis in compression of the exiting L3 route. Assessment is low back pain with radiculopathy. He should continue with therapy though he states he can perform this as a home exercise program. They discuss epidural steroid injection. Dr. prescribes the injection. (PX7, p 3-4).

On March 31, 2021, Petitioner saw Dr. Domb for left knee pain following a snowboarding trip. Dr. Domb refers him to his colleague, Dr. Lall for continued knee treatment. (PX 6, p 48).

Petitioner testified that sitting in a chair for too long causes his back to feel uncomfortable. He notices that sitting in a car for an extended period of time also causes issue with his back. Getting in and out of his truck or his wife's car, doing counter work, washing dishes, cause him some issues as

well. (TX 34). Getting out of bed and putting his shoes and socks on also causes discomfort. His back still stiffens up at night sometimes and his sleep is disrupted from time to time depending on the weather. (TX 34). As a part of his job, he teaches classes. When he has to move equipment or teach CPR to his students, he notices some aggravation in his lower right back. (TX 34-35). Loading hoses, up to 110 pounds he can do, but he monitors himself and is careful in how he lifts. He is finished treating for both his hip and his low back. (TX 38). He exercises and watches his weight now. (TX 38). He has been performing his normal job duties, including station chores to washing and waxing a building, firefighting, performing EMS services, public outings for community outreach, for the last few years. (TX 47). He testified that when he was treating, he went through many different treatment modalities and the diagnoses kept changing, but even though the diagnoses were changing, his symptoms were consistent throughout that treatment. (TX 50).

Deposition of Dr. Perlmutter

The parties took the deposition of Dr. Perlmutter on August 18, 2017. Dr. Perlmutter testified that he is board certified in orthopedic surgery and a subspecialty of problems involving the spine. (PX9, p 5-6). Dr. Perlmutter testified consistently with his treating records. And that there were no prior back complaints to the December 8, 2014, injury. (PX9, p 9). Dr. Perlmutter disagreed with Dr. Mash that Petitioner was at maximum medical improvement in March 2016. (PX9, p 20). Dr. Perlmutter also disagreed with the utilization review of April 16 which said Petitioner did not need more than 10 physical therapy visits. Dr. Perlmutter testified that physical therapy is a patient-by-patient decision and 10 physical therapy visits do

not fix everyone. He further testified that within a reasonable degree of medical and surgical certainty, the physical therapy he prescribed is reasonable, necessary, and causally related to the December 8, 2014 accident. (PX9, p 21). Dr. Perlmutter testified that he is trained to look for signs of malingering and did not see any signs of malingering in Petitioner. (PX9, p 24). Dr. Perlmutter testified that Petitioner did not undergo one course of physical therapy because his wife had severe complications after the birth of their child, and he was the sole caretaker of the newborn and other child while his wife recovered. (PX9, pp 29-30). He testified that his initial diagnosis, a differential diagnosis was a lumbar sprain, then he focused on the lipoma, then diagnosed sacroiliitis. That the sprain and sacroiliitis can mimic each other. (PX9, p 30). He further testified that even though Petitioner is working full duty, he is still in pain and therefore not at MMI. (TX9, p 31).

Deposition of Dr. Mash

The parties took the deposition of Dr. Mash on July 26, 2021. Dr. Mash testified that he is board certified in orthopedic surgery and keeps his board certification and Illinois license to practice medicine in retirement. (RX 4 p 7). Dr. Mash testified consistently with his reports. He testified that his physical exam was normal except some increased discomfort in the SI joint during flexion abduction and internal rotation tests as well as a positive FABER test. He had some tenderness over the SI joint. (RX4 p 13). Dr. Mash testified that when he asked Petitioner whether he was able to continue working a s a fire fighter given his symptoms, Petitioner told him he wished to continue working as a fire fighter and he was able to do so given his symptoms, so Dr. Mash agreed that he could continue working.

(RX4 pp 17-18). He testified that the SI joint symptoms were causally related to the accident. He recommended a diagnostic injection, and some physical therapy would be appropriate. (RX4 p 18). Dr. Mash testified that he did not think SI joint surgery was appropriate because if patients adjust their lifestyle, they will find that their symptomology will be dramatically reduced. With this individual who is a fire fighter working at full duty, very physical occupation, and he thought that before Petitioner considered any surgical intervention, he should reduce the demand on his low back and SI joint. He suggested that continuing to work as a fire fighter would not be appropriate if the symptoms were so bad that he couldn't tolerate it. He felt that since Petitioner felt he could continue working, his symptoms must not be enough to immediately consider operating on him. (RX4 pp 24-25). Dr. Mash continued to testify that with first responders, police officers, etc. want to go back to work before they should. So he believed Petitioner in terms of his symptoms and thought he was able to work. He thought that if Petitioner was going to continue to work as a fire fighter, he as at MMI. Dr. Mash again saw Petitioner after his examination with Dr. Domb. He disagreed with Dr. Domb's opinion that Petitioner likely had intra-articular pathology, likely labral, and recommended a diagnostic injection. Dr. Mash still thought that the Petitioner had SI joint dysfunction. (RX4 p 29). Dr. Mash testified that an MR Arthrogram is a more objective test than a FABER test but all are a part of the puzzle when diagnosing a patient. (RX4 pp 35-36).

Deposition of Dr. Domb

At his deposition, Dr. Domb testified that he is double board certified in orthopedic and sports medicine. He is fellowship trained in hip injuries and

his medical practice is focused on hip treatment. He testified that in addition to reviewing the medical records, he reviewed the actual films. Dr. Domb testified consistently with his records and initial report. He also testified that he believed the need for his right hip arthroscopy was related to the December 8, 2014, accident. (PX8, p 13). Dr. Domb also testified that the intraoperative findings of a torn labrum, damaged cartilage on the acetabulum and sub spine impingement, a partial tear of the ligamentum teres, inflammation of the iliopsoas bursa, a loose body, laxity of the capsule, and CAM morphology were all consistent with Petitioner's symptoms since December 8, 2014. (PX8, p 14). Dr. Domb explained that initially Petitioner had symptoms of sacroiliitis, and his surgery could have allowed the sacroiliitis to calm down. (PX8, p 17). He also testified that the diagnosis of a possible labral tear was not speculative as the MRI of February 22, 2019, showed a labral tear and was objective evidence of the same. (*Id.*). He opined that within a reasonable degree of medical and surgical certainty, that Petitioner's treatment of his hip was related to the December 8, 2014, accident. (PX8, pp 18-19). Dr. Domb went on to testify that injuries to the hip can occur without trauma. (PX8, p 21). He also noted that there were no specific complaints of hip pain in Dr. Perlmutter's records. (PX8, p 21-22). He further testified that, within a reasonable degree of medical and surgical certainty that Petitioner's torn labrum was a result of the trauma on December 8, 2014. (PX8, p 24). Petitioner was snowboarding which can be stressful to any joint in the lower extremities depending on degree and difficulty of the slopes and Petitioner was well enough after the surgery to go snowboarding and work full duty at the fire house. (PX8, 25-26). Dr. Domb testified that an SI joint sacroiliitis is very commonly misdiagnosed when there is a labral tear because there is a

significant overlap in the symptoms that can be caused by an SI joint injury and a labral injury in the hip. (PX8, p 27). Dr. Domb also testified that Petitioner had symptoms coming from the hip prior to seeing him and the symptoms were initially thought to be coming from the SI joint but after the MRI and diagnostic injection, the pain had in fact been coming from the hip joint all along. (PX8, p 28).

II. Conclusions of Law

Is the Petitioner's present condition of ill-being causally related to the accident?

A prerequisite to the right to recover benefits under the Act is some causal relationship between the claimant's employment and the injury suffered. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill.App.3d 463, 470, 949 N.E.2d 1158, 1165 (2011). Compensation may be awarded under the Act even if the conditions of employment do not constitute the sole or principal cause of the claimant's injury. A Petitioner need only prove that some act or phase of his employment was a causative factor in the ensuing injury. *Vogel v. Industrial Comm'n*, 354 Ill.App.3d 780, 821 N.E.2d 807, (2005). A work-related injury need not be the sole or principal causative factor so long as it was "A" causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n* 207 Ill. 2d 193, 205, 797 N.E. 2d 665. (2003).

In Illinois, employers take their employees as they find them. *Land and Lakes v. Industrial Comm'n*, 359 Ill. App. 3d 582, 834 N.E. 2d 583 (2 Dist. 2005). Although a preexisting condition may make a worker more vulnerable to injury, compensability cannot be denied where a Petitioner can show that

a work-related injury accelerated the preexisting disease such that the current condition of ill being is causally related to the work injury and not merely the result of a normal degenerative process of the preexisting condition. *Sisbro,* 207 Ill.2d at 205. "[A] preexisting condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment." *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill.2d 30, 36, 440 N.E.2d 861, 864 (1982). Further, "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 causal nexus between the accident and the employment." *International Harvester v. Industrial Comm'n,* 93 Ill. 2d 59, 442 N.E. 2d 908 (1982).

Here, there is no indication whatsoever that Petitioner had any prior treatment, complaints, or injuries to his low back, SI joint, or hip. He was able to perform his job duties as a fire fighter without issue. Further, while Petitioner did not have any specific treatment to his hip prior to seeing Dr. Domb, the evidence is clear that Petitioner's pain complaints did not resolve at any point after his initial injury. When Dr. Perlmutter noted the lipoma, in the general area where Petitioner was complaining of pain, he excised it, when complaints of pain continued, he suspected SI joint issues. When treatment to the SI joint did not resolve Petitioner's complaints, further work up of the hip revealed labral pathology. When the labral tear was repaired by Dr. Domb, Petitioner's pain complaints subsided to a point that they had not subsided since the accident. Petitioner testified that although the diagnosis went from lipoma to lumbar strain/sprain, to sacroiliitis, to labral tear, his complaints of pain did not change. Dr. Mash testified that there was

no objective indication of a labral tear, however Dr. Domb noted it on the films. Dr. Mash also relied upon Petitioner's lack of groin complaints when ruling out any hip or labral issues. However, Petitioner did have complaints of groin pain throughout the treating records. Dr. Mash also relied upon a negative FABER test, to support his diagnosis of SI joint disfunction, yet testified that an MR Arthrogram is a more objective way to diagnose hip pathology. Dr. Mash did not recommend, nor review the Arthrogram. He did not defer his opinion in his last report until reviewing the arthrogram. Based upon the record as a whole, the Arbitrator finds the opinions of Dr. Domb more credible than those of Dr. Mash and finds that Petitioner's condition of a labral tear is causally related to the December 8, 2014, injury. There is no dispute as to whether the treatment for the lipoma was reasonable, necessary and causally related to the accident.

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?

Based upon the foregoing, Petitioner's current condition of ill being is related to the December 8, 2014 injury and the opinions of Dr. Domb are more credible than those of Dr. Mash and the medical treatment Petitioner has received to date are reasonable and necessary. Petitioner offered into evidence PX 10, which included medical bills showing outstanding balances for Alexian Brothers, Lake Cook Orthopedic, Illinois Bone & Joint, Centegra, Hinsdale Orthopedics, American Hip Institute, Cary PT, and Central States Imagine. Petitioner also testified that he purchased a stationary bike for $250.00 which is less than the cost of renting one. Dr. Domb recommended the use of a stationary bike in his hip recovery. Given

the foregoing, the Arbitrator finds that Respondent has not paid all appropriate charges for all reasonable and necessary medical treatment. Respondent shall pay to Petitioner all medical charges as outlined in Petitioner Exhibit 10 pursuant to Section 8(a) of the Act and pursuant to the Illinois Fee Schedule. The parties stipulated that Respondent is entitled to a credit of $127,611.42 in medical payments made through the group carrier pursuant to Section 8(j) of the Act.

Is Petitioner entitled to TTD benefits?

As Petitioner is employed as a firefighter, he was paid his salary while off work recovering from the disputed hip surgery from April 23, 2019 through December 5, 2019, or 32 and 3/7 weeks. The parties agree that Petitioner is not owed any money for that time, but what is at issue is whether Respondent is responsible for TTD for that time period. Petitioner has established that he was temporarily totally disabled for 32 and 3/7 weeks, from April 23, 2019, through December 5, 2019 and that period of temporary disability was causally related to his December 8, 2014 injury. The Arbitrator awards TTD benefits for 32 3/7 weeks, from April 23, 2019 through December 5, 2019.

What is the nature and extent of the injury?

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a fire fighter at the time of the accident and that he is able to return to work

in his prior capacity as a result of said injury. The Arbitrator notes that Petitioner's job includes heavy lifting and Petitioner is able to do his job duties. However, he has made changes to how he performs some of his job duties as a result of the injury. He monitors how he lifts hoses; he feels pain and aggravation in his lower back when performing and teaching CPR, moving equipment and other activities. Because of the modification of the way Petitioner performs his job duties and the ongoing complaints he has when performing some of those duties, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 45 years old at the time of the accident. Because of the heavy nature of his job and the years he has left in the job, the Arbitrator therefore gives lesser weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes there was no impact on Petitioner's future earning capacity. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner had a good recovery from his hip surgery but at his 7 month post operative visit he still had some intermittent groin pain. He also complained of ongoing pain in his June 21, 2021, physical therapy note. Because of his ongoing complaints, but no permanent restrictions the Arbitrator lesser weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of

22.5% loss of use of man as a whole for his surgically repaired hip pursuant to §8(d)(2) of the Act and 12.5% loss of use of the man as a whole for his herniated lumbar disc pursuant to §8(d)(2) of the Act for a total of 35% loss of use of the man as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC035065
Case Name	Ralph Przybylski v. US Foods Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0442
Number of Pages of Decision	13
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Joseph J. Leonard
Respondent Attorney	Steven Miller

DATE FILED: 11/22/2022

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Ralph Przybylski,

Petitioner,

vs. NO: 18 WC 35065

US Foods, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the sole issue of the nature and extent of Petitioner's 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.

With regard to the nature and extent of Petitioner's injury the Commission notes that the Arbitrator properly considered and weighted each of the five factors required by §8.1b(b) of the Act. However, the Commission finds the Petitioner sustained permanent partial disability to the extent of 40% loss of use of the right leg and modifies the Arbitrator's award accordingly.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 24, 2022, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner $813.87 per week for a period of 45.15 weeks, for the net loss of use of the right leg of 21%, as provided in §8(e) of the Act, because the injury sustained caused a 40% loss of use of a

right leg less a credit of 19% loss of use of the right leg Petitioner received in case number 18 WC 035065.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $36,800.00. 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.

November 22, 2022

MP:dak
o 11/17/22
68

/s/ *Marc Parker*
Marc Parker

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC035065
Case Name	PRZYBYLSKI, RALPH v. U.S. FOODS, INC.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Joseph J. Leonard
Respondent Attorney	Steven Miller

DATE FILED: 5/24/2022

THE INTEREST RATE FOR THE WEEK OF MAY 24, 2022 1.53%

/s/Frank Soto, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **COOK**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Ralph Przybylski
Employee/Petitioner

v.

U.S. Foods, Inc.,
Employer/Respondent

Case # **18**WC **035065**

Consolidated cases: **N/A**

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 **FRANK SOTO**, Arbitrator of the Commission, in the city of **WHEATON**, on **APRIL 13, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **NOVEMBER 12, 2018**, 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 **$92,559.48**; the average weekly wage was **$1,779.99**

On the date of accident, Petitioner was **44** years of age, **MARRIED** with **2** dependent children.

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

Respondent **HAS NOT** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$115,106.02** for TTD and **$900.63** in TPD, $**0** for maintenance, and

Respondent is entitled to a credit of **0** under Section 8(j) of the Act.

ORDER

Respondent shall pay only the medical expenses identified in PX 3 subject to Sections 8.2 and 8(a) of the Act and the Illinois Medical Fee Schedule. Respondent shall also receive a credit for all medical expenses Respondent previously paid but Respondent shall hold Petitioner harmless for any amounts which Respondent claims a credit.

Respondent shall pay Petitioner the sum of $813.87/week for a period of 32.25 weeks for the net loss of use of a right leg of 15%, as provided in Section 8(e) of the Act, because the injury sustained caused a 34% loss of use of a right leg less a credit of 19% loss of use of a right leg Petitioner received in case 18WC035065.

Respondent shall pay Petitioner compensation that has accrued from November 12, 2018 through April 13, 2022 and shall pay the remainder of the award, if any, in weekly payments.

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.

By: /o/ Frank J. Soto **MAY 24, 2022**
Arbitrator

PROCEDURAL HISTORY

This case proceeded to trial on April 13,2022. The issues in dispute are whether Respondent liable for unpaid medical bills as well as the nature and extent of Petitioner's injury. (Arb. Ex. #1).

FINDINGS OF FACT

Ralph Przybylski (hereinafter referred to as "Petitioner") works as a delivery driver for US Foods, Inc. (hereinafter referred to as "Respondent"). Petitioner testified on November 12, 2018, his right knee gave out while attempting to pull a jammed pallet at a customer drop off location during a delivery. (T. 12).

Petitioner began medical treatment with Concentra from November 12, 2018, through November 14, 2018. (T. 13). He received x-rays and a brace while treated at Concentra. (T. 13). On November 15, 2018, Petitioner came under the care of Dr. Freedberg, an orthopedic surgeon at Suburban Orthopedic, who examined his right leg and ordered a right knee MRI. (T. 14).

On November 26, 2018, Petitioner underwent a right knee MRI at Suburban Orthopedics which showed mild degenerative signal alteration of the medial meniscus without surface tear, nondisplaced oblong osteochondral defect with minimal cystic changes, and subchondral marrow edema involving the anterior margin of lateral femoral condyle. (PX. 1, Pg. 9). Following the MRI, on November 29, 2018, Dr. Freedberg recommended Petitioner have surgery. (T 15-16).

On January 9, petitioner was sent to Dr. Verma at Midwest Orthopaedics for a Section 12 examination. (T. 16.). Dr. Verma diagnosed the Petitioner with a likely patellofemoral subluxation with focal traumatic chondral defect of the lateral trochlea. He indicated that Petitioner had a fair to good prognosis and no prior or pre-existing injury. (PX. 2).

Dr. Verma recommended a course of conservative care and treatment that included a trial of an intra-articular cortisone injections with oral anti-inflammatories. Dr. Verma also recommended an additional 4 weeks of physical therapy. Dr. Verma further indicated if Petitioner continues to have significant swelling and/or mechanical catching despite the injection and physical therapy, then a diagnostic arthroscopy with debridement of the

chondral lesion would be indicated. (PX. 2). Petitioner then began formal treatment with Dr. Verma. (T. 16).

Petitioner saw Dr. Verma again on February 15, 2019, for a cortisone injection. On March 29, 2019, after lack of response to conservative care, Dr. Verma recommended a diagnostic arthroscopy. Petitioner underwent the diagnostic arthroscopy on April 11, 2019, at Rush SurgiCenter. The post-operative diagnoses were right knee trochlear chondral defect and right knee medial femoral condyle chondral defect. (PX. 2).

Thereafter, Petitioner remained off work and continued under the care of Dr. Verma, undergoing physical therapy and water-based therapy through May of 2019. (T. 17) (PX. 2). Petitioner received an injection in his right knee on July 1, 2019, at which point Dr. Verma wrote petitioner could return work with no kneeling, squatting, or climbing restrictions, intermittent walking, standing up to 2 hours per day, and a 10-pound lifting limit. (*Id*. PX.2.).

On August 9, 2019, Dr. Verma recommended petitioner obtain an updated MRI of the right knee. (T. 17). On August 16, 2019, Petitioner obtained the recommended MRI. (T.18). Following the MRI, Dr. Verma recommended ongoing treatment which included a series of three Synvisc injections. Petitioner testified that he received his injections between December 6, 2019, and December 20, 2019.

Petitioner saw Dr. Verma at his office on January 10, 2020, at which point he recommended a repeat MRI. (T. 19). The MRI was completed on January 17, 2020, and then reviewed by Dr. Verma the same day. The MRI revealed persistence of the trochlear lesion with medial femoral chondral lesion and mild edema. (PX. 2, Pg. 53). Petitioner testified that Dr. Verma told him he could either live with the pain or have a second surgery. Petitioner opted for a second surgery which occurred on March 17, 2020. The postoperative diagnoses were right knee pain and right knee medial femoral condyle, trochlear chondral defect. (T. 19) (PX. 2, Pg. 55).

Following Petitioner's most recent surgery, Petitioner testified he was in physical therapy from March 27, 2020, through May 1, 2020. (T. 20). Petitioner testified he saw Dr. Verma again on July 24, 2020, where he ordered Petitioner more physical therapy, Meloxicam, and prescribed petitioner a medial unloader brace. (T. 20).

On September 4, 2020, Dr. Verma transitioned Petitioner from physical therapy to work conditioning three times a week for four weeks, after which Dr. Verma anticipated

Petitioner returning to full duty work. Dr. Verma indicated Petitioner will require the use of his off-loader brace. (PX. 2, Pg. 71). Petitioner testified that his work conditioning was conducted at Team Rehabilitation. (T. 21). On an October 2020 visit to Dr. Verma, he recommended to Petitioner to continue wearing his brace during work activities. (T. 21).

Petitioner saw Dr. Verma last on January 8, 2021, which was nine months and 22 days status post right knee open osteochondral allograft transplantation for chondral defects of the medial femoral condyle and the trochlea. On this visit, Dr. Verma noted Petitioner report occasional swelling within the right knee, however, it has not limited Petitioner's return to full duty. Dr. Verma reported Petitioner was at maximal medical improvement and may return to full duty work without any restrictions. He provided Petitioner a note stating that he could drive without using his medical unloader brace. (PX. 2, Pg. 77).

At trial, Petitioner testified that he had been back to work for over a year and was performing the essential functions of a delivery driver. (T. 22). Specifically, after reviewing his job activity from the date of accident (PX. 7), he testified he is now able to perform the same activities that he performed at the time of the accident while wearing his off-loader brace, just not at the same pace. (T. 23). Petitioner testified after the end of the workday he continues to experience pain which he rates as 3 out of 10 but, by Fridays, his pain level is 5 out of 10. (T. 23). Petitioner testified he takes Advil and uses ice to alleviate his pain. (T. 23).

Petitioner testified at trial that as of April 12, 2022, there is a bill from Midwest Orthopaedics Rush totaling $10,368 which he understood remained unpaid. (T. 27). (PX. 3). He testified that he has not received any other bills from Dr. Verma or any other provider besides this one. Petitioner confirmed on cross-examination that his transfer of care from Dr. Freedberg to Dr. Verma along with all subsequent treatment recommended by Dr. Verma were authorized. (T. 33-34). Petitioner testified that, as of the date of the trial, he does not have any future appointments scheduled with Dr. Verma. (T. 37).

Petitioner testified that all his lost time benefits and temporary total disability benefits while he was off work following December 1, 2018, has been paid (T. 27). Additionally, Petitioner indicated that all the benefits he was owed while working modified duty have also been paid.

The petitioner confirmed in his testimony he suffered an injury on January 11, 2016, when he took a "spill on the ice." (T. 28). He reports he received a settlement following the medical treatment in that case. He testified receiving 19% loss of use of the right leg in an approved settlement by the Industrial Commission. (T. 28). On cross-examination, Petitioner confirmed that the Commission approved a settlement contract in 2016 that was for 19% percent loss of use of the same right leg that is at issue in the current matter. (T. 37).

On cross-examination, petitioner testified that he did not return to Concentra to receive treatment for his right knee after transferring to Suburban Orthopaedics. (T. 32). At Suburban Orthopaedics, petitioner testifies only having two visits and an MRI. He reports he has not returned to see Dr. Freedberg since November 2018. (T. 32). He testified he does not have any subsequent appointments scheduled with Dr. Freedberg or Concentra as it relates to his right knee. (T. 33).

The Arbitrator found Petitioner's testimony to be credible.

CONCLUSION OF LAW

The Arbitrator adopts the finding of fact in support of the Conclusions of Law as Set forth below.

In support of Arbitrator's Decision regarding to issue (J), whether Respondent is liable for unpaid medical bills, the Arbitrator finds as follows:

Under Section 8(a) of the Act, claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising our or and in the scope of employment and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury. *Absolute Cleaning/SVMBC v. Illinois Workers' Compensation Comm'n,* 409 Ill.App.3d 463, 470 (4th Dist. 2011).

The parties stipulated at trial that there exists an ongoing dispute involving the Midwest Orthopaedics at Rush outstanding charges totaling $10,368.00. Respondent's position is that the outstanding charges pertain to "included procedures" and, therefore, are not subject to reimbursement. Petitioner, to the contrary, points to an appeal filed by Midwest Orthopaedics at Rush to justify the charges.

The parties stipulated during trial that to the extent the outstanding charges are allowed under the fee schedule, it shall be awarded pursuant to the Fee Schedule. The parties further stipulated that resolution of said dispute between the provider and Respondent may exceed the

30 days in which the award may become final, and the Petitioner stipulated that he will not file a petition for penalties for nonpayment of the award for medical bills in such an event. (T. 7-9).

Petitioner submitted bills from provider Midwest Orthopaedics at Rush with a P.O. Box located in Belfast, Maine indicating a remaining unpaid balance of $10,368.00. (PX. 3). Respondent doesn't dispute that the medical services provided to Petitioner were causally related to Petitioner's work injury and necessary to diagnose, relieve, or cure him from the effects of his injury. The extent of Respondent's liability for medical expenses is limited by the Illinois Fee Schedule and Sections 8.2 and 8(a) of the Act. Since the medical provider filed an appeal, which is currently pending, it is unclear from the evidence presented whether the outstanding amounts constitute unpaid medical services or balance billing. Based upon the parties' stipulation, the Arbitrator finds that Respondent shall pay only the medical expenses identified in PX 3 subject to Sections 8.2 and 8(a) of the Act and the Illinois Medical Fee Schedule. Respondent shall also receive a credit for all medical expenses Respondent previously paid and shall hold Petitioner harmless for any amounts which Respondent claims a credit.

In support of the Arbitrator's Decision relating to issue (L), the Nature and Extent of the Injury? The Arbitrator finds as follows:

Section 8.lb of the Illinois Workers' Compensation Act ("Act") addresses the factors that must be considered in determining the extent of permanent partial disability for accidents occurring on or after September 1, 2011. 820 ILCS 305/8.1b (LEXIS 2011). Specifically, Section 8.1b states:

> For accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:
>
> (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.
>
> (b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:
>
> (i) the reported level of impairment pursuant to subsection (a);

(ii) the occupation of the injured employee;

(iii) the age of the employee at the time of the injury;

(iv) the employee's future earning capacity; and

(v) evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order. *Id.*

Considering these factors in light of the evidence submitted at trial, the Arbitrator addresses the factors delineated in the Act for determining permanent partial disability.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report was submitted into evidence and, as such, the Arbitrator gives no weight to this factor in determining permanent partial disability.

With regard to subsection (ii) of §8.lb(b), the occupation of the employee, Petitioner is employed as a delivery driver which is a physically demanding occupation. As such, the Arbitrator gives significant weight to this factor in determining permanent partial disability.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 44 years old at the time of the accident and still has a significant portion of his work life remaining to endure from the effects of the injury. As such, the Arbitrator gives significant weight to this factor in determining permanent partial disability.

With regarding to subsection (iv) Petitioner's future earning capacity. Petitioner returned to his occupation and presented no evidence showing an impact upon his future earing earning capacity. As such, the Arbitrator gives no weight to this factor in determining permanent partial disability.

With regard to subsection (v) evidence of disability corroborated by the treating medical records. Petitioner was released to return to work full duty. Petitioner testified he is capable performing his essential functions of his occupation. Petitioner testified he is required to wear a brace and he is unable to perform his job duties as quickly as he could before his injury. Petitioner continues to experience daily pain which he takes over-the-counter pain medication. As such, the Arbitrator gives significant weigh to this factor in determining permanent partial disability.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 34% loss of use of the right leg pursuant to Section 8(e) of the Act. Respondent is granted a credit for the PPD award of 19% loss of use of the right leg for the injury Petitioner previously received in case 18WC035065. As such, Respondent shall pay Petitioner 32.25/weeks, at the statutory maximum rate of $813.87, for the permanent partial disability of 15% loss of use of the right leg.

By: /o/ Frank J. Soto — May 23, 2022
Arbitrator — Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC020075
Case Name	James D Stanley v. Fresh Express Incorporated
Consolidated Cases	
Proceeding Type	Remand from Circuit Court of Cook County
Decision Type	Commission Decision
Commission Decision Number	22IWCC0443
Number of Pages of Decision	6
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Andrew Kriegel
Respondent Attorney	James Toomey

DATE FILED: 11/22/2022

/s/ Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAMES D. STANLEY,

Petitioner,

vs. NO: 14 WC 020075

FRESH EXPRESS, INC.,

Respondent.

DECISION AND OPINION ON CIRCUIT COURT REMAND

This matter comes before the Illinois Workers' Compensation Commission (Commission) pursuant to the Opinion and Order issued by the Circuit Court of Cook County on May 29, 2020, in case number 19 L 050492. The Circuit Court, after being fully briefed and apprised of the facts, law and premises, reversed the Decision and Opinion of the Commission regarding the permanent partial disability (PPD) award and remanded the matter to the Commission with instructions to consider Dr. Cherf's impairment rating to determine Petitioner's level of PPD to comply with section 8.1b(a) of the Act and further, if PPD is awarded, to determine whether Respondent is entitled to a credit for the prior award of 10% loss of use of the leg as received in 15 IWCC 0400. Consistent with the Opinion and Order of the Circuit Court, the Commission, with consideration of Dr. Cherf's PPD impairment rating, finds that Petitioner is entitled to a PPD award of 15% loss of use of the left leg pursuant to section 8(e), and that Respondent is entitled a credit for the prior award of 10% loss of use of the left leg as received in 15 IWCC 0400.

Pursuant to the Circuit Court remand, the Commission's Decision and Opinion on Review in case number 19IWCC0395 posed only two issues for the Commission to address on remand and as such the Commission's prior Decision and Opinion on Review will be modified solely to address those two issues as instructed by the Circuit Court as follows:

Section 8.1b

With respect to Dr. Cherf's impairment rating report, the Commission notes that Dr. Cherf's impairment rating report *per se* was not admitted into evidence. The Arbitrator sustained Petitioner's hearsay objections to the Respondent's deposition exhibits two through four. (RX1, 11, 34, 38, 42) However, the Commission finds pursuant to section 8.1b(a), Dr. Cherf's evidence deposition testimony confirmed that in conjunction with a section 12 evaluation on October 15, 2014, he provided an impairment rating. (RX1, 33) Dr. Cherf testified that he performed an impairment rating according to AMA Guide 6th Edition. He generated a second report just for the impairment rating consistent with AMA Guide 6th Edition. (RX1, 38) Dr. Cherf created a table and testified that the majority of impairment ratings are based on a diagnosis-based impairment. As an evaluator, he produced a diagnosis-based impairment by picking the diagnosis that best matches the injury. In this case he went to the knee chapter, then to the Knee Regional Grid and looked for a diagnosis and then decided what classes and grades as defined by the AMA Guide 6th Edition book. Dr. Cherf testified that there is a systematic way of doing this, by showing what class and grade was used, the table used and the page it is on. If you are combining numbers, this explains how you do the math. (RX1, 3940)

Dr. Cherf testified the diagnosis that best fit Petitioner's work-related left knee injury on May 17, 2014, is a muscle tendon sprain from the muscle tendon section of the Knee Regional Grid. Dr. Cherf noted this a class -0- criteria based on the Knee Regional Grid. He testified that he looked next at objective abnormal findings or tendon injury at MMI, and that gave him his plan. He then proceeds to grade modifiers if applicable. Dr. Cherf determined that Petitioner had a class of zero and that there is no grade modification. Dr. Cherf explained that by going down the chart, you come up with a Lower Extremity Impairment and a Whole Person Impairment. This resulted in lower extremity impairment (LEI) rating of 0% and whole person impairment (WPI) rating of 0%. (RX1, 40-42)

Therefore, the Commission reassesses the criteria for determining Petitioner's PPD award pursuant to Section 8.1b of the Act. According to Section 8.1b(b) of the Act, for injuries that occur after September 1, 2011, in determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) The reported level of impairment pursuant to AMA guidelines;
(ii) The occupation of the injured employee;
(iii)The age of the employee at the time of the injury;
(iv) The employee's future earning capacity; and
(v) Evidence of disability corroborated by the treating medical records.

In considering the degree to which Petitioner is permanently partially disabled as a result of the work-related accident, the Commission weighed the five factors in Section 8.1b(b) of the Act as follows:

i) Respondent secured a permanent partial disability impairment report authored by Dr. Cherf. Dr. Cherf testified regarding the method and

conclusions of his impairment rating assessment of Petitioner's left knee injury. Dr. Cherf concluded that Petitioner had a 0% lower extremity impairment rating and a 0% whole person impairment rating. The Commission assigns some weight to this factor;

ii) Petitioner is a forklift operator, just as he was at the time of his accident; Petitioner testified that being a forklift operator is a physically-demanding job and also that he moves cases weighing between two and thirty pounds by hand throughout his workday; the Commission assigns some weight to this factor;

iii) Petitioner was 50 years old at the time of his injury; Petitioner's age means that he will likely continue to experience the as-testified-to stiffness and tenderness for a prolonged period of time; the Commission assigns some weight to this factor;

iv) No evidence was provided concerning Petitioner's future earning capacity; in the absence of such a report, the Commission assigns no weight to this factor; and

v) There is no evidence of disability corroborated by the treating medical records save for an unspecified complaint of left-sided pain made by Petitioner on September 22, 2014. Petitioner's rehabilitation discharge note, dated August 29, 2014, indicated he had no complaints of discomfort or impairment and assessed him as having full range of motion and full strength in his left knee. Petitioner's final examination note, dated September 22, 2014, indicated he complained of pain of unknown quality to the left-side of his knee, but the physical exam elicited no complaints of pain or tenderness and resulted in him being declared at maximum medical improvement and being allowed to return to work without restrictions. The Commission assigns significant weight to this factor.

Based upon the above criteria, the Commission finds that Petitioner sustained 15% loss of use of the left leg under section 8(e) of the Act.

Section 8(e) Credit

Section 8(e)17 states in pertinent part as follows:

In computing the compensation to be paid to any employee who, before the accident for which he claims compensation, had before that time sustained an injury resulting in the loss by amputation or partial loss by amputation of any member,

> including hand, arm, thumb or fingers, leg, foot or any toes, such loss or partial loss of any such member shall be deducted from any award made for the subsequent injury. For the permanent loss of use or the permanent partial loss of use of any such member or the partial loss of sight of an eye, for which compensation has been paid, then such loss shall be taken into consideration and deducted from any award for the subsequent injury. *820 ILCS 305/8(e)17*

The Petitioner was previously awarded 10% loss of use of a left leg by the Commission in case number 15 IWCC 0400. (RX7) This Decision was confirmed by the circuit court and later affirmed by the First District Appellate Court. See *Stanley v. Ill. Workers' Comp. Comm'n*, 2016 IL App (1st) 160143WC-U. (RX10) The Commission finds that Respondent is entitled to credit for the 10% award preceding the subject injury. Therefore, the Commission orders Respondent to pay Petitioner 15% loss of use of the left leg, less 10% loss of use of the left leg previously awarded, thus Respondent shall pay 5% loss of use of the left leg for permanent partial disability under Section 8(e) of the Act for the subject matter.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission's prior Opinion and Decision on Review, case number 19IWCC0395, is modified as stated herein pursuant to the Circuit Court Order in case number 19 L 050492.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $398.29 per week for a period of 6-6/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $358.44 per week for a period of 32.25 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 15% loss of use of the left leg, however, Respondent shall be entitled to a credit for 10% loss of use of the left leg previously awarded to Petitioner under §8(e) in case number 15IWCC0400; thus Respondent shall pay to Petitioner the sum of $358.44 per week for a period of 10.75 weeks, as provided in §8(e) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $24,444.51 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 $31,200.00; 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.

November 22, 2022
KAD/bsd
O092722
42

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/*Maria E. Portela*
Maria E. Portela

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC005240
Case Name	Charles Trimble v. Heel and Hard Hats Contracting
Consolidated Cases	19WC005241
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	22IWCC0444
Number of Pages of Decision	25
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Stephanie Seibold
Respondent Attorney	David Weichel, Paul Krauter

DATE FILED: 11/22/2022

/s/ Thomas Tyrrell, Commissioner

Signature

22IWCC0444

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEGBAGO)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Charles Trimble,

Petitioner,

vs. NO: 19 WC 5240

Heels & Hardhats Contracting,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical treatment, and temporary total disability ("TTD") benefits, and being advised of the facts and law, modifies the Corrected Decision of the Arbitrator and corrects two scrivener's errors. The Commission otherwise affirms and adopts the Corrected Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission affirms the Arbitrator's conclusion that Petitioner failed to prove by a preponderance of the evidence that his current condition of ill-being is causally connected to the August 31, 2017, work incident. The Commission also affirms the Arbitrator's conclusions that Petitioner failed to prove by a preponderance of the evidence an entitlement to the claimed medical expenses, prospective medical treatment, and TTD benefits. However, the Commission makes certain modifications to the Arbitration Decision.

The Commission corrects two scrivener's errors in the Decision. On the Decision Form, when identifying the disputed issues, the Arbitrator mistakenly identified "Perspective medical" as an issue in item O. The Commission hereby modifies item O on the Arbitration Decision Form to read: **Prospective** medical.

Additionally, on page eleven (11) of the Decision, the Arbitrator wrote, "…he was his opinion that it lessened the importance of the August 17 accident." The Commission hereby modifies this sentence to read as follows:

> However, he admitted that as it took a period of time for that realization to be evident to petitioner, **it** was his opinion that it

lessened the importance of the August 17 accident.

The Commission otherwise affirms and adopts the Corrected Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Corrected Decision of the Arbitrator filed on November 15, 2021, is modified as stated herein.

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.

November 22, 2022

o: 9/27/22
TJT/jds
51

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Deborah L. Simpson*
Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC005240
Case Name	TRIMBLE, CHARLES v. HEELS AND HARDHATS CONTRATING
Consolidated Cases	19WC005241
Proceeding Type	
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Stephanie Seibold
Respondent Attorney	David Weichel

DATE FILED: 11/15/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 9, 2021 0.06%

/s/ Paul Seal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Charles Trimble
Employee/Petitioner

v.

Heels & Hardhats Contracting
Employer/Respondent

Case # **19 WC 05240**

Consolidated cases:

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 **Paul Seal**, Arbitrator of the Commission, in the city of **Rockford**, on September 17, 2021. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☐ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Perspective medical**

FINDINGS

On **8/31/2017**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $47,694.11; the average weekly wage was $1,445.28.

On the date of accident, Petitioner was 58 years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $ **0** for TTD, $ **0** for TPD, $ **0** for maintenance, and $**0** 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

Based on the medical records, medical opinions and hearing the evidence on the matter, the Arbitrator finds that petitioner failed to meet his burden of proof, and that his current condition is **not** related to the accident of 8/31/17. Therefore, the Arbitrator finds the proposed left knee replacement is **not** related to the accident of 8/31/17, and that Respondent is not liable for any prospective medical care, or payment of any medical bills, TTD benefits or other benefits under the Act for this alleged incident. All other issues are moot.

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.

NOVEMBER 15, 2021

Signature of Arbitrator

Statement of Facts

I. Lay Testimony

Petitioner was an employee of and working for respondent, Heels & Hardhats Contracting on August 31, 2017. His job included sanding and painting gas pipes. On August 31, 2017, he was working in a field painting a pipe, had just finished painting and was coming down from a 4-foot stepladder, when the ladder kicked out and went sideways. (T. 16-17). He testified he was spinning around, hit the ground, twisted his knee and his knee popped. (T. 16). He clarified that he did not fall to the ground, but landed in a crouched position, with his feet on the ground, between the rungs of the ladder (T. 19-21). He stated he experienced immediate pain and swelling to his left knee. (T. 21). He testified that he did not seek medical attention because he had knee problems before. (T. 23).

He reported the accident to Cyndi (Richter) over the phone. She asked Petitioner if he wanted to seek medical attention, but petitioner declined, stating he would see how it goes, because he could walk on it, and that is where he left it. (T. 23). He reported his swelling resolved in about a month and that his knee has gotten better since the accident. (T. 24). Following the accident, he continued to work for Respondent, doing his normal job of sanding and painting pipes, working 40 hours a week until he was laid off in December of 2018. (T. 25-28).

Petitioner then sought medical care with Dr. Nyquist January 17, 2019. (T. 29). He told Dr. Nyquist about the accident, that he twisted his knee, his knee swelled up and it popped. (T. 29). He also clarified that the blow he sustained in the accident was the force of his knee twisting

(T.30). He testified that he had an MRI of his left knee on January 24, 2019. He then returned to Dr. Nyquist on May 22, 2019, and he recommended a knee replacement.

On cross-examination, petitioner testified that he had prior problems with his left knee including multiple prior surgeries including two arthroscopic surgeries in the 1990s, ACL reconstruction in 2004, and arthroscopic repair of torn cartilage in 2009. (T. 35-36). He further testified to having four prior workers' compensation claims, including two prior workers' compensation claims for his left knee with other employers. (T. 37-38).

Regarding the accident, Petitioner clarified that he came off the ladder, did not fall to the ground, and his knee did not hit the ground. (T. 39). He admitted that when he reported the accident, he didn't report any severe pain, just that it swelled up, and stated that he could not remember if he told her he heard a pop. (T. 40). He testified that he reported the accident to Cyndi Richter, and at that time did not request to see a doctor, refused an offer from Ms. Richter to see a doctor, and stated that he would be find and would wait to see what happened. (T.40-41). He also testified that he continued to work full duty for Respondent following the accident for nearly 16 months from August 31, 2017, until he was laid off on December 15, 2018. (T. 41). During that time, he performed his normal job, and didn't seek any medical care until January 17, 2019. (T. 42-43).

Next, Petitioner testified regarding a written statement he made. He admitted to writing and signing a written statement (Rx 8) stating that "I was stepping off the 4-foot stepladder. It shifted in the gravel and fell sideways. I stumbled but didn't fall. My left knee and right shoulder were sore afterwards." (T. 43-45). He admitted that nowhere in his written statement did he indicate he struck his knee, twisted his knee, or have catching or swelling to his knee. (T. 46-47).

Lastly, petitioner testified regarding a conversation he had with Cyndi Richter about his left knee prior to the August 31, 2017, accident. While at first he stated that he could not remember any such conversation, he later admitted that he remembered something about having a conversation with Ms. Richter, prior to August 31, 2017, in which he said his knee hurt, and he would have it knee taken care of under workers' compensation because it pays better. (T. 52-53). He further stated that he had had a prior recommendation to have his knee replaced. (T. 54).

On re-direct examination, the petitioner testified that he did not have any problems getting in to see his doctor. (T. 58). He further testified that he had problems with his knee prior to August 31, 2017, which included occasional swelling, and that the swelling in his knee changed for about a month following August 31, 2017. (T. 58).

Cyndi Richter testified on behalf of Respondent. She is the vice-president of Heels & Hardhats. Her job includes overseeing bills, payrolls, union reports, and workers' compensation claims. Heels & Hardhats provides services including utility construction, traffic control, paint and coatings, and camera televising. She testified that petitioner worked in the paint and coatings department. The job of that department was to go out stations and restore and paint gas lines. She testified that is not a heavy labor job. It required lifting an 8-pound grinder and a gallon of paint, with occasionally lifting 5-gallon bucket of paint. (T. 64)

Next, Ms. Richter testified regarding petitioner's reporting of the August 31, 2017, accident. She stated that petitioner called her on August 31, 2017, to report an accident. He stated that he had slipped off a ladder at the jobsite but said that he was okay. He did not report any specific injuries resulting from the accident. She asked if he needed to go for medical attention, but he refused, stating he would see how it goes over the next couple of days. (T. 65-66).

Further, Ms. Richter testified that Petitioner did not complain about his left knee following the accident through his last date of employment. (T. 66). Nor did he request medical attention for his left knee following the date of accident through his last date of employment. (T. 66). He continued to work full duty following the accident and never reported any ongoing pain in the left knee. (T. 68). Additionally, he did not call to advise why he wasn't returning to work following the seasonal layoff in December 2018, nor did he present any work restriction notes. (T. 69). He also never reported any catching, locking or slipping of his knee. (T. 71).

Lastly, Ms. Richter testified regarding a conversation she had with petitioner. She stated that the conversation took place between her and petitioner in her office in November of 2016. She stated that petitioner mentioned that his knee was bothering him and he would go through workmen's comp. because it paid more than going on unemployment. (T. 70). At that time petitioner had worked for Heels & Hardhats for about 4 months.

II. Medical Care

Petitioner presented to Dr. Nyquist for a consultation on January 17, 2019. Dr. Nyquist noted petitioner was a 56 year-old white male with longstanding problems in his left knee including an arthroscopy in the 1990s, an ACL reconstruction in 2004, and an arthroscopy in 2009. (Px2, pg 10). Petitioner reported doing fairly well until a work-related injury approximately one and a half years prior. (Px2, pg 10). He reported coming down a ladder which kicked out and caused him a direct axial blow as well as a twist to his left knee. Petitioner reported feeling it pop and having swelling. Since that time, he had a feeling of catching in his knee. He reported being able to continue working, although reported being laid off at that time.

Physical exam found instability to the knee. X-rays were taken which showed degenerative disease with post-op changes of the ACL reconstruction. Dr. Nyquist diagnosed petitioner with internal derangement of his left knee with underlying degenerative disease and previous surgery. He had concerns petitioner had something torn or loose in his knee and might benefit from arthroscopy. He recommended an MRI to better define pathology.

X-rays of the left knee were performed on January 17, 2019. X-rays showed degenerative changes present with significant joint space narrowing and spur formation both medial and anterior with interference screws present from previous anterior cruciate reconstruction. (Px2, pg 14).

An MRI of the left knee was performed on January 24, 2019. Indications were chronic left side medial pain for one year and problem with the knee locking up when bending joint. This study, as interpreted by Dr. Butler, showed marked tricompartmental osteoarthritic changes with intra-articular loose bodies, prior subtotal medial meniscectomy with no definite intravasation of fluid signal to suggest meniscal re-tear, probable re-tear of ACL graft. (Px2, pg 16-17).

Petitioner was seen by Dr. Nyquist for a follow up on January 31, 2019. Dr. Nyquist reviewed the MRI which showed significant arthritis as well as absence of the anterior cruciate and possible loose bodies. Dr. Nyquist diagnosed petitioner with degenerative joint disease of the left knee with instability and provided treatment options, including physical therapy, repeat arthroscopy, attempted ACL reconstruction, and knee replacement. (Px2, pg 12)

Petitioner saw Dr. Nyquist for a follow up on May 2, 2019. Petitioner reported ongoing problems with his left knee with significant difficulty going down stairs and inclines. Petitioner indicated he was not able to return to work. Petitioner reported he was able to work as a laborer

until his most recent work injury and now he was having increased pain, giving way, and buckling to his knee. Physical exam found good range of motion of the left knee, degenerative osteophytes felt, and mild instability. Dr. Nyquist diagnosed petitioner with internal derangement of the left knee with osteoarthritis and instability and recommended a knee replacement. He opined petitioner had significant aggravation of a preexisting condition and noted he did not feel petitioner could perform his job at that time. (Px3, pg 38).

Petitioner saw Dr. Nyquist for a follow up on September 12, 2019. It was noted this was a follow up for his bilateral knees. (Px3, pg 33). Petitioner reported increased problems with his knee. Physical exam of the left knee found a deformity, no swelling, and slight instability. Dr. Nyquist diagnosed petitioner with degenerative joint disease of the left knee, recommended knee replacement, and imposed restrictions including no kneeling, squatting, or climbing.

III. Respondent's Record Review – Dr. Karlsson

Dr. Karlsson conducted a records review in this matter on January 17, 2021. Following review of all records, Dr. Karlsson noted petitioner's diagnosis to be tricompartmental osteoarthritis with varus deformity of the knee. He opined that petitioner's current diagnosis was no way caused by the August 31, 2017, work injury and was not caused, accelerated, or permanently aggravated by it. He noted that, at most, petitioner would have a temporary exacerbation but there was no acute structural damage in his knee and the described injury would not be sufficient to cause a full disruption of the ACL. He also noted there was evidence that petitioner continued to work following the accident and did not seek medical treatment for a year and a half, which argued against a significant structural change or situational change in his knee.

He noted that if there was significant change in his abilities with his knee or increased symptoms of the knee, he would expect medical treatment to commence in the days, weeks or months following the incident. However, that it was approximately a year and a half after the alleged injury that petitioner sought treatment would argue against any permanent aggravation or acceleration caused by the August 31, 2017, accident. He noted that if there were any structural damage from the August 31, 2017, accident which would have caused any permanent aggravation or acceleration of his arthritis, he would expect petitioner to have difficulty in doing full-time labor and the fact that petitioner was able to do full-time labor would argue against any permanent acceleration or permanent aggravation of his condition in the left knee.

He believed no treatment was necessary for the August 31, 2017, accident, but noted that petitioner did need further care for his osteoarthritis in the left knee, which would include a knee replacement. However, he noted petitioner had not tried any anti-inflammatories, physical therapy or injections to the knee and recommend a course of conservative care prior to surgery. If there was no improvement, he noted petitioner would be a candidate for a total knee arthroplasty.

Dr. Karlsson opined petitioner was at MMI for the August 31, 2017, accident and would have been at MMI within three months. Regardless of causation, he anticipated petitioner to be at MMI six months postoperatively from a total knee replacement. Lastly, he opined that petitioner was not in need of any work restrictions related to the work-related condition and noted that petitioner had preexisting osteoarthritis in the left and apparently was able to work full-time in a labor position until the time of his layoff. (Rx 2).

IV. IME – Dr. Nho

Petitioner presented to Dr. Nho for an IME on September 16, 2019. Petitioner reported left knee pain which began on August 31, 2017, when he was coming down a ladder which kicked out and caused an axial blow, including a pop with swelling to his left knee. He reported a history of left knee surgery in the 90's, ACL reconstruction in 2004 and arthroscopy in 2009. Petitioner complained of pain rated as a 7/10 which he described as achy and dull. On exam Dr. Nho found mild tenderness over the medial joint line, extension into -8 degrees, flexion to 100 degrees, and negative provocative maneuvers. Dr. Nho diagnosed petitioner with moderate to severe left knee tricompartmental arthritis. He opined that the injury is unlikely related to the August 31, 2017, accident. He noted it was unlikely to have caused or aggravated a knee injury as there was no further medical care provided after the alleged injury. He noted petitioner was able to work full duty and did not require any treatment immediately after the August 31, 2017, injury; therefore, it is his opinion that the lack of contemporaneous documentation in the medical records did not support a causal relationship from the alleged August 31, 2017 injury. He opined petitioner's condition was the result of normal aging progression and know pre-existing degenerative osteoarthritis. He opined petitioner will likely require a left total knee replacement however, it is due to an excessive history of trauma and surgery to the left knee predating the alleged work injury. He opined petitioner could work full duty without restrictions at this time and was at MMI for any work injury. (Rx. 4).

V. Medical Testimony

Dr. Nyquist testified on behalf of Petitioner. He is a board-certified orthopedic surgeon and has been board certified since 1987 (Px 7 pg. 55). Dr. Nyquist advised Petitioner was a patient of his, but he had not seen him in several months. (Px 7 pg. 57). He described the history of prior surgery, including ACL reconstruction in 2004 and an arthroscopy in 2009. (Px 7 pg. 57). He indicated petitioner returned to his care on January 17, 2019, with problems in the knee which purportedly began following an injury—coming down off a ladder when it kicked out causing a direct axial blow as well as a left twist to his left knee with petitioner hearing a pop and having swelling which was significant and both an aggravation and causation of his problems with the left knee. (Px 7 pg. 57-58). He ordered an MRI which showed significant degenerative disease, rupture of his ACL reconstruction, and torn cartilage. (Px 7 pg. 59).

Dr. Nyquist opined that the ladder injury caused a torn cartilage and rupture of the ACL based on petitioner's history, physical exam, as well as the corroborative MRI scan. (Px 7 pg. 59). He noted that there is no question that he had a preexisting condition as the amount of arthritis on X-ray would not have generated in a month's period of time, but over years. (Px 7 pg. 59). Dr. Nyquist testified that it was his concern was that that someone who had a direct blow, twisting, and heard a pop that there was a 72% chance that it involves an injury to the ACL, and when you have twisting, there is a high likelihood you could have an injury to the meniscus which would be approximately 80%. (Px 7 pg. 560). However, the Arbitrator notes that Dr. Nyquist did not cite any scientific or medical studies, articles or journals to support his figures. Dr. Nyquist testified that is no question Petitoiner had a preexisting condition, but it was his belief that the ladder incident caused an aggravation of preexisting arthritic condition and caused

more likely than not a ligament and cartilage injury resulting in a disruption to his ACL graft and a tear of the cartilage in the medial meniscus. (Px 7 pg. 60-61). He also opined that petitioner's repetitive job duties could have caused his knee to worsen. (Px 7 pg. 62).

Further, Dr. Nyquist testified that it washis opinion that petitioner needed a left knee replacement. (Px 7 pg. 63). He noted he was not sure if petitioner could return to a job with heavy labor, but if his job involved kneeling, squatting, climbing, and heavy lifting over a significant part of the day, it was more likely than not he would restrict him from that work. (Px 7 pg. 63-64).

On cross examination, Dr. Nyquist testified that his causation opinion was based entirely on the statement of petitioner. (Px 7 pg. 67). He further stated that he did not have a single piece of medical evidence to indicate or corroborate the August 2017 accident other than the statement petitioner made on January 17, 2019. (Px 7 pg. 67). Dr. Nyquist stated that it was possible that someone with three prior surgeries to the same knee, one of which being an ACL reconstruction, could develop degenerative changes in that knee. (Px 7 pg. 71). He testified that a person with petitioner's body habitus, 5'10" tall, weighing 225 pounds, would make him more prone to arthritic deterioration as opposed to less, that weight adversely affects arthritic changes, and that it was more likely that a person 5'10" tall weighing 225 pounds with three prior knee surgeries develop degenerative changes, even in the absence of specific trauma and with just performing activities of daily living. (Px 7 pg. 71-74). He also stated that that a person who is bowlegged would have worsened arthritis with normal activities of daily living absent trauma. (Px 7 pg. 76-77).

Dr. Nyquist stated that it was his understanding that petitioner continued to work after the August, 2017 injury, but that petitioner told to him he felt that the accident caused him to become significantly worse to the point where he could no longer do his job. (Px 7 pg. 78). However, he admitted that as it took a period of time for that realization to be evident to petitioner, he was his opinion that it lessened the importance of the August 17 accident. (Px 7 pg. 78). Further, he agreed that the fact that Petitioner continued to work after the incident lessened, the significance of it, and the longer petitioner worked would make the incident less clinically significant. (Px 7 pg. 80). Dr. Nyquist admitted it was possible petitioner continued to work up until approximately the January 17, 2019, visit which would be approximately 17 months. He noted he would find it significant if during that time petitioner did not lose any time from work or did not get any help from friends or do anything with respect to the knee during that interim period. (Px 7 pg. 81). Dr. Nyquist further admitted that if petitioner did not seek any medical treatment from the date of the accident until when he saw him would make it less likely the accident had a significant impact. (Px 7 pg. 82). He further admitted that the same would go if petitioner continued to work construction. (Px 7 pg. 82).

Dr. Nyquist testified that, in petitioner's report of the ladder incident, petitioner did not indicate how high the ladder was, and that it was his understanding that petitioner fell to the ground from the ladder. (Px 7 pg. 85). He further stated that it would be unusual for someone with three prior knee surgeries who suffered a direct axial blow as well as a twist injury to the same knee, felt a pop, and had immediate swelling, to not seek medical treatment for 17 months. (Px 7 pg. 86). He further stated that "The fact that he was able to keep working and apparently did not seek medical care for a period of time after that means, to me, that that would be -- that would lessen the importance of the ladder accident." (Px 7 pg. 87). He stated he believed the

vast majority of people that rupture their anterior cruciate would not view it as a little strain or sprain, that it is a significant injury, that after that rupture you would immediately know something was not right and that they would seek medical attention. (Px 7 pg. 88).

Dr. Nyquist went on to testify, "I understand the reason for this lengthy cross examination. The bottom line is, I think there is no question, based on a reasonable degree of medical certainty, that he had a preexisting disease. Based on his statement, there is no question that he had an accident on/or about August of 2017 which he states made it worse. Apparently, he took a prolonged period of time to seek medical care and was able to keep working, which, to me, would lessen the importance of that ladder accident. My recommendation to him to have a knee replacement is based on the fact that his knee is so far gone, I think doing a reconstruction would not be wise." (Px 7 pg. 89-90). He further admitted that there was nothing found on the MRI that would suggest the findings took place in August of 2017. (Px 7 pg. 93).

Dr. Karlsson testified that he is a board-certified orthopedic surgeon who specializes in general orthopedic surgery, and that 40% of his practice focuses on treatment of the knee. (Rx 3 pg. 7). He outlined all the records he reviewed, including the job safety analysis report (which the Arbitrator notes, the contents of which testified to are the same as petitioner's written statement contained in Rx. 8), payroll records, correspondence from Heels & Hardhats indicating petitioner worked for 15 months following August 31, 2017, records of Dr. Nyquist, X-rays from January 17, 2019, the MRI report of January 24, 2019, and the IME report of Dr. Nho. (Rx 3, pg. 11-13).

Dr. Karlsson testified that following the records review he formed a diagnosis of tricompartmental osteoarthritis of the left knee. (Rx 3, pg. 13). He stated that these conditions are degenerative in nature and take a lifetime to develop. (Rx 3, pg. 14). He opined that the August

31, 2017, accident did not cause, accelerate, or permanently aggravate petitioner's tricompartmental osteoarthritis of the knee. (Rx 3, pg. 14). He noted his opinion was based on the fact that the chronic degenerative changed were found with the lack of any acute structural damage, the time between when the incident occurred and his first treatment, his comorbidities including high BMI, varus deformity and chronic lack of an ACL, and his ability to continue working following the accident. (Rx 3, pg. 15-16). He further stated that, petitioner's multiple prior surgeries, high BMI and varus deformity are all setups for significant arthritis of the knee. (Rx 3, pg. 16).

He testified that if petitioner had suffered some permanent aggravation or acceleration of his arthritic condition on August 31, 2017, that he would have expected him to seek medical treatment contemporaneous with the injury as a person would have a decline in their function, increased pain, and difficulty doing things. (Rx 3, pg. 16-17). He further testified that if petitioner had suffered a permanent aggravation or acceleration of his arthritic condition as a result of the accident, that he would not expect him to be able to continue to work as a laborer for over a year after the accident, and the fact that he did continue to work was further evidence that there was not any significant permanent aggravation or structural change. (Rx 3, pg. 17-18). He testified that petitioner could have had a temporary exacerbation from the accident resulting in a temporary increase in symptoms, but there was no evidence it caused any permanent aggravation. (Rx 3, pg. 18).

Dr. Karlsson testified that petitioner was not in need of any further care relating to the alleged accident, and while a knee replacement may be reasonable, it was not related to the alleged accident. (Rx 3, pg. 19). He opined petitioner was at MMI as it relates to the August 31, 2017, accident and would have reached MMI with weeks, to, at most, two months after the

alleged injury. (Rx 3, pg. 20). Lastly, he testified that Petitioner was not in need of any work restrictions relating to the work injury as he had pre-existing arthritis in the knee and was able to work full-time as a laborer with that condition before and after the alleged injury. (Rx 3, pg. 20-21).

On cross-examination Dr. Karlsson testified that while the radiologist report of the MRI from January 2019 referenced a probable re-tear of the ACL, that with an acute tear of the ACL you would still see fibers there, but the MRI report noted no visible intact fibers of the ACL. (Rx 3, pg. 24). He further testified that symptoms of catching or locking are not typical of a torn ACL, rather typical symptoms would be giving way. (Rx 3, pg. 25).

Dr. Nho testified that he works for Midwest Orthopedics at Rush and has been so employed since 2009. He has a subspecialty within orthopedics of sports medicine. He is an associate professor in orthopedic surgery at Rush Medical College, and routinely treats knee injuries. (Rx 5, pg. 6-7).

He conducted an IME of petitioner on September 16, 2019, for which he drafted a report. Petitioner reported an injury of August 31, 2017, which occurred when he was coming down a ladder, which got kicked out, and caused an axial blow including a pop and swelling to the left knee. (Rx 5, pg. 9). The medical records he reviewed were outlined in his IME report. He noted petitioner's treatment history was significant for prior knee surgeries including a knee arthroscopy in the 1990's, ACL reconstruction in 2004, and follow up knee arthroscopy in 2009. (Rx 5, pg. 12).

At the time of the IME, petitioner reported dull and achy pain located in the anterior aspect of the knee rated as a 7/10. He also reported locking, catching, and instability. Dr. Nho testified regarding his physical exam findings, which were recorded in his IME report. Dr. Nho

diagnosed petitioner with tricompartmental arthritis. (Rx 5, pg. 15). He testified this was the result of the normal natural progression of known-pre-existing degenerative osteoarthritis, particularly in the setting of prior knee surgeries. (Rx 5, pg. 16). He agreed that Petitioner would require a left total knee replacement, but testified it was due to the extensive history and trauma to the left knee predating the time of the injuries and was therefore not related to the alleged accidents of August 31, 2017, or January 17, 2019. (Rx 5, pg. 17). Specifically, regarding the August 31, 2017, accident, Dr. Nho testified that if that accident had caused a permanent aggravation or acceleration of this arthritic condition, he would not expect petitioner to continue to work full duty because petitioner would have sought either more medical treatment that would indicate there was a change in his otherwise degenerative knee. (Rx 5, pg. 20-21). He opined petitioner was at MMI and could work full duty. (Rx 5, pg. 17-18). He noted that as petitioner had not sought any care between August 31, 2017, and January 17, 2019, it appeared he had reached a plateau well before that date. (Rx 5, pg. 21-22).

On cross-examination, Dr. Nho testified that the radiologist finding of a probable ACL tear, assuming it is correct, is something that could have occurred naturally over a period of time. (Rx 5, pg. 25).

On re-direct examination, Dr. Nho testified that if petitioner had torn his ACL from the accident, that he would have expected petitioner to seek contemporaneous treatment because it would cause pain, discomfort, and other symptoms. (Rx 5, pg. 28-29). He further stated that it is less likely that the August 2017 injury would have caused an ACL tear if there was no significant symptoms, treatment, or disability contemporaneous with the incident. (Rx 5, pg. 30).

IN SUPPORT OF THE ARBITRATOR'S FINDINGS ON THE ISSUES OF (F) "IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE WORK INJURY?" (J) "HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?" (K) "WHAT TEMPORARY BENEFITS ARE IN DISPUTE?" AND (O) "IS PETITIONER ENTITLED TO PROSPECTIVE MEDICAL CARE" THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

It is axiomatic that a claimant must establish by a preponderance of the evidence each and every element of his claim, including that a causal relationship exists between a condition of ill-being and the work injury. *Glister Marylee Corp. v. Indus. Comm'n*, 326 Ill.App.3d 177, 759 N.E.2d 979 (2001). An award cannot rest on or cannot be based on speculation or conjecture. Further, employees with a pre-existing condition shall only be awarded compensation if the work accident aggravated or accelerated the pre-existing condition so that the current condition can be said to have been caused by the work injury and not the normal degenerative process of the pre-existing condition. *Sisbro v. Ind. Comm'n.*, 207Ill.2d 193, 797N.E.2d 665 (2003). Additionally, pursuant to Section 8(a), an employer's liability for medical care is limited to that which is necessary and reasonably required to cure or relieve the effects of the accidental injury. *W. J. Newman Company v. Ind. Comm'n.,* 353Ill.190, 187N.E. 137 (1933). Only those services required to diagnose, relieve or cure the effects of the work injury may be awarded. *Palmer House v. Ind. Comm'n*., 200Ill.App.3d 558, 558N.E.2d 285 (1990).

The Arbitrator finds that the August 31, 2017, work injury caused, **at most**, a temporary aggravation of Petitioner's preexisting degenerative osteoarthritis which did not necessitate any medical care. In this regard, the work injury did not cause or permanently aggravate the pre-existing degeneration in Petitioner's left knee, and the need for the proposed left knee replacement surgery is not related to the August 31, 2017, accident.

In support of this decision, the Arbitrator points to several pertinent facts. First, it is undisputed that Petitioner did not seek medical care for nearly seventeen months, following the August 31, 2017, accident, and his fist treatment date was January 17, 2019. Second, it is undisputed that Petitioner did not begin treatment until after he was laid off from Respondent. Third, it is undisputed that Petitioner did not miss any time from work following the injury while he was employed with Respondent for some sixteen months. Fourth, it is undisputed that Petitioner continued to work full duty following the accident, for some sixteen months, and continued to work full duty until his seasonal lay off on December 15, 2018. Fifth, Petitioner had a history of at least three prior knee surgeries and admitted to having problems with his knee prior to the work accident. Sixth, Petitioner admitted the swelling in his knee resolved within one month. Seventh, Petitioner admitted to having a conversation with Cyndi Richter regarding filing a workers' compensation claim for his left knee because it pays more than unemployment.

Further, the Arbitrator finds Ms. Richter's testimony to be more persuasive than Petitioner's testimony as to his reporting of the accident, and a conversation had nearly a year before the accident. The Arbitrator also finds Petitioner's testimony to be less credible. Here, Petitioner testified that he had swelling, experienced a pop and experienced catching of his left knee at the time/following the accident. However, his own written statement is contradictory to his testimony. In his written statement, the only complaint petitioner documented was that his knee was "sore." Nowhere did he indicate that he felt a pop, experienced swelling, or experienced catching as a result of the accident. Additionally, he was evasive when testifying regarding the conversation had with Ms. Richter before the accident. Conversely, Ms. Richter testified that petitioner made a verbal report consistent with his written statement—there was no

mention of a pop, swelling, or catching. She also recalled details and specifics regarding the November 2016 conversation she had with petitioner where he indicated he would file a workers' compensation claim for his left knee because it pays more than unemployment. The Arbitrator rejects petitioner's contention that his current condition of ill-being is related to the August 31, 2017, work injury as he did not seek any treatment for nearly 17 months, and continued to work full duty following the accident, for nearly 16 months, through his last date of employment of December 15, 2018.

Moreover, the Arbitrator finds Dr. Karlsson's and Dr. Nho's testimony more credible than Dr. Nyquist on the issue of causation. In this regard, Dr. Karlsson and Dr. Nho had very similar opinions supported by evidence corroborated at trial. Namely their opinions that petitioner's degenerative osteoarthritis of the left knee was not caused, aggravated or accelerated by the August 31, 2017, accident was based, in part, on an understanding that petitioner did not seek treatment until January 17, 2019, did not miss any time from work, and continued to work full duty until approximately that time. These facts are supported by the testimony of petitioner and Ms. Richter. Further, all the medical experts agreed that petitioner had a pre-existing condition, and even petitioner's own surgeon, Dr. Nyquist, testified that the delay in seeking treatment and the ability to work full duty following the accident was important, stating that "the fact that he was able to keep working and apparently did not seek medical care for a period of time after that means, to me, that that would be -- that would lessen the importance of the ladder accident." (Px 7 pg. 87). Additionally, Dr. Karlsson testified that petitioner's condition would have resolved within weeks and at most two months. This testimony is consistent with petitioner's testimony that the swelling in his knee resolved within one month after the accident. This evidence supports a temporary aggravation of a pre-existing condition. Lastly, both Dr.

Nyquist and Dr. Karlsson testified that there were no acute findings on the MRI. For these and other reasons contained in the record, the Arbitrator finds that Dr. Karlsson and Dr. Nho credibly testified that petitioner's symptoms for his osteoarthritic knee were pre-existing, and were not caused, accelerated, or permanently aggravated by the work injury.

Based on these facts, it would be speculation or conjecture to conclude that the described injury of August 31, 2017, aggravated petitioner's pre-existing arthritis in the left knee so as to necessitate surgery, or any treatment of any kind for that matter. Consequently, the Arbitrator finds the work injury did not cause, aggravate, or accelerate petitioner's pre-existing osteoarthritis of the left knee so as to necessitate the proposed left knee replacement surgery. Instead, the Arbitrator finds that petitioner's current condition of ill-being and need for ongoing care is attributable to his pre-existing and not work-related arthritis. Further, the arbitrator finds that petitioner reached MMI on September 30, 2017, and is in need of no further treatment related to the August 31, 2017, injury. Simply put, while it is clear that the petitioner sustained some incident, the entirety of the testimonial, documentary, and medical evidence does not prove by a preponderance of the evidence that the petitioner's employment caused his current condition of ill-being.

Lastly, as the Arbitrator finds Petitioner's current condition is not related to the August 31, 2017, accident, and that petitioner had reached MMI on September 30, 2017, before any medical care or imposition of any restrictions. Petitioner is not entitled to any TTD benefits, and Respondent is not responsible for payment of any medical bills or prospective medical care.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC005241
Case Name	Charles Trimble v. Heel and Hard Hats Contracting
Consolidated Cases	19WC005240;
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	22IWCC0445
Number of Pages of Decision	13
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Stephanie Seibold
Respondent Attorney	Paul Krauter, David Weichel

DATE FILED: 11/22/2022

/s/ Thomas Tyrrell, Commissioner

Signature

22IWCC0445

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify (Employment, Notice)	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Charles Trimble,

Petitioner,

vs. NO: 19 WC 5241

Heels & Hardhats Contracting,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Petitioner herein and notice given to all parties, the Commission, after considering all issues, and being advised of the facts and law, modifies the Corrected Decision of the Arbitrator. The Commission finds an employee-employer relationship did exist between Petitioner and Respondent. The Commission also finds that Petitioner did provide timely notice of this alleged accident to Respondent. The Commission otherwise affirms and adopts the Corrected Decision of the Arbitrator, which is attached hereto and made a part hereof.

Findings of Fact

Initially, the Commission notes that prior to the arbitration hearing, the parties consolidated this case with an earlier case. In case 19 WC 5240, Petitioner alleged his left knee condition was the result of an August 31, 2017, work incident. In the current case, Petitioner alleged that his left knee condition was the result of work-related repetitive trauma that manifested on January 17, 2019. The parties addressed both cases during the arbitration hearing, and the Arbitrator issued separate Decisions for each case. The Commission addresses the issues Petitioner raised on review relating to case 19 WC 5240 in a separate Decision. However, the Commission notes that in the companion case, the Commission affirmed the Arbitrator's conclusion that the August 31, 2017, work incident caused at most a temporary aggravation of Petitioner's underlying left knee degenerative condition. The Commission also affirmed the Arbitrator's conclusions that Petitioner's left knee condition was not causally related to the August 31, 2017, work incident and that Petitioner was not entitled to additional medical treatment relating to that incident.

The Arbitrator did not include a detailed explanation of his findings and conclusions in this matter. Instead, the Decision consists only of the Decision Form. However, the Arbitrator did write

a detailed summary of the evidence and his findings of facts in the Decision he authored in case 19 WC 5240. In the interest of efficiency, the Commission primarily relies on the Arbitrator's detailed recitation of facts in case 19 WC 5240 and highlights the facts pertinent to the current repetitive trauma claim in this Decision.

Petitioner worked as a laborer for Respondent. He testified that he began working for Respondent over a year before his August 31, 2017, work injury. His job duties primarily involved cleaning and painting gas pipes. He testified that he worked in the fields where the pipelines were laid and worked on Nicor's gas lines. He testified that his job duties were assigned by Nicor, and John Thred gave Petitioner his daily assignments.

On August 31, 2017, Petitioner sustained an injury to his left knee after falling while he descended a stepladder. He testified that he worked 40 hours a week from the date of his August 2017 injury until January 2019. He testified that during his shifts he was constantly on his feet except during his breaks. Petitioner testified that his job duties regularly required him to lift grinders, paint buckets, rollers, ladders, and tools used to mix paint. He estimated the heaviest item he had to lift was a 5-gallon bucket. Petitioner testified that after his August 2017 injury he did not often climb ladders at work. Petitioner testified that each year he was laid off from approximately November until March. He initially testified that he was laid off in either November or December 2018. Under further questioning, Petitioner later agreed that he was laid off on or around December 15, 2018. He did not seek any medical treatment following the August 2017 incident until his visit with Dr. Nyquist on January 17, 2019. He testified that he waited to seek medical treatment until after the holiday season and finally sought treatment because his left knee began to give out while he walked down stairs. Petitioner continued to perform his regular job duties including painting, priming, and sanding gas pipes, from August 31, 2017, until his seasonal layoff on December 15, 2018.

Petitioner testified that he had a long history of left knee problems and complaints before the August 2017 incident. By the time Petitioner began working for Respondent, he had already undergone several left knee surgeries. Under cross-examination, Petitioner agreed that he underwent an arthroscopic left knee surgery in the 1990s, a left ACL reconstruction surgery in 2004, and a second arthroscopic left knee surgery to repair torn cartilage in 2009. Petitioner testified that he also had another surgery on the knee in either the 1990s or early 2000s. He testified that he needed a left knee replacement before he began working for Respondent. Petitioner testified that after he underwent surgery to repair his left meniscus, Dr. Nyquist told him that he would eventually need to undergo a left knee replacement surgery. Petitioner admitted that he told Ms. Richter before the August 2017 work incident that he had left knee pain and that Dr. Nyquist had already told him that he needed a left knee replacement. He then testified that he could not recall what he told Ms. Richter other than he had a knee problem. Petitioner denied telling Ms. Richter that he would undergo the recommended left knee replacement surgery under workers' compensation because those benefits paid better.

Petitioner has not returned to work following his seasonal layoff in November 2018. He testified that he began receiving Social Security Disability benefits in October 2019.

Cyndi Richter Testimony

Ms. Richter testified on Respondent's behalf. She has been vice-president of the company since 2011. She testified that the company does utility construction, traffic control, paint and coating, and camera televising. She testified that painting and coating assignments involved going to the stations and restoring the existing pain on the gas pipelines. Her job duties include overseeing the office. She testified that employees were to report any work injuries to her.

Ms. Richter testified that Petitioner worked for Respondent from August 2016 until December 15, 2018, as a laborer. She testified that Petitioner's job duties were to prep the gas pipes and perform sanding, painting, and priming. She testified that the heaviest items Petitioner had to lift were a grinder that weighed approximately 8 pounds and a gallon of paint. She testified that sometimes Petitioner did have to carry 5-gallon containers of paint. Ms. Richter testified that Petitioner did not make any complaints about his left knee from the August 2017 work incident until his regular seasonal layoff on December 15, 2018. She testified that Petitioner continued to work his regular job and continued to perform all his normal job duties during that period. She testified that normally workers will call the company in March or April and inquire about returning to work. She testified that Petitioner never called seeking work after the December 2018 layoff.

Ms. Richter testified that in November 2016, she had a conversation with Petitioner in her office regarding his left knee. She testified that he mentioned his left knee was bothering him and told her he would go through workers' compensation for treatment. She testified that he told her he would do this because workers' compensation paid more than unemployment benefits. She testified that he told her he had prior problems with his left knee and had gone through workers' compensation at his previous job when he had his left knee scraped. She denied that Petitioner ever called or reported any catching, locking, or slipping of his left knee from the August 2017 work incident until his last day of work on December 15, 2018.

Medical Treatment

Dr. Nyquist first examined Petitioner on January 17, 2019. The doctor wrote the following history:

> "He states back in the 1990s he had an injury that required an arthroscopy. This was followed by an anterior cruciate reconstruction in 2004, and I did a knee arthroscopy in 2009. He has done fairly well until a work-related injury about a year and a half ago. He was coming down a ladder, which kicked out and caused him a direct axial blow as well as twist to his left knee. He felt it pop and had swelling. Since that time, he has had a feeling of catching in his knee."

(PX 2). Petitioner reported that he had been able to continue working but was currently laid off. He complained of dull pain that worsened with activity. The doctor interpreted left knee x-rays taken that day as showing degenerative disease with postoperative changes of anterior cruciate reconstruction. He diagnosed internal derangement of the left knee with underlying degenerative

disease and previous surgery. Dr. Nyquist wrote that Petitioner was aware that he had significant arthritis. A January 24, 2019, MRI of the left knee had the following impression: 1) marked tricompartmental osteoarthritic changes with intra-articular loose bodies; 2) prior subtotal medial meniscectomy with no definite intravisation of fluid signal to suggest a meniscal retear; and 3) a probable retear of ACL graft.

On January 31, 2019, Petitioner reported having continued problems with pain and discomfort, and instability in the left knee. Dr. Nyquist interpreted the recent MRI as showing significant arthritis as well as the absence of the anterior cruciate and possible loose bodies. Dr. Nyquist diagnosed left knee degenerative joint disease with instability. He believed Petitioner needed a knee replacement but also discussed other surgical options including a repeat arthroscopy and attempted reconstruction of the anterior cruciate.

Dr. Nyquist next examined Petitioner on May 2, 2019. Petitioner reported significant difficulty going down stairs as well as navigating inclines. Petitioner reported that he had not been able to return to work and had already tried conservative treatment. Dr. Nyquist wrote: "He says he was able to work as a laborer until his most recent work injury and now he is having increased pain, giving way and buckling to his knee." (PX 3). The doctor diagnosed internal derangement of the left knee with osteoarthritis and instability. Dr. Nyquist recommended Petitioner consider a knee replacement. He wrote: "I feel he has had a significant aggravation of a preexisting condition." The doctor also opined that Petitioner was unable to perform his job.

Petitioner returned to Dr. Nyquist on September 12, 2019. He complained of worsening pain he rated at 7/10 and reported having a hard time bending down. Petitioner also reported feeling like his knee would slip and that he would lose his balance. Dr. Nyquist noted there was no swelling in the left knee but there was deformity and slight instability. He continued to recommend knee replacement surgery. He also wrote that Petitioner could not do his normal job, but could perform a job that did not involve kneeling, squatting, or climbing. There are no further office visit notes in evidence.

Expert Opinions and Testimony

Dr. Scott Nyquist—Treating Physician

Dr. Nyquist authored a narrative report on Petitioner's behalf on July 1, 2019. (PX 4). He wrote that he had treated Petitioner for quite some time for chronic problems relating to his left knee. Dr. Nyquist wrote:

> "…Mr. Trimble has had longstanding problems with his left knee. I believe he has had 3 previous operations and the last one was by me. I feel his most recent injury has most likely disrupted his anterior cruciate reconstruction, torn a cartilage, and aggravated his arthritis…"

(PX 4). The doctor continued to recommend Petitioner undergo a left knee replacement surgery.

Dr. Nyquist testified via evidence deposition on Petitioner's behalf on March 26, 2020. (PX 7). He testified:

> "I believe…based on a reasonable degree of medical certainty, that the ladder injury caused a torn cartilage and rupture of his anterior cruciate ligament. This is based on his history and physical exam as well the corroborative MRI scan. But there's no question at all that he had a preexisting condition. The amount of arthritis I saw on x-ray would not have generated in a month's period of time, but over years."

Id. at 9.

Dr. Nyquist testified that the August 2017 incident caused a disruption of Petitioner's anterior cruciate graft and a tear of the cartilage in the medial meniscus. He admitted that he did not know any details regarding Petitioner's job duties. The doctor also admitted that he did not know how often Petitioner had to climb ladders or how much weight he had to lift. However, Dr. Nyquist testified that Petitioner's repetitive job duties could have caused Petitioner's left knee condition to worsen. Dr. Nyquist testified that Petitioner reported doing well until the August 2017 incident and reported that his left knee significantly worsened after his fall.

Under cross-examination, Dr. Nyquist agreed a person who previously underwent three surgeries on a knee—one being an ACL reconstruction—could likely develop degenerative changes in the knee. He testified that Petitioner was overweight, and that increased weight adversely affects arthritic changes. Dr. Nyquist testified that Petitioner is bowlegged, and that this varus deformity is the result of Petitioner's arthritis and is a sign that his arthritis is progressing. He also testified that activities of daily living would more likely than not continue the progression of Petitioner's arthritis.

Dr. Shane Nho—Respondent's Section 12 Examiner

Dr. Nho examined Petitioner at Respondent's request on September 16, 2019. (RX 1). After reviewing the medical records and examining Petitioner, Dr. Nho diagnosed moderate-severe left knee tri-compartmental arthritis. He opined that Petitioner's left knee condition is most likely not related to the August 31, 2017, incident. Dr. Nho also opined that Petitioner's left knee condition is not related to any repetitive trauma from Petitioner's work duties. He opined that Petitioner's left knee condition is the result of the normal progression of his preexisting degenerative osteoarthritis. The doctor agreed that a left knee replacement is appropriate given Petitioner's condition; however, he reiterated that the surgery is related to neither the August 2017 work incident nor Petitioner's job duties.

Dr. Nho testified on Respondent's behalf via evidence deposition on February 22, 2021. (RX 2). He testified that Petitioner's left knee condition is not related to either alleged date of accident. He testified that Petitioner's condition "…is a result of [the] normal natural progression of known pre-existing degenerative osteoarthritis, particularly in the setting of prior knee surgeries." *Id*. at 16. The doctor testified:

> "He has a long-standing history of knee injuries and surgeries dating back to the 1990's which included a knee arthroscopy, an ACL reconstruction in 2004, and a subsequent knee arthroscopy in 2009, and certainly I think that those have more of a contributing role in addition to his age as far as the development of his osteoarthritis."

Id. at 19-20.

Dr. Troy Karlsson—Respondent's Section 12 Examiner

Dr. Karlsson conducted a records review on behalf of Respondent and authored a report dated January 17, 2021. (RX 2). In addition to medical records, he also reviewed other documents including Petitioner's written statement regarding his injury, payroll information, Dr. Nho's narrative report, and Dr. Nyquist's narrative report. He diagnosed Petitioner with tricompartmental osteoarthritis with varus deformity of the knee. He opined that Petitioner's left knee condition was not caused, accelerated, or permanently aggravated by the August 2017 incident. Dr. Karlsson opined that Petitioner's prior subtotal medial meniscectomy is a known factor for the development of significant arthritis over several years. He also opined that Petitioner's obesity, varus deformity, and prior knee surgeries also contribute to his worsening arthritis.

Dr. Karlsson testified via evidence deposition on behalf of Respondent on May 24, 2021. (RX 3). He testified that tricompartmental arthritis is a long-term degenerative condition. The doctor also testified that Petitioner's left knee condition and complaints are simply the natural progression of his arthritis.

Conclusions of Law

Petitioner bears the burden of proving every element of his case by a preponderance of the evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). After carefully considering the totality of the evidence, the Commission reverses the Arbitrator's conclusion that Petitioner failed to prove the existence of an employment relationship on the alleged date of accident. The Commission also reverses the Arbitrator's conclusion that Petitioner failed to provide timely notice of his alleged injury. However, the Commission affirms the Arbitrator's conclusion that Petitioner failed to prove he sustained an injury arising out of and in the course of his employment. Thus, the Commission affirms the Arbitrator's denial of benefits.

The Commission notes that the Arbitrator denied benefits in this matter due to Petitioner's failure to prove the issues of accident, causal connection, employment, and notice. After considering the evidence, the Commission respectfully disagrees with the Arbitrator's conclusions that an employment relationship did not exist, and that Petitioner failed to provide timely notice of his injury to Respondent. In the current matter, Petitioner claimed his left knee condition and complaints are the result of work-related repetitive trauma. Petitioner alleged a date of accident of January 17, 2019. There is no dispute that Petitioner was laid off by Respondent on or about December 15, 2018, and did not work for Respondent on January 17, 2019. However, these facts do not determine whether an employment relationship existed between the parties during the

relevant period.

In a case alleging injuries due to a specific traumatic event on the alleged date of accident, the Commission would agree with the Arbitrator's conclusion that no employment relationship existed under these circumstances. However, in this matter the Arbitrator's finding that no employment relationship existed is factually correct, but legally insufficient. *See Tolbert v. Ill. Workers' Comp. Comm'n*, 2014 IL App (4th) 130523WC at ¶89. In cases involving repetitive trauma claims, the manifestation date is the date of accident. Illinois courts have determined the manifestation date does not have to fall within the period of the claimant's employment. *See A.C.&S. v. Indus. Comm'n*, 304 Ill. App. 3d 875, 881-82 (1999). However, the claimant must establish that their injury is work-related, and the claimed manifestation date must be set at a the time the claimant's injury and its relationship to their employment become plainly apparent. *Id*. In the current matter, Petitioner alleged his left knee gradually worsened during his time working for Respondent after the August 2017 work incident. While he last worked for Respondent on December 15, 2018, he did not seek any medical treatment regarding his left knee condition until January 17, 2019. Respondent does not dispute that it employed Petitioner from August 2016 until December 15, 2018. The Commission finds the totality of the evidence proves that an employment relationship did exist between the parties during the relevant period in this matter.

The Arbitrator also concluded that Petitioner failed to provide timely notice of his claim to Respondent. After considering the evidence, the Commission respectfully disagrees with this conclusion. The Act requires that a claimant provide notice to their employer "…as soon as practicable, but not later than 45 days after the accident." 820 ILCS 305/6(c). Petitioner filed the Application for Adjustment of Claim in this matter on February 22, 2019—37 days after the alleged date of accident. Although Petitioner did not state on the Application that he was claiming an injury due to work-related repetitive trauma, he did clearly state that he sustained an injury on January 17, 2019, to his left leg and that the injury occurred while he was working. This provided Respondent with sufficient notice of Petitioner's claim. Therefore, the Commission finds that Petitioner did provide timely notice pursuant to Section 6(c) of the Act to Respondent.

While the Commission disagrees with the Arbitrator's conclusions regarding the issues of employment and notice, the Commission agrees with the Arbitrator's conclusion that Petitioner failed to prove he sustained an injury due to repetitive trauma that arose out of and in the course of his employment. A claimant who alleges they sustained an injury due to repetitive trauma must prove that the alleged injury is work-related and not the result of the normal degenerative aging process. *See Edward Hines Precision Components v. Indus. Comm'n*, 356 Ill. App. 3d 186, 194 (2005). To prevail under the theory of repetitive trauma, Petitioner must prove that "…his work duties were sufficiently repetitive in nature, occurrence, and force so as to cause a gradual breakdown…" of his left knee. *Williams v. Indus. Comm'n.*, 244 Ill. App. 3d 204, 209 (1993). Petitioner must prove that some act or phase of his employment was a causative factor in his claimed injury. *Id*. After examining the evidence, the Commission finds Petitioner failed to prove the repetitive nature of his work duties contributed to his left knee condition.

The Commission finds the credible evidence does not establish that Petitioner's work duties required him to engage in repetitive activities. Additionally, the credible evidence fails to establish that Petitioner's work in any way contributed to or hastened the natural progression of

Petitioner's significant pre-existing left knee degenerative condition. The Commission notes that Petitioner did not identify which, if any, work duty he believed to be repetitive and he certainly did not identify which, if any, work duty he believed might have caused or contributed to his current left knee condition. A review of the evidence, and particularly Petitioner's testimony, shows that Petitioner did not offer many details regarding his work duties. Petitioner testified that he worked approximately 40 hours each week. He testified that he was assigned to various locations and that his primary job duties were cleaning and painting gas pipes. He worked in fields where the gas company laid the pipelines. Petitioner testified that except for breaks, he was constantly on his feet during his shifts. He testified that he regularly lifted grinders, paint buckets, rollers, ladders, and tools used to mix paint. He testified that the heaviest item he was required to lift was a 5-gallon bucket. Petitioner also climbed ladders as part of his job. However, he testified that following the August 31, 2017, work incident, he did not climb ladders as frequently. Petitioner testified that each year Respondent conducted routine seasonal layoffs. He testified that during his period of employment, Respondent laid him off each year from approximately November until the next March. The Commission finds that Petitioner's testimony lacked the key details necessary for the Commission to determine whether his job duties involved repetitive duties.

After examining Petitioner's testimony, the Commission does not have any idea of how often Petitioner painted gas pipes and how often he cleaned the pipes. The Commission also has no details regarding the manner in which Petitioner performed his duties. For example, the Commission is unable to determine whether Petitioner's job duties involved a significant and routine amount of bending or kneeling. While Petitioner testified that he regularly carried items such as paint buckets, rollers, grinders, and ladders, his testimony provided no details regarding approximately how often he carried these items during each shift. In fact, Petitioner made no attempt to provide any evidence of the body mechanics involved in his daily work duties. Absent any details regarding the regularity with which and the manner in which Petitioner performed each job duty, the Commission is unable to conclude that Petitioner engaged in any repetitive work-related actions. Petitioner can not meet his burden by simply testifying that he "regularly" performed certain activities.

Petitioner's medical records also lack any evidence that Petitioner discussed his job duties with any detail with Dr. Nyquist. Petitioner described the August 2017 incident in some detail to Dr. Nyquist; however, the office visit notes reveal that Petitioner only told his doctor that he worked as a laborer. In fact, Dr. Nyquist admittedly did not know any details regarding Petitioner's job other than Petitioner's statement that his job was heavy duty. Dr. Nyquist believed Petitioner possibly worked in construction. Given the clear evidence that Dr. Nyquist knew, at best, very little about the nature of Petitioner's job and Petitioner's job duties, the Commission finds that the doctor's testimony that Petitioner's repetitive job duties could have caused Petitioner's left knee condition to worsen is not credible. The Commission notes that Dr. Nyquist did not identify which job duty he believed caused Petitioner's left knee to worsen. The doctor also offered no explanation regarding how any of Petitioner's job duties could have caused his already significantly deteriorated left knee to worsen beyond the normal progression of his condition. The Commission finds the credible evidence shows that Petitioner's current left knee condition is the result of the natural progression of his significant pre-existing left knee osteoarthritis. After carefully weighing the evidence, the Commission finds Petitioner failed to meet his burden of proving his left knee

condition is causally related to any of Petitioner's job duties. Therefore, the Commission affirms the Arbitrator's conclusions that Petitioner failed to prove he sustained an accidental injury arising out of his employment and failed to prove his current condition of ill-being is causally related to repetitive trauma due to his work duties.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Corrected Decision of the Arbitrator filed on November 15, 2021, is modified as stated herein.

IT IS FURTHER ORDERED that an employee-employer relationship did exist between Petitioner and Respondent.

IT IS FURTHER ORDERED that Petitioner did provide timely notice of this alleged accident to Respondent.

IT IS FURTHER ORDERED that all benefits are denied as Petitioner failed to meet his burden of proving he sustained an injury arising out of and in the course of his employment. Petitioner also failed to meet his burden of proving his left knee condition is causally connected to his employment.

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.

November 22, 2022

o: 9/27/22
TJT/jds
51

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Deborah L Simpson*
Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC005241
Case Name	TRIMBLE, CHARLES v. HEELS AND HARDHATS CONTRACTING
Consolidated Cases	
Proceeding Type	
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	3
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Stephanie Seibold
Respondent Attorney	Paul Krauter

DATE FILED: 11/15/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 9, 2021 0.06%

/s/ Paul Seal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Charles Trimble
Employee/Petitioner

v.

Heels & Hardhats Contracting
Employer/Respondent

Case # **19** WC **005241**

Consolidated cases:

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 **Paul Seal**, Arbitrator of the Commission, in the city of **Rockford**, on **9/17/21**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☒ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☐ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **1/17/19**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did not*** exist between Petitioner and Respondent.

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

Timely notice of this accident ***was not*** given to Respondent.

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

In the year preceding the injury, Petitioner earned $**81,120.00**; the average weekly wage was $**1,560.00**.

On the date of accident, Petitioner was **58** years of age, ***single*** with **0** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

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

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Denial of benefits

Because an employee-employer relationship did not exist, benefits are denied.

Because the petitioner failed to prove accident benefits are denied.

Because the petitioner failed to prove causal connection, benefits are denied.

Because the petitioner failed to prove notice, benefits are denied.

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

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

NOVEMBER 15, 2021

Signature of Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC015773
Case Name	Linda Webb v. State of Illinois - NIU
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0446
Number of Pages of Decision	15
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Nicholas Karayannis, Craig Mielke
Respondent Attorney	Alyssa Silvestri

DATE FILED: 11/23/2022

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LINDA WEBB,

Petitioner,

vs. NO: 15 WC 15773

STATE OF ILLINOIS - NIU,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of the nature and extent of Petitioner's permanent disability and whether Petitioner's current conditions of ill-being are causally related to her accident and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 01, 2021 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent has paid Petitioner all temporary partial disability benefits as stipulated by the parties and no additional temporary total disability benefits are claimed by Petitioner. After giving credit to Respondent for temporary total disability payments of $32,730.57 the Arbitrator awards no additional temporary total disability benefits.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $450.20 per week for a period of 150 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 30% loss of use of person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner compensation that has accrued from January 5, 2015 through September 15, 2021 and pay the remainder of the award, if any, in weekly payments.

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

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

Under Section 19(f)(2), no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. 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.

November 23, 2022

/s/ *Deborah J. Baker*

DJB/lyc

O: 11/09/22

/s/ *Stephen J. Mathis*

43

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC015773
Case Name	WEBB, LINDA v. STATE OF ILLINOIS - NIU
Consolidated Cases	No Consolidated Cases
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Craig Mielke
Respondent Attorney	Alyssa Silvestri

DATE FILED: 11/1/2021

/s/Frank Soto, Arbitrator

Signature

INTEREST RATE WEEK OF OCTOBER 26, 2021 0.06%

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

November 1, 2021

/s/ Brendon O'Rourke
Brendan O'Rourke, Assistant Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **Kane**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Linda Webb
Employee/Petitioner

v.

State of Illinois
Employer/Respondent

Case # **15** WC **15773**

Consolidated cases: _____

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 **Frank Soto**, Arbitrator of the Commission, in the city of **Geneva**, on **9/15/2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **1/5/2015**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did*** 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 $**39,017.28**; the average weekly wage was $**750.33**.

On the date of accident, Petitioner was **62** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**32,730.57** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**32,750.57**.

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

ORDER

The Arbitrator finds that Petitioner's current left shoulder and cervical spine conditions are causally related to her work accident of January 5, 2015, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Respondent has paid Petitioner all temporary partial disability benefits as stipulated by the parties and no additional TTD benefits are claimed by Petitioner. After giving credit to Respondent for TTD payments of $32,730.57 the Arbitrator awards no additional TTD benefits.

The Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 30% loss of use of person as a whole pursuant to §8(d)2 of the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Respondent shall pay Petitioner compensation that has accrued from January 5, 2015 through September 15, 2021 and shall pay the remainder of the award, if any, in weekly payments.

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.

By: /o/ Frank J. Soto

Arbitrator

November 1, 2021

Procedural History

This case proceeded to trial on September 15, 2021. The disputed issues were whether Petitioner's current conditions of ill-being (*i.e.* cervical and left shoulder) were causally connected to her injury as well as the nature and extent of Petitioner's injury. (Arb. Ex. #1).

Findings of Facts

Linda Webb (hereafter referred to as "Petitioner") testified that she is 69 years old and started working for Northern Illinois University (hereafter referred to as "Respondent") on February 14, 2015. Petitioner testified she was employed as a communications specialist, a position she held for 17 years. Petitioner testified prior to January 5, 2015 she was in good health and able to perform her job duties without any restrictions. Petitioner testified prior to January 5, 2015 she never suffered any injuries to her left shoulder or received any medical care for her left shoulder. Regarding her cervical spine, Petitioner testified in 2011 she received medical care consisting of therapy but that she was released from care and returned to work with no work restrictions and, after being released to return to work, she had no other issues with her cervical spine until her fall at work on January 5, 2015.

Petitioner testified on January 5, 2015 she arrived at work, the first day back following the holiday break, she slipped and fell on ice in a parking lot. Petitioner testified the parked lot was designated for staff and not used by the public. Petitioner testified as she exited her car, she slipped on the ice falling backwards landing on her left side and left arm.

Petitioner testified that after falling, she got up and went to work but, as she worked, she began to experience pain in her left shoulder, left hand, and cervical spine which caused her to leave work early, around 2:30 p.m.

On January 7, 2015, Petitioner sought medical treatment at the DeKalb Clinic. X-rays were taken of the left shoulder and neck. Petitioner was taken off work and she was referred to Dr. Glasgow, of Midwest Orthopedic Institute. (PX7, Pgs. 18-19; PX2, Pgs. 19-22). On February 10, 2015, Petitioner was examined by Dr. Glasgow. At that visit, Petitioner reported falling in the NIU parking lot on January 5, 2015 landing on her back and left side. The medical records state that Petitioner complained of pain located at the base of neck and ear which radiated down the left arm. (PX2, pgs. 19-20). The exam noted left shoulder pain, neck pain and radiating discomfort down to the left wrist. The exam also noted a trigger point in the left scapular region which Dr. Glasgow injected with lidocaine and Kenalog. Dr. Glasgow

diagnosed left shoulder pain with neck pain with radiating discomfort down the left wrist. (PX2, pgs. 20-21)

Petitioner returned to Dr. Glasgow on March 11, 2015 complaining of left-sided neck pain with left shoulder pain and left arm pain. Petitioner reported constant sharp pain that radiated from the left side of her neck to the posterior left shoulder, over the triceps and dorsum of the left forearm. Dr. Glasgow reviewed an MRI of the cervical spine taken on March 9, 2015, which showed marginal osteophyte with disc osteophyte complex extending to the left side of the spinal canal and left foramen at C5-6 with and moderate canal stenosis with slight effacement of the ventral spinal cord along the left side. Dr. Glasgow also noted a mild to moderate left foraminal stenosis. At C6-7 level, Dr. Glasgow noted a marginal osteophyte and a mild disc bulge with slight extension into the left forearm and a slight central protrusion and an annular fissure. Dr. Glasgow further noted moderate canal stenosis with effacement of the ventral subarachnoid space and moderate left foraminal stenosis. Dr. Glasgow compared Petitioner's cervical MRI of March 9, 2015 to an MRI for Petitioner's cervical spine taken in 2005. Dr. Glasgow noted minimal changes between the two MRIs. Dr. Glasgow indicated that Petitioner's 2005 cervical MRI showed moderate-sized left paracentral disc herniations at C5-6 and C6-7 which seemed unchanged in the March 9, 2015 cervical MRI. (PX2, pg. 11).

Petitioner discontinued treatment with Dr. Glasgow and she started to treat with Dr. Gryfinski of the Neuro and Headache Center. (PX2, pg. 5; PX3). On April 13, 2015, Petitioner saw Dr. Gryfinski reporting a history of falling on her left shoulder on January 5, 2015. (PX3, pg. 17). Petitioner underwent an EMG which confirmed left C6 and C7 radiculopathy. (PX3, pg. 14). Dr. Gryfinski diagnosed Petitioner with cervical spine stenosis and recommended a 2-level cervical fusion at C5-6 and C6-7. (PX3, pgs. 17-18). Dr. Gryfinski continued to keep Petitioner off work while waiting for surgical approval. (PX3, pg. 14). Thereafter, Dr. Gryfinski terminated his relationship with Petitioner stating that he could not provide further advise or care to Petitioner since her worker's compensation carrier was non-compliant with his advice nor provided Petitioner a second opinion. (PX3, pg. 7).

Petitioner was referred to Dr. Rabin, of Neurosurgery & Spine Surgery, by Dr. Haab of the DeKalb Clinic. (RX3 pg. 1). Petitioner provided a history of falling on ice in January while getting out of car at NIU where she worked. (PX4, pgs. 6). Dr. Rabin was concerned that

Petitioner's cervical symptoms could be caused by her left shoulder condition so he referred Petitioner to Dr. Asselmeier. (PX4, pg. 7).

On September 21, 2015, Petitioner was seen by Dr. Asselmeier who diagnosed impingement and acromioclavicular arthropathy of the left shoulder. At that time, Dr. Asselmeier recommended an arthroscopic acromioplasty and distal clavicle resection. (PX1, pg. 21).

On December 16, 2015. Petitioner underwent two Section 12 examinations. Dr. Singh examined Petitioner's cervical spine and Dr. Verma examined Petitioner's left shoulder. (RX3, RX 4).

Dr. Singh noted Petitioner's cervical MRI showed central stenosis at C5-6 and C6-7 with neuroforaminal stenosis left greater than right and that Petitioner's EMG revealed left sided C6 and C7 radiculopathy. (RX3, pg. 4). Dr. Singh opined there was no objective basis for Petitioner's complaints noting positive Waddell findings. (RX3, pg. 3). Dr. Singh diagnosed a cervical strain and degenerative disk disease at C5-6 and C6-7. Dr. Singh opined that Petitioner sustained a soft tissue muscular strain during her fall, which resolved. Dr. Singh also opined the disk degeneration at C5-6 and C6-7 was preexisting in nature. Dr. Singh further opined that Petitioner could return to work full duty without restrictions and further medical treatment was not necessary. (RX3, pgs., 5-6).[1]

Dr. Verma examined Petitioner that same day and he indicated he saw "*no behavioral observations or inappropriate illness behaviors*." (RX4, pg. 4). Dr. Verma stated "*It is my opinion, there is a causal relationship between the left shoulder condition and the patient's work injury of January 5, 2015, based on the acute onset of symptoms, appropriate cause to mechanism, clinical exam finding, and imaging review.*" (RX4, pg. 4). Dr. Verma agreed with the treating surgeon's recommendation for a left shoulder surgery. (RX4, pg. 4).

On January 22, 2016, Petitioner underwent shoulder surgery with Dr. Asselmeier. The surgery consisted of an acromioplasty and distal clavicle resection left shoulder. (PX6, pgs. 14-15). On April 13, 2016, Petitioner was released from her for the left shoulder without any restrictions. Petitioner reported significant improvement after the surgery with full range of motion and only mild discomfort at the extremes. (PX1, pg. 7).

[1] Dr. Singh's report does not address whether Petitioner's fall aggravated or exacerbated the pretexting degenerative disk disease at C5-6 or C6-7. (RX3).

On May 18, 2016, Petitioner returned to Dr. Rabin for her cervical condition reporting ongoing pain and numbness in the left arm. At that visit, Dr. Rabin ordered a thoracic and brachial plexus MRI and EMG. On June 20, 2016, Petitioner followed up with Dr. Rabin who indicated that the thoracic outlet MRI was negative but he could not completely rule it out. Dr. Rabin noted that Petitioner still has two disk herniations at C5-6 and C6-7 and he recommended surgery consisting of an anterior cervical discectomy and fusion at C5-6 and C6-7. (PX8, pg. 6).

In a progress note dated July 29, 2016, Dr. Rabin noted Petitioner reported that when she sits and works on a computer, she is unable to work more than a minute or two without increased pain, numbness, and weakness of the arm. Dr. Rabin opined that Petitioner could not return to work without risking permanent injury. Dr. Rabin further opined "*Although there is degenerative disease that predates the incident in 2015, the incident of 2015 is a clear exacerbation and caused worsening of her condition*. ". (PX8, pg. 10).

Dr. Rabin notes that Petitioner's cervical surgery was delayed due to a myocardial infarction. (PX8, pg. 10). Thereafter, Dr. Rabin retired and Petitioner followed up with his partner, Dr. Brayton who performed the surgery on October 11, 2018. (PX11, pgs. 54-55)

Petitioner did well and improved post-surgery. Petitioner last saw Dr. Brayton on April 9, 2019. Dr. Brayton noted that Petitioner had achieved a full recovery with complete resolution of pain and radiculopathy and restoration of full range of motion. The medical records indicate that Petitioner was released from care with no restrictions. (PX10, pg. 12)

Petitioner never returned to work for Respondent retiring in January 2017 upon reaching the age of 65. Petitioner continues to receive her retirement benefits and the parties stipulated that TTD is not in dispute. (Arb. Ex. #1).

Regarding her current condition, Petitioner testified she does not sleep soundly as she did prior to her work accident and that she needs to sleep on her stomach. Petitioner testified she tosses and turns throughout the night and, in the morning, her neck and left shoulder are stiff. Petitioner testified she has difficulty washing her hair and putting on her clothes due to difficulties raising her left arm above her head. Petitioner also testified to difficulties performing repetitive activity with her left arm such as keyboarding. Petitioner testified that she does not drive unless it is necessary because she has difficulty turning her neck to see behind her. Petitioner testified that she avoids overhead activity, heavy lifting and that several times a week

she takes Tylenol and applies ice to her left shoulder. Petitioner acknowledge that no doctor has issued restrictions on performing activities.

The Arbitrator found Petitioner's testimony credible.

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim (*O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253 (1980)) including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co, v. Industrial Commission*, 129 Ill.2d 52, 63 (1998). To be compensable under the Act, an injury need only be a cause of an employee's condition of ill-being, not the sole or primary causative factor. *Sisbro, Inc. v. Industrial Commission*, 207 Ill.2d 193, 205 (2003).

With Respect to Issue (F), Whether the Petitioner's Current Condition of Ill-being is Causally Related to the Injury, the Arbitrator Finds as follows:

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current condition of ill-being can be said to have been causally-connected to the work-related injury and not simply the result of a normal degenerative process of a pre-existing condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n,* 89 Ill.2d 432, 60 Ill.Dec. 629, 433 N.E.2d 671 (1982). When an employee with a preexisting condition is injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment, whether the accidental injury aggravated or accelerated the preexisting condition or whether the preexisting condition alone was the cause of the injury. *Sisbro, Inc. Industrial Comm'n*, 207 Ill.2d 193, 278 Ill.Dec. 70,797 N.E.2d 665, (2003). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989). Furthermore, it

has long been held that "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. Industrial Comm'n*, 93 Ill.2d 59, 63-64 (1982). "When the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. *Id*. at 64.

The Arbitrator has carefully reviewed and considered all medical evidence along with all testimony. The Arbitrator concludes that Petitioner has proven by the preponderance of the credible evidence that her current conditions of ill-being involving the cervical spine and left shoulder are causally related to her work accident of January 5, 2015, as set forth more fully below.

The Arbitrator finds that Petitioner presented sufficient, credible evidence that her current condition is causally related to the work injury. Petitioner testified that prior to her fall at work on January 5, 2015 she was not experiencing any left shoulder and cervical symptoms and that she was able to perform her job duties. No evidence was submitted into evidence showing that Petitioner was experiencing cervical radicular complaints, pain and discomfort, difficulties preforming her job duties or that she received recent medical care for either the left shoulder or cervical spine prior to her January 5, t2015 work accident.

The Arbitrator notes that Petitioner testified to experiencing ongoing cervical symptoms and shoulder complaints after her work accident of January of 2015 through the date of the surgeries, which was consistent with the medical records. Regarding the cervical spine, the Arbitrator finds the causation opinions of treating neurosurgeon, Dr. Rabin, to be more persuasive than the opinions of the Section 12 cervical examiner, Dr. Singh. Drs. Rabin and Singh agree that Petitioner had preexisting degenerative disc disease. Dr. Rabin opined that the degenerative disc disease was exacerbated and worsened by Petitioner's 2015 work accident. Dr. Singh only addressed whether Petitioner's preexisting disc disease was caused by her work fall of 2015 but not whether her condition was aggravated or exacerbated by Petitioner's 2015 fall at work. The Arbitrator notes that Dr. Singh's report is devoid of any information regarding Petitioner's physical condition prior to her 2015 fall at work. Dr. Singh opined that Petitioner's fall at work caused a soft tissue strain which resolved. The Arbitrator finds that Dr. Singh's causation opinion is based upon guess, speculation or surmise when he is unaware or fails to

consider Petitioner's physical condition prior to her fall at work. It is axiomatic that the weight accorded an expert opinion is measured by the facts supporting it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. Retirement Board*, 318 Ill. App. 3d. 514,15 (First. Dist. 2000).

Dr. Verma, who conducted the left shoulder Section 12 examination, opined there is a causal relationship between the left shoulder condition and Petitioner's work injury of January 5, 2015, based on the acute onset of symptoms, appropriate cause to mechanism, clinical exam finding, and imaging review. The Arbitrator finds the opinions of Dr. Verma to be persuasive and consistent with the opinions and conclusions of Dr. Asselmeier, who treated Petitioner's left shoulder condition.

With respect to issue "L," the nature and extent of Petitioner's injuries, the Arbitrator makes the following conclusions:

Section 8.lb of the Illinois Workers' Compensation Act ("Act") addresses the factors that must be considered in determining the extent of permanent partial disability for accidents occurring on or after September 1, 2011. 820 ILCS 305/8.1b (LEXIS 2011). Specifically, Section 8.1b states:

> For accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:
>
> (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.
>
> (b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:
>
> (i) the reported level of impairment pursuant to subsection (a);
> (ii) the occupation of the injured employee;
> (iii) the age of the employee at the time of the injury;
> (iv) the employee's future earning capacity; and
> (v) evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order. *Id.*

Considering these factors in light of the evidence submitted at trial, the Arbitrator addresses the factors delineated in the Act for determining permanent partial disability.

With regards to paragraph (i) of Section 8.1(b) of the Act. No AMA rating was offered into evidence. The Arbitrator, therefore, gives no weight to this factor.

With regards to paragraph (ii) of Section 8.1(b) of the Act. Petitioner was employed as a communications technician. Petitioner's job duties include answering phones and keyboarding. Petitioner retired upon reaching the age of 65. The Arbitrator gives some weight to this factor for determining permanent partial disability.

With regards to paragraph (iii) of Section 8.1 (b) of the Act. Petitioner was 62 years old at the time of her injury. Upon reaching the age of 65 Petitioner retired and, as such, does not need to continue working with the effects of her injury. Petitioner testified that she continues to experience neck and left shoulder pain performing some tasks of daily living which Petitioner continues to take over-the-counter pain relief medicine. The Arbitrator gives this factor some weight for determining permanent partial disability.

With regards to paragraph (iv) of the Act. Petitioner did not proffer any evidence involving her future earing capacity. Therefore, the Arbitrator gives this factor no weight for determining permanent partial disability.

With regards to paragraph (v) of the Act. Petitioner testified that she continues to suffer from neck and left shoulder pain. Petitioner takes over-the-counter medicine. The nature of the complaints contained in Petitioner's medical records are consistent with the areas of her body which she continues to experience pain. The medical records indicate that Petitioner's pain levels improved during treatment. Petitioner was released from care without restrictions. Petitioner testified that her pain levels did improve but that she continues to experience residual pain which she did not experience before her injury. The Arbitrator gives this factor greater weight to this factor for determining permanent partial disability.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that the Petitioner sustained permanent partial disability to the extent of 30% loss of use of a person as a whole, pursuant to Section 8(d)(2) of the Act.

By: /o/ Frank J. Soto
Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC034335
Case Name	Shantel Carter v. SCR Medical Transport
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0447
Number of Pages of Decision	14
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Matthew Jones
Respondent Attorney	PETER SINK

DATE FILED: 11/23/2022

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SHANTEL CARTER,

Petitioner,

vs. NO: 19 WC 034335

SCR MEDICAL TRANSPORTATION,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission specially writes to emphasize that the Arbitrator's denial of benefits is affirmed based upon Petitioner's lack of credibility. Having carefully reviewed the facts in evidence the Commission finds it impossible to determine the actual course of events that occurred on October 13, 2019. Petitioner simply failed to put forward any coherent factual scenario to prove by a preponderance of the evidence that she sustained an accident that arose out of and in the course of her employment that would entitle her to benefits under the Act.

Petitioner urges the Commission to find that Petitioner was a "traveling employee" and asserts that Petitioner's testimony is undisputed that she was "driving to the Dollar Store to pick up a client as dictated by Respondent." Petitioner argues that, as in *Potenza* v. *Illinois Workers' Compensation Comm'n.* 378 Ill..App 3d 113, 137 Ill. Dec. 355 (Ill. App.2007), she was

performing her job duties as a traveling employee when her purse was snatched and that her alleged injuries were therefore sustained in the course of her employment. She asserts that her testimony is undisputed that she was "driving to the Dollar Store to pick up a client as dictated by the Respondent."

Petitioner's credibility problems however negatively impact every aspect of her testimony as pointed out in the Special Finding in the Arbitrator's Decision. The Arbitrator found that Petitioner was not credible on several determinative issues. The Commission agrees with this finding and affirms the Arbitrator's denial of this claim.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 8, 2022 is hereby affirmed and adopted

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 by Petitioner. 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.

November 23, 2022
SM/msb
O-10/12/22
44

/s/*Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah Baker*
Deborah Baker

/s/*Deborah Simpson*
Deborah Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC034335
Case Name	CARTER, SHANTEL v. SCR MEDICAL TRANSPORTATION
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Molly Mason, Arbitrator

Petitioner Attorney	Adam Rosner
Respondent Attorney	Peter Sink

DATE FILED: 2/8/2022

THE INTEREST RATE FOR THE WEEK OF FERUARY 8, 2022 0.58%

/s/Molly Mason, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

SHANTEL CARTER Case # **19** WC **34335**
Employee/Petitioner

v.

SCR MEDICAL TRANSPORTATION
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **12/21/2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On **10/13/2019**, 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.

For the reasons set forth in the attached decision, the Arbitrator finds that Petitioner was not a credible witness and failed to prove a compensable "mental mental" injury. The Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues.

Timely notice of this accident ***was*** given to Respondent. Arb Exh 1.

In the year preceding the injury, Petitioner earned $**30,160.00**; the average weekly wage was $**580.00**. Arb Exh 1.

On the date of accident, Petitioner was **23** years of age, ***single*** with **0** dependent children. Arb Exh 1.

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**. Arb Exh 1.

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act. Arb Exh 1.

ORDER

For the reasons set forth in the attached decision, the Arbitrator finds that Petitioner was not a credible witness and failed to prove a compensable "mental mental" injury. The Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

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

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

Molly C Mason

Signature of Arbitrator **FEBRUARY 8, 2022**

Shantel Carter v. SCR Medical Transport
19 WC 34335

Summary of Disputed Issues

Petitioner, a 23-year-old medical transport driver, asserts "mental mental" injuries arising out of an incident occurring in a Dollar Tree parking lot on October 13, 2019. Petitioner testified she drove a company vehicle to the Dollar Tree store with the intention of picking up a client. She was unable to identify the client in any way and could not recall whether she made contact with the client before leaving the store. She testified that, after she left the store and began walking back toward the company vehicle, two men "flashed" a gun at her and took her purse. When Petitioner reported the incident to Respondent, however, she made no mention of any weapons. She simply indicated that two teenagers took her purse after she exited the Dollar Tree store and that she had received "fraud alerts" on her phone. RX 2.

The disputed issues include accident, causal connection, medical expenses, temporary total disability and nature and extent.

Arbitrator's Findings of Fact

Petitioner testified she began working for Respondent in March 2019. T. 16. Respondent is a transportation company that picks up and drops off clients at various locations, including hospitals, doctors' offices, stores and casinos. Petitioner testified she worked five days a week, driving a Respondent-owned Dodge Caravan that bore the logo "SCR." T. 19. The vehicle was equipped with a ramp and a computer monitor that showed her assignments. She would go to Respondent's office at the beginning of each workday and then head out to the designated destinations. She was not required to return to the office at other points in her shift. Respondent did not allow her or the other drivers to use its vehicles to perform personal errands.

Petitioner testified she felt happy and good when she woke up on October 13, 2019. T. 20. She went to work and began her route. At approximately noon, she went to a Dollar Tree store located in a strip mall at 95th and Jeffrey. She testified she was scheduled to pick up a client at that store. The following exchange took place on direct examination:

> "Q: And when you normally do pickups, do you get out of your vehicle to make contact with the client?
>
> A: Yes.
>
> Q: And is that what you did at the Dollar Tree?
>
> A: I don't remember if I was basically going to – I knew I was making contact, yes.

Q: And do you recall if you had gone into the Dollar Tree and already made contact with the client ---

A: No.

Q: --before the robbery or after?

A: No, I don't recall."

Petitioner testified that, after she left the store, two men approached her, flashed a gun at her and yanked her purse out of her arms. The men did not point the gun at her. The purse contained ten credit cards, $1300 in cash and her car keys. The men did not take her cell phone.

Petitioner testified she initially was in shock after the robbery. She then began feeling scared and furious. She used her cell phone to call the police but employees inside the store had already called them. She also called Respondent and provided notice of the incident. Police officers arrived at the scene and talked with her but then left to try to apprehend the men who had robbed her. She went to sit inside the company vehicle. Her phone "kept going off," notifying her of locations where the robbers were using her credit card to make transactions. She called the police to inform them of these locations. She then went back to Respondent's office and completed a report.

Petitioner identified RX 2 as the accident/incident report she completed at Respondent on October 13, 2019. RX 2 is a two-page, pre-printed form. On page one, Petitioner indicated her purse was "snatched" at 10:20 AM at 2101 East 95th Street. In response to a question asking her to describe the "trip type," Petitioner checked "regular." In response to a question inquiring about injuries, if any, she wrote: "n/a." She also indicated there was no damage to the company vehicle. On the second page, she indicated the vehicle was parked at the time of the incident. She also wrote the following:

> "I was walking to the van coming out of Dollar Tree store when two young teenager[s] ran up and snatched my purse with all my personal identification. I instantly called the police. Then I call [sic] drivers' coordinator and report [sic] the incident. After police arrived I showed the police my fraud alert text message. They investigated the transaction. Then they arrested the two young men. I went to the police station to make a police report."

RX 2.

Petitioner testified she felt traumatized by the incident. She felt anxious and depressed.

On November 5, 2019, she began a course of care at Aunt Martha's. She saw a nurse practitioner, Zenobia Clark. Clark's note reflects that Petitioner reported being robbed two weeks earlier while "coming out of a store." Petitioner indicated she felt depressed and anxious. She also reported driving a "Medi-Car" and feeling "extreme anxiety while working and being surrounded by people that she [doesn't] know or trust." Clark indicated that Petitioner complained of anxiety, depression and agitation but seemed to be in no apparent distress. She diagnosed post-traumatic stress disorder. She prescribed Trazodone, a sleep aid, and recommended therapy and a psychiatric evaluation. She directed Petitioner to return on November 26, 2019. She also indicated that Petitioner should "get FMLA paperwork and bring back for completion." PX 1.

Petitioner called Aunt Martha's the following day, November 6, 2019, to request assistance with a letter she needed. That same day, Clark issued a note indicated she had seen Petitioner the previous day and that Petitioner should remain off work "until further notice." PX 2.

On November 14, 2019, Petitioner saw Laura Koch, CNM, at Aunt Martha's for a test and screenings. On November 22, 2019, Petitioner contacted Aunt Martha's again and indicated she had not received a document "that was supposed to be faxed to her." PX 1.

Petitioner returned to Aunt Martha's on November 27, 2019 and again saw Zenobia Clark, N.P. Petitioner reported feeling anxious and depressed. Clark also noted that Petitioner stated "she would have wanted to stay off work for a continuous amount of time" and wanted to see a psychiatrist or counselor once or twice per week. Clark again diagnosed post-traumatic stress disorder. She continued the Trazodone and recommended counseling. PX 1.

On December 4, 2019, Clark issued a note indicating that, "because of the nature of [Petitioner's] diagnosis and after a violent incident while working, it would be beneficial" to change Petitioner's duties "to accommodate her current mental health issues." Clark went on to state that working in an office setting "would be most suitable." PX 2.

Petitioner testified that Respondent did not provide accommodated duty and, at some point shortly after the incident, terminated her. She felt "shook up and angry" because Respondent was not working with her to provide restricted work and counseling.

Petitioner saw a counselor, Lisa Myles, at Aunt Martha's on December 10, 2019. Myles noted a diagnosis of post-traumatic stress disorder "diagnosed in September 2019 as a result of the robbery that client survived." She also noted that Petitioner complained of migraines since September 2019. Later in the same note, she indicated that Petitioner was experiencing various symptoms, including anxiety, depression, intrusive thoughts, irritability and hypervigilance, secondary to being "robbed at gunpoint on the job in October." On the last page, she noted that Petitioner "was assaulted at work and her life was threatened." She recommended that Petitioner see a psychiatrist. PX 1.

Petitioner returned to Lisa Myles on December 17, 2019 and again complained of anxiety, depression, difficulty focusing and anger. Myles noted that Petitioner was scheduled to see a psychiatrist in January. She again diagnosed post-traumatic stress disorder. She encouraged Petitioner to take care of herself and "continue to seek healing." Px 1.

Petitioner saw Lisa Myles again on December 30, 2019. Myles noted that Petitioner was still depressed and anxious and felt that no one cared about her. Myles also noted that Petitioner was anticipating going to court in January. Petitioner reported that her employer wanted her to resume the same route she performed "when she was attacked on the job" and that she actively avoided that route because, when she was there, "she relives being attacked there." Myles indicated she and Petitioner "discussed the extreme difficulty that [Petitioner] would likely experience having to return to the route at this time." PX 1.

Petitioner returned to Lisa Myles on January 14, 2020. Petitioner reported that she still felt "impacted by what happened to her" but was considering returning to work "despite experiencing some ongoing symptoms of PTSD." Myles indicated that Petitioner had gone to her place of employment that week and had spoken with them about returning to work. PX 1.

Petitioner saw Lisa Myles again on February 10, 2020 and reported feeling nervous, anxious and "worried about something bad happening." Myles again noted that Petitioner had been "robbed at gunpoint on the job in October." She indicated that Petitioner continued to feel threatened and traumatized "by what she experienced on her job – a matter of life and death." She further noted that Petitioner was "frustrated with how her job responded to her traumatic event and had not supported her in pursuing her workers' compensation." She indicated that Petitioner was afraid "to go far." She recommended therapy to reduce Petitioner's symptoms. PX 1.

On February 24, 2020, Petitioner saw Marlin Reyes and underwent a test. PX 1.

On October 2, 2020, Petitioner saw Dr. Gillard. The doctor noted that Petitioner reported feeling "stressed and depressed recently" and that these symptoms "started 6-7 months ago." He prescribed Busipirone and Trazodone and referred Petitioner to a psychiatrist. PX 1.

On October 12, 2020, Petitioner had a teletherapy session with Kenneth Simpson. Simpson noted the previous diagnoses of post-traumatic stress disorder and migraines. Petitioner reported anxiety and sleep difficulties as well as "conflict at her employment with the Postal Service." Simpson discussed journaling and various coping skills with Petitioner. PX 1.

On October 27, 2020, Petitioner had a teletherapy session with Kenneth Simpson. Simpson indicated that Petitioner complained of anxiety and depression and had recently stopped seeing her boyfriend. He discussed various coping mechanisms with Petitioner. PX 1.

On November 16, 2020, Petitioner had a teletherapy session with Kenneth Simpson. Petitioner reported trying to rid herself of a cold and having issues with her supervisor, who wanted her to continue delivering mail despite the fact she was feeling sick. Petitioner also indicated she was getting ready to attend real estate school. Simpson indicated he taught Petitioner "conflict resolution skills." PX 1.

On December 10, 2020, Petitioner had a telehealth Covid follow-up visit with Dr. Gillard. Petitioner reported having tested positive for Covid on November 17, 2020 and needing a letter because she was "trying to go back to work." PX 1.

On February 2, 2021, Petitioner saw Michele Toney, a nurse practitioner. Toney ordered a test and various screenings. PX 1.

On February 8, 2021, Petitioner had a telephone visit with Dr. Achufusi, an osteopathic physician. Dr. Achufusi noted that Petitioner had been involved in a motor vehicle accident more than a week earlier and was complaining of 8/10 pain in her lower back and left knee. He prescribed X-rays and physical therapy. PX 1.

On February 22, 2021, Petitioner returned to Dr. Achufusi. The doctor noted that Petitioner had a history of back, neck and knee pain. He also noted that Petitioner had undergone four physical therapy sessions but wanted to change therapists as she felt the therapy to date was not beneficial. He further noted a history of chronic anxiety with an onset date of October 2, 2020. He referred Petitioner to a physical therapist. PX 1.

On April 28, 2021, Petitioner saw Jane Sutkowski, a nurse practitioner. Petitioner reported having undergone an ultrasound the previous day. Sutkowski performed a test and recommended that Petitioner go to the Emergency Room at St. James Hospital. PX 1.

On May 7, 2021, Dr. Khan performed repeat testing and a repeat pelvic ultrasound. He also ordered laboratory studies and screenings. PX 1.

On May 14, 2021, Dr. Khan ordered laboratory studies and a pelvic ultrasound. He noted a complaint of depression and indicated that Petitioner denied any suicidal ideation. PX 1.

On May 21, 2021, Petitioner had a telehealth visit with Jacqueline Wrobelewski in follow-up from the visit of May 14th. Petitioner indicated she was dealing with "severe stress in her life" and was "very irritable." She complained of difficulty focusing and remaining calm at work due to stress. She denied any suicidal ideation. She expressed frustration at not having received an FMLA letter she needed for work.

On July 8, 2021, Petitioner saw Heather Tod, a licensed clinical social worker. Tod noted the previous diagnoses of post-traumatic stress disorder and migraines. She conducted a mental status examination. She described Petitioner's mood as "anxious, irritable and

depressed." She noted that Petitioner denied suicidal ideation. She and Petitioner discussed coping skills. She recommended that Petitioner return to the office as needed. PX 1.

Petitioner testified she is currently "feeling good." After the incident, she took medication for her symptoms every day. She now takes medication about once a week. The medication makes her feel nauseated so she does not like to take it. T. 37.

Under cross-examination, Petitioner testified she cannot recall the date of the incident. T. 39. She thinks the incident occurred around noon. The men who took her purse flashed a gun but did not hold the gun to her head. T. 40. She cannot recall the name of the client she was supposed to contact. T. 41. Her purse contained about ten cards, $1300 in cash and her car keys. The robbers did not take her cell phone. T. 41. She was in a public parking lot when the robbers took her purse. T. 42-43. She called the police and told them someone snatched her purse. She cannot recall flagging the police down. She did not tell the police she left her purse in her vehicle and left the vehicle unlocked. T. 45. She told them someone took her purse and ran. She also told them that she was receiving transaction alerts on her phone. After the incident, she first went to Respondent and completed a report before she went to the police station. She retrieved her wallet at the police station. She was not required to appear at court. She identified RX 2 as the statement she completed at Respondent. T. 49. She was not physically injured but was "in shock" after she was robbed. She felt frustrated, scared and traumatized. T. 51. If her records from Aunt Martha's reflect she was stressed out because her boyfriend was not returning her calls, she would disagree. That is "absolutely not" true. T. 52. She has no recollection of telling her providers she was experiencing job stress or planning to attend real estate school. The computer inside Respondent's van kept track of the clients she picked up. She was not able to key in other stops. T. 56. She has no recollection of picking up a client at 9:24 on Michigan. Nor does she recall stopping at a gas station. She cannot recall how long she was inside the Dollar Tree store. T. 60. Respondent does not allow its drivers to use company vehicles to perform personal errands. She reported to Respondent that two teenagers "snatched" her purse. She was not afraid of getting in trouble. She was not on her lunch break. She is not sure when she recovered her purse. She has no proof with her showing that the individuals who robbed her used her credit card to make purchases. She cannot recall the client or where she was supposed to take the client. T. 61.

On redirect, Petitioner identified RX 2 as the incident report she completed and signed on the date of the incident. This was the only report she authored. She did not complete or review any driver logs. T. 63-64.

Under re-cross, Petitioner testified she cannot clearly recall her restrictions. She believes they were driving-related. T. 65. She has no evidence indicating she attempted to return to work. Respondent never reviewed her workday activities or overall job performance with her.

Respondent did not call any witnesses. Respondent offered five exhibits into evidence. The Arbitrator sustained Petitioner's objections to RX 1 (the police report) and RX 4

(Respondent's log of Petitioner's driving activities on the date in question). The Arbitrator rejected these two exhibits and gave no consideration to them in reaching her decision. The Arbitrator admitted and considered RX 2 (the accident report that Petitioner completed for Respondent), RX 3 (Zenobia Clark's note of December 4, 2019 concerning the need for accommodations due to Petitioner being involved in a "violent incident while working"); and RX 5 (a Form 45/First Report of Injury dated December 5, 2019).

Arbitrator's Credibility Assessment

The Arbitrator found Petitioner not credible on several significant issues.

Petitioner was able to recall, in detail, the items that were taken from her. She was remarkably vague, however, about what she did immediately prior to the incident. She contended that her stop at the Dollar Tree store was work-related but she provided absolutely no information about the client she was supposed to pick up, how she went about contacting that client, where she was supposed to take the client or what she did inside the store while allegedly looking for the client. She maintained she was robbed in a strip mall parking lot, after she exited the store, but again made no mention of any client. She gave the impression of exiting the store alone and never clarified whether she had been unable to find the client. In short, she was evasive and not credible as to a critical issue, i.e., whether she was in fact performing job-related duties at the time of the incident. She grew defensive under cross-examination, when asked whether she had been performing a personal errand before being robbed, but that was exactly the impression the Arbitrator was left with.

When Petitioner reported the incident to Respondent she made no mention of any gun. RX 2. When Petitioner underwent treatment, however, she reported being "robbed at gunpoint", "assaulted" and "attacked." PX 1. At the hearing, Petitioner conceded that the men who took her purse did not point any weapon at her.

Petitioner also disputed a number of entries in her medical records.

Arbitrator's Conclusions of Law

<u>Did Petitioner sustain an accident on October 13, 2019 arising out of and in the course of her employment?</u>

The Arbitrator concludes that items were stolen from Petitioner in a parking lot on October 13, 2019. The Arbitrator is unable to conclude, however, that the robbery occurred while Petitioner was working or that Petitioner established a compensable "mental mental" claim. While there seems to be no dispute that Petitioner drove a company vehicle to a Dollar Tree store on October 13, 2019, the Arbitrator is unable to conclude that the purpose of the stop was to pick up a client. The Arbitrator finds it odd that Petitioner would vividly recall the contents of her purse yet say little to support her story that she went to the store in furtherance of her job. The Arbitrator can fully understand that Petitioner might not recall the

name of the client, since she presumably transported several individuals each day, but she literally offered no information as to how she tried to reach out to the client, what she did inside the store, whether she exited the store alone or where she would have gone next had the robbery not taken place.

As for the "mental mental" aspect of Petitioner's claim, the Arbitrator agrees that an individual might suffer a Pathfinder-like "severe emotional shock" upon seeing a gun, even if the gun was "flashed" rather than pointed. There is no credible evidence, however, that the individuals who took Petitioner's purse "flashed" a gun at her. Petitioner's testimony on this point was simply not believable. The Arbitrator again notes that, when Petitioner reported the theft to Respondent, on the day the incident occurred, she said nothing about seeing a gun or feeling threatened. She denied any injury. She focused on the items that were taken from her and the telephonic "fraud alerts" she received. RX 2. When she later began undergoing treatment, however, she reported being "robbed at gunpoint", "assaulted" and "attacked." The providers who saw her based their diagnoses and recommendations on that reporting. PX 1.

The Arbitrator finds that Petitioner lacked credibility and failed to establish a compensable "mental mental" injury. The Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC036914
Case Name	Stephanie Thomas v. Carlyle Healthcare Center
Consolidated Cases	19WC010086;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0448
Number of Pages of Decision	33
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Richard Salmi
Respondent Attorney	John Allen

DATE FILED: 11/23/2022

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify Temporary Disability	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STEPHANIE THOMAS,

Petitioner,

vs. NO: 18 WC 36914

CARLYLE HEALTHCARE CENTER,

Respondent.

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 whether Petitioner's current condition of ill-being is causally related to the undisputed November 1, 2018 work accident, entitlement to temporary disability benefits, and entitlement to incurred medical expenses as well as prospective medical care, and being advised of the facts and law, modifies the Decision as stated below but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission 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 (1980). This case was consolidated for hearing with case number 19 WC 10086.

CONCLUSIONS OF LAW

I. Causal Connection

Finding that Petitioner suffered an initial injury on November 1, 2018 (the instant case) that was being mistakenly treated as a shoulder issue until her second injury on March 20, 2019 (case no. 19 WC 10086), after which a refocused diagnostic workup established that her continuing complaints stemmed from her cervical spine (neck), the Arbitrator concluded Petitioner's

condition of ill-being is causally related solely to the November 1, 2018 accident and unrelated to the March 20, 2019 accident. The Commission agrees, in part. Specifically, the Commission finds a causal connection exists between the November 1, 2018 accident and Petitioner's current condition of ill-being. The record reflects Petitioner had an immediate onset of pain, sought emergency room treatment the same day, and despite work-up, conservative care, and ultimate rule out of shoulder pathology correlating to her pain, her symptoms never resolved. As observed by the Arbitrator, the treating physicians as well as Respondent's experts confirmed there is symptomatic overlap between shoulder and neck injuries: Dr. Lee noted Petitioner had "some component of capsular tightness on her shoulder which may be a protective response due to the overlap of the cervical symptoms" (Pet.'s Ex. 6); Dr. Gornet's initial evaluation reflects he "explained to her the overlap between the shoulder and the cervical spine and that her disc injuries predominantly at C5-6 and C6-7 could easily be the source of her shoulder pain, her scapular pain, trapezial pain, neck pain and headaches" (Pet.'s Ex. 9); Dr. Frisella acknowledged the overlap between symptoms from a shoulder injury and a neck injury, and agreed Petitioner has continuing symptoms consistent with neck pathology (Resp.'s Ex. D, p. 25, 35); and Dr. Kitchens agreed there is overlap between shoulder pathology and neck pathology (Resp.'s Ex. G, p. 26-27). The Commission finds the medical evidence along with Petitioner's credible testimony establish that Petitioner developed complaints consistent with neck pathology following the undisputed November 1, 2018 accident.

While the Commission agrees with the Arbitrator that there is a causal connection between Petitioner's current condition of ill-being and the November 1, 2018 accident, we view the evidence regarding the March 20, 2019 accident differently. As such, the Commission strikes the last paragraph from Page 20 and continuing to Page 21. Causal connection to the March 20, 2019 work accident is analyzed in companion case 19 WC 10086.

II. Temporary Disability

The Request for Hearing reflects Petitioner alleged entitlement to Temporary Total Disability ("TTD") benefits from May 1, 2019 through December 6, 2019 and December 9, 2019 through April 29, 2021[1]. Arb.'s Ex. 1. Finding Dr. Lee's April 30, 2019 work restrictions precluded Petitioner from working as a CNA, and Respondent failed to provide accommodated duty except for December 7 and 8, the Arbitrator found Petitioner entitled to the claimed TTD periods at $366.43 per week. The Commission views the evidence differently and finds that rather than TTD under §8(b), the applicable temporary disability provision under the Act for the benefit periods claimed by Petitioner is §8(a).

Section 8(b) provides for the payment of benefits to compensate for an employee's "temporary total incapacity" for work. *820 ILCS 305/8(b)*. While the Commission agrees with the Arbitrator that Petitioner was medically restricted from working as a CNA, we emphasize that Petitioner was not totally incapacitated from all work; rather, it is undisputed that Petitioner

[1] The proceedings began on April 29, 2021 but a continuance was requested and granted; proofs were not closed until June 29, 2021.

continued to work her concurrent employment[2] with Moto Mart through the arbitration date. T. 44-45, 50. As such, the proper temporary disability benefit is "temporary partial disability" under §8(a):

> When the employee is working light duty on a part-time basis or full-time basis and earns less than he or she would be earning if employed in the full capacity of the job or jobs, then the employee shall be entitled to temporary partial disability benefits. Temporary partial disability benefits shall be equal to two-thirds of the difference between the average amount that the employee would be able to earn in the full performance of his or her duties in the occupation in which he or she was engaged at the time of accident and the gross amount which he or she is earning in the modified job provided to the employee by the employer or in any other job that the employee is working. *820 ILCS 305/8(a)* (Emphasis added).

Although Petitioner misidentified her remedy, there was no error in identifying the relevant dates, so the Commission will treat the claimed periods as a request for Temporary Partial Disability ("TPD") benefits. *See McLean Trucking Co. v. Industrial Commission*, 96 Ill. 2d 213, 218-219 (1983) (In pleadings under a compensation act, calling things by wrong names, or bringing a petition under a wrong title, or making other harmless mistakes as to details such as dates, are immaterial if the intention of the pleading is clear. As to variance between pleadings and proof, wide latitude is allowed). The Commission finds Petitioner is entitled to TPD benefits as detailed below.

The parties stipulated that Petitioner's pre-accident average weekly wage, *i.e.*, her earnings when employed in the full capacity of her jobs, is $868.13. Arb.'s Ex. 1. After May 1, 2019, Petitioner continued to work at Moto Mart, and Respondent's Exhibit J details Petitioner's weekly Moto Mart earnings through October 12, 2019. As such, the Commission is able to calculate the individual TPD benefit for each week from May 1 through October 12, 2019:

Pay Period End Date	Moto Mart Wages	Difference from Full Capacity ($868.13)	TPD Benefit
May 4, 2019	$209.57	$658.56	$439.04
May 11, 2019	$321.65	$546.48	$364.32
May 18, 2019	$348.70	$519.43	$346.29
May 25, 2019	$394.01	$474.12	$316.08
June 1, 2019	$449.49	$418.64	$279.09
June 8, 2019	$318.66	$549.47	$366.31
June 15, 2019	$336.05	$532.08	$354.72
June 22, 2019	$413.80	$454.33	$302.89
June 29, 2019	$371.65	$496.48	$330.99
July 6, 2019	$450.29	$417.84	$278.56
July 13, 2019	$369.62	$498.51	$332.34

[2] Petitioner testified she also continued to assist Attorney Goggin however, since January 2019, Attorney Goggin had been unable to pay Petitioner's wages. T. 46-47. As such, rather than wage-earning employment, the Commission considers Petitioner's efforts for Attorney Goggin to be unpaid volunteering.

July 20, 2019	$356.89	$511.24	$340.83
July 27, 2019	$411.35	$456.78	$304.52
August 3, 2019	$340.90	$527.23	$351.49
August 10, 2019	$291.85	$576.28	$384.19
August 17, 2019	$501.83	$366.30	$244.20
August 24, 2019	$221.43	$646.70	$431.13
August 31, 2019	$291.05	$577.08	$384.72
September 7, 2019	$321.94	$546.19	$364.13
September 14, 2019	$280.00	$588.13	$392.09
September 21, 2019	$339.47	$528.66	$352.44
September 28, 2019	$238.54	$629.59	$419.73
October 5, 2019	$239.07	$629.06	$419.37
October 12, 2019	$241.30	$626.83	$417.89
			Total: $5,146.42

While the transcript does not contain wage records for the remaining TPD periods (October 13, 2019 through December 6, 2019 and December 9, 2019 through June 29, 2021), Petitioner testified as to her work activities during that time. Petitioner acknowledged that her weekly hours at Moto Mart continue to fluctuate, depending on how she is feeling as well as staffing issues, and she agreed that Respondent's Exhibit J is a fair representation of what her hours have been since October 12, 2019. T. 62-64. The Commission's analysis of Respondent's Exhibit J reveals Petitioner's mean workweek is 33.5 hours (804.49 total hours / 24 weeks = 33.5). Petitioner further detailed the changes in her hourly rate over that span: from October 2019 through June 2020, her hourly wage was $10.00; from July 1, 2020 through December 31, 2020, her hourly rate was $10.10; and since January 1, 2021, she has earned $11.00 per hour. T. 64-65.

Based on Petitioner's credible testimony, the Commission calculates the TPD benefits as follows:

<u>October 13, 2019 through December 6, 2019</u>

Average weekly Moto Mart earnings:	$335.00 (33.5 hours x $10.00 = $335.00)
Difference from Full Capacity ($868.13):	$533.13
Weekly TPD Benefit:	$355.42
Total TPD:	$2,792.59 ($355.42 x 7 6/7 weeks)

<u>December 9, 2019 through June 30, 2020</u>

Average weekly Moto Mart earnings:	$335.00 (33.5 hours x $10.00 = $335.00)
Difference from Full Capacity ($868.13):	$533.13
Weekly TPD Benefit:	$355.42
Total TPD:	$10,408.73 ($355.42 x 29 2/7 weeks)

<u>July 1, 2020 through December 31, 2020</u>

Average weekly Moto Mart earnings:	$338.35 (33.5 hours x $10.10 = $338.35)
Difference from Full Capacity ($868.13):	$529.78
Weekly TPD Benefit:	$353.19
Total TPD:	$9,283.85 ($353.19 x 26 2/7 weeks)

January 1, 2021 through June 29, 2021	
Average weekly Moto Mart earnings:	$368.50 (33.5 hours x $11.00 = $368.50)
Difference from Full Capacity ($868.13):	$499.63
Weekly TPD Benefit:	$333.09
Total TPD:	$8,565.17 ($333.09 x 25 5/7 weeks)

The Commission finds Petitioner is entitled to accrued TPD benefits totaling $36,196.76. The Commission vacates the award of TTD benefits.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 28, 2021, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner temporary partial disability benefits in the amount of $36,196.76, as provided in §8(a) of the Act, and as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that award of Temporary Total Disability benefits from May 1, 2019 through December 6, 2019 and December 9, 2019 through June 29, 2021 is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the reasonable and necessary medical expenses as detailed in Petitioner's Exhibit 12, as provided in §8(a), subject to §8.2 of the Act. Respondent shall have a credit for the medical payments detailed in Respondent’s Exhibit M.

IT IS FURTHER ORDERED BY THE COMMISSION that Responent shall provide and pay for cervcial spine surgery as recommended by Dr. Gornet, including but not limited to any necessary pre-operative clearance and post-operative rehabilitative treatment, as provided in §8(a) of the Act.

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

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

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 the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. 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.

November 23, 2022

/s/ *Deborah J. Baker*

DJB/mck

O: 9/28/22

43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC036914
Case Name	THOMAS, STEPHANIE v. CARLYLE HEALTHCARE CENTER
Consolidated Cases	19WC010086
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	26
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Richard Salmi
Respondent Attorney	John Allen

DATE FILED: 12/28/2021

/s/ Jeanne AuBuchon, Arbitrator

Signature

INTEREST RATE WEEK OF DECEMBER 28,2021 0.21%

STATE OF ILLINOIS)
)SS.
COUNTY OF **Madison**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Stephanie Thomas
Employee/Petitioner

v.

Carlyle Healthcare Center
Employer/Respondent

Case # **18** WC **036914**

Consolidated cases: **19 WC 010086**

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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **04/29/2021 and 6/29/21**. 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 _____

FINDINGS

On the date of accident, **11/01/2018**, 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 these 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 **$38,546.00** the average weekly wage was **$868.13**, representing average weekly wage at Carlyle Healthcare of $549.65; Attorney Andrew Goggin of $150.10; Motomart of $168.38.

On the dates of accident, Petitioner was ***38*** years of age, ***single*** with ***2*** dependent children.

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

Respondent shall be given a credit of $**N/A** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit of $**n/a** under Section 8(j) of the Act. Respondent to receive a credit for medical paid.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **$366.43**/week for 111 and 3/7 weeks (**$40,830.77**), commencing 05/01/2019 to 12/06/2019 and 12/09/2019 through 06/29/2021, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to Section 8.2, to the medical providers/lienholders, as outlined in Petitioner's Exhibit 12. Respondent shall receive credit for medical payments previously paid as outlined in Respondent's Exhibit M.

Respondent shall authorize and pay for Petitioner's medical treatment pursuant to the recommendations of Dr. Matthew Gornet.

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.

Jeanne L. AuBuchon

Signature of Arbitrator

December 28, 2021

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to trial on October 27, 2020, pursuant to Sections 19(b) and 8(a) if the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's shoulder and cervical spine injuries; 2) payment of medical bills; 3) entitlement to TTD benefits from May 1, 2019, through December 6, 2019, and December 9, 2019, through April 29, 2021; and 4) entitlement to prospective medical care to the Petitioner's cervical spine. This case was consolidated with 19 WC 10086 for purposes of trial. The trial began on April 29, 2021, but proofs were not closed until June 29, 2021, in order to give the Petitioner an opportunity to review and rebut the surveillance videos offered by the Respondent. Therefore, the Arbitrator extends the second period of TTD sought to June 29, 2021.

FINDINGS OF FACT

The Petitioner was employed with Respondent as a certified nursing assistant (CNA) for nearly three years assisting patients with everyday activities, such as dressing, getting ready for bed, brushing teeth, feeding, toileting, transferring and positioning patients in their beds. (T. 13-14) She testified that on November 1, 2018, the Petitioner was putting patients to bed in the Alzheimer's unit when a male patient was not cooperating with getting out of his recliner. (T. 15-16) The Petitioner said that she, a nurse and another CNA tried twice to get the patient out of his recliner, and on the second try, the Petitioner felt a pop and wanted to stop, but the nurse told her it was company policy to try three times. (Id.) She stated that on the third try, she was holding the patient with both hands when he lifted his bottom and scooted his recliner from underneath him. (T. 16) She held him up until the nurse and the other CNA put the recliner back underneath him. (Id.) She said she lunged forward because she was fully extended. (Id.) While she was holding the patient up, the Petitioner started feeling a burning sensation from her neck to her

shoulder. (T. 17) She said that when she was able to sit down, she felt pain in the upper inside part of her shoulder and felt a loss of strength. (Id.) She then tried to assist another patient to the bathroom but was unable to. (Id.)

The Petitioner testified that prior to the accident, she was able to perform all of her job duties without any neck or arm symptoms and had no prior treatment for neck or arm problems. (T. 14) The Petitioner also had concurrent employment at Moto Mart as a cashier and with attorney Daniel Goggin doing light filing and computer work. (T. 14-15, 43) On cross-examination, the Petitioner admitted that she was in a motor-vehicle accident when she was 15 years old and has had migraines since then, for which she took medication. (T. 37-39)

On the day of the accident, the Petitioner went to the emergency room at St. Joseph's Hospital complaining of right shoulder pain. (PX13) The hospital performed X-rays, which were normal. (Id.) The Petitioner was diagnosed with a shoulder sprain, prescribed ibuprofen, instructed to follow up with her primary care physician and advised to avoid lifting more than 20 pounds until she was cleared by her doctor. (Id.)

On November 7, 2018, the Petitioner saw her primary care physician, Dr. Andrew Goggin, at Greenville Family Practice. (PX2) She reported being unable to raise her right arm above level due to pain and reported tenderness behind her shoulder blade. (Id.) Dr. Goggin diagnosed a right rhomboid shoulder strain, prescribed medication, referred the Petitioner to physical therapy and gave her a work restriction of no raising her arm above level until December 1, 2018. (Id.) On November 29, 2018, Dr. Goggin ordered the Petitioner off work until she could follow up with orthopedics. (PX2)

The Petitioner testified that Dr. Goggin referred her to Dr. George Paletta, an orthopedic surgeon at The Orthopedic Center of St. Louis, whom she saw on December 3, 2018. (T. 17-18,

PX3) A physical examination revealed marked tenderness along the right rhomboids as the medial border of the scapula with no tenderness at the acromioclavicular joint, sternoclavicular joint or bicipital groove. (Id.) The Petitioner had good range of motion with pain at the end ranges and pain with passive protraction as the arm was brought cross body. (Id.) She had good overall cuff strength, negative O'Brien's sign and no translational abnormalities. (Id.) Dr. Paletta diagnosed a rhomboid strain of the right shoulder, recommended an MRI, prescribed medication and placed the Petitioner on light duty restrictions of no lifting more than 10 pounds floor to chest, no lifting more than 1 pound overhead, no reaching overhead, no repetitive reaching cross body, no pushing or pulling more than one pound and no patient contact. (Id.)

Dr. Paletta reviewed the MRI on December 19, 2018, and found no evidence of tears nor rhomboid strain but stated that the scan demonstrated tendinopathy of the supraspinatus tendon and evidence of tenosynovitis of the long head of the biceps, which he stated did not correlate with her clinical symptoms – most notably her report of periscapular pain with no evidence of any abnormality of the rhomboids or other periscapular musculature. (Id.) He opined that the Petitioner required no additional orthopedic treatment at that time and could work full duty. (Id.) He recommended consultation with a non-operative specialist, such as Dr. Matt Bayes, a sports medicine specialist at Bluetail Medical Group, for consideration of a possible injection. (Id.)

On February 6, 2019, the Petitioner underwent a Section 12 examination by Dr. Michael Nogalski, an orthopedic surgeon at Orthopedic Associates, to whom she provided a consistent description of the work incident and complained of spasms near her shoulder blade and mild pain into her neck. (RXA) She noted grinding at times around the back of the shoulder and some feelings of catching in the shoulder. (Id.) A physical examination of the shoulder itself was normal. (Id.) In the scapular region, Dr. Nogalski found tenderness over the inferior scapular

angle and medial scapular border, especially in the mid- to lower- scapular border. (Id.) With flexion and abduction of the shoulder, the Petitioner had some complaints in the posterior scapular region at maximum abduction and forward flexion. (Id.) She had "fairly significant" pain in the medial scapular border with resisted abduction. (Id.) Shoulder X-rays were normal. (Id.)

Dr. Nogalski reviewed records from Dr. Goggin and Dr. Paletta. (Id.) He did not have the MRI scans nor the radiologist's report but did look at Dr. Paletta's "MRI Review." (Id.) Dr. Nogalski diagnosed the Petitioner with right posterior scapular pain and stated that the Petitioner's pain was related to the work accident but also stated that there were no objective findings to validate a specific injury had occurred. (Id.) He wrote that he did not identify any objective data that the work accident aggravated, accelerated or precipitated a pre-existing condition beyond ordinary progression. (Id.) He found that the treatment rendered to date had been necessary and appropriate with respect to evaluation for the claimed injury. (Id.) He stated that no further treatment was required, that the Petitioner could work full duty and that she reached maximum medical improvement. (Id.) He rated the Petitioner's impairment at 1percent based on the AMA Guides to the Evaluation of Permanent Impairment. (Id.)

Dr. Nogalski criticized Dr. Paletta for having "framed a discussion" of whether the Petitioner needed surgery rather than "actually" providing a diagnosis or opinion on causation. (Id.) He said that it was well within the scope of a board-certified orthopedic surgeon in the practice of shoulder surgery to offer a diagnosis, prescribe physical therapy and provide an injection – which, he said, Dr. Paletta did not do. (Id.)

The Petitioner testified that the treatment by Dr. Bayes was not approved, and she continued to have symptoms in her upper back and right arm but continued working at all three of

her jobs. (T. 18-19, 43-44) The Petitioner said she was unaware that Dr. Paletta had released her to full duty until March 2019. (T. 53)

On March 16, 2019, the Petitioner went to the emergency room at Holy Family Hospital complaining of right shoulder pain. (T. 57) She said she had no neck pain, radiating pain or headaches. (T. 57-58) An examination showed right shoulder blade tenderness. (PX10) The Petitioner was given an injection of a non-steroidal anti-inflammatory, prescribed medications, instructed to follow up with her primary care physician and ordered off work for two days. (Id.)

The Petitioner testified that on March 20, 2019 – the day she returned to work full duty – another incident occurred with the same Alzheimer's patient whom she was trying to clean up after he had wet his bed. (T. 19-20, 55) The patient resisted her when she rolled him towards the wall away from her, he pushed against the wall, causing the Petitioner's arm to jolt her arm up into her shoulder and neck, resulting in sharp pain. (T. 20) She described the pain as a shock wave going up through her neck. (T. 21) She said her shoulder was still hurting as it had been after the prior incident. (Id.)

On the same day, the Petitioner went to the emergency room at Holy Family Hospital, complaining of right shoulder pain radiating from her upper back to neck. (PX10) A physical examination revealed tenderness over the right shoulder and painful range of motion with the right shoulder. (Id.) The hospital staff restricted the Petitioner to light duty work until she followed up with her primary care physician. (Id.)

On March 27, 2019, the Petitioner saw Dr. Daniel Brunkhorst, a chiropractor at DB Healthcare, and reported the March 20, 2019, incident consistently with her testimony. (PX4) She complained of pain in her cervical and thoracic spine and right shoulder that was continuous, aching, pressure-like, throbbing and sharp with movement, physical activity and work activity.

(PX4) She said nothing helped alleviate the pain and had radiating symptoms into her right shoulder blade. (Id.) The Petitioner told Dr. Brunkhorst that her shoulder symptoms had never improved from the November 1, 2018, accident, and she did not feel that she was healed or ready to go back to work. (Id.)

Muscle testing indicated decreased functioning at C5 and C6. (Id.) Deep tendon reflexes, sensory evaluation and cervical distraction tests were normal. (Id.) Cervical compression testing elicited pain, and Spurling's test was positive to the right. (Id.) Other cervical tests (Valsalva's maneuver and vertebro-basalar insufficiency) were negative. (Id.) Shoulder compression test was positive on the left with increase in pain in the right cervical and right cervical dorsal region. (Id.) Empty can, Gerber's subscapularis lift off, Apley's and apprehension tests were positive on the right side. (Id.) Dr. Brunkhorst found that the Petitioner was experiencing myospasms at the right cervical spine, thoracic, trapezius, subscapularis, supraspinatus and deltoid. (Id.)

Dr. Brunkhorst diagnosed: cervical spine displacement; cervical radiculopathy; cervical ligament sprain; cervical muscle, fascia and tendon strain; thoracic ligament sprain; right acromioclavicular joint sprain; unspecified ligament disorder; unspecified muscle contracture; and myalgia. (Id.) He opined that these conditions were fully or in part related to trauma from the work accident. (Id.) He referred the Petitioner for cervical spine and right shoulder MRIs and for further evaluation by a specialist and gave light duty work restrictions of: no lifting, pushing or pulling over 10 pounds; no repetitive lifting, twisting or turning; and no working with arms above shoulder height or overhead. (Id.)

The Petitioner underwent cervical spine and right shoulder MRIs on April 8, 2019, at Greater Missouri Imaging. (PX5) On the cervical MRI, radiologist Dr. Vikram Sobti found: 1) patent central canal and foraminal with no herniations; 2) mild spondylotic changes from C4

through C7; 3) shallow annular bulges impinging the ventral thecal sac from C4 through C7; and 4) straightening of normal cervical lordosis that may represent muscle spasm versus strain. (Id.) On the right shoulder MRI, he found mild subdeltoid bursitis with intact rotator cuff, osseous structures and glenoid labrum. (Id.)

Dr. Brunkhorst saw the Petitioner again on April 23, 2019, and he performed electrical stimulation, myofascial release and heat treatment. (Id.) He again referred the Petitioner to a specialist and continued work restrictions. (Id.)

The Petitioner testified that the treatment did not resolve her symptoms, and Dr. Brunkhorst referred her to Dr. Thomas Lee, an orthopedic specialist at United Physicians Group. (T. 21-22, PX6) She saw Dr. Lee, on April 30, 2019, gave a consistent history and complained of neck pain going into the bilateral trapezial regions and severe headaches. (Id.) A spinal examination showed tenderness in the right mid-trapezial region with a marked pain response and withdraw, along with 35 percent loss of right rotation and 25 percent loss of left rotation. (Id.) A shoulder examination showed stiffness in end-range with some asymmetry in internal rotation, diminished on the right. (Id.) Dr. Lee reviewed the cervical MRI and diagnosed a herniated nucleus pulposus with annular tear at C5-6 and disc protrusions at C3-4, C4-5 and C6-7. (Id.) He noted capsular tightness of the right shoulder that may have been a protective response due to the overlap of the cervical symptoms. (Id.) He prescribed medications, an epidural injection at C5-6 and physical therapy, to include shoulder therapy. (Id.) He said the Petitioner was capable of sedentary work – such as her cashier job – and ordered work restrictions of no patient contact, no lifting more than 10 pounds, no overhead work, no repetitive reaching and no repetitive or prolonged bending of the neck. (Id.)

On May 9, 2019, the Petitioner underwent a Section 12 evaluation by Dr. William Frisella, an orthopedic shoulder, elbow and upper extremity surgeon at Advanced Bone and Joint. (RXB) The Petitioner gave consistent histories of the two incidents and complained of right shoulder blade and neck pain, saying that she had trouble with activities that involved moving her neck and felt a pulling sensation with moving her neck. (Id.) She did not report radicular symptoms. (Id.) Dr. Frisella reviewed: records from Drs. Goggin, Nogalski, Brunkhorst and Lee; MRIs from December 18, 2018, and April 8, 2019; and the November 1, 2018, injury report. (Id.)

Dr. Firsella reported that a physical examination was normal, except for the Petitioner having scapular pain with arm motion when he tested her range of motion. (Id.) He reviewed the April 8, 2019, MRI scans, noting no abnormalities in the shoulder and mild degeneration in the cervical spine at C4-5, C5-6 and C7-T1 but no herniations. (Id.) He diagnosed typical age-related degeneration of the cervical spine and right shoulder and opined that neither work injury caused an objectively identifiable diagnosis in the Petitioner's right shoulder, scapula or cervical spine. (Id.) He wrote: "Although the patient reports pain that began after the 11/1/2018 injury, and increased pain after the 3/20/2019 injury, her subjective complaints are not confirmed by objective findings on imaging studies or physical examination. There is no objectively identifiable diagnosis which was caused, worsened, or aggravated by either work injury." (Id.) He recommended no further treatment, found her to be at maximum medical improvement and gave no work restrictions. (Id.)

On May 21, 2019, the Petitioner underwent a right C-5-6 interlaminar epidural steroid injection performed by Dr. Helen Blake, a pain management specialist at United Physicians Group. (PX6, PX7) The Petitioner testified that the injections provided temporary relief of her symptoms. (T. 23)

The Petitioner returned to Dr. Lee on June 18, 2019, and he added a diagnosis of right shoulder rotator cuff contusion with subacromial/subdeltoid bursitis. (PX6) He stated that much of the Petitioner's ongoing symptoms appeared related to the rotator cuff, with clear clinical correlation with her neck being less certain. (Id.) He noted that the Petitioner's arm and hand symptoms were more consistent with an ulnar nerve distribution which may have related to some neurogenic thoracic outlet symptoms related more to the shoulder injury. (Id.) He prescribed continued therapy, a subacromial injection and medication and ordered the Petitioner off work. (Id.)

On July 1, 2019, Dr. Blake performed a right subacromial bursa injection. (Id.) The Petitioner returned to Dr. Lee on July 30, 2019, and reported that the injection improved her symptoms, but she had worse pain in the right thoracic paramedian region from about the mid-intrascapular region up to the base of the neck. (Id.) Dr. Lee ordered another cervical MRI because the April 8, 2019, was of limited quality. (Id.) He continued the off-work order. (Id.)

The cervical MRI conducted on August 7, 2019, by Dr. Matthew Rule, a radiologist at MRI Partners of Chesterfield, showed a left foraminal protrusion at C3-4 and bilateral foraminal protrusions at C4-5 and C5-6 resulting in foraminal stenosis at all three levels. (Id.) Dr. Rule also found a midline protrusion at C6-7 resulting in dural displacement but no central or foraminal stenosis. (Id.)

Also on August 7, 2019, the Petitioner saw Dr. Lee and reported persistent neck pain and that her shoulder was feeling more stiff. (Id.) Dr. Lee prescribed medication, ordered physical therapy and continued work restrictions. (Id.) He discussed with the Petitioner that the next step would be cervical disc replacement if she failed to improve. (Id.)

The Petitioner underwent physical therapy at ApexNetwork Physical Therapy from August 5, 2019, through September 13, 2019, for a total of 18 visits. (PX8) It appeared that the Petitioner's shoulder function improved, but her cervical function did not. (Id.) The Petitioner testified that the physical therapy helped "to an extent," but the pain was still there. (T. 22)

On September 12, 2019, Dr. Frisella testified consistently with his report at a deposition. (RXD) He stated that although he practiced in shoulder surgery, he commonly evaluated patients with shoulder and neck problems. (Id.) He said that one out of every five patients he saw complained about their shoulders when the cervical spine actually was the problem. (Id.)

Regarding his evaluation of the Petitioner, Dr. Frisella stated that the April 8, 2019, cervical MRI showed only some wear and tear on her discs but nothing that looked like an acute disc herniation or an acute injury. (Id.) He said it was not clear whether the degenerative changes he saw on the cervical and shoulder MRIs were causing the Petitioner's pain complaints but said such changes could cause neck pain. (Id.) He reiterated that he saw no cervical disc herniations and added that he also saw no annular tear. (Id.)

On cross-examination, Dr. Frisella said he did not review the August 7, 2019, MRI. (Id.) He also said that the November 1, 2018, incident as described by the Petitioner was "very unlikely" to cause an injury to the cervical spine and that the March 20, 2019, incident would "not typically" cause an injury to the cervical spine. (Id.) He acknowledged that there is frequently overlap between symptoms from a shoulder injury and a cervical injury. (Id.) Regarding definitions of disc pathology, Dr. Frisella stated that in his opinion, "herniation" implied a specific traumatic event that caused the disc to be protruded or extruded from the disc space, while a "bulge" or "protrusion" suggested and were consistent with typical age-related degeneration of the disc. (Id.) He did identify degenerative disc bulging on the cervical scans. (Id.)

At a follow-up visit with Dr. Lee on September 18, 2019, the Petitioner complained of ongoing neck pain and what she described as shoulder pain in the right scapular region. Dr. Lee found that she was not getting the symptoms in the peri-acromial region that she had prior to the injection and physical therapy. (Id.) Dr. Lee referred the Petitioner to Dr. Matthew Gornet, an orthopedic surgeon at The Orthopedic Center of St. Louis, for a surgical evaluation on her cervical spine. (Id.) He continued work restrictions. (Id.)

The Petitioner saw Dr. Gornet on December 4, 2019, who took a history, examined the Petitioner and reviewed both cervical MRIs. (PX9) In comparing the MRIs from April 8, 2019, and August 7, 2019, Dr. Gornet noted similar findings on both studies. (Id.) On the April 8, 2019, study, he found clear disc protrusions at C5-6 and C6-7 and an annular tear at C5-6. (Id.) On the August 7, 2019, study, he noted pathology at C4-5, C5-6 and C6-7 with an obvious annular tear and herniations at C5-6 and C6-7. (Id.) Dr. Gornet opined that the Petitioner's symptoms were causally connected to the work injuries. (Id.) He stated that the Petitioner's disc injuries could have been the source of all of her symptoms – headaches and shoulder, scapular, trapezial and neck pain. (Id.) He recommended disc replacement surgery at all three levels and gave light duty work restrictions, including no lifting greater than 10 pounds, no overhead work and no assisting in transfer of patients. (Id.)

The Petitioner testified that the Respondent gave her light duty work in another area of the nursing home, which she performed on December 7 and 8, 2019. (T. 25, 92) However, she said that in that capacity, she had to be CPR certified. (T. 25-26) Following a phone conversation with the Petitioner on December 10, 2019, Physician Assistant Allyson Joggerst added a restriction of "no CPR" after the Petitioner informed her that the Respondent had asked the Petitioner to perform CPR. (Id.)

At a follow-up visit on February 20, 2020, Dr. Gornet continued to recommend surgery. (Id.) He reviewed Dr. Frisella's report and stated that Dr. Frisella may not have seen the high-resolution MRI scan and may not have been aware of the differences between an MRI without foraminal views and an MRI with such views. (Id.) He emphasized that in comparing the two cervical scans, there was clear objective pathology that was "obvious and compelling" and correlated with the Petitioner's subjective complaints. (Id.) He characterized the C5-6 herniation as "large" and those at C4-5 and C6-7 as "smaller." (Id.) The Petitioner had another visit with Dr. Gornet on August 20, 2020, at which time he reiterated his findings and continued work restrictions. (Id.)

The Petitioner returned to Dr. Gornet on February 22, 2021, and Dr. Gornet reviewed Dr. Kitchens' report. (Id.) He disagreed with Dr. Kitchen's statement that the disc pathology and annular tear at C5-6 were not visualized on the April 8, 2019, MRI. (Id.) Dr. Gornet's conclusions and recommendations were unchanged, and he stated that the Petitioner was not at maximum medical improvement. (Id.) He continued work restrictions. (Id.)

At a deposition on April 30, 2020, Dr. Gornet testified consistently with his reports. (PX1) He explained that patients frequently may present with shoulder problems when they actually have neck problems – what he called a watershed or overlapping area. (Id.) He said that the Petitioner's complaints of pain in the shoulder or upper arm correlated well with a problem at the C5-6 spinal level. (Id.) During his testimony, Dr. Gornet reviewed the August 7, 2019, MRI and pinpointed evidence of his findings of a "fairly significant" disc protrusion and large tear at C5-6 and smaller herniations and tears at C4-5 and C6-7. (Id., Deposition Exhibit 3) He stated that these herniations and tears were evident on the April 8, 2019, MRI scan but were not as well visualized because the radiologist did not take the appropriate views. (Id.) He explained that the first MRI used an older

magnet of lesser quality and that foraminal views were not performed, making the pathology not as obvious or straightforward as in the results of the second MRI. (Id.)

Dr. Gornet opined that the Petitioner's cervical condition and need for treatment was causally related to her work injuries, which he characterized as acute injuries. (Id.) He gave a breakdown of how he reached that conclusion: The Petitioner had no prior shoulder or arm problems; she lifted a patient resulting in an injury that was known to cause potentially shoulder or neck pathology; she saw Dr. Paletta, who wasn't overwhelmed by the pathology in her shoulder; and she had obvious neck pathology that correlated with her symptoms. (Id.) He said the Petitioner's injuries were predominately caused by the accident of November 1, 2018. (Id.)

Regarding Dr. Frisella's evaluation, Dr. Gornet stated that although Dr. Frisella was an excellent shoulder specialist, he was not qualified to make conclusions about the Petitioner's cervical condition. (Id.)

In explaining his recommendation for a three-level disc replacement, Dr. Gornet stated that to successfully cure and relieve the effects of the Petitioner's work injury, he needed to treat all three levels to remove the source of nerve irritation. (Id.) He said that disc replacement had been found to be superior to cervical fusion in that patients return to work earlier and have higher satisfaction and more functional improvement. (Id.) He said the Petitioner was not at maximum medical improvement because of the need for treatment to cure and relieve the effects of her work-related injury. (Id.) He did not believe that a single-level or two-level disc replacement would be options for the Petitioner because such procedures would not address all the structural problems present and may necessitate future surgery. (Id.) On cross-examination, Dr. Gornet went into detail about his preference for performing a three-level disc replacement and the likelihood of the Petitioner being able to return to work without restrictions. (Id.) But he admitted that the risk of

complications was greater as the number of levels replaced increased, although he classified it as not "statistically significant." (Id.)

Also on cross-examination, Dr. Gornet admitted that the Petitioner lacked radicular symptoms but stated that the C5-6 injury would be symptomatic with neck pain, headaches and the subtle decrease in the Petitioner's biceps that he found. (Id.) When asked about Dr. Sobti's report classifying the disc pathology as "shallow disc bulges" and not noting annular tears in the April 8, 2019, MRI, Dr. Gornet maintained that he saw the tears, a significant herniation and low-level herniations on those scans. (Id.) Regarding the difference between disc bulges and protrusions, Dr. Gornet stated that the term "bulge" is not accepted terminology in the spinal specialty and further explained in detail the various classifications of disc pathology. (Id.)

Dr. Gornet also testified that the treatment performed by Drs. Lee, Paletta and Blake was reasonable and necessary. (Id.) Regarding adding "no CPR" to the Petitioner's work restrictions, Dr. Gornet said the type of activity involved with performing CPR – pushing hard with the arms – would easily irritate the Petitioner's spine pathology. (Id.) Regarding the Petitioner continuing to work as a cashier while having work restrictions, Dr. Gornet said that if the Petitioner were performing duties beyond her work restrictions without aggravating her symptoms, he may have modified the work restrictions, but that would not change his ultimate opinions because the Petitioner had clear pathology that correlated with her symptoms. (Id.)

On October 19, 2020, the Petitioner underwent a Section 12 examination by Dr. Daniel Kitchens, a neurosurgeon at Cardinal Neurosurgery & Spine. (RXE) The Petitioner gave a consistent history, and Dr. Kitchens performed an examination and reviewed the following: accident reports; medical records from Drs. Goggin, Paletta, Brunkhorst, Lee, Blake and Gornet; Section 12 reports from Dr. Nogalski and Dr. Kitchen; Holy Family Hospital records; the April 8,

2019, and August 7, 2019, cervical MRIs and reports; physical therapy records; and Dr. Gornet's deposition. (Id.)

The results of Dr. Kitchens' examination appeared normal except for the Petitioner reporting right-sided neck and shoulder pain with extension and flexion of the neck and with raising her right arm above her head. (Id.) On the April 8, 2019, MRI, Dr. Kitchens saw mild disc bulging at the C5-6 and C6-7 levels but no herniation nor evidence of an annular tear. (Id.) On the August 7, 2019, MRI, he saw degenerative disc bulging at C4-5, C5-6 and C6-7 and hyperintensity in the posterior annulus at C5-6 that was consistent with an annular tear but no evidence of disc herniation or foraminal stenosis. (Id.) In comparing the two series of MRI films, Dr. Kitchens noted that the studies were significantly different, with the disc bulges being more pronounced at C5-6 and C6-7 and the appearance of the annular tear. (Id.)

Dr. Kitchens diagnosed the Petitioner with cervical degenerative disc disease and cervical spondylosis. (Id.) He opined that neither work incidents caused an injury to the Petitioner's cervical discs, stating that there was no mechanism of injury that provided axial loading to the cervical spine and no evidence of an acute injury to the cervical discs. (Id.) He agreed with Dr. Gornet that the August 7, 2019, MRI showed an annular tear and disc bulges but pointed out that these findings were not seen on the April 8, 2019, MRI and it was impossible that the tear that he believed developed between April 8, 2019, and August 7, 2019 would have been caused by either work incident. (Id.) He said that the Petitioner was at maximum medical improvement, did not require additional treatment to her cervical spine as it related to the work incidents and could return to work without restrictions. (Id.) He stated that the treatment the Petitioner received had not been appropriate nor medically necessary for her cervical spine as it related to the work incidents because there was no evidence of an acute injury as a result of the two work incidents. (Id.)

Dr. Kitchens testified consistently with his reports at a deposition on December 16, 2020. (RXG) He said that the changes he saw between the two MRIs were normal, age-related progression of the Petitioner's underlying condition. (Id) He explained that the lack of axial loading from the incidents that he referred to in his report was based on the Petitioner not describing an injury or accident that caused her neck to forcefully flex forward or back – rather it was a pulling of and force to her shoulder that he said would not cause the pathology he saw on the MRI films. (Id.) He further stated that the Petitioner's work activities on the day would not cause, contribute to or aggravate the Petitioner's cervical spondylosis or cervical degenerative disc disease. (Id.) He disagreed with Dr. Gornet's opinion that the Petitioner's symptoms were "related" to her work injuries because there was no evidence, symptoms or diagnosis of cervical injury in November 2018. (Id.) He stated that the Petitioner's smoking contributed to the progression of cervical disc disease that he saw on the MRIs. (Id.) Also unlike Dr. Gornet, Dr. Kitchens believed the April 8, 2019, MRI was of sufficient diagnostic quality. (Id.)

The Petitioner testified that she was able to continue working at Moto Mart and for Mr. Goggin within her restrictions. (T. 27-28) The Petitioner testified that she picked up more shifts at Moto Mart from 19.27 hours in the week ending March 30, 2019, to 22.66 hours the week ending April 13, 2019, and up to 40 hours per week in May and June 2019 because they were shorthanded. (T. 60-61) She stated that since October 12, 2019, her hours at Moto Mart have fluctuated – 20 hours some weeks, 28 hours some weeks and 30 hours some weeks – but at the time of arbitration, she was back to 24-28 hours per week. (T. 62-63) She said that since she had been off work from the nursing home, Moto Mart was her only source of income. (T. 86-87)

The Respondent submitted 1,073 minutes of surveillance videos of the Petitioner taken over a little more than 13 days. (T. 99) Upon review of these videos, the Petitioner's activities

were within her work restrictions. (RXK) The most vigorous activities included opening doors, carrying an empty box with her right hand, cleaning her car seat using paper towels, pulling and pushing a gallon of windshield washer fluid on the counter, wiping the roller grill between waist and chest height primarily using her left hand (using her right hand for approximately 20 seconds) and dusting products and shelves for a little more than one minute (at shoulder height for 20 seconds). (Id.) The Petitioner also was seen putting on a jacket and holding her cell phone between her left ear and shoulder while carrying a soda and a bag for approximately 1 minute. (Id.) The Petitioner could also be observed stretching her neck occasionally. (Id.)

The Petitioner agreed that she was able to open and close her car door and the door at Moto Mart without difficulty, put on a jacket most days, clean out her car using both arms, hold a cell phone between her neck and shoulder at times and clean the roller grill at Moto Mart with her right arm and dusting above shoulder height for a short period of time. (T. 68, 70-77) But she said her activities at Moto Mart are limited in that she is not allowed to work in the coolers, take out trash, wipe down the gas pumps, carry buckets to change windshield washer fluid or clean or lift overhead – relying on her coworkers to handle the physically demanding duties. (T. 83-84, 100) She said the majority of her duties were waiting on customers, ringing up their purchases and taking payments. (T. 101) She said she follows her 10-pound lifting restriction as much as she could. (T. 101-102) In comparing her activities at Moto Mart and performing CPR on a patient, the Petitioner said performing CPR required a lot of force on her arms that she described as "jolting." (T. 101) Regarding holding her cell phone between her neck and shoulder and cleaning the roller grill, she said the movements were similar to her physical therapy exercises. (T. 102)

The Petitioner testified that she still had a constant, dull ache between her shoulder blade and her neck that increases with certain activities, such as driving, vacuuming, laundry, taking out

trash and playing with her daughter. (T. 31-32, 35) She stated that she had good days and bad days, with good days where she doesn't feel hurt and bad days where she does not want to get out of bed. (T. 84-85) More recently, the bad days were more frequent than the good. (T. 85-86) She said she has had to refuse to take extra shifts at Moto Mart when she was not having a good day. (T. 101) She said her migraines have worsened – becoming more frequent – since the work injuries. (T. 82-83) She said her symptoms affected her sleep. (T. 33) She wanted to undergo the surgery because she wanted her "life back." (T. 35) She added that she does not want to continue working her minimum-wage job at Moto Mart and wants to return to the medical field, where she had been working for 20 years and for which she went to college. (T. 103-104)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below.

Issue (F): Is Petitioner's current condition of ill-being, specifically his neck injury, causally related to the accident?

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n,* 371 ILL. App. 3d 882, 888 (2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill. 2d 30, 36 (1982).

In addition to or aside from expert medical testimony, circumstantial evidence may also be used to prove a causal nexus between an accident and the resulting injury. *Gano Electric*

Contracting v. Indus. Comm'n, 260 Ill.App.3d 92, 631 N.E.2d 724 (4th Dist. 1994); *Int'l Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982). Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724 (1994); *Int'l Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982).

Regarding the Petitioner's right shoulder, both Dr. Nogalski and Dr. Paletta found no evidence of shoulder pathology to explain the Petitioner's complaints. Dr. Paletta pointed out that the Petitioner's complaints were inconsistent with any of the findings on the shoulder MRI. Both doctors noted scapular pain and tenderness but were unable to link these to any specific pathology.

As to the Petitioner's cervical symptoms, aside from the Petitioner's testimony that she felt a burning sensation in her neck immediately after the first work incident, there is no recorded report of neck pain until the Petitioner saw Dr. Nogalski on February 6, 2019. When the Petitioner went to the emergency room on March 16, 2019, she again complained of shoulder pain, but no neck pain nor radiating symptoms.

After the second incident, the Petitioner's cervical problems became apparent. Dr. Brunkhorst pointed to cervical issues after his examination of the Petitioner following the second incident. Although Drs. Frisella and Kitchens found only degenerative changes to the Petitioner's cervical spine but no apparent acute pathology on the April 8, 2019, MRI, other doctors saw more than that. Dr. Sobti found annular bulges impinging the ventral thecal sac from C4 through C7 on the April 8, 2019, MRI. Dr. Lee found a herniated nucleus pulposus with annular tear at C5-6 and

disc protrusions at C3-4, C4-5 and C6-7. Dr. Gornet saw disc protrusions at C5-6 and C6-7 and an annular tear at C5-6. The doctors who saw the second MRI agreed that there was disc pathology but disagreed as to the causation.

In looking at the totality of the evidence – no prior symptomology, persistent scapular pain, no shoulder pathology and increasing neck pain after the second incident – Dr. Gornet's opinion that the Petitioner's cervical pathology was masked by what was thought to be shoulder symptoms is logical. Dr. Frisella also noted that it was common for patients complaining of shoulder symptoms to actually suffer from cervical pathology, although he did not believe this was the case with the Petitioner.

After the first accident, diagnosis and treatment were focused on the Petitioner's shoulder. It was not until after the second incident that anyone thought to look to the Petitioner's cervical spine as a source of her continued complaints. In his deposition, Dr. Gornet thoroughly explained how the first accident would have caused cervical injuries, how he saw the injuries on the first MRI and how those injuries may not have been readily apparent to other doctors who reviewed that MRI. Based on all the evidence, the Arbitrator gives greater weight to the opinions of Drs. Lee and Gornet than those of Drs. Frisella and Kitchens.

The Arbitrator finds that the Petitioner's cervical injuries were causally related to the November 1, 2018, accident. Because her symptoms initially were linked to a possible shoulder injury, the Petitioner had to make her way through a series of doctors and diagnoses before a diagnosis was made that correlated the Petitioner's symptoms to the cervical pathology.

Regarding the second accident, the Arbitrator finds that this was not an intervening accident that severed the causal connection between the first accident and the Petitioner's cervical

condition. It was merely the impetus for healthcare providers to take a further look at the Petitioner to determine the pathology that caused her continuing symptoms.

Therefore, the Arbitrator finds that the Petitioner has met her burden of proof establishing causal connection between the accident if November 1, 2018, and the Petitioner's cervical spine condition.

Issue (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?

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const*., 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 1273 (2009).

As stated above, the Petitioner received treatment from several healthcare professionals before the determination that her cervical pathology was causing her symptoms. The Arbitrator finds that all of the care provided to the Petitioner was reasonable and necessary to diagnose the true nature of her injuries.

The Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 12. The Respondent shall have credit for any amounts already paid as shown in Respondent's Exhibit M.

Issue (K): Is Petitioner entitled to any prospective medical care?

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691

N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

As noted above, the Petitioner continued to experience symptoms that correlated with her cervical pathology. She has not returned to the condition in which she was prior to the accident nor reached maximum medical improvement. She is entitled to treatment designed to bring her back to a condition under which she can pursue her vocation in the medical field. The Arbitrator finds that Dr. Gornet's rationale for a three-level disc replacement is sound. Treating only one or two cervical levels would not fully address the Petitioner's condition and leave her susceptible to the need for further treatment.

The Arbitrator finds that the Petitioner is entitled to prospective medical care as recommended by Dr. Gornet, and the Respondent shall authorize and pay for such care.

Issue (L): What temporary benefits are in dispute? (TTD)

The parties dispute temporary total disability benefits for the periods of May 1, 2019 to December 6, 2019, and December 9, 2019, to June 29, 2021.

An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Id.* at 121.

On April 30, 2019, Dr. Lee ordered work restrictions of no patient contact, no lifting more than 10 pounds, no overhead work, no repetitive reaching and no repetitive or prolonged bending of the neck. The Respondent accommodated these restrictions on December 7 and 8, 2019, until it was determined that the Petitioner would need CPR certification. Upon the Petitioner checking

with Dr. Gornet's office regarding performing CPR, Dr. Gornet and his physician assistant agreed that a restriction prohibiting CPR was appropriate. The Respondent could not accommodate this restriction.

Another issue is whether the Petitioner's activities while working at Moto Mart negated the need for work restrictions. After having viewed all the video surveillance, the Arbitrator finds that the Petitioner's activities depicted therein were within her work restrictions.

Therefore, the Petitioner is entitled to temporary total disability benefits pursuant to Section 8(b) of the Act for 111 and 3/7 weeks – from May 1, 2019 to December 6, 2019, and from December 9, 2019 to June 29, 2021.

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.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC010086
Case Name	Stephanie Thomas v. Carlyle Healthcare Center
Consolidated Cases	18WC036914;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	22IWCC0449
Number of Pages of Decision	28
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Richard Salmi
Respondent Attorney	John Allen

DATE FILED: 11/23/2022

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse Causation	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STEPHANIE THOMAS,

Petitioner,

vs. NO: 19 WC 10086

CARLYLE HEALTHCARE CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current condition of ill-being is causally related to the undisputed March 20, 2019 work accident, entitlement to temporary disability benefits, and entitlement to incurred medical expenses as well as prospective medical care, and being advised of the facts and law, reverses the Decision of the Arbitrator and finds Petitioner's current condition of ill-being is causally related, in part, to the March 20, 2019 work accident. The Commission 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 (1980). This case was consolidated for hearing with case number 18 WC 36914.

FINDINGS OF FACT

The Commission affirms and adopts the Statement of Facts as set forth in the Decision of the Arbitrator and incorporates such facts herein.

CONCLUSIONS OF LAW

Finding that Petitioner suffered an initial injury on November 1, 2018 (case no. 18 WC 36914) that was being mistakenly treated as a shoulder issue until her second injury on March 20,

2019 (the instant case), after which a refocused diagnostic workup established that her continuing complaints stemmed from her cervical spine (neck), the Arbitrator concluded the March 20, 2019 accident did not sever the chain of causation from the November 1, 2018 accident and Petitioner's condition remains causally related to the November 1, 2018 accident. The Commission views the evidence slightly differently. The Commission finds Petitioner's current condition of ill-being is causally related, in part, to the March 20, 2019 work accident.

At the outset, the Commission finds it important to clarify Petitioner's clinical picture leading up to the undisputed March 20, 2019 accident. Prior to her November 1, 2018 injury, Petitioner had no history of shoulder or neck symptoms and was able to work three jobs without issue. On November 1, 2018, she experienced a burning sensation and pain from her neck down to her shoulder while transferring a resident. T. 17. She sought emergency treatment the same day and despite subsequent work-up, conservative care, and an ultimate rule-out of shoulder pathology correlating to her pain, her symptoms never resolved. The Commission notes Petitioner presented to the emergency room at Holy Family Hospital on March 16, 2019 and complained of spasming pain to the right shoulder area dating back to a November 1, 2018 work injury. Pet.'s Ex. 10. The emergency room report reflects that an injection had been recommended but the workers' compensation insurance carrier had not approved it. The emergency room physician administered a Toradol injection to ease Petitioner's pain, authorized her off work for two days, and directed that Petitioner follow-up with her primary care doctor. Pet.'s Ex. 10.

When Petitioner reported to work on March 19, 2019, she was informed that her work restrictions were no longer necessary and she was to immediately resume her full duty work activities; Petitioner complied and began her first full-duty shift since the November 1, 2018 injury. T. 88, 19. It was during that overnight shift on March 20, 2019 that Petitioner sustained her second accidental injury. Arb.'s Ex. 3. Petitioner explained she was assisting the same resident when he became resistive and her arm was "jolted" up into her shoulder and neck; Petitioner described feeling "like a shock wave just went right up through my neck. My shoulder was still hurting in the same spot, the upper part, and up into my neck, but that's where it's generally always been." T. 21. Petitioner went to the Holy Family Hospital emergency room that day. T. 21. The triage nurse, S. Katwaroo, R.N., documented that Petitioner presented with "right shoulder pain radiating from upper back to neck" after an injury at work: "states she hurt her upper back/neck area assisting a [patient], sent here by job to get treated." Pet.'s Ex. 10. After an examination, Petitioner was diagnosed with a thoracic strain and discharged with instructions to follow-up with her primary care doctor. Pet.'s Ex. 10.

On March 27, 2019, Petitioner was evaluated by Dr. Daniel Brunkhorst. Petitioner gave a history of a March 20, 2019 work injury wherein a resistive resident "jarred her right shoulder causing pain in the shoulder, scapula, and neck on the right side." Pet.'s Ex. 4. Petitioner further reported that she suffered an initial injury in November 2018 and had been under the care of Dr. George Paletta, but she was unable to receive the recommended treatment because the workers' compensation insurance would not approve the procedures; Petitioner advised Dr. Brunkhorst that her pain levels had never improved following the November 2018 injury. On examination, Dr. Brunkhorst noted objective findings in Petitioner's right shoulder and neck: painful range of motion of the right shoulder and neck, decreased strength at C5 and C6 disc levels, and muscle spasms throughout the neck, mid-back, right shoulder, and arm; Dr. Brunkhorst further noted he performed provocative testing on both areas and several tests were positive. Concluding there may

be a cervical spine component to Petitioner's ongoing complaints, Dr. Brunkhorst ordered MRIs of the neck and right shoulder and referred her for an orthopedic evaluation. Pet.'s Ex. 4.

The recommended MRIs were completed on April 8, 2019, and on April 30, 2019, Petitioner was evaluated by Dr. Thomas Lee. Dr. Lee memorialized that Petitioner presented with neck and trapezial region pain as well as severe headaches after work accidents in November 2018 and March 2019. Dr. Lee further noted Petitioner was "fine" before the work accidents; she had no prior neck or shoulder problems and was able to perform all her work duties, including turning quadriplegic patients, without difficulty. Pet.'s Ex. 6. Dr. Lee's examination findings included marked tenderness in the right mid trapezial region, decreased neck range of motion, decreased right arm reflexes, and right shoulder stiffness in end-range with some asymmetry in internal rotation. Dr. Lee reviewed the April 8, 2019 right shoulder and neck MRI scans; although noting there were "some limitations to the image quality," Dr. Lee identified a "herniation at C5-6, more pronounced on the right, and associated annular signal change consistent with herniation," as well as protrusions at C3-4, C4-5, and C6-7. Pet.'s Ex. 6. Dr. Lee's assessment was C5-6 herniations with annular tear and C3-4, C4-5, and C6-7 disc protrusions; noting Petitioner had a component of capsular tightness in her shoulder which could be a protective response due to the overlap of the neck symptoms, Dr. Lee ordered an epidural injection at C5-6 to complement the shoulder injection previously ordered by Dr. Paletta as well as physical therapy. Pet.'s Ex. 6.

Petitioner thereafter underwent the injections recommended by Dr. Lee: Dr. Helen Blake performed a right C5-6 epidural steroid injection on May 21, 2019 and a right shoulder injection on July 1, 2019. Pet.'s Ex. 6. Petitioner was re-evaluated by Dr. Lee on July 30, 2019, and the doctor noted Petitioner had some improvement in her shoulder symptoms but the pain from her shoulder blade up into her neck persisted. Dr. Lee memorialized that he re-reviewed the April 8, 2019 MRI which was of questionable quality but nonetheless revealed a pronounced protrusion at C5-6. With regard to Petitioner's "overlapping neck and shoulder conditions," Dr. Lee concluded "the likelihood is that the cervical spine is likely the primary condition and the shoulder condition more of a tendonitis and is probably secondary in terms of the problematic injury." Pet.'s Ex. 6. Dr. Lee ordered a repeat neck MRI with a higher field strength and additional sequences, which was completed on August 7, 2019. Pet.'s Ex. 6. On review of the updated MRI, Dr. Lee noted it showed evidence of four-level injury. Pet.'s Ex. 6. Dr. Lee ordered further physical therapy but warned that if Petitioner failed to improve, the "next step is cervical disc replacement." Pet.'s Ex. 6. Petitioner continued with therapy as directed but her symptoms did not resolve. When Petitioner was re-evaluated by Dr. Lee on September 18, 2019, the doctor memorialized Petitioner had ongoing neck pain and right scapular pain, both rated at 7/10. Noting that he re-reviewed the updated MRI "which shows clinically correlating disc protrusion/herniations," Dr. Lee referred Petitioner to Dr. Matthew Gornet for a surgical evaluation. Pet.'s Ex. 6.

On December 4, 2019, Petitioner consulted with Dr. Gornet. Dr. Gornet's records reflect that Petitioner complained of neck pain to the right trapezius and right shoulder with frequent headaches stemming from two work injuries. In the first injury, Petitioner "was assisting a patient with a gait belt with her arms extended and the patient sat down. This caused a pop or pain in her right shoulder"; Petitioner ultimately saw Dr. Paletta "for what was felt to be a shoulder injury," but when subsequent imaging did not reveal shoulder pathology which correlated to her symptoms, Petitioner was referred for further evaluation to Dr. Matt Bayes. Pet.'s Ex. 9. In the second injury, Petitioner "had a similar injury with the same patient, although slightly different and had increasing pain." Pet.'s Ex. 9. Examination findings included pain from the neck to the right shoulder,

shoulder blade, and upper arm as well as a subtle decrease in biceps strength on the right at 4/5. Dr. Gornet memorialized that he was provided with the MRI scans from both April and August. Regarding the April 8, 2019 MRI, Dr. Gornet noted the full complement of views had not been performed, but the scan nonetheless revealed abnormal findings: "The disc protrusions are clearly seen at 5-6 and 6-7, best seen on image #9 of 13 of the T2 sagittals along with the annular tear at C5-6, best seen on image #10." Pet.'s Ex. 9. Dr. Gornet additionally detailed his interpretation of the August 2019 MRI: "To my viewing on the right side reveals some disc pathology at C4-5, C5-6 and C6-7 with an obvious annular tear and herniation at both 5-6 and 6-7, best seen on image #6 of 15 of the T2 sagittals. Foraminal views are not yet available and will be sent later." Pet.'s Ex. 9. *Dr. Gornet concluded Petitioner had disc injuries at C4-5, C5-6, and C6-7, and her symptoms were causally connected to both work injuries*: "I have explained to her the overlap between the shoulder and the cervical spine and that her disc injuries predominantly at C5-6 and C6-7 could easily be the source of her shoulder pain, her scapular pain, trapezial pain, neck pain and headaches." Dr. Gornet ultimately recommended three-level disc replacement surgery. Pet.'s Ex. 9.

The Commission finds Petitioner's neck condition is causally related, in part, to the March 20, 2019 work accident. Following the March 20, 2019 accident, the symptoms which had persisted since the November 1, 2018 injury were exacerbated and Petitioner's neck complaints became more pronounced, leading Dr. Brunkhorst to institute the further diagnostic workup that ultimately established the genesis of Petitioner's persistent symptoms was pathology in her neck. The Commission does not believe either work accident superseded the other; rather, it is the aftereffects of both events in concert which are responsible for Petitioner's current constellation of symptoms: the credible and persuasive conclusions of Dr. Lee and Dr. Gornet establish that the neck pathology was present after the November 1, 2018 accident, and the evidence further shows the March 20, 2019 accident worsened Petitioner's symptoms and she has yet to return to her pre-exacerbation symptomatic baseline. Consistent with our determination that Petitioner's current right shoulder and neck conditions are causally related to both undisputed work accidents but initiated with the November 1, 2018 accident, all benefits are awarded under case 18 WC 36914.

IT IS THEREFORE ORDERED BY THE COMMISSION the Decision of the Arbitrator filed December 28, 2021 is reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's current right shoulder and neck conditions of ill-being are causally related, in part, to the March 20, 2019 work accident.

IT IS FURTHER ORDERED BY THE COMMISSION that all benefits are awarded in companion case 18 WC 36914.

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 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.

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(2)*. As all benefits are

awarded under consolidated case 18 WC 36914, no bond is set herein. 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.

November 23, 2022 /s/ *Deborah J. Baker*

DJB/mck

O: 9/28/22 /s/ *Stephen J. Mathis*

43

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC010086
Case Name	THOMAS, STEPHANIE v. CARLYLE HEALTHCARE CENTER
Consolidated Cases	18WC036914
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Richard Salmi
Respondent Attorney	John Allen

DATE FILED: 12/28/2021

/s/ Jeanne AuBuchon, Arbitrator
Signature

INTEREST RATE WEEK OF DECEMBER 28, 2021 0.21%

STATE OF ILLINOIS)
)SS.
COUNTY OF **Madison**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Stephanie Thomas
Employee/Petitioner

v.

Carlyle Healthcare Center
Employer/Respondent

Case # **19** WC **010086**

Consolidated cases: **18 WC 036914**

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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **04/29/2021 and 6/29/21**. 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 _____

FINDINGS

On the date of accident, **03/20/2019**, 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 these accident ***was*** given to Respondent.

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

In the year preceding the injury, Petitioner earned **$38,546.00** the average weekly wage was **$868.13**, representing average weekly wage at Carlyle Healthcare of $549.65; Attorney Andrew Goggin of $150.10; Motomart of $168.38.

On the dates of accident, Petitioner was ***38*** years of age, ***single*** with ***2*** dependent children.

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

Respondent shall be given a credit of $**N/A** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit of $**n/a** under Section 8(j) of the Act. Respondent to receive a credit for medical paid.

ORDER

Due to the Arbitrator's finding that the Petitioner's current condition of ill-being is not causally related to the accident, no benefits are awarded.

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.

Jeanne L. AuBuchon

Signature of Arbitrator

December 28, 2021

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to trial on October 27, 2020, pursuant to Sections 19(b) and 8(a) if the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's shoulder and cervical spine injuries; 2) payment of medical bills; 3) entitlement to TTD benefits from May 1, 2019, through December 6, 2019, and December 9, 2019, through April 29, 2021; and 4) entitlement to prospective medical care to the Petitioner's cervical spine. This case was consolidated with 19 WC 10086 for purposes of trial. The trial began on April 29, 2021, but proofs were not closed until June 29, 2021, in order to give the Petitioner an opportunity to review and rebut the surveillance videos offered by the Respondent. Therefore, the Arbitrator extends the second period of TTD sought to June 29, 2021

FINDINGS OF FACT

The Petitioner was employed with Respondent as a certified nursing assistant (CNA) for nearly three years assisting patients with everyday activities, such as dressing, getting ready for bed, brushing teeth, feeding, toileting, transferring and positioning patients in their beds. (T. 13-14) She testified that on November 1, 2018, the Petitioner was putting patients to bed in the Alzheimer's unit when a male patient was not cooperating with getting out of his recliner. (T. 15-16) The Petitioner said that she, a nurse and another CNA tried twice to get the patient out of his recliner, and on the second try, the Petitioner felt a pop and wanted to stop, but the nurse told her it was company policy to try three times. (Id.) She stated that on the third try, she was holding the patient with both hands when he lifted his bottom and scooted his recliner from underneath him. (T. 16) She held him up until the nurse and the other CNA put the recliner back underneath him. (Id.) She said she lunged forward because she was fully extended. (Id.) While she was holding the patient up, the Petitioner started feeling a burning sensation from her neck to her

shoulder. (T. 17) She said that when she was able to sit down, she felt pain in the upper inside part of her shoulder and felt a loss of strength. (Id.) She then tried to assist another patient to the bathroom but was unable to. (Id.)

The Petitioner testified that prior to the accident, she was able to perform all of her job duties without any neck or arm symptoms and had no prior treatment for neck or arm problems. (T. 14) The Petitioner also had concurrent employment at Moto Mart as a cashier and with attorney Daniel Goggin doing light filing and computer work. (T. 14-15, 43) On cross-examination, the Petitioner admitted that she was in a motor-vehicle accident when she was 15 years old and has had migraines since then, for which she took medication. (T. 37-39)

On the day of the accident, the Petitioner went to the emergency room at St. Joseph's Hospital complaining of right shoulder pain. (PX13) The hospital performed X-rays, which were normal. (Id.) The Petitioner was diagnosed with a shoulder sprain, prescribed ibuprofen, instructed to follow up with her primary care physician and advised to avoid lifting more than 20 pounds until she was cleared by her doctor. (Id.)

On November 7, 2018, the Petitioner saw her primary care physician, Dr. Andrew Goggin, at Greenville Family Practice. (PX2) She reported being unable to raise her right arm above level due to pain and reported tenderness behind her shoulder blade. (Id.) Dr. Goggin diagnosed a right rhomboid shoulder strain, prescribed medication, referred the Petitioner to physical therapy and gave her a work restriction of no raising her arm above level until December 1, 2018. (Id.) On November 29, 2018, Dr. Goggin ordered the Petitioner off work until she could follow up with orthopedics. (PX2)

The Petitioner testified that Dr. Goggin referred her to Dr. George Paletta, an orthopedic surgeon at The Orthopedic Center of St. Louis, whom she saw on December 3, 2018. (T. 17-18,

PX3) A physical examination revealed marked tenderness along the right rhomboids as the medial border of the scapula with no tenderness at the acromioclavicular joint, sternoclavicular joint or bicipital groove. (Id.) The Petitioner had good range of motion with pain at the end ranges and pain with passive protraction as the arm was brought cross body. (Id.) She had good overall cuff strength, negative O'Brien's sign and no translational abnormalities. (Id.) Dr. Paletta diagnosed a rhomboid strain of the right shoulder, recommended an MRI, prescribed medication and placed the Petitioner on light duty restrictions of no lifting more than 10 pounds floor to chest, no lifting more than 1 pound overhead, no reaching overhead, no repetitive reaching cross body, no pushing or pulling more than one pound and no patient contact. (Id.)

Dr. Paletta reviewed the MRI on December 19, 2018, and found no evidence of tears nor rhomboid strain but stated that the scan demonstrated tendinopathy of the supraspinatus tendon and evidence of tenosynovitis of the long head of the biceps, which he stated did not correlate with her clinical symptoms – most notably her report of periscapular pain with no evidence of any abnormality of the rhomboids or other periscapular musculature. (Id.) He opined that the Petitioner required no additional orthopedic treatment at that time and could work full duty. (Id.) He recommended consultation with a non-operative specialist, such as Dr. Matt Bayes, a sports medicine specialist at Bluetail Medical Group, for consideration of a possible injection. (Id.)

On February 6, 2019, the Petitioner underwent a Section 12 examination by Dr. Michael Nogalski, an orthopedic surgeon at Orthopedic Associates, to whom she provided a consistent description of the work incident and complained of spasms near her shoulder blade and mild pain into her neck. (RXA) She noted grinding at times around the back of the shoulder and some feelings of catching in the shoulder. (Id.) A physical examination of the shoulder itself was normal. (Id.) In the scapular region, Dr. Nogalski found tenderness over the inferior scapular

angle and medial scapular border, especially in the mid- to lower- scapular border. (Id.) With flexion and abduction of the shoulder, the Petitioner had some complaints in the posterior scapular region at maximum abduction and forward flexion. (Id.) She had "fairly significant" pain in the medial scapular border with resisted abduction. (Id.) Shoulder X-rays were normal. (Id.)

Dr. Nogalski reviewed records from Dr. Goggin and Dr. Paletta. (Id.) He did not have the MRI scans nor the radiologist's report but did look at Dr. Paletta's "MRI Review." (Id.) Dr. Nogalski diagnosed the Petitioner with right posterior scapular pain and stated that the Petitioner's pain was related to the work accident but also stated that there were no objective findings to validate a specific injury had occurred. (Id.) He wrote that he did not identify any objective data that the work accident aggravated, accelerated or precipitated a pre-existing condition beyond ordinary progression. (Id.) He found that the treatment rendered to date had been necessary and appropriate with respect to evaluation for the claimed injury. (Id.) He stated that no further treatment was required, that the Petitioner could work full duty and that she reached maximum medical improvement. (Id.) He rated the Petitioner's impairment at 1percent based on the AMA Guides to the Evaluation of Permanent Impairment. (Id.)

Dr. Nogalski criticized Dr. Paletta for having "framed a discussion" of whether the Petitioner needed surgery rather than "actually" providing a diagnosis or opinion on causation. (Id.) He said that it was well within the scope of a board-certified orthopedic surgeon in the practice of shoulder surgery to offer a diagnosis, prescribe physical therapy and provide an injection – which, he said, Dr. Paletta did not do. (Id.)

The Petitioner testified that the treatment by Dr. Bayes was not approved, and she continued to have symptoms in her upper back and right arm but continued working at all three of

her jobs. (T. 18-19, 43-44) The Petitioner said she was unaware that Dr. Paletta had released her to full duty until March 2019. (T. 53)

On March 16, 2019, the Petitioner went to the emergency room at Holy Family Hospital complaining of right shoulder pain. (T. 57) She said she had no neck pain, radiating pain or headaches. (T. 57-58) An examination showed right shoulder blade tenderness. (PX10) The Petitioner was given an injection of a non-steroidal anti-inflammatory, prescribed medications, instructed to follow up with her primary care physician and ordered off work for two days. (Id.)

The Petitioner testified that on March 20, 2019 – the day she returned to work full duty – another incident occurred with the same Alzheimer's patient whom she was trying to clean up after he had wet his bed. (T. 19-20, 55) The patient resisted her when she rolled him towards the wall away from her, he pushed against the wall, causing the Petitioner's arm to jolt her arm up into her shoulder and neck, resulting in sharp pain. (T. 20) She described the pain as a shock wave going up through her neck. (T. 21) She said her shoulder was still hurting as it had been after the prior incident. (Id.)

On the same day, the Petitioner went to the emergency room at Holy Family Hospital, complaining of right shoulder pain radiating from her upper back to neck. (PX10) A physical examination revealed tenderness over the right shoulder and painful range of motion with the right shoulder. (Id.) The hospital staff restricted the Petitioner to light duty work until she followed up with her primary care physician. (Id.)

On March 27, 2019, the Petitioner saw Dr. Daniel Brunkhorst, a chiropractor at DB Healthcare, and reported the March 20, 2019, incident consistently with her testimony. (PX4) She complained of pain in her cervical and thoracic spine and right shoulder that was continuous, aching, pressure-like, throbbing and sharp with movement, physical activity and work activity.

(PX4) She said nothing helped alleviate the pain and had radiating symptoms into her right shoulder blade. (Id.) The Petitioner told Dr. Brunkhorst that her shoulder symptoms had never improved from the November 1, 2018, accident, and she did not feel that she was healed or ready to go back to work. (Id.)

Muscle testing indicated decreased functioning at C5 and C6. (Id.) Deep tendon reflexes, sensory evaluation and cervical distraction tests were normal. (Id.) Cervical compression testing elicited pain, and Spurling's test was positive to the right. (Id.) Other cervical tests (Valsalva's maneuver and vertebro-basalar insufficiency) were negative. (Id.) Shoulder compression test was positive on the left with increase in pain in the right cervical and right cervical dorsal region. (Id.) Empty can, Gerber's subscapularis lift off, Apley's and apprehension tests were positive on the right side. (Id.) Dr. Brunkhorst found that the Petitioner was experiencing myospasms at the right cervical spine, thoracic, trapezius, subscapularis, supraspinatus and deltoid. (Id.)

Dr. Brunkhorst diagnosed: cervical spine displacement; cervical radiculopathy; cervical ligament sprain; cervical muscle, fascia and tendon strain; thoracic ligament sprain; right acromioclavicular joint sprain; unspecified ligament disorder; unspecified muscle contracture; and myalgia. (Id.) He opined that these conditions were fully or in part related to trauma from the work accident. (Id.) He referred the Petitioner for cervical spine and right shoulder MRIs and for further evaluation by a specialist and gave light duty work restrictions of: no lifting, pushing or pulling over 10 pounds; no repetitive lifting, twisting or turning; and no working with arms above shoulder height or overhead. (Id.)

The Petitioner underwent cervical spine and right shoulder MRIs on April 8, 2019, at Greater Missouri Imaging. (PX5) On the cervical MRI, radiologist Dr. Vikram Sobti found: 1) patent central canal and foraminal with no herniations; 2) mild spondylotic changes from C4

through C7; 3) shallow annular bulges impinging the ventral thecal sac from C4 through C7; and 4) straightening of normal cervical lordosis that may represent muscle spasm versus strain. (Id.) On the right shoulder MRI, he found mild subdeltoid bursitis with intact rotator cuff, osseous structures and glenoid labrum. (Id.)

Dr. Brunkhorst saw the Petitioner again on April 23, 2019, and he performed electrical stimulation, myofascial release and heat treatment. (Id.) He again referred the Petitioner to a specialist and continued work restrictions. (Id.)

The Petitioner testified that the treatment did not resolve her symptoms, and Dr. Brunkhorst referred her to Dr. Thomas Lee, an orthopedic specialist at United Physicians Group. (T. 21-22, PX6) She saw Dr. Lee, on April 30, 2019, gave a consistent history and complained of neck pain going into the bilateral trapezial regions and severe headaches. (Id.) A spinal examination showed tenderness in the right mid-trapezial region with a marked pain response and withdraw, along with 35 percent loss of right rotation and 25 percent loss of left rotation. (Id.) A shoulder examination showed stiffness in end-range with some asymmetry in internal rotation, diminished on the right. (Id.) Dr. Lee reviewed the cervical MRI and diagnosed a herniated nucleus pulposus with annular tear at C5-6 and disc protrusions at C3-4, C4-5 and C6-7. (Id.) He noted capsular tightness of the right shoulder that may have been a protective response due to the overlap of the cervical symptoms. (Id.) He prescribed medications, an epidural injection at C5-6 and physical therapy, to include shoulder therapy. (Id.) He said the Petitioner was capable of sedentary work – such as her cashier job – and ordered work restrictions of no patient contact, no lifting more than 10 pounds, no overhead work, no repetitive reaching and no repetitive or prolonged bending of the neck. (Id.)

On May 9, 2019, the Petitioner underwent a Section 12 evaluation by Dr. William Frisella, an orthopedic shoulder, elbow and upper extremity surgeon at Advanced Bone and Joint. (RXB) The Petitioner gave consistent histories of the two incidents and complained of right shoulder blade and neck pain, saying that she had trouble with activities that involved moving her neck and felt a pulling sensation with moving her neck. (Id.) She did not report radicular symptoms. (Id.) Dr. Frisella reviewed: records from Drs. Goggin, Nogalski, Brunkhorst and Lee; MRIs from December 18, 2018, and April 8, 2019; and the November 1, 2018, injury report. (Id.)

Dr. Firsella reported that a physical examination was normal, except for the Petitioner having scapular pain with arm motion when he tested her range of motion. (Id.) He reviewed the April 8, 2019, MRI scans, noting no abnormalities in the shoulder and mild degeneration in the cervical spine at C4-5, C5-6 and C7-T1 but no herniations. (Id.) He diagnosed typical age-related degeneration of the cervical spine and right shoulder and opined that neither work injury caused an objectively identifiable diagnosis in the Petitioner's right shoulder, scapula or cervical spine. (Id.) He wrote: "Although the patient reports pain that began after the 11/1/2018 injury, and increased pain after the 3/20/2019 injury, her subjective complaints are not confirmed by objective findings on imaging studies or physical examination. There is no objectively identifiable diagnosis which was caused, worsened, or aggravated by either work injury." (Id.) He recommended no further treatment, found her to be at maximum medical improvement and gave no work restrictions. (Id.)

On May 21, 2019, the Petitioner underwent a right C-5-6 interlaminar epidural steroid injection performed by Dr. Helen Blake, a pain management specialist at United Physicians Group. (PX6, PX7) The Petitioner testified that the injections provided temporary relief of her symptoms. (T. 23)

The Petitioner returned to Dr. Lee on June 18, 2019, and he added a diagnosis of right shoulder rotator cuff contusion with subacromial/subdeltoid bursitis. (PX6) He stated that much of the Petitioner's ongoing symptoms appeared related to the rotator cuff, with clear clinical correlation with her neck being less certain. (Id.) He noted that the Petitioner's arm and hand symptoms were more consistent with an ulnar nerve distribution which may have related to some neurogenic thoracic outlet symptoms related more to the shoulder injury. (Id.) He prescribed continued therapy, a subacromial injection and medication and ordered the Petitioner off work. (Id.)

On July 1, 2019, Dr. Blake performed a right subacromial bursa injection. (Id.) The Petitioner returned to Dr. Lee on July 30, 2019, and reported that the injection improved her symptoms, but she had worse pain in the right thoracic paramedian region from about the mid-intrascapular region up to the base of the neck. (Id.) Dr. Lee ordered another cervical MRI because the April 8, 2019, was of limited quality. (Id.) He continued the off-work order. (Id.)

The cervical MRI conducted on August 7, 2019, by Dr. Matthew Rule, a radiologist at MRI Partners of Chesterfield, showed a left foraminal protrusion at C3-4 and bilateral foraminal protrusions at C4-5 and C5-6 resulting in foraminal stenosis at all three levels. (Id.) Dr. Rule also found a midline protrusion at C6-7 resulting in dural displacement but no central or foraminal stenosis. (Id.)

Also on August 7, 2019, the Petitioner saw Dr. Lee and reported persistent neck pain and that her shoulder was feeling more stiff. (Id.) Dr. Lee prescribed medication, ordered physical therapy and continued work restrictions. (Id.) He discussed with the Petitioner that the next step would be cervical disc replacement if she failed to improve. (Id.)

The Petitioner underwent physical therapy at ApexNetwork Physical Therapy from August 5, 2019, through September 13, 2019, for a total of 18 visits. (PX8) It appeared that the Petitioner's shoulder function improved, but her cervical function did not. (Id.) The Petitioner testified that the physical therapy helped "to an extent," but the pain was still there. (T. 22)

On September 12, 2019, Dr. Frisella testified consistently with his report at a deposition. (RXD) He stated that although he practiced in shoulder surgery, he commonly evaluated patients with shoulder and neck problems. (Id.) He said that one out of every five patients he saw complained about their shoulders when the cervical spine actually was the problem. (Id.)

Regarding his evaluation of the Petitioner, Dr. Frisella stated that the April 8, 2019, cervical MRI showed only some wear and tear on her discs but nothing that looked like an acute disc herniation or an acute injury. (Id.) He said it was not clear whether the degenerative changes he saw on the cervical and shoulder MRIs were causing the Petitioner's pain complaints but said such changes could cause neck pain. (Id.) He reiterated that he saw no cervical disc herniations and added that he also saw no annular tear. (Id.)

On cross-examination, Dr. Frisella said he did not review the August 7, 2019, MRI. (Id.) He also said that the November 1, 2018, incident as described by the Petitioner was "very unlikely" to cause an injury to the cervical spine and that the March 20, 2019, incident would "not typically" cause an injury to the cervical spine. (Id.) He acknowledged that there is frequently overlap between symptoms from a shoulder injury and a cervical injury. (Id.) Regarding definitions of disc pathology, Dr. Frisella stated that in his opinion, "herniation" implied a specific traumatic event that caused the disc to be protruded or extruded from the disc space, while a "bulge" or "protrusion" suggested and were consistent with typical age-related degeneration of the disc. (Id.) He did identify degenerative disc bulging on the cervical scans. (Id.)

At a follow-up visit with Dr. Lee on September 18, 2019, the Petitioner complained of ongoing neck pain and what she described as shoulder pain in the right scapular region. Dr. Lee found that she was not getting the symptoms in the peri-acromial region that she had prior to the injection and physical therapy. (Id.) Dr. Lee referred the Petitioner to Dr. Matthew Gornet, an orthopedic surgeon at The Orthopedic Center of St. Louis, for a surgical evaluation on her cervical spine. (Id.) He continued work restrictions. (Id.)

The Petitioner saw Dr. Gornet on December 4, 2019, who took a history, examined the Petitioner and reviewed both cervical MRIs. (PX9) In comparing the MRIs from April 8, 2019, and August 7, 2019, Dr. Gornet noted similar findings on both studies. (Id.) On the April 8, 2019, study, he found clear disc protrusions at C5-6 and C6-7 and an annular tear at C5-6. (Id.) On the August 7, 2019, study, he noted pathology at C4-5, C5-6 and C6-7 with an obvious annular tear and herniations at C5-6 and C6-7. (Id.) Dr. Gornet opined that the Petitioner's symptoms were causally connected to the work injuries. (Id.) He stated that the Petitioner's disc injuries could have been the source of all of her symptoms – headaches and shoulder, scapular, trapezial and neck pain. (Id.) He recommended disc replacement surgery at all three levels and gave light duty work restrictions, including no lifting greater than 10 pounds, no overhead work and no assisting in transfer of patients. (Id.)

The Petitioner testified that the Respondent gave her light duty work in another area of the nursing home, which she performed on December 7 and 8, 2019. (T. 25, 92) However, she said that in that capacity, she had to be CPR certified. (T. 25-26) Following a phone conversation with the Petitioner on December 10, 2019, Physician Assistant Allyson Joggerst added a restriction of "no CPR" after the Petitioner informed her that the Respondent had asked the Petitioner to perform CPR. (Id.)

At a follow-up visit on February 20, 2020, Dr. Gornet continued to recommend surgery. (Id.) He reviewed Dr. Frisella's report and stated that Dr. Frisella may not have seen the high-resolution MRI scan and may not have been aware of the differences between an MRI without foraminal views and an MRI with such views. (Id.) He emphasized that in comparing the two cervical scans, there was clear objective pathology that was "obvious and compelling" and correlated with the Petitioner's subjective complaints. (Id.) He characterized the C5-6 herniation as "large" and those at C4-5 and C6-7 as "smaller." (Id.) The Petitioner had another visit with Dr. Gornet on August 20, 2020, at which time he reiterated his findings and continued work restrictions. (Id.)

The Petitioner returned to Dr. Gornet on February 22, 2021, and Dr. Gornet reviewed Dr. Kitchens' report. (Id.) He disagreed with Dr. Kitchen's statement that the disc pathology and annular tear at C5-6 were not visualized on the April 8, 2019, MRI. (Id.) Dr. Gornet's conclusions and recommendations were unchanged, and he stated that the Petitioner was not at maximum medical improvement. (Id.) He continued work restrictions. (Id.)

At a deposition on April 30, 2020, Dr. Gornet testified consistently with his reports. (PX1) He explained that patients frequently may present with shoulder problems when they actually have neck problems – what he called a watershed or overlapping area. (Id.) He said that the Petitioner's complaints of pain in the shoulder or upper arm correlated well with a problem at the C5-6 spinal level. (Id.) During his testimony, Dr. Gornet reviewed the August 7, 2019, MRI and pinpointed evidence of his findings of a "fairly significant" disc protrusion and large tear at C5-6 and smaller herniations and tears at C4-5 and C6-7. (Id., Deposition Exhibit 3) He stated that these herniations and tears were evident on the April 8, 2019, MRI scan but were not as well visualized because the radiologist did not take the appropriate views. (Id.) He explained that the first MRI used an older

magnet of lesser quality and that foraminal views were not performed, making the pathology not as obvious or straightforward as in the results of the second MRI. (Id.)

Dr. Gornet opined that the Petitioner's cervical condition and need for treatment was causally related to her work injuries, which he characterized as acute injuries. (Id.) He gave a breakdown of how he reached that conclusion: The Petitioner had no prior shoulder or arm problems; she lifted a patient resulting in an injury that was known to cause potentially shoulder or neck pathology; she saw Dr. Paletta, who wasn't overwhelmed by the pathology in her shoulder; and she had obvious neck pathology that correlated with her symptoms. (Id.) He said the Petitioner's injuries were predominately caused by the accident of November 1, 2018. (Id.)

Regarding Dr. Frisella's evaluation, Dr. Gornet stated that although Dr. Frisella was an excellent shoulder specialist, he was not qualified to make conclusions about the Petitioner's cervical condition. (Id.)

In explaining his recommendation for a three-level disc replacement, Dr. Gornet stated that to successfully cure and relieve the effects of the Petitioner's work injury, he needed to treat all three levels to remove the source of nerve irritation. (Id.) He said that disc replacement had been found to be superior to cervical fusion in that patients return to work earlier and have higher satisfaction and more functional improvement. (Id.) He said the Petitioner was not at maximum medical improvement because of the need for treatment to cure and relieve the effects of her work-related injury. (Id.) He did not believe that a single-level or two-level disc replacement would be options for the Petitioner because such procedures would not address all the structural problems present and may necessitate future surgery. (Id.) On cross-examination, Dr. Gornet went into detail about his preference for performing a three-level disc replacement and the likelihood of the Petitioner being able to return to work without restrictions. (Id.) But he admitted that the risk of

complications was greater as the number of levels replaced increased, although he classified it as not "statistically significant." (Id.)

Also on cross-examination, Dr. Gornet admitted that the Petitioner lacked radicular symptoms but stated that the C5-6 injury would be symptomatic with neck pain, headaches and the subtle decrease in the Petitioner's biceps that he found. (Id.) When asked about Dr. Sobti's report classifying the disc pathology as "shallow disc bulges" and not noting annular tears in the April 8, 2019, MRI, Dr. Gornet maintained that he saw the tears, a significant herniation and low-level herniations on those scans. (Id.) Regarding the difference between disc bulges and protrusions, Dr. Gornet stated that the term "bulge" is not accepted terminology in the spinal specialty and further explained in detail the various classifications of disc pathology. (Id.)

Dr. Gornet also testified that the treatment performed by Drs. Lee, Paletta and Blake was reasonable and necessary. (Id.) Regarding adding "no CPR" to the Petitioner's work restrictions, Dr. Gornet said the type of activity involved with performing CPR – pushing hard with the arms – would easily irritate the Petitioner's spine pathology. (Id.) Regarding the Petitioner continuing to work as a cashier while having work restrictions, Dr. Gornet said that if the Petitioner were performing duties beyond her work restrictions without aggravating her symptoms, he may have modified the work restrictions, but that would not change his ultimate opinions because the Petitioner had clear pathology that correlated with her symptoms. (Id.)

On October 19, 2020, the Petitioner underwent a Section 12 examination by Dr. Daniel Kitchens, a neurosurgeon at Cardinal Neurosurgery & Spine. (RXE) The Petitioner gave a consistent history, and Dr. Kitchens performed an examination and reviewed the following: accident reports; medical records from Drs. Goggin, Paletta, Brunkhorst, Lee, Blake and Gornet; Section 12 reports from Dr. Nogalski and Dr. Kitchen; Holy Family Hospital records; the April 8,

2019, and August 7, 2019, cervical MRIs and reports; physical therapy records; and Dr. Gornet's deposition. (Id.)

The results of Dr. Kitchens' examination appeared normal except for the Petitioner reporting right-sided neck and shoulder pain with extension and flexion of the neck and with raising her right arm above her head. (Id.) On the April 8, 2019, MRI, Dr. Kitchens saw mild disc bulging at the C5-6 and C6-7 levels but no herniation nor evidence of an annular tear. (Id.) On the August 7, 2019, MRI, he saw degenerative disc bulging at C4-5, C5-6 and C6-7 and hyperintensity in the posterior annulus at C5-6 that was consistent with an annular tear but no evidence of disc herniation or foraminal stenosis. (Id.) In comparing the two series of MRI films, Dr. Kitchens noted that the studies were significantly different, with the disc bulges being more pronounced at C5-6 and C6-7 and the appearance of the annular tear. (Id.)

Dr. Kitchens diagnosed the Petitioner with cervical degenerative disc disease and cervical spondylosis. (Id.) He opined that neither work incidents caused an injury to the Petitioner's cervical discs, stating that there was no mechanism of injury that provided axial loading to the cervical spine and no evidence of an acute injury to the cervical discs. (Id.) He agreed with Dr. Gornet that the August 7, 2019, MRI showed an annular tear and disc bulges but pointed out that these findings were not seen on the April 8, 2019, MRI and it was impossible that the tear that he believed developed between April 8, 2019, and August 7, 2019 would have been caused by either work incident. (Id.) He said that the Petitioner was at maximum medical improvement, did not require additional treatment to her cervical spine as it related to the work incidents and could return to work without restrictions. (Id.) He stated that the treatment the Petitioner received had not been appropriate nor medically necessary for her cervical spine as it related to the work incidents because there was no evidence of an acute injury as a result of the two work incidents. (Id.)

Dr. Kitchens testified consistently with his reports at a deposition on December 16, 2020. (RXG) He said that the changes he saw between the two MRIs were normal, age-related progression of the Petitioner's underlying condition. (Id) He explained that the lack of axial loading from the incidents that he referred to in his report was based on the Petitioner not describing an injury or accident that caused her neck to forcefully flex forward or back – rather it was a pulling of and force to her shoulder that he said would not cause the pathology he saw on the MRI films. (Id.) He further stated that the Petitioner's work activities on the day would not cause, contribute to or aggravate the Petitioner's cervical spondylosis or cervical degenerative disc disease. (Id.) He disagreed with Dr. Gornet's opinion that the Petitioner's symptoms were "related" to her work injuries because there was no evidence, symptoms or diagnosis of cervical injury in November 2018. (Id.) He stated that the Petitioner's smoking contributed to the progression of cervical disc disease that he saw on the MRIs. (Id.) Also unlike Dr. Gornet, Dr. Kitchens believed the April 8, 2019, MRI was of sufficient diagnostic quality. (Id.)

The Petitioner testified that she was able to continue working at Moto Mart and for Mr. Goggin within her restrictions. (T. 27-28) The Petitioner testified that she picked up more shifts at Moto Mart from 19.27 hours in the week ending March 30, 2019, to 22.66 hours the week ending April 13, 2019, and up to 40 hours per week in May and June 2019 because they were shorthanded. (T. 60-61) She stated that since October 12, 2019, her hours at Moto Mart have fluctuated – 20 hours some weeks, 28 hours some weeks and 30 hours some weeks – but at the time of arbitration, she was back to 24-28 hours per week. (T. 62-63) She said that since she had been off work from the nursing home, Moto Mart was her only source of income. (T. 86-87)

The Respondent submitted 1,073 minutes of surveillance videos of the Petitioner taken over a little more than 13 days. (T. 99) Upon review of these videos, the Petitioner's activities

were within her work restrictions. (RXK) The most vigorous activities included opening doors, carrying an empty box with her right hand, cleaning her car seat using paper towels, pulling and pushing a gallon of windshield washer fluid on the counter, wiping the roller grill between waist and chest height primarily using her left hand (using her right hand for approximately 20 seconds) and dusting products and shelves for a little more than one minute (at shoulder height for 20 seconds). (Id.) The Petitioner also was seen putting on a jacket and holding her cell phone between her left ear and shoulder while carrying a soda and a bag for approximately 1 minute. (Id.) The Petitioner could also be observed stretching her neck occasionally. (Id.)

The Petitioner agreed that she was able to open and close her car door and the door at Moto Mart without difficulty, put on a jacket most days, clean out her car using both arms, hold a cell phone between her neck and shoulder at times and clean the roller grill at Moto Mart with her right arm and dusting above shoulder height for a short period of time. (T. 68, 70-77) But she said her activities at Moto Mart are limited in that she is not allowed to work in the coolers, take out trash, wipe down the gas pumps, carry buckets to change windshield washer fluid or clean or lift overhead – relying on her coworkers to handle the physically demanding duties. (T. 83-84, 100) She said the majority of her duties were waiting on customers, ringing up their purchases and taking payments. (T. 101) She said she follows her 10-pound lifting restriction as much as she could. (T. 101-102) In comparing her activities at Moto Mart and performing CPR on a patient, the Petitioner said performing CPR required a lot of force on her arms that she described as "jolting." (T. 101) Regarding holding her cell phone between her neck and shoulder and cleaning the roller grill, she said the movements were similar to her physical therapy exercises. (T. 102)

The Petitioner testified that she still had a constant, dull ache between her shoulder blade and her neck that increases with certain activities, such as driving, vacuuming, laundry, taking out

trash and playing with her daughter. (T. 31-32, 35) She stated that she had good days and bad days, with good days where she doesn't feel hurt and bad days where she does not want to get out of bed. (T. 84-85) More recently, the bad days were more frequent than the good. (T. 85-86) She said she has had to refuse to take extra shifts at Moto Mart when she was not having a good day. (T. 101) She said her migraines have worsened – becoming more frequent – since the work injuries. (T. 82-83) She said her symptoms affected her sleep. (T. 33) She wanted to undergo the surgery because she wanted her "life back." (T. 35) She added that she does not want to continue working her minimum-wage job at Moto Mart and wants to return to the medical field, where she had been working for 20 years and for which she went to college. (T. 103-104)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below.

Issue (F): Is Petitioner's current condition of ill-being, specifically his neck injury, causally related to the accident?

Based on the totality of the evidence, the Arbitrator finds that Petitioner's current condition of ill-being in her cervical spine was not causally related to the accident that occurred on March 20, 2019, but remains related to her initial accident on November 1, 2018 (see Case No. 18 WC 36914). The March 20, 2019, incident was merely the impetus that led the healthcare providers to take a further look at the Petitioner to determine the pathology that caused her continuing symptoms.

While Petitioner's symptoms increased following the March 20, 2019, accident, it is clear this did not sever the chain of causal connection from the first incident. See e.g., *Lasley*

Construction Co. v. Industrial Comm'n, 274 Ill.App.3d 890, 893, 655 N.E.2d 5 (5th Dist. 1995) (holding that "other incidents, whether work-related or not, may have aggravated the claimant's condition is irrelevant").

Issue (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?

Based on the Arbitrator's decision that Petitioner's current condition of ill-being is not causally related to her subsequent accident that occurred on March 20, 2019, but remains related to her initial accident on November 1, 2018, and the Arbitrator having awarded Petitioner benefits in Case No. 18 WC 36914, the Arbitrator does not award further benefits herein.

Issue (K): Is Petitioner entitled to any prospective medical care?

Based on the Arbitrator's decision that Petitioner's current condition of ill-being is not causally related to her subsequent accident that occurred on March 20, 2019, but remains related to her initial accident on November 1, 2018, and the Arbitrator having awarded Petitioner benefits in Case No. 18 WC 36914, the Arbitrator does not award further benefits herein.

Issue (L): What temporary benefits are in dispute? (TTD)

Based on the Arbitrator's decision that Petitioner's current condition of ill-being is not causally related to her subsequent accident that occurred on March 20, 2019, but remains related to her initial accident on November 1, 2018, and the Arbitrator having awarded Petitioner benefits in Case No. 18 WC 36914, the Arbitrator does not award further benefits herein.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC009813
Case Name	Kevin Shirley v. State of Illinois - Northern Illinois University
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0450
Number of Pages of Decision	12
Decision Issued By	Deborah Baker, Commissioner

Petitioner Attorney	Stephanie Seibold
Respondent Attorney	Alyssa Silvestri

DATE FILED: 11/23/2022

/s/ Deborah Baker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify Permanent Disability	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KEVIN SHIRLEY,

Petitioner,

vs. NO: 20 WC 09813

NORTHERN ILLINOIS UNIVERSITY,

Respondent.

DECISION AND OPINION ON REVIEW

This matter comes before the Commission pursuant to a Petition for Review timely filed by the Respondent herein. Both parties have presented argument requesting modification of the permanent partial disability award. Notice having been given to all parties, the Commission, after considering the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as set forth below, but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

CONCLUSIONS OF LAW

The Commission weighs the evidence as to Petitioner's permanent partial disability differently than the Arbitrator. Specifically, the Commission affords greater weight to §8.1b(b) factors (ii) and (iv).

§8.1b(b)(ii) – occupation of the injured employee

Petitioner has a 30-year work history as an executive chef and food service manager. T. 41. The Commission emphasizes that it is only by virtue of an ADA accommodation that Petitioner was able to return to work in his pre-accident occupation. The February 17, 2021 Accommodation Implementation Form reflects Petitioner's permanent restrictions required an accommodation of "No overhead lifting or lifting of items over 10 pounds on own. Teammates will assist with lifting

heavier items and with lifting items overhead," and the accommodation "is indefinite while Kevin is employed at NIU as a Food Service Manager." Pet.'s Ex. 7. The Commission finds this factor weighs heavily in favor of increased permanent disability.

§8.1b(b)(iv) – future earning capacity

While Petitioner has not suffered a current loss of earnings, the evidence establishes that Petitioner's future earning capacity has been significantly impacted. *See Jackson Park Hospital v. Illinois Workers' Compensation Commission*, 2016 IL App (1st) 142431WC, ¶ 44 ("'[P]ost-injury earnings and earning capacity are not synonymous' because other evidence can show that 'the actual earnings do not fairly reflect claimant's capacity.' 4 A. Larson & L. Larson, Larson's Workers' Compensation Law § 81.03[1] (2005)."). Here, Petitioner testified his permanent restrictions will impact his ability to find another food service manager position:

> Based on my past experience, resume, career, um, the jobs that I've worked in the past paid significantly more than where I'm at now. I took this job when I relocated out of the Chicago metropolitan area with hopes of rebuilding my resume and career in a new locale and I don't foresee that happening. I do enjoy my job where I work, but I don't see any potential for career advancement based on the injury…I don't foresee anybody wanting to hire an executive chef that has limitations on his ability to use his right arm. T. 23.

Petitioner's testimony is credible and is corroborated by the necessity for an indefinite accommodation to continue working for Respondent. The Commission finds this factor weighs heavily in favor of increased permanent disability.

The Commission finds Petitioner sustained a 30% loss of use of the person as a whole under Section 8(d)2.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 6, 2022, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $530.00 for out of pocket medical payments as well as $289.00 in outstanding medical expenses to Swedish American Medical Group as provided in Section 8(a) and subject to Section 8.2. Respondent shall be given a credit for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims from any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $644.21 per week for a period of 150 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 30% loss of use of the person as a whole.

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.

Pursuant to Section 19(f)(1), this decision is not subject to judicial review.

November 23, 2022

/s/ *Deborah J. Baker*

DJB/mck

O: 11/9/22

43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC009813
Case Name	SHIRLEY, KEVIN v. NORTHERN IL UNIVERSITY
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Stephanie Seibold
Respondent Attorney	Alyssa Silvestri

DATE FILED: 6/6/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 1, 2022 1.58%

/s/Stephen Friedman, Arbitrator
Signature

CERTIFIED as a true and correctcopy pursuant to 820 ILCS 305/14

June 6, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **Kane**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Kevin Shirley
Employee/Petitioner

v.

Northern IL University
Employer/Respondent

Case # **20** WC **009813**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Geneva**, on **May 19, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **January 9, 2020**, 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 $**55,831.36**; the average weekly wage was $**1073.68**.

On the date of accident, Petitioner was **55** years of age, ***married*** with **0** dependent children.

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

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

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

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

ORDER

Respondent shall pay Petitioner out of pocket medical payments of $530.00 and outstanding medical to Swedish American Medical Group of $289.00 pursuant to the provisions of Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for all medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $644.21/week for 125 weeks, because the injuries sustained caused the 25% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

/s/ Stephen J. Friedman **JUNE 6, 2022**
Signature of Arbitrator

Statement of Facts

Petitioner testified that on January 9, 2020, he was employed by Respondent as the Food Service Manager. He had been employed by Respondent for 3 ½ years in this capacity. He has been in the food service industry for 30 years. He has been a food service manager, food and beverage manager and executive chef. His duties for Respondent include scheduling, planning, and execution of the daily food service at multiple locations at the college. Petitioner identified RX 3 as the HR job description of his job. He testified his job duties included unloading and storing, groceries and deliveries. He also needed to fill in for hourly employees if they did not show up including food preparation.

Petitioner testified that on January 9, 2020, it was a cold icy day. He was walking out of the parking structure down a steep icy incline when he slipped and fell on his right shoulder. He felt pain in the right shoulder. He walked to work, and contacted security to fill out an accident report. The Employee Notice of Injury, prepared the day of his accident, was admitted as RX 1. He remained at work to the end of his shift. He testified that he stayed in his office with ice on his shoulder. After the shift he went to the emergency room. Petitioner testified that he had prior right shoulder surgery for a rotator cuff tear by Dr. Nyquist in 2018. He treated to October 2018. He testified that after that treatment, his right shoulder was not 100%, but close.

On January 9, 2020, Petitioner sought treatment at Swedish American Hospital (PX 1, p 211-245). He reported a consistent history of accident of slipping on ice and falling onto his right shoulder. He was concerned because he had a rotator cuff repair a year ago and this pain feels similar to then. X-rays of the right shoulder showed postoperative changes. Petitioner was diagnosed with a right shoulder contusion. He was given a sling and advised that if he had continued pain for a week, to see his primary care doctor for further imaging.

On January 23, 2020, Petitioner saw Dr. Scott Nyquist at Lundholm Orthopedics. Dr. Nyquist acknowledged that Petitioner had seen him previously for a right rotator cuff repair about eighteen months previously. Dr. Nyquist stated that Petitioner was doing great until he fell on the ice about three weeks ago. Since that time, he has had pain, disability, and decreased motion to his shoulder. Dr. Nyquist expressed concern that Petitioner may have injured his prior rotator cuff repair. He ordered an MRI. On March 16, 2020, Petitioner followed up with Dr. Nyquist for review of the MRI. Dr. Nyquist noted the prior rotator cuff repair in May 2018. Petitioner had been doing fine until 3 months ago when he fell onto his right arm. Since that time, he has had significant increasing pain, weakness, and passive greater than active motion. The MRI showed a large tear of the rotator cuff (PX 3, p 492). Dr. Nyquist recommended a repair of the recurrent tear. He noted the risk that a second repair could not be as good as new (PX 3, p 500).

On March 24, 2020, Petitioner underwent a right rotator cuff repair with biceps tenodesis. The post operative diagnosis was recurrent tear right rotator cuff including biceps (PX 1, p 83-86). Petitioner had post operative treatment with Dr. Nyquist. On April 6, 2020, the wires were removed, and he was cleared for physical therapy when they can see him due to COVID. Petitioner advised Dr. Nyquist he was off narcotics (PX 3, p 464). Petitioner had therapy from April 7, 2020 through May 20, 2020. The report notes continued weakness of the right arm (PX 2, p 293). On May 28, 2020, Dr. Nyquist noted PT was complete. Petitioner was off narcotics. Petitioner was working from home with limitations. Physical examination showed good range of motion with marked weakness. He recommended continued physical therapy (PX 4, p 591-592). On July 20, 2020, Dr. Nyquist again recorded marked weakness of the right shoulder on examination. He recommended that Petitioner return to work with a restriction of no overhead work and no lifting more than 10 lbs. Dr. Nyquist stated that Petitioner was well aware that his shoulder would not be as good as new, and possible further

surgery may be required (PX 4, p 582). On August 31, 2020, Petitioner reported that he went back to work July 30, 2020 within his restrictions. Dr. Nyquist stated that Petitioner's restrictions will be on an indefinite basis. His shoulder was not as good as new. His symptoms may worsen with time, and he may require a shoulder replacement for rotator cuff arthropathy (PX 4, p 571-572). Dr. Nyquist issued permanent restrictions of no overhead and no lifting over 10 pounds (PX 5). Petitioner saw Dr. Nyquist beginning on October 22, 2020 for an unrelated problem with his left knee, diagnosed as internal derangement (PX 4, p 562).

Petitioner testified he returned to work within his restrictions at the end of August 2020. His job was modified. For duties that would require him to raise his arm overhead or with any type of significant weight, he was allowed to either get assistance from other employees or not have to do that particular task. This included unloading and storing deliveries. An Accommodation to have teammates assist with heavy lifting or overhead was completed (PX 7). Petitioner testified he struggles with knife skills and physically doing preparation and cooking. He is slower and has to endure pain. He estimates that 50% of his work is done at chest height including stowing pots and pans, grocery supplies, using knife skills on a cutting board. He has trouble bringing his arm down from overhead. He needs to use the left arm to assist because the right arm grinds and snaps on the way down. Petitioner testified that he does not see potential for advancement based on his injury because he does not foresee anybody wanting to hire an executive chef with limitations on his ability to use his dominant right arm.

Petitioner testified he continues to be the Food Service Manager. His job description does not include the heavy and overhead lifting. He is working his full duty job within his restrictions. His job requires him to perform the duties of all supervised employees when staffing needs warrant such activities. He is required to fill in for employees who call off work. That is common. It happens daily. He is working someone else's job more that 50% of the time.

Petitioner was examined at Respondent's request by Dr. Stephen Weiss on May 24, 2021 (RX 4). Petitioner provided a history of the prior 2018 rotator cuff repair, the January 9, 2020 injury, and treatment. Dr. Weiss reviewed medical records of treatment following the accident. His physical examination notes significant loss of motion in the right shoulder. He notes crepitus, and atrophy of the infraspinatus and supraspinatus. Dr. Weiss opined that the accident caused a large rotator cuff tear. All treatment was reasonable and necessary Petitioner is at MMI. Dr. Weiss recommended no overhead work with the right arm, no lifting more than 5 pounds frequently or more than 10 pounds occasionally with his right arm alone. With both arms together Petitioner can lift up to 10 pounds frequently and up to 20 pounds occasionally (RX 4).

Conclusions of Law

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

A Workers' Compensation Claimant bears the burden of showing by a preponderance of credible evidence that his current condition of ill-being is causally related to the workplace injury. *Horath v. Industrial Commission*, 449 N.E.2d 1345, 1348 (Ill. 1983) citing *Rosenbaum v. Industrial Com.* (1982), 93 Ill.2d 381, 386, 67 Ill. Dec. 83, 444 N.E.2d 122). The Commission may find a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by an accident. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 182, 457 N.E.2d 1222, 1226, 75 Ill. Dec. 663 (1983). However, expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a

claimant's work duties and his condition of ill-being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63, 442 N.E.2d 908, 911, 66 Ill. Dec. 347 (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839, 639 N.E.2d 886, 892, 203 Ill. Dec. 327 (1994). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000).

If the claimant had health problems prior to a work-related injury, he bears the burden of showing that the preexisting condition was aggravated by the employment and that the aggravation occurred as a result of an accident which arose out of and in the course of his employment. *Nunn v. Industrial Comm'n,157 Ill. App. 3d 470, 476, 510 N.E.2d 502, 505, 109 Ill. Dec. 634 (1987)*. It is well-established that an accident need not be the sole or primary cause—as long as employment is a cause—of a claimant's condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Cases involving aggravation of a preexisting condition concern primarily medical questions and not legal ones. That is, if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been. *Nanette Schroeder v. The Illinois Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC (4th Dist., 2017).

Petitioner had a prior right shoulder rotator cuff repair in 2018. His unrebutted testimony was that he was doing well after that surgery, about 95% recovered. On January 23, 2020, Dr. Nyquist stated that he was doing great until he fell on the ice about three weeks ago. Since that time, he has had pain, disability, and decreased motion to his shoulder. No records of any interval treatment or complaints were offered. Petitioner worked his regular job without any restrictions until the January 9, 2020 accident. Thereafter, Petitioner was diagnosed with a large recurrent right rotator cuff tear and underwent treatment to address this condition. Respondent's expert, Dr. Weiss, agreed that the Petitioner's recurrent rotator cuff tear was related to his accident.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that his condition of ill-being in the right shoulder is causally connected to the accidental injury of January 9, 2020.

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

Under §8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers ' Compensation Commission,* 409 Ill. App. 3d 258, 267 (1st Dist., 2011). Based upon the Arbitrator's findings with respect to Accident and Causal Connection, reasonable and necessary medical for Petitioner's right shoulder would be causally related to the accident.

Petitioner offered PX 8 with alleged medical bills owing to Swedish American Hospital and Swedish American Medical Group. The bills reviewed were obtained in October 2020. Respondent offered its workers' compensation payment log as RX 2. The Arbitrator has reviewed the medical treatment records offered (PX 1-PX 4), and finds the treatment for the right shoulder was reasonable, necessary, and causally related to the

accident. The Arbitrator notes that Dr. Weiss agreed that the treatment he reviewed was reasonable and necessary. The Arbitrator has reviewed the billing records and notes that some of the bills were paid by Workers Compensation and others by a group insurance plan. The Arbitrator has reviewed the billing and finds:

1. The Swedish American Hospital bill documents Petitioner paid $500 out of pocket for related treatment. The unpaid balances claimed are for unrelated treatment on service dates 9/21/20 and 10/14/20 and are denied.
2. The Swedish American Medical Group bills document $289.00 in balances owed and a $30 co-pay paid by Petitioner for related treatment.

Based upon the record as a whole, the Arbitrator finds that Respondent shall pay Petitioner out of pocket medical payments of $530.00 and outstanding medical to Swedish American Medical Group of $289.00 pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for all medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving credit, as provided in Section 8(j) of the Act.

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

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

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a Food Service Manager at the time of the accident and that he is able to return to work in his prior capacity with accommodation as a result of said injury. The Arbitrator notes Petitioner testified that because of his restrictions, he now requires assistance to complete many functions he previously performed himself. He also testified that he would not be able to obtain advancement within the food service industry because of his permanent restrictions, thus limiting his other employment options should he wish to obtain another job. Because of this, the Arbitrator therefore gives some weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 55 years old at the time of the accident. Petitioner would be expected to remain in the workforce for a number of years. Because of this, the Arbitrator therefore gives some weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner has returned to his regular job without loss of earnings. Petitioner testified that because of his restrictions, he would not be able to obtain advancement within the food service industry. Because of this, the Arbitrator therefore gives some weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the MRI showed a large tear of the rotator cuff. Petitioner underwent a right rotator cuff repair with biceps tenodesis. The post operative diagnosis was recurrent tear right rotator cuff including biceps. Dr. Nyquist recorded marked weakness of the right shoulder on examination. He recommended that Petitioner return to work with a restriction of no overhead work and no lifting more than 10 lbs. In August 2020, these restrictions became permanent. Because of these facts, the Arbitrator therefore gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 25% loss of use of whole person pursuant to §8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC014407
Case Name	Robert Berndt v. Keenan Transit Company
Consolidated Cases	16WC020206;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0451
Number of Pages of Decision	22
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Michael Scully

DATE FILED: 11/23/2022

/s/ Thomas Tyrrell, Commissioner

Signature

22IWCC0451

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Berndt,

Petitioner,

vs. NO: 15 WC 14407

Keenan Transit Co.,

Respondent.

DECISION AND OPINION ON REVIEW

A Motion to Dismiss Review and Petition for Additional Penalties and Fees having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues and being advised of the facts and law, denies Petitioner's motion. The Commission finds Respondent's timely filed review of this case shall proceed. Furthermore, the Commission sets a new Return Date on Review in this matter.

Procedural History

Initially, the Commission notes that on May 21, 2021, the parties in this matter consolidated this case with four additional cases for hearing. The cases involve two separate dates of accident and three separate employers. In case 16 WC 6712, Petitioner alleged he sustained a work-related injury on October 15, 2014, and named Keenan Transit ("Keenan") as his employer. In case 16 WC 20211, Petitioner also alleged he sustained a work-related injury on October 15, 2014, and named Phoenix Logistics ("Phoenix") as his employer. In the current case, Petitioner alleged he sustained a work-related injury on March 23, 2015, and named Keenan Transit as his employer. In case 16 WC 20206, he also alleged he sustained a work-related injury on March 23, 2015, and named Phoenix Logistics as his employer. Finally, in case 17 WC 35300, Petitioner alleged he sustained a work-related injury on March 23, 2015, and named Amerisafe Consulting & Safety ("Amerisafe") as his employer. Petitioner's pending motion involves the three cases in which Petitioner alleged he sustained an injury on March 23, 2015.

On September 28, 2021, all the consolidated cases proceeded to hearing before Arbitrator Granada. As this Decision only concerns the merits of Petitioner's pending motion, the Commission will neither discuss the Arbitration Decision in detail nor address the merits of the Arbitration Decision. Keenan and Phoenix were represented by Ms. Kiesewetter at Quintairos,

Prieto, Wood & Boyer, P.A., while Amerisafe was represented by Mr. Halbleib at Law Offices of Joseph Marciniak. During the arbitration hearing it was revealed that Keenan and Phoenix are covered by the same insurer, while Amerisafe is covered by a different insurer. In the relevant three cases, Petitioner alleged that on March 23, 2015, he was driving an Amerisafe truck when he was involved in a collision with another truck. In addition to sustaining injuries to his left shoulder and back, Petitioner sustained injuries to his bilateral knees—particularly his right knee. Eventually, Petitioner underwent bilateral total knee replacement surgeries and was released by his treating doctor with significant permanent restrictions. A vocational rehabilitation specialist opined on behalf of Petitioner that due to his work history and permanent restrictions, no stable labor market existed for Petitioner. The primary dispute between the three named employers involved liability pursuant to Section 1(a)4 of the Act, the relationship between Keenan, Phoenix, and Amerisafe, and each company's employment relationship with Petitioner.

The Arbitrator filed the Arbitration Decision on December 2, 2021. After considering the evidence, the Arbitrator concluded that on the date of accident, Keenan and Phoenix were lending employers and Amerisafe was the borrowing employer. The Arbitrator concluded that Petitioner sustained a compensable accident and that his current condition of ill-being is causally related to that accident. The Arbitrator also concluded that Petitioner is permanently and totally disabled as a result of the March 23, 2015, work incident. Regarding the employment and liability disputes, the Arbitrator concluded that there was no evidence that Keenan and Phoenix are separate and independent entities. Furthermore, the Arbitrator concluded that there was an agreement by which Keenan and Phoenix agreed to assume the liability for Petitioner's workers' compensation claim; thus, he determined that Amerisafe did not have any liability relating to the work incident. Finally, the Arbitrator awarded penalties and fees against Keenan and Phoenix as he determined the companies' failure to provide benefits following Petitioner's injury was vexatious and unreasonable.

The Arbitrator issued separate Decisions in the consolidated cases; however, the Decisions in the three cases relating to the March 2015 incident—15 WC 14407, 16 WC 20206, and 17 WC 35300—notably have identical findings of fact and conclusions. Keenan and Phoenix timely filed Petitions for Review in cases 15 WC 14407 and 16 WC 20206 respectively on December 10, 2021. Keenan identified the following issues as in dispute in its Petition for Review: accident, benefit rates, employment relationship, medical expenses, notice, TTD, nature and extent, evidentiary issues, Section 1(a)4 liability, and penalties and fees. Phoenix identified the following disputed issues in its Petition for Review: benefit rates, medical expenses, notice, TTD, nature and extent, evidentiary issues, Section 1(a)4 liability, and penalties and fees. As Amerisafe won its case given the Arbitrator's determination that Keenan and Phoenix are solely liable for Petitioner's March 2015 injury, Amerisafe did not review case 17 WC 35300. Petitioner notably did not file what is sometimes referred to as a "protective review" in case 17 WC35300. Thus, that Decision became final on January 3, 2022.

Petitioner filed the pending motion seeking dismissal of Respondent's review in this matter on January 4, 2022. In his motion, Petitioner argues that the Arbitrator's findings and conclusions in case 17 WC 35300 are now the law of the case; consequently, according to Petitioner, Respondent's pending review is barred by the doctrines of res judicata and/or collateral estoppel. Petitioner argues that all the issues Respondent seeks to review have already received a final and

binding determination by the Arbitrator in favor of Amerisafe, and against Respondent. Thus, Petitioner argues that Respondent's pending review is unable to proceed. Respondent filed an objection to Petitioner's motion and a request for attorney fees on January 20, 2022. In its objection, Respondent argued that the Commission lacked jurisdiction to even consider Petitioner's motion to dismiss.

When the matter first appeared on Commissioner Tyrrell's Geneva Review Call on February 17, 2022, the Commissioner granted Respondent's request to allow the parties to fully brief the jurisdictional issue raised by Respondent. On May 16, 2022, Commissioner Tyrrell issued an Order concluding that the Commission does have jurisdiction to consider Petitioner's motion to dismiss. This Order only addressed the question of jurisdiction and did not consider the merits of Petitioner's motion. When the case was next before the Commissioner on the review call, Commissioner Tyrrell granted Respondent's request to fully brief the issues of res judicata and collateral estoppel Petitioner raised in his motion to dismiss. Commissioner Tyrrell also granted the parties' request for oral argument on the motion to dismiss. On June 10, 2022, Commissioner Tyrrell issued an Order tolling the original June 3, 2022, Return Date on Review in this case pending the disposition of Petitioner's motion.[1]

Conclusions of Law

After carefully considering the facts and relevant case law, the Commission finds Respondent's review in this matter is not barred by the doctrines of res judicata or collateral estoppel. The Commission finds the conclusions of the Arbitrator detailed in case 17 WC 35300 with Amerisafe as the named respondent are not binding against Keenan and Phoenix. Therefore, Respondent's timely filed pending review shall proceed in the usual manner.

The Illinois Supreme Court explains the doctrine of res judicata as follows:

> "The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action. *Res judicata* bars not only what was actually decided in the first action but also those matters that could have been decided…For *res judicata* to apply, three requirements must be met: 1) a final judgment on the merits rendered by a court of competent jurisdiction, 2) an identity of cause of action, and 3) an identity of parties or their privies."

A&R Janitorial v. Pepper Constr. Co., 2018 IL 123220 at ¶16 (citations omitted). Thus, the Commission may only find that the Arbitrator's conclusions in the case against Amerisafe are binding upon Respondent if all three requirements are met. After reviewing the relevant facts, the Commission finds the doctrine of res judicata does not apply in this matter because there is no

1 The Commission notes that Keenan and Phoenix filed timely Petitions for Review in cases 16 WC 6712 and 16 WC 20211, respectively. Pursuant to the June 10, 2022, Order, the original June 3, 2022, Return Date on Review in these consolidated cases was also tolled pending the Commission's consideration of the Petitioner's motion to dismiss.

privity or common identity between Respondent and Amerisafe.

There is no question that the Arbitration Decision in case 17 WC 35300 is now a final decision of the Commission. It is also undisputed that the Decision in case 17 WC 35300 represents a judgment on the merits of Petitioner's claim. Thus, the Commission finds the first requirement in determining the applicability of res judicata is met. When determining whether there is an identity of cause of action, Illinois courts use a transactional test and have found that "…separate claims are considered the same cause of action if they 'arise from a single group of operative facts, regardless of whether they assert different theories of relief.'" *Id*. at ¶18 (citation omitted). The Commission notes that the relevant three consolidated cases unquestionably arise from a single group of operative facts—so much so, that the Arbitrator wrote identical findings of fact and conclusions in each of the three Decisions. The three relevant cases all involve the March 23, 2015, work accident. While there was a dispute between Keenan, Phoenix, and Amerisafe regarding which employer was liable for Petitioner's workers' compensation claim, the dispute involved an identical set of facts. Thus, the Commission finds the second requirement in determining the applicability of res judicata has been met. However, Petitioner has presented no evidence showing that there is an identity of the parties or that Keenan and/or Phoenix are in privity with Amerisafe.

Petitioner is correct when he argues that the parties do not need to be identical to be considered the same for the purposes of res judicata. However, the parties must have interests that are sufficiently similar or aligned. Illinois courts have stated that "[l]itigants are considered the same when their interests are sufficiently similar, even if they differ in name or number. Litigants are privies when 'a person is so identified in interest with another that he represents the same legal right.'" *Langone v. Schad*, 406 Ill. App. 3d 820, 832 (2010). After carefully considering the facts in this matter, the Commission finds that the interests of Respondent directly conflict with those of Amerisafe. It is unquestionably in Amerisafe's best interest that any other company is identified as the liable employer, because this would completely relieve Amerisafe of the extensive liability this case presents to the liable employer. Likewise, it is also in the best interests of both Keenan and Phoenix that Amerisafe is identified as the liable employer. While all named Respondents most likely shared an interest in limiting the exposure of the employer, there is no disputing the fact that regarding the primary issue of which company is liable for Petitioner's injury, Amerisafe was in direct conflict with both Keenan and Phoenix. This conflict between Keenan, Phoenix, and Amerisafe is perhaps most evident in the fact that the companies are covered by separate insurers and are represented by separate counsel. Thus, the goals of neither Keenan nor Phoenix were sufficiently aligned with those of Amerisafe to support a finding that there is a common identity or privity amongst the three companies. Therefore, the Commission is unable to find that the Arbitrator's conclusions in the Decision in case 17 WC 35300 in which Amerisafe is the named respondent are binding against either Keenan or Phoenix in the cases currently pending review.

Petitioner's argument that the doctrine of collateral estoppel applies against Respondent in this matter fails for precisely the same reason. Illinois courts define collateral estoppel as follows:

> "Collateral estoppel, also referred to as issue preclusion, will prevent a party from relitigating an issue if the following elements are present: 1) the issue decided in the prior litigation is identical to the one presented in the current case, 2) there was a final

> adjudication on the merits in the prior case, and 3) the party against whom estoppel is asserted was a party to, or in privity with a party to, the prior litigation."

Pine Top Receivables of Ill., LLC v. Transfercome, Ltd., 2017 IL App (1st) 161781 at ¶8. After reviewing the relevant facts, the Commission finds that the lack of privity or shared identity between Keenan, Phoenix, and Amerisafe once again has proven to be a fatal blow to Petitioner's motion. Illinois courts interpret the issue of the identity or privity of the parties relating to the application of collateral estoppel in the same manner as seen in the application of res judicata. There is simply no viable argument to be made that the three named employers in these cases shared the same interests to the degree where the Commission can conclude that Amerisafe effectively represented all the interests of Keenan and Phoenix.

Petitioner's motion ignores the fact that the parties agreed to consolidate all five cases—including the two cases in which Petitioner alleged an October 15, 2014, date of accident—for the purposes of hearing only. Contrary to Petitioner's belief, the consolidation did not have the effect of merging all five cases into a single case. The consolidation certainly did not have the effect of eliminating the fact that Petitioner filed separate cases against Keenan, Phoenix, and Amerisafe regarding the March 2015 date of accident. The parties' decision to consolidate the cases for hearing did not erase the fact that in the relevant cases Keenan is only a party in case 15 WC 14407, Phoenix is only a party in case 16 WC 20206, and Amerisafe is only a party in case 17 WC 35300. Petitioner is unable to overcome this overarching fact.

The Commission notes that Petitioner blithely states that Respondent should have also filed a review in case 17 WC 35300, the case involving Amerisafe. Petitioner notably has identified no case law in support of this notion. Petitioner accurately notes that neither the Act nor the IWCC Administrative Rules explicitly prohibit a person or entity (i.e., Keenan or Phoenix) from filing a review in a case to which it is not a party (i.e., the Amerisafe case). However, it is axiomatic that only a party with standing may appeal a case. Standing is a common law concept, with the primary focus of the inquiry being whether a party "…has a real interest in the outcome of the controversy." *People v. 1,124,905 U.S. Currency*, 177 Ill. 2d 314, 328 (1997). It requires that the person or entity seeking to appeal a decision suffer "…some injury in fact to a legally cognizable interest." *Knox v. Chi. Transit Auth.*, 2018 IL App (1st) 162265 at ¶20. In Illinois, the right to appeal "…exists only in favor of a party whose rights have been prejudiced by the judgment or decree appealed from." *Clay v. Pepper Constr. Co.*, 205 Ill. App. 3d 1018, 1022 (1990). Only Amerisafe and Petitioner had standing to file a review in case 17 WC 35300. Petitioner made the strategic decision to not file a protective review in that case and to instead pursue the pending motion to dismiss. Despite Petitioner's assertion to the contrary, Respondent did not have standing to file a review in that matter and any such review filed by either Keenan or Phoenix would be subject to dismissal due to that lack of standing.

The Commission notes that both parties in this matter have requested an award of attorneys' fees and/or penalties relating to Petitioner's motion to dismiss. In his motion, Petitioner requests an award of penalties and fees based merely on the fact that Respondent filed a review in this matter. As the Commission has thoroughly explained, Respondent's review was timely and properly filed and shall proceed. Neither the doctrines of res judicata nor collateral estoppel are a

bar to Respondent's review proceeding. Likewise, Respondent requested an award of attorneys' fees due to its belief that Petitioner's motion to dismiss was frivolous. While the Commission denies Petitioner's motion, it does not conclude that Petitioner's motion was frivolous. Therefore, the Commission declines the requests made by both parties to assess penalties and/or fees.

Finally, as the original June 3, 2022, Return Date on Review was tolled in this matter pending the disposition of Petitioner's motion to dismiss, the Commission must set a new Return Date. As the parties have had ample time to review the transcript in this matter, the Commission sets the new Return Date of Review as December 16, 2022. The normal briefing schedule for Respondent to file its Statement of Exceptions and Petitioner to file any response will apply pursuant to Section 9040.70 of the IWCC Administrative Rules.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Motion to Dismiss Review filed on January 4, 2022, is hereby **denied**.

IT IS FURTHER ORDERED that the Commission declines to assess penalties or attorneys' fees against either party in this matter.

IT IS FURTHER ORDERED that the pending review filed by Respondent on December 10, 2021, shall proceed. The new Return Date on Review is **December 16, 2022.** The normal briefing schedule will apply pursuant to Section 9040.70 of the IWCC Administrative Rules.

This Decision is interlocutory and is not subject to immediate review in the Circuit Court.

November 23, 2022

o: 9/27/22
TJT/jds
51

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC014407
Case Name	BERNDT, ROBERT v. KEENAN TRANSIT
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Jennifer Kiesewetter

DATE FILED: 12/2/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 30, 2021 0.09%

/s/Gerald Granada, Arbitrator

Signature

22IWCC0451

STATE OF ILLINOIS)
)SS.
COUNTY OF **DUPAGE**)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

ROBERT BERNDT
Employee/Petitioner

v.

KEENAN TRANSIT
Employer/Respondent

Case # **15** WC **14407**

Consolidated cases:

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 **Gerald Granada**, Arbitrator of the Commission, in the city of **Wheaton**, on **9/28/21**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☒ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☒ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☒ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☒ What was Petitioner's age at the time of the accident?
I. ☒ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **1(a)(4) liability**

FINDINGS

On **3/23/15**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondents in which Respondents Keenan Transit and Phoenix were the loaning employers and Respondent Amerisafe was the borrowing employer.

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 $**41,533.76**; the average weekly wage was $**798.73**.

On the date of accident, Petitioner was **47** years of age, ***married*** with **0** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $**9,332.52** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**9,332.52**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Respondents Keenan Transit and Phoenix Logistics are responsible for Petitioner's claims pursuant to Section 1(a)(4) of the Act.

Respondents shall pay reasonable and necessary medical services as outlined in the attached findings, as provided in Section 8(a) of the Act subject to the Fee Schedule.

Respondents shall pay Petitioner temporary total disability benefits of $532.49/week for 139 weeks, commencing 3/23/15 through 11/20/17, as provided in Section 8(b) of the Act.

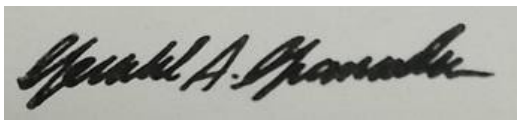
Respondents shall pay Petitioner permanent and total disability benefits of $532.49/week for life, commencing 11/21/17, as provided in Section 8(f) of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in Section 8(g) of the Act.

Respondents shall pay to Petitioner penalties of $10,000.00 as provided in Section 19(l) of the Act, $151,739.85 as provided in Section 19(k) of the Act and $60,695.94 in attorney fees as provided in Section 16 of the Act.

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

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



Signature of **Arbitrator Gerald Granada**

DECEMBER 2, 2021

FINDINGS OF FACT

This case involves Petitioner Robert Berndt – a truck driver, who alleges to have been injured while working for Respondents Keenan Transit, Phoenix Logistics (Phoenix), and Amerisafe Consulting (Amerisafe) on October 15, 2014 (16 WC 6712 and 16 WC 20211) and on March 23, 2015 (15 WC 14407, 16 WC 20206, and 17 WC 35300). Petitioner has filed separate Applications for Adjustment of Claim for all of these accidents, and all the claims have been consolidated. Given the sequence of events, the issues in dispute, and for judicial economy, the findings in this case will also apply to the subsequent case filings. Although all these claims were heard together, this decision is focused on Petitioner's March 23, 2015 claim, in which all issues are in dispute, including the issue of liability in a borrowing/loaning situation under Section 1(a)(4) of the Act. The main point of contention at trial was the question of Petitioner's employment and which Respondent(s) is/are ultimately responsible for Petitioner's claim.

October 15, 2014 incident

On October 15, 2014, Petitioner was training a new driver in a truck owned by Respondent Amerisafe. They drove to a construction site in Chicago, Petitioner exited the cab, walked across an unpaved parking lot and stepped into a pothole, injuring his right leg. He had never experienced any problems with the right leg before this accident. Petitioner's job required him to exit the cab at the stops, open the cargo doors to unload the product, unload the produce and close the door and the lift gate. The job included loading and unloading pallets with a pallet jack, pushing and pulling loads weighing up to 2,000 to 3,000 lbs. (RX1 p.8)

Petitioner reported this incident to the Amerisafe Warehouse manager at that time, Evan Wollak. Mr. Wollak testified that after he was contacted by Petitioner regarding the October 15, 2014 incident, Wollak called Bill Keenan of Keenan Transit to advise him of the incident. Wollak later completed an accident report, which he sent to Keenan Transit.

On October 20, 2014, Petitioner went to Edwards Immediate Care, where x-rays revealed moderate degenerative changes of the right knee in the medial compartment and narrowing in the left knee that was much worse than the right knee. A November 7, 2014 MRI revealed medial meniscal tearing of the right knee along the junction of the posterior horn and posterior root ligament, mild peripheral extrusion of medial meniscal tissue, and osteoarthritis of the medial femorotibial compartment. (PX4 p.8) Dr. Karlsson performed a right knee arthroscopy at Edwards Hospital on November 19, 2014. (PX4 p.14) The meniscal tissue was intact, but he did find grade 3 changes over the patellar and femoral side with slight flaps on the femoral trochlea, which he shaved back to create a stable base of cartilage for the joint. (PX4 p.14) He also reported grade 3 chondromalacia over majority of medial joint line in the right knee. He debrided cartilage flaps to create a stable base of cartilage for the joint. (PX p.14) Dr. Karlsson noted that the joint had cartilage in it at the time of this surgery. (PX1 p.11) Post surgery, Petitioner reported that he still experienced some pain over the medial side, some pain in the hamstring, and that he was having difficulty getting back to the type of activities he would need to do at work where he pulls a pallet jack. Dr. Karlsson recommended that Petitioner remain off work and do some therapy, which took place at Edwards on January 20, 2015. (PX4 p.112) Petitioner experienced significant relief between the surgery and therapy and returned to full work duties on February 16, 2015. Petitioner noticed some continuing symptoms when getting in and out of the truck as they had not simulated that activity in therapy. He experienced minor pain when getting in and out of the truck and while pulling heavy cargo, but he was able to get through all his work duties and missed no time from work following this accident.

March 23, 2015 incident

On March 23, 2015, Petitioner was involved in a vehicle collision while driving an Amerisafe truck for work. A truck traveling alongside his vehicle lost control in the snow, hitting the side of Petitioner's truck and causing Petitioner's truck to travel sideways down the road. Petitioner jammed down on the brake repeatedly with both legs in a technique to get his vehicle back under control. When his truck came to a rest, Petitioner saw that the other driver was trapped in his own truck, so Petitioner pulled his door open and pulled the other driver out of the truck. When the adrenaline wore off, he noticed pain in the back, his left side and both knees, down both legs. Petitioner described feeling immobilized.

Following this incident, Petitioner called the Amerisafe Warehouse Manager Evan Wollak from his truck. Wollak testified at trial that he called Bill Keenan of Keenan Transit that same morning to advise him of Petitioner's incident.

The police arrived and Petitioner was taken by ambulance to Good Samaritan Hospital. (PX5) X-rays revealed mild joint space narrowing medially and mild degenerative change of patellofemoral joint space. The radiologist read the film as showing mild degenerative changes.

On March 24, 2015, Petitioner saw his primary care physician, Dr. Kuhlman presenting with back pain, shoulder pain, knee pain and anxiety. (PX11 p.85) Petitioner's back pain level was 6/10, persistent, improving and non-radiating. The left shoulder pain was 8/10, constant, aching and non-radiating. The right knee pain was 10/10, aching, non-radiating and worse with weight-bearing. The knee was swelling, he was limping, and it felt like it would give way that morning. Kuhlman also noted that Petitioner had felt anxious, had moderate frontal headaches, dizziness, shakiness and had not slept. Dr. Kuhlman suspected a labral tear in the left shoulder and sent Petitioner for an MRI arthrogram. (PX11 p.90) He also diagnosed Petitioner with internal derangement of the right knee, suspecting exacerbation of the medial meniscus, sending him out for a MRI on the knee. (PX11 p.90) He also diagnosed contusion of the left chest wall, acute stress reaction and acute post-traumatic headaches. (PX11 p.91) He fully restricted Petitioner from work. (PX11 p.120) Following that visit, Petitioner underwent a number of injections to his left knee. The right knee MRI taken on April 2, 2015 revealed a new medial meniscal tear, Grade 1 strain of the medial collateral ligament, more advanced arthritic changes in the medial compartment and moderate sized joint effusion. A subsequent MRI taken on April 10, 2015 revealed a complex tear with a large radial component of the posterior horn and root tearing of the medial meniscus, a 1x1 cm osteochondral lesion of the articular surface of med femoral condyle without any displaced fragment and mild joint effusion and synovitis. (PX11 p.93) Petitioner also had a left shoulder MRI arthrogram that revealed a SLAP tear with partial thickness tear of the anterior-inferior labral ligament complex, as well as tendinosis of the cuff ligaments. (PX11 p.96) Dr. Karlsson also noted Petitioner's complaints of radiating low back pain, for which he recommended a lumbar MRI and referral to Dr. Mather.

On May 6, 2015, Dr. Karlsson again operated on Petitioner's right knee. (PX4 p.184-185) Dr. Karlsson found a medial meniscal tear at the junction of the body and the posterior horn, with a flap which was displaceable into the joint. The tear was not there at the 2014 surgery. (PX1 p.10-11) Karlsson addressed this finding with a partial medial meniscectomy. (PX4 p.184) Dr. Karlsson noted that the complex tear and osteochondral lesion on the articular surface of the femoral condyle were new findings after the March 23, 2015 accident. (PX1 p.11-12) He thought those new findings were logically related to that accident. (PX1 p.11-12) There were no bone-on-bone areas found at the surgery following the October 15, 2014 accident. (PX1 p.11)

On May 15, 2015, Petitioner saw Dr. Mather for his back complaints. Dr. Mather noted that Petitioner's prior low back fusion was doing well before this March 23, 2015 collision. (PX3 p.108-109) Petitioner was using

Norco from Karlsson. Mather thought the low back pain was likely due to early spondylosis at the L4-5 facet joint and recommended that Petitioner get facet blocks for the pain. On May 27, 2015, Petitioner began his pain treatment with Dr. Fetzer, which included a number of injections, and ablations to relieve the back pain.

On June 13, 2017, Petitioner returned to Dr. Kuhlman, who opined that Petitioner was unable to perform work of any kind. (PX2 Ex.2 p.4)

On June 30, 2015, Respondent sent Petitioner to Thomas Gleason for an IME. Dr. Gleason testified via evidence deposition on January 26, 2016. (RX2) Dr. Gleason concluded that the only condition related to the accident was a symptomatic arthritic condition of the right knee due to aggravation of pre-existing condition resulting in right knee pain. New x-rays revealed severe bilateral degenerative joint disease medially with joint space obliteration, sclerosis, marginal spurring, mild lateral subluxation, moderate changes of the patellofemoral joint with marginal spurring and more mild changes of the lateral compartments bilaterally.

Respondent Keenan/Phoenix also retained Dr. Paul Belich as an IME, who testified via evidence deposition on December 13, 2019. (RX1) Dr. Belich disagreed with Dr. Gleason's opinion that the March 23, 2015 accident aggravated the pre-existing arthritic condition in the right knee. (RX1 p.29) Dr. Belich also did not agree with Dr. Gleason that Petitioner had finished treatment by the time of Gleason's evaluation or that Petitioner could return to the driving job at that point. (RX1 p.29-30) On cross-examination, Belich admitted he did not have enough information about the 2014 surgery to draw a valid causation analysis about that accident. (RX1 p.57) He also conceded he did not have much information about what damage was caused by the March 23, 2015 accident. (RX1 p.64) He did discuss the mechanics as to how a knee breaks down rapidly following a root detachment and meniscectomies. Dr. Belich summarized his understanding of the sequence for the right knee breakdown, noting that Petitioner's step into the hole in 2014 started the pain, leading to the steroid injection and then the surgery which accelerated the degeneration in the right knee. (RX1 p.88) The 2014 accident started the problem and everything after that just accelerated the breakdown in the knee. (RX1 p.88) He thought the March 23, 2015 accident had a minimal contributive impact to the knee. (RX1 p.88) The same was true for the left knee, with Belich contending that the March 23, 2015 accident had a minimal role in the breakdown of the left knee. (RX1 p.90)

Petitioner continued to have complaints of pain in both knees and his shoulder. On July 30, 2015, he underwent a second gel injection to the right knee. Petitioner informed Dr. Karlsson that his left knee was "starting to bother him". (PX3 p.67) Dr. Karlsson recommended a total knee arthroplasty and restricted Petitioner's work to sitting work only, with no pushing or pulling of heavy objects, and no unloading of trucks. He underwent Cortisone injections to both knees on September 15, 2015. On October 14, 2015, Petitioner underwent a total knee arthroplasty for the right knee. (PX4 p.273-635) The records show that Petitioner continued to have complaints related to his right knee following the total knee surgery, which lead to Petitioner undergoing a right knee synovectomy on April 28, 2016. Petitioner's complaints to his left knee ultimately lead to him undergoing a left knee total knee arthroplasty on June 22, 2016. (PX4, p.801-802) Petitioner had increasing problems with the left knee, including bursitis, swelling and pain that required him to undergo a revision surgery to the left knee on February 10, 2017. Petitioner underwent a second stage of his left total knee arthroplasty with Dr. Kim on May 15, 2017. (PX4, p.2712-2713) Petitioner's medical records document Petitioner's continued complaints in his right knee due to overcompensation from the left knee.

On September 7, 2017, Dr. Karlsson imposed permanent work restrictions on Petitioner of no high impacts to the knees, no kneeling, no squatting, no climbing, and no lifting beyond 15 lbs. (PX2 Ex.2 p.4) Dr. Karlsson testified via evidence deposition on January 19, 2017. He opined that Petitioner's right knee condition was

causally related to his March 23, 2015 motor vehicle accident.

On November 20, 1017, Dr. Kim also placed permanent work restrictions on Petitioner, agreeing with Karlsson's restrictions and adding limitations against standing or walking more than 45 mins without 15 min of rest. (PX3 p.3) In his reports, Dr. Kim opined that Petitioner's March 23, 2015 accident reinjured his right knee condition and caused the need for his right total knee replacement surgery. (PX12)

Petitioner explained that he was destined to take Penicillin for the rest of his life for the left knee. He was on Norco for an extended period but was now on Meloxicam. The March 23, 2015 incident had profoundly changed every aspect of his life. Before going anywhere, he had to plan out whether he had a place to sit, how long the ride would be and whether walking would be involved. He could not go with his wife to Menards or walk around ponds in the area due to the knees. Standing for more than 10 minutes brought on pain as did 15 to 20 minutes of sitting. Everything started to lock up on him. Petitioner found that he could only walk half a city block. Dr. Karlsson had not placed a walking or standing restriction on him, but Dr. Kim did restrict him from doing those activities more than 15 minutes.

Lisa Helma, a certified vocational rehabilitation specialist, evaluated Petitioner and testified via evidence deposition on November 2, 2018. (PX2) Ms. Helma provides vocational services to people with disabilities. (PX2 p.5) She collected information about Petitioner's medical, his doctor's opinions, his work and education history to determine overall employability. (PX2 p.8) Helma concluded that Petitioner had lost access to his usual and customary occupation as a delivery driver. (PX2 p.10) She also thought Petitioner was unable to perform work of any kind, so he was totally disabled from a vocational standpoint. (PX2 p.10) She based this conclusion on the treating doctor's belief that Petitioner was unable to work as well as the significant restrictions placed on Petitioner by his surgeons. (PX2 p.11-14) Taking his background information into account along with the work capacity opinions, she felt Petitioner did not have access to a reasonably stable labor market. (PX2 p.16)

Evan Wollak was called to testify at trial by counsel for Respondent Amerisafe. Mr. Wollak had worked for Amerisafe for 20 years prior to his retirement in 2019. In 2013, Mr. Wollak was the warehouse manager for Amerisafe. He described Amerisafe as being in the business of selling insulation products and using trucks to transport those products. In 2013, Mr. Wollak contacted Bill Keenan of Keenan Transit to obtain drivers for Amerisafe's operation. Amerisafe initially sent its own drivers over to Keenan Transit so that Keenan Transit could lease these drivers back to Amerisafe. Wollak only spoke with Bill Keenan and believed he was getting drivers from Keenan Transit. He identified a set of emails surrounding the arrangement. (RX8) Bill Keenan's emails came from a Keenan Transit email address. Keenan Transit was located in the same offices as Phoenix Logistics. Wollak called Keenan Transit for drivers rather than Phoenix. At some point, Bill Keenan told Wollak that he set up Phoenix to loan out nonunion drivers. Amerisafe Ex1 was a document between Amerisafe and Phoenix. Wollak went back and forth with Bill Keenan over the content of this document. (Amerisafe Ex1) Bill Keenan was going to sign the document, obligating Amerisafe to pay an hourly fee for drivers. Wollak testified that Bill Keenan was supposed to take care of fringe benefits and workers comp liability - which was precisely the intention of the document. (Amerisafe Ex1) Wollak obtained Berndt by calling Bill Keenan. Berndt used Amerisafe's equipment, delivered Amerisafe's products and kept a timecard at their facility. When payroll time arrived, Wollak faxed the timecard to Keenan Transit's payroll person at the Keenan Transit office and Phoenix would send the driver a check. The only people Wollak dealt with were Bill Keenan and his payroll person Dawn, also at Keenan Transit. When Petitioner suffered both his injuries, Wollak reported both injuries to Bill Keenan. The phone calls were made to Bill at the Keenan Transit office as Wollak was never given a phone number for Phoenix. Wollak also sent Keenan Petitioner's detailed written account of the accident. (PX15) TTD was paid for a short period after the second accident, and the checks

identified Keenan Transit as the employer.

CONCLUSIONS OF LAW

1. Regarding the issue of employment, the Arbitrator finds that there existed an employment relationship between the Petitioner and the Respondents in which the Respondents Keenan Transit and Phoenix were the loaning employers and Amerisafe was the borrowing employer for both Petitioner's October 15, 2014 accident and his March 23, 2015 accident. Petitioner thought he was working for Phoenix as he got checks from Phoenix. However, he was interviewed and hired for the job by Tom Keenan, who had a Keenan Transit email address and worked out of the Keenan Transit offices. The Phoenix checks also came out of the Keenan Transit offices. Petitioner admitted he was not sure whether Phoenix was a distinct company from Keenan Transit. The same defense counsel represented both Keenan Transit and Phoenix at trial, but only lodged the employer/employee dispute on behalf of Keenan Transit. Counsel ultimately claimed, near the end of trial, that both Keenan Transit and Phoenix were covered by the same workers compensation insurance carrier. Keenan Transit and Phoenix did not present any documentary evidence suggesting they were independent entities. The Arbitrator further relies the testimony of Mr. Wollak, whose unrebutted testimony was persuasive on this issue.

2. With regard to the issue of accident, the Arbitrator finds that the Petitioner met his burden of proving that he sustained an accident arising out of and in the course of his employment on both October 15, 2014 and on March 23, 2015. The facts clearly show that Petitioner sustained injuries while working on both days and there was no evidence offered to rebut Petitioner on this issue.

3. Regarding the issue of notice, the Arbitrator finds that the Petitioner met his burden of proving that he provided timely notice of both his October 15, 2014 accident and his March 23, 2015 accident to the Respondents by reporting the same to Mr. Wollak of Amerisafe. Mr. Wollak testified that he then reported the incidents to Keenan Transit on the same day. There was no evidence offered to rebut Petitioner or Mr. Wollak's testimony on this issue.

4. With regard to the issue of causation, the Arbitrator finds that the Petitioner has met his burden of proving that his current condition of ill-being is causally related to his work accidents. In support of this finding, the Arbitrator relies on Petitioner's unrebutted testimony and the preponderance of the medical evidence. Petitioner's October 15, 2014 accident, in which he stepped in a pothole, injured his right knee, and subsequently underwent arthroscopic surgery is clearly documented in the medical evidence and does not appear to be disputed. The Arbitrator finds persuasive the opinions of Petitioner's treating physicians that the Petitioner's March 23, 2015 accident aggravated his right knee condition to the extent that he needed knee replacement surgeries. Although Respondent had two IME opinions to address this issue, their opinions appear to support the fact that the Petitioner had at the very minimum an aggravation of a pre-existing right knee condition.

The Arbitrator further finds that the Petitioner's left knee condition is causally related to his March, 23, 2015 accident. This is supported by both the Petitioner's testimony and a preponderance of the medical evidence, particularly from Dr. Kim, that show that following Petitioner's March 23, 2015 accident and surgeries to his right knee, Petitioner began to have problems with his left knee due to over compensation. Essentially, Petitioner overused the left knee to accommodate the right knee injuries and treatment - which led to an accelerated breakdown of the left knee and Petitioner's ultimate need for a total left knee replacement.

The Arbitrator also finds that the Petitioner suffered additional injuries following his March 23, 2015 accident, including the left shoulder injury, an aggravation of his pre-existing low back condition, headaches and aggravation of the anxiety. These symptoms are clearly documented in Petitioner's medical evidence, which

corroborated Petitioner's testimony in that regard.

5. Regarding the issues of age, marital status and average weekly wage, the Arbitrator finds that the Petitioner was 47 years old, married and had an average weekly wage of $798.73 at the time of his accidents. There was no evidence offered to rebut the Petitioner on these issues.

6. Consistent with the findings above, the Arbitrator further finds that the Petitioner's medical treatment following both his October 15, 2014 accident and his March 23, 2015 accident have been reasonable and necessary in addressing his multiple conditions stemming from his work accidents. Respondent did pay some treatment related to the March 23, 2015 accident. (PX4) Petitioner's wife's insurance paid for the majority of Petitioner's treatment, including the multiple knee surgeries and all the related treatment and rehabilitation. Given the findings on accident and causation, Respondent shall pay Petitioner for all treatment related to the bilateral knees, left shoulder, lower back, headaches and anxiety after the March 23, 2015 accident, including treatment required to address the infection to the left knee. This includes the Humana payments totaling $131,766.74. (PX14)

7. The Arbitrator finds that the Petitioner was temporarily totally disabled following his March 23, 2015 accident from the date of accident through the date he was placed at MMI with permanent work restrictions by Dr. Kim on November 20, 2017. During this time period, the medical evidence clearly documents Petitioner being take off work completely by his treating physicians. Therefore Respondent shall pay Petitioner temporary total disability benefits of $532.49/week for 139 weeks, commencing March 23, 2015 through November 20, 2017, as provided in Section 8(b) of the Act. Respondents shall receive a credit for any TTD it has paid toward the period in question.

8. Regarding the issue of permanency, the Arbitrator finds that the Petitioner is permanently and totally disabled due to his injuries from his March 23, 2015 work accident. This finding is supported by the Petitioner's unrebutted testimony, a preponderance of the medical evidence and the opinions of Petitioner's vocational expert. Petitioner's testimony regarding his current physical limitations following his March 23, 2015 accident is corroborated by his treating physicians. Both Dr. Karlsson and Dr. Kim released Petitioner with permanent work restrictions following the treatment. In aggregate, those restrictions prohibited Petitioner from activities placing significant impact on the knees, including kneeling, squatting, climbing, lifting beyond 15 lbs, or even standing or walking more than 45 mins without 15 min of rest. (PX3 p.3) Dr. Kuhlman thought Petitioner could not return to work in any capacity. (PX2 Ex.2 p.4) Based on these opinions, Petitioner's vocational expert, Lisa Helma opined that Petitioner was unable to perform work of any kind, and he was totally disabled from a vocational standpoint. (PX2 p.10) Therefore, Respondent shall pay Petitioner permanent and total disability benefits of $532.49/week for life, commencing November 21, 2017, as provided in Section 8(f) of the Act. Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) of the Act.

9. Regarding the issue of liability under Section 1(a)(4) of the Act, the Arbitrator finds that the Respondents Keenan Transit and Phoenix are responsible for Petitioner's claims. The relevant provision of the Act states:

> Where an employer operating under and subject to the provisions of this Act loans an employee to another such employer and such loaned employee sustains a compensable accidental injury in the employment of such borrowing employer and where such borrowing employer does not provide or pay the benefits or payments due such injured employee, such loaning employer is liable to provide or pay all benefits or payments due such employee under this Act and as to such employee the liability of such loaning and borrowing employers is joint and several, provided that such loaning employer is in the absence of agreement to the contrary entitled to receive from such borrowing employer full reimbursement for all sums paid or incurred pursuant to this paragraph together with reasonable attorneys' fees and expenses in any hearings before the Illinois Workers' Compensation Commission or in any action to secure such reimbursement. 820 ILCS 305/1(a)(4)

The borrowing employer, Amerisafe, admits it never paid compensation for TTD or treatment for either of Petitioner's injuries. Under 1(a)(4) then, the loaning employer (Keenan Transit/Phoenix) became liable for all benefits or payments under the Act. Keenan Transit/Phoenix also did not pay TTD or benefits after the Gleason IME, nor did it pay for the years of treatment that followed. Keenan Transit/Phoenix is liable for the unpaid benefits and treatment awarded for both of Petitioner's accident dates as the borrowing employer did not pay.

Keenan Transit/Phoenix contends however, that liability should transfer to Amerisafe per 1(a)(4)'s clause that borrowing employers must fully reimburse "all sums paid or incurred" by the loaning employer. The caveat is that borrowing/lending employers can alter the borrowing employer's reimbursement obligation through "an agreement to the contrary". 820 ILCS 305/1(a)(4). This language permits the parties to reverse the payment priority as to who is responsible for accidents. See *Ill. Guar. Fund v. Va. Sur. Co.,* 2012 IL App (1st) 113758 *P5. Therefore, the 1(a)(4) dispute pivots on whether the Respondents entered into an agreement to reverse the payment priority.

Amerisafe offered into evidence a document which memorialized the respective obligations for the borrowing/lending arrangement. (Amerisafe EX1) Mr. Wollak, Amerisafe's warehouse manager explained that Amerisafe entered into the borrowing/lending arrangement with Keenan Transit/Phoenix specifically for the purpose of not having to pay workers compensation claims. Amerisafe sent the drivers it employed at the time to Keenan Transit/Phoenix so Keenan Transit/Phoenix could lend them back to Amerisafe, for the express purpose of Keenan Transit/Phoenix to provide workers compensation coverage. Keenan Transit/Phoenix apparently drafted the document, including a paragraph stating "Phoenix Logistics is not responsible for any damage caused by an accident or incident." (Amerisafe Ex.1). Amerisafe added a handwritten qualification to that paragraph, narrowing the paragraph's operation "to the extent of [Phoenix's] negligence unless covered by the vehicle policy". This handwritten qualification was added before both parties signed the document. Amerisafe's warehouse manager testified that the language "Phoenix is not responsible" only applied to property damage occurring to Amerisafe's vehicles and had nothing to do with workers compensation liability, since the main purpose of the agreement between the parties was that Amerisafe would not be responsible for workers compensation liability. Keenan Transit/Phoenix provided no testimony or evidence to rebut that claim. Thus, without rebuttal evidence, Amerisafe has proven that it had an agreement with Keenan Transit/Phoenix for the lending employer to bear the workers compensation liability for Petitioner's claims.

10. The Arbitrator finds that penalties and attorneys fees are warranted in this case. Penalties are warranted when the injured worker is denied benefits and treatment due to a fight between employers in a borrowing/lending setting or a fight between carriers. The appellate court has addressed both scenarios. *Bunnow v. IC*, 327 Ill.App.3d 1039, 1049 (2002) involved two separate employers disputing liability, each contending that claimant was an employee of the other, but neither contesting that claimant suffered injuries from the accident. The Commission awarded 19(k) penalties and Section 16 fees for their failure to pay TTD, and the appellate court extended the penalty and fee award to also cover the unpaid medical expenses. *Id.* at 1049. Two employers pointing the finger at each other to the detriment of the worker justified penalties and fees when there was no significant dispute over the injury occurring or the worker's need for treatment. The dispute between employers qualifies as unreasonable and vexatious misconduct. The same result came where two carriers were fighting over who would pick up liability for a case. *Central Rug & Carpet v. IC*, 361 Ill.App.3d 684, 693 (2005). Central Rug had different insurance carriers for the two accident dates and they were both denying liability and pointing at the other carrier. Even though they also promoted disputes in the evidence on causation, the delay was considered vexatious and unreasonable.

Petitioner was caught in the dispute between his employers as well as a dispute between the carriers. Our threshold concern is whether these actors acted unreasonably or vexatiously in declining to pay benefits under the Act. *Bunnow v. IC*, 327 Ill.App.3d 1039, 1049 (2002) On causation, there was never a real dispute about the right knee being injured in the March 23, 2015 accident. Two weeks after the MVA, the MRI identified the new cartilage tears, detachment of the meniscal root, new bone-on-bone findings in the knee and a new divot depression in the weight-bearing surface of the femoral condyle. Dr. Karlsson said these findings were not present during the surgery he performed four months before the March 23, 2015 accident and he explained why each of these things was causally related to the March 23, 2015 accident. Keenan Transit/Phoenix hired Dr. Gleason to evaluate the Petitioner, and Dr. Gleason related the March 23, 2015 accident to the arthroscope and documented the continuing symptoms Petitioner was having with his right leg. Gleason did declare MMI and released Petitioner to work with restrictions, but Keenan Transit/Phoenix did not provide work at that point. Keenan Transit/Phoenix also obtained the release from Dr. Gleason by providing him with a job description which failed to inform him of the weight demands Petitioner would have to handle in the job. And Dr. Gleason's work release and MMI claim were not persuasive following the Petitioner undergoing a total knee replacement within months of Gleason's evaluation. This was not simply a dispute between an IME doctor and all the treaters who had Petitioner off work at the time. Rather, Respondent's second IME, Dr. Belich, disagreed with Gleason that Petitioner would have been in shape to return to his job when Gleason saw him. (RX1 p.29-30) Yet Keenan Transport/Phoenix simply cut off benefits to Petitioner as of August 27, 2015, a date which corresponds with nothing. At that point, the treating surgeon had Petitioner restricted to "sitting work only with no pushing or pulling of heavy objects and no unloading of trucks" (PX3 p.67) and Petitioner would go for the total knee arthroplasty in October. (PX4 p.273-635) Keenan Transit/Phoenix offered no explanation as to why they cut off TTD or refused to pay for treatment with the exception of a pharmaceutical charge from July 15, 2015. (RX4)

Rather than taking care of their injured worker, Keenan Transit raised an employer/employee defense which lacked merit and failed to prove at hearing that Phoenix was a real (and legitimate) separate legal entity from Keenan Transit. More fundamentally, this shell corporation dispute was completely immaterial as counsel for Keenan Transit/Phoenix ultimately admitted that both were covered by the same insurance policy. That admission came six years after the accident at the end of trial after Amerisafe's witness was interrogated over the issue as well as Petitioner. That was a vexatious and unreasonable dispute over which employer was responsible for the case. Keenan Transit/Phoenix then jointly raised a meritless 1(a)(4) issue, again without presenting evidence to support their dispute. That was a vexatious and unreasonable dispute over which carrier

was responsible for the case.

820 ILCS 305/19(l) penalties are awarded when the employer cannot show that its delay in payment was objectively reasonable. See *R.D. Masonry v IC*, 215 Ill.2d 397, 409 (2005). Keenan Transit/Phoenix offered no objectively reasonable explanation as to its stopping of TTD and treatment. Thus 19(l) penalties are awarded against Keenan Transit and Phoenix Logistics in the maximum amount of $ 10,000.

820 ILCS 305/19(k) penalties demand a higher standard of misconduct, an "unreasonable or vexatious" delay or an "intentional underpayment of compensation." *Id*. 19(k) penalties are "intended to address the situation where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose." *McMahan v. IC*, 183 Ill.2d 499, 515 (1998). This penalty covers both unpaid compensation and medical bills, per *Bunnow*. The awarded amounts for the March 23, 2015 accident include: $107,029.82 for PTD to date, $131,766.74 for medical reimbursement; and $64,683.13 for TTD. A 50% penalty on those numbers totals $151,739.85. That is the 19(k) penalty against Keenan Transit and Phoenix Logistics.

The same standards of misconduct govern the award of attorney fees under 820 ILCS 305/16. Based on the reasoning outlined in this section, Section 16 penalties are awarded against Keenan Transit and Phoenix Logistics in the amount of $60,695.94.

22IWCC0451

Illinois Workers' Compensation Commission
Arbitrator Decision Receipt Form

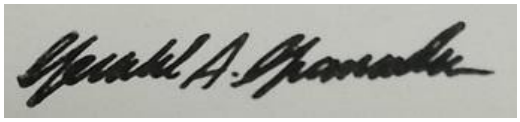
Please list all decisions on this form and complete all fields. Print three copies of this form and submit with your decisions to Arbitration Support Staff. One signed copy will be returned to you.

Arbitrator Gerald Granada			Date sent **12/2/21**	
	Case Number	**Petitioner's Name**	**Respondent's Name**	**Proofs Closed Date**
1	**15 WC 14407**	**Berndt**	**Keenan**	**9/28/21**
2	**16 WC 6712**	**Berndt**	**Keenan**	**9/28/21**
3	**16 WC 20206**	**Berndt**	**Phoenix**	**9/28/21**
4	**16 WC 20211**	**Berndt**	**Phoenix**	**9/28/21**
5	**17 WC 35300**	**Berndt**	**Amerisafe**	**9/28/21**
6				
7				
8				
9				
10				

Total number of decisions: **5**

By signing below I hereby verify that for each of the decisions listed above I have double-checked for accuracy each of the following:

- The correct form has been used;
- The case name and number are correct;
- The correct boxes for funds have been checked;
- The rates for TTD, TPD, PPD, PTD, and fatal benefits are correct in relation to both the AWW listed and the applicable maximum and minimum rates;
- The correct number of weeks is listed in relation to the percentage(s) of disability awarded;
- The correct number of weeks is listed in relation to the period of TTD awarded;
- The findings and conclusions attached to the decision correctly match the findings and order portion of the Commission's decision form;
- I have properly signed and dated the decision.



Arbitrator signature

ARBITRATION SUPPORT SECTION

Date received: _____

Number of decisions received: _____

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC020206
Case Name	Robert Berndt v. Phoenix Logistics Inc
Consolidated Cases	15WC014407;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0452
Number of Pages of Decision	7
Decision Issued By	Thomas Tyrrell, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Carol Cesaretti

DATE FILED: 11/23/2022

/s/ Thomas Tyrrell, Commissioner

Signature

22IWCC0452

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Berndt,

Petitioner,

vs. NO: 16 WC 20206

Phoenix Logistics, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

A Motion to Dismiss Review and Petition for Additional Penalties and Fees having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues and being advised of the facts and law, denies Petitioner's motion. The Commission finds Respondent's timely filed review of this case shall proceed. Furthermore, the Commission sets a new Return Date on Review in this matter.

Procedural History

Initially, the Commission notes that on May 21, 2021, the parties in this matter consolidated this case with four additional cases for hearing. The cases involve two separate dates of accident and three separate employers. In case 16 WC 6712, Petitioner alleged he sustained a work-related injury on October 15, 2014, and named Keenan Transit ("Keenan") as his employer. In case 16 WC 20211, Petitioner also alleged he sustained a work-related injury on October 15, 2014, and named Phoenix Logistics ("Phoenix") as his employer. In the current case, Petitioner alleged he sustained a work-related injury on March 23, 2015, and named Phoenix as his employer. In case 15 WC 14407, he also alleged he sustained a work-related injury on March 23, 2015, and named Keenan as his employer. Finally, in case 17 WC 35300, Petitioner alleged he sustained a work-related injury on March 23, 2015, and named Amerisafe Consulting & Safety ("Amerisafe") as his employer. Petitioner's pending motion involves the three cases in which Petitioner alleged he sustained an injury on March 23, 2015.

On September 28, 2021, all the consolidated cases proceeded to hearing before Arbitrator Granada. As this Decision only concerns the merits of Petitioner's pending motion, the Commission will neither discuss the Arbitration Decision in detail nor address the merits of the Arbitration Decision. Keenan and Phoenix were represented by Ms. Kiesewetter at Quintairos,

Prieto, Wood & Boyer, P.A., while Amerisafe was represented by Mr. Halbleib at Law Offices of Joseph Marciniak. During the arbitration hearing it was revealed that Keenan and Phoenix are covered by the same insurer, while Amerisafe is covered by a different insurer. In the relevant three cases, Petitioner alleged that on March 23, 2015, he was driving an Amerisafe truck when he was involved in a collision with another truck. In addition to sustaining injuries to his left shoulder and back, Petitioner sustained injuries to his bilateral knees—particularly his right knee. Eventually, Petitioner underwent bilateral total knee replacement surgeries and was released by his treating doctor with significant permanent restrictions. A vocational rehabilitation specialist opined on behalf of Petitioner that due to his work history and permanent restrictions, no stable labor market existed for Petitioner. The primary dispute between the three named employers involved liability pursuant to Section 1(a)4 of the Act, the relationship between Keenan, Phoenix, and Amerisafe, and each company's employment relationship with Petitioner.

The Arbitrator filed the Arbitration Decision on December 2, 2021. After considering the evidence, the Arbitrator concluded that on the date of accident, Keenan and Phoenix were lending employers and Amerisafe was the borrowing employer. The Arbitrator concluded that Petitioner sustained a compensable accident and that his current condition of ill-being is causally related to that accident. The Arbitrator also concluded that Petitioner is permanently and totally disabled as a result of the March 23, 2015, work incident. Regarding the employment and liability disputes, the Arbitrator concluded that there was no evidence that Keenan and Phoenix are separate and independent entities. Furthermore, the Arbitrator concluded that there was an agreement by which Keenan and Phoenix agreed to assume the liability for Petitioner's workers' compensation claim; thus, he determined that Amerisafe did not have any liability relating to the work incident. Finally, the Arbitrator awarded penalties and fees against Keenan and Phoenix as he determined the companies' failure to provide benefits following Petitioner's injury was vexatious and unreasonable.

The Arbitrator issued separate Decisions in the consolidated cases; however, the Decisions in the three cases relating to the March 2015 incident—15 WC 14407, 16 WC 20206, and 17 WC 35300—notably have identical findings of fact and conclusions. Keenan and Phoenix timely filed Petitions for Review in cases 15 WC 14407 and 16 WC 20206 respectively on December 10, 2021. Keenan identified the following issues as in dispute in its Petition for Review: accident, benefit rates, employment relationship, medical expenses, notice, TTD, nature and extent, evidentiary issues, Section 1(a)4 liability, and penalties and fees. Phoenix identified the following disputed issues in its Petition for Review: benefit rates, medical expenses, notice, TTD, nature and extent, evidentiary issues, Section 1(a)4 liability, and penalties and fees. As Amerisafe won its case given the Arbitrator's determination that Keenan and Phoenix are solely liable for Petitioner's March 2015 injury, Amerisafe did not review case 17 WC 35300. Petitioner notably did not file what is sometimes referred to as a "protective review" in case 17 WC35300. Thus, that Decision became final on January 3, 2022.

Petitioner filed the pending motion seeking dismissal of Respondent's review in this matter on January 4, 2022. In his motion, Petitioner argues that the Arbitrator's findings and conclusions in case 17 WC 35300 are now the law of the case; consequently, according to Petitioner, Respondent's pending review is barred by the doctrines of res judicata and/or collateral estoppel. Petitioner argues that all the issues Respondent seeks to review have already received a final and

binding determination by the Arbitrator in favor of Amerisafe, and against Respondent. Thus, Petitioner argues that Respondent's pending review is unable to proceed. Respondent filed an objection to Petitioner's motion and a request for attorney fees on January 20, 2022. In its objection, Respondent argued that the Commission lacked jurisdiction to even consider Petitioner's motion to dismiss.

When the matter first appeared on Commissioner Tyrrell's Geneva Review Call on February 17, 2022, the Commissioner granted Respondent's request to allow the parties to fully brief the jurisdictional issue raised by Respondent. On May 16, 2022, Commissioner Tyrrell issued an Order concluding that the Commission does have jurisdiction to consider Petitioner's motion to dismiss. This Order only addressed the question of jurisdiction and did not consider the merits of Petitioner's motion. When the case was next before the Commissioner on the review call, Commissioner Tyrrell granted Respondent's request to fully brief the issues of res judicata and collateral estoppel Petitioner raised in his motion to dismiss. Commissioner Tyrrell also granted the parties' request for oral argument on the motion to dismiss. On June 10, 2022, Commissioner Tyrrell issued an Order tolling the original June 3, 2022, Return Date on Review in this case pending the disposition of Petitioner's motion.[1]

Conclusions of Law

After carefully considering the facts and relevant case law, the Commission finds Respondent's review in this matter is not barred by the doctrines of res judicata or collateral estoppel. The Commission finds the conclusions of the Arbitrator detailed in case 17 WC 35300 with Amerisafe as the named respondent are not binding against Keenan and Phoenix. Therefore, Respondent's timely filed pending review shall proceed in the usual manner.

The Illinois Supreme Court explains the doctrine of res judicata as follows:

> "The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action. *Res judicata* bars not only what was actually decided in the first action but also those matters that could have been decided…For *res judicata* to apply, three requirements must be met: 1) a final judgment on the merits rendered by a court of competent jurisdiction, 2) an identity of cause of action, and 3) an identity of parties or their privies."

A&R Janitorial v. Pepper Constr. Co., 2018 IL 123220 at ¶16 (citations omitted). Thus, the Commission may only find that the Arbitrator's conclusions in the case against Amerisafe are binding upon Respondent if all three requirements are met. After reviewing the relevant facts, the Commission finds the doctrine of res judicata does not apply in this matter because there is no

1 The Commission notes that Keenan and Phoenix filed timely Petitions for Review in cases 16 WC 6712 and 16 WC 20211, respectively. Pursuant to the June 10, 2022, Order, the original June 3, 2022, Return Date on Review in these consolidated cases was also tolled pending the Commission's consideration of the Petitioner's motion to dismiss.

privity or common identity between Respondent and Amerisafe.

There is no question that the Arbitration Decision in case 17 WC 35300 is now a final decision of the Commission. It is also undisputed that the Decision in case 17 WC 35300 represents a judgment on the merits of Petitioner's claim. Thus, the Commission finds the first requirement in determining the applicability of res judicata is met. When determining whether there is an identity of cause of action, Illinois courts use a transactional test and have found that "…separate claims are considered the same cause of action if they 'arise from a single group of operative facts, regardless of whether they assert different theories of relief.'" *Id*. at ¶18 (citation omitted). The Commission notes that the relevant three consolidated cases unquestionably arise from a single group of operative facts—so much so, that the Arbitrator wrote identical findings of fact and conclusions in each of the three Decisions. The three relevant cases all involve the March 23, 2015, work accident. While there was a dispute between Keenan, Phoenix, and Amerisafe regarding which employer was liable for Petitioner's workers' compensation claim, the dispute involved an identical set of facts. Thus, the Commission finds the second requirement in determining the applicability of res judicata has been met. However, Petitioner has presented no evidence showing that there is an identity of the parties or that Keenan and/or Phoenix are in privity with Amerisafe.

Petitioner is correct when he argues that the parties do not need to be identical to be considered the same for the purposes of res judicata. However, the parties must have interests that are sufficiently similar or aligned. Illinois courts have stated that "[l]itigants are considered the same when their interests are sufficiently similar, even if they differ in name or number. Litigants are privies when 'a person is so identified in interest with another that he represents the same legal right.'" *Langone v. Schad*, 406 Ill. App. 3d 820, 832 (2010). After carefully considering the facts in this matter, the Commission finds that the interests of Respondent directly conflict with those of Amerisafe. It is unquestionably in Amerisafe's best interest that any other company is identified as the liable employer, because this would completely relieve Amerisafe of the extensive liability this case presents to the liable employer. Likewise, it is also in the best interests of both Keenan and Phoenix that Amerisafe is identified as the liable employer. While all named Respondents most likely shared an interest in limiting the exposure of the employer, there is no disputing the fact that regarding the primary issue of which company is liable for Petitioner's injury, Amerisafe was in direct conflict with both Keenan and Phoenix. This conflict between Keenan, Phoenix, and Amerisafe is perhaps most evident in the fact that the companies are covered by separate insurers and are represented by separate counsel. Thus, the goals of neither Keenan nor Phoenix were sufficiently aligned with those of Amerisafe to support a finding that there is a common identity or privity amongst the three companies. Therefore, the Commission is unable to find that the Arbitrator's conclusions in the Decision in case 17 WC 35300 in which Amerisafe is the named respondent are binding against either Keenan or Phoenix in the cases currently pending review.

Petitioner's argument that the doctrine of collateral estoppel applies against Respondent in this matter fails for precisely the same reason. Illinois courts define collateral estoppel as follows:

> "Collateral estoppel, also referred to as issue preclusion, will prevent a party from relitigating an issue if the following elements are present: 1) the issue decided in the prior litigation is identical to the one presented in the current case, 2) there was a final

> adjudication on the merits in the prior case, and 3) the party against whom estoppel is asserted was a party to, or in privity with a party to, the prior litigation."

Pine Top Receivables of Ill., LLC v. Transfercome, Ltd., 2017 IL App (1st) 161781 at ¶8. After reviewing the relevant facts, the Commission finds that the lack of privity or shared identity between Keenan, Phoenix, and Amerisafe once again has proven to be a fatal blow to Petitioner's motion. Illinois courts interpret the issue of the identity or privity of the parties relating to the application of collateral estoppel in the same manner as seen in the application of res judicata. There is simply no viable argument to be made that the three named employers in these cases shared the same interests to the degree where the Commission can conclude that Amerisafe effectively represented all the interests of Keenan and Phoenix.

Petitioner's motion ignores the fact that the parties agreed to consolidate all five cases—including the two cases in which Petitioner alleged an October 15, 2014, date of accident—for the purposes of hearing only. Contrary to Petitioner's belief, the consolidation did not have the effect of merging all five cases into a single case. The consolidation certainly did not have the effect of eliminating the fact that Petitioner filed separate cases against Keenan, Phoenix, and Amerisafe regarding the March 2015 date of accident. The parties' decision to consolidate the cases for hearing did not erase the fact that in the relevant cases Keenan is only a party in case 15 WC 14407, Phoenix is only a party in case 16 WC 20206, and Amerisafe is only a party in case 17 WC 35300. Petitioner is unable to overcome this overarching fact.

The Commission notes that Petitioner blithely states that Respondent should have also filed a review in case 17 WC 35300, the case involving Amerisafe. Petitioner notably has identified no case law in support of this notion. Petitioner accurately notes that neither the Act nor the IWCC Administrative Rules explicitly prohibit a person or entity (i.e., Keenan or Phoenix) from filing a review in a case to which it is not a party (i.e., the Amerisafe case). However, it is axiomatic that only a party with standing may appeal a case. Standing is a common law concept, with the primary focus of the inquiry being whether a party "…has a real interest in the outcome of the controversy." *People v. 1,124,905 U.S. Currency*, 177 Ill. 2d 314, 328 (1997). It requires that the person or entity seeking to appeal a decision suffer "…some injury in fact to a legally cognizable interest." *Knox v. Chi. Transit Auth.*, 2018 IL App (1st) 162265 at ¶20. In Illinois, the right to appeal "…exists only in favor of a party whose rights have been prejudiced by the judgment or decree appealed from." *Clay v. Pepper Constr. Co.*, 205 Ill. App. 3d 1018, 1022 (1990). Only Amerisafe and Petitioner had standing to file a review in case 17 WC 35300. Petitioner made the strategic decision to not file a protective review in that case and to instead pursue the pending motion to dismiss. Despite Petitioner's assertion to the contrary, Respondent did not have standing to file a review in that matter and any such review filed by either Keenan or Phoenix would be subject to dismissal due to that lack of standing.

The Commission notes that both parties in this matter have requested an award of attorneys' fees and/or penalties relating to Petitioner's motion to dismiss. In his motion, Petitioner requests an award of penalties and fees based merely on the fact that Respondent filed a review in this matter. As the Commission has thoroughly explained, Respondent's review was timely and properly filed and shall proceed. Neither the doctrines of res judicata nor collateral estoppel are a

bar to Respondent's review proceeding. Likewise, Respondent requested an award of attorneys' fees due to its belief that Petitioner's motion to dismiss was frivolous. While the Commission denies Petitioner's motion, it does not conclude that Petitioner's motion was frivolous. Therefore, the Commission declines the requests made by both parties to assess penalties and/or fees.

Finally, as the original June 3, 2022, Return Date on Review was tolled in this matter pending the disposition of Petitioner's motion to dismiss, the Commission must set a new Return Date. As the parties have had ample time to review the transcript in this matter, the Commission sets the new Return Date of Review as December 16, 2022. The normal briefing schedule for Respondent to file its Statement of Exceptions and Petitioner to file any response will apply pursuant to Section 9040.70 of the IWCC Administrative Rules.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Motion to Dismiss Review filed on January 4, 2022, is hereby **denied**.

IT IS FURTHER ORDERED that the Commission declines to assess penalties or attorneys' fees against either party in this matter.

IT IS FURTHER ORDERED that the pending review filed by Respondent on December 10, 2021, shall proceed. The new Return Date on Review is **December 16, 2022.** The normal briefing schedule will apply pursuant to Section 9040.70 of the IWCC Administrative Rules.

This Decision is interlocutory and is not subject to immediate review in the Circuit Court.

November 23, 2022

o: 9/27/22
TJT/jds
51

/s/ *Thomas J. Tyrrell*
Thomas J. Tyrrell

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC029749
Case Name	Joseph C Swanborg v. Midwest Seamless Gutter of Rockford Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0453
Number of Pages of Decision	20
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Kylee Miller
Respondent Attorney	Brian Raterman

DATE FILED: 11/29/2022

/s/ Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WINNEBAGO

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOSEPH C. SWANBORG,

Petitioner,

vs. NO: 19 WC 029749

MIDWEST SEAMLESS GUTTERS OF ROCKFORD, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 14, 2022, is hereby affirmed and adopted.

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

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

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(1) (West 2013)*. Based upon the denial of compensation herein, no bond is set by the Commission.

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.

November 29, 2022

KAD/bsd
O112222
42

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Thomas J. Tyrrell*
Thomas J. Tyrrell

s/*Maria E. Portela*
Maria E. Portela

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC029749
Case Name	SWANBORG, JOSEPH C v. MIDWEST SEAMLESS GUTTERS OF ROCKFORD INC.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Kylee Miller
Respondent Attorney	Brian Raterman

DATE FILED: 3/14/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 8, 2022 0.67%

/s/ Paul Seal, Arbitrator

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JOSEPH C. SWANBORG,
Employee/Petitioner

Case # **19 WC 29749**

v.

Consolidated cases:

MIDWEST SEAMLESS GUTTERS OF ROCKFORD, INC.,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **PAUL-ERIC SEAL**, Arbitrator of the Commission, in the city of **WAUKEGAN**, on **February 15, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Prospective Medical**

FINDINGS

On **7/1/2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

Because Petitioner failed to prove accident, the other issues in dispute, including Timely Notice, Causal Connection, whether Petitioner has received all reasonable and necessary medical services, whether Respondent has paid all reasonable and necessary services, etc. are hereby rendered moot.

In the year preceding the injury, Petitioner earned $**5,818.17**; the average weekly wage was $**831.17**.

On the date of accident, Petitioner was **37** years of age, ***single*** with **2** dependent children.

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

Petitioner failed to prove by a preponderance of the evidence that he sustained accidental injuries arising out of and in the course of his employment with Respondent, and therefore, all benefits and compensation are denied. All other issues are rendered moot.

NOTICE

Petitioner has failed to prove by a preponderance of the credible evidence that he gave timely notice of any accident to Respondent. Petitioner is therefore denied all benefits and compensation.

Causal Connection

Petitioner has failed to prove by a preponderance of the credible evidence that the current condition of ill-being of his right shoulder is causally related to any accident. Petitioner is denied all benefits and compensation.

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.

MARCH 14, 2022

Signature of Arbitrator

FINDINGS OF FACTS

Petitioner, Joseph Swanborg, testified he was employed as a gutter installer or installer technician for Midwest Seamless Gutters in July 2018. T. 11. He was hired on, or around, May 10, 2018. T.30. Resp. Ex. 7, P. 25. Petitioner worked from May 10, 2019, to October 31, 2018, for Respondent. T. 29; Resp. Ex. 7. His job involved removing old gutters, utilizing ladders to get up to the roof or the eaves, placing new gutters, and installing gutters. T. 11, 12.

The request for hearing form documents Petitioner's alleged accident on July 1, 2018. AX1. Petitioner alleged on the request for hearing form that he gave notice to Greg Green on July 1, 2018. Id. Petitioner's filed Application for Adjustment alleged an accident occurring on July 1, 2018. AX2.

Petitioner testified his shoulder was injured on July 1, 2018, by a ladder on a jobsite in Madison, Wisconsin. T. 12. He testified he dismounted a 40-foot ladder from the box truck and then had to carry it to the job site himself. T.13. He carried the ladder in an upright position. Id. Petitioner testified wind caught the ladder and caused the top of the ladder to tip over, hit the ground, and impact his right shoulder. T. 13, 14. He was working with Pat and 'Taylor' or 'Tyler' at the time of. Id. Petitioner testified the incident was witnessed by Pat. T. 17, 26.
Petitioner testified he finished his job tasks that day then noticed his arm was sore and bruising from the impact. T.15.

Petitioner testified he was laid off in November 2018. Id. He said he was a seasonal layoff. Id. Petitioner did not seek treatment for his shoulder until July 2019. T. 18. He had an MRI. T. 20. He has had no treatment since November 2019. T. 20.

Petitioner testified he has constant pain, depending on usage. T. 21. He can no longer punch a punching bag without pain. Id. He finds it difficult to reach for a steering wheel and cannot play darts with his right arm any longer. T. 21. Petitioner testified he didn't try to do any work after

his layoff in November 2018 aside from helping a friend erect a couple of walls before he joined the union for Creative Erectors in 2019. T. 22.

On cross-examination, Petitioner testified he never worked on Sundays for Respondent. T. 25. The Arbitrator took judicial notice that July 1, 2018, was a Sunday. T. 25. Petitioner continued on cross-examination that July 1, 2018, was the approximate date of his injury, as he was never able to attain the exact date. P. 25, 26. He told his coworker, Tyler Bankson, about his accident immediately after. P. 26, 27. Petitioner worked his regular job for Respondent for approximately 4 ½ month after his alleged accident. T. 28. Petitioner did not have pictures of the bruising on his shoulder. T. 27.

Petitioner identified Greg Green in the hearing room and testified he would occasionally communicate with him by phone. T. 30, 31. Petitioner has texted Greg Green directly on his cell phone. T. 32.

Petitioner was shown Respondent's Exhibit 2 and testified the first page reflected messages he exchanged with Greg Green. T. 33. Petitioner's messages were in the black box, white text, on the left of the screen. T. 33, 34. Mr. Green 's texts would be on the right side of the screen, blue box, with white text. T. 34. The following exchange between Petitioner and Greg Green occurred on July 2, 2018, at 8:02 PM:

Greg Green: You can drive a lift right?
Petitioner: Yes, fork lift right? Or sky lift? I can manage many lifts.
Greg Green: Boom lift / sky lift
Petitioner: Yes [Resp. Ex. 2, p.2].

No further text messages were exchanged until July 20, 2018 at 6:31 AM when Greg Green wrote: "What's up your working today right? Id.

Petitioner testified that on October 21, 2018, at 7:01 PM he wrote to Greg Green “So I am asking for you to please just lay me off. It will cover my child support, I would do what I need from there. I have to look out for myself as you would do the same. I hope you can help. Thanks." Resp. Ex. 2, p.4; T. 34-35. Petitioner admitted he was requesting to be laid off. T. 35, 36.

Petitioner testified he texted Greg on March 1, 2019 “Do you still go out to peak?” Resp. Ex. 2, p.6; T.36. Peak Sports Club was a facility he was a member of. T.36. Petitioner also texted on March 1, 2019 “Good, just started the insurance sales. And I hope this is my last career.” Resp. Ex. 2, p.6; T.36. Petitioner testified that he became a licensed insurance agent working for Washington Mutual. T. 38. He admitted that his testimony of having no other work aside from the union was inaccurate. T. 38, 39.

Petitioner testified he did not contact Greg to return to work after his layoff. T. 39. Petitioner then testified that on May 5, 2019, at 1:53 PM he texted Greg Green “Happy awesome weekend!! I'm looking for work, do you have a opening for me with you? I'm looking to start as soon as Wednesday." Resp. Ex. 2, p.7; T. 40. On, May 30, 2019, he texted Greg Green looking for work. Resp. Ex. 2, p.7; T. 40, 41. On June 3, 2019, Petitioner testified he offered to come to work for Respondent. T. 41; Resp. Ex. 2, p. 9.

Petitioner testified he had a phone call with Greg Green in June 2019 where he discussed receiving medical attention and his alleged injury in July 2018. T. 42 and Resp. Ex. 2, p.9.

Petitioner testified he had a Facebook account before he became employed by Midwest and left the site in 2020. T. 43, 44. His account name was “Joseph Swanborg." T. 44. He was the only one to have access to his Facebook account. Id. He had not given authority to anyone to edit or update his Facebook profile. T. 45. Petitioner testified that pictures depicted in Respondent's Exhibit Number 4 were posts that he made to his Facebook profile. T. 46 and Resp. Ex. 4. Petitioner testified that a Facebook post on September 5, 2018, was a message and picture from Peak Fitness. T. 46, 47 and Resp. Ex. 4, P. 2. He testified he went to Peak Fitness once a week at least. T. 47. He testified he perform exercise including jogging, moderate weightlifting that was

"enough to actually have some resistance," movement of his legs, abdominal, back, shoulders, and arms. T. 47. He did exercises including bicep curls. T. 48. He used his upper extremities to lift weights. Id. He used his right arm. Id. His shoulders were activated by the lifts he did with his upper extremities. T. 48. Petitioner testified he exercised one time per week at Peak Fitness for approximately 6 months after the alleged accident. T. 50. Sometimes more. Id.

Petitioner testified he authored a Facebook post on August 19, 2019 where he checked in at Northern Illinois Combat Club and Fitness. T. 50, 51 and Resp. Ex. 4, p. 4. He was at the fitness club. T. 51. He went to Northern Illinois Combat Club at least one time per week, sometimes more, for 3 to 4 months after his alleged incident. T. 52. There he trained in jujitsu. T. 52. This was grappling and wrestling. T. 53. He trained in this by physically wrestling another individual or being taught how to properly submit an individual. T. 53. This required use of his upper body, including his right arm. T. 53. His post on August 19, 2019, included two pictures of him wrestling or grappling with another person. Resp. Ex. 4, p. 4.

Petitioner testified he made a Facebook post on April 16, 2019. T. 54 and Resp. Ex. 5, p. 12. He testified he performed a bathroom remodel in April 2019. T. 54. He demoed and remodeled his mother's bathroom. Id. He testified he installed tile in the bathroom in which he carried 9 to 10 boxes of tile that weighed less than 50 pounds each. T. 55, 56. He removed the bathtub by carrying it out in pieces. T. 56. He carried out the old vanity. T. 57. He installed and carried in a new vanity. Id. All these actions unavoidably involved the use of his right arm. T. 57.

Testimony of Greg Green

Greg Green testified on behalf of Respondent. T. 63. He is the owner of Midwest Seamless Gutters and Siding. T. 63. Mr. Green testified that Joseph Swanborg was known to him as an ex-employee of his company. T. 64. Greg Green testified that Petitioner worked two projects for Walter McKenzie, both in Verona, Wisconsin, on July 3, 2018. Resp. Ex. 8 and T. 72. Greg was not at this jobsite. T. 75. He testified that the Verona, Wisconsin project was called Autumn Lakes

Apartments. T. 76. Mr. Green heard the testimony of Petitioner that he (Petitioner) reported the incident by coming into his office. T. 77. Mr. Green denied he had any conversations with Petitioner around July 1, 2018, about a work injury. T. 77, 78. He further denied Petitioner came to his office around July 1, 2018, to report an injury. Id. Mr. Green denied he received a phone call from Petitioner around July 1, 2018, describing an accident involving a ladder at a job site in Verona, Wisconsin. Id.

Mr. Green communicated with Petitioner via text exchange on June 3, 2019. T. 78 and Resp. Ex. 2, p.9. Mr. Green texted "call me all ASAP" in response to a voicemail left with him by Petitioner. T. 79 and Resp. Ex. 2, p. 9. Mr. Green testified Petitioner detailed in this voicemail that he was going to see a doctor after he hurt his shoulder. T.79. In the voicemail, Petitioner stated he had injured his shoulder and was going to see a doctor and then later texted for a physician recommendation. T. 80, 81; Resp. Ex. 2, p.9. Mr. Green testified he first tried to call Petitioner back after receipt of the voicemail. T.79, 80. He did not speak with Petitioner after the text message. T. 80. The first time Mr. Green learned of an alleged incident to Petitioner involving a ladder striking his shoulder at the Autumn Lakes project was this voicemail in June 2019. T. 80. There was no verbal or in-person conversation thereafter. T. 81. Petitioner never complained of shoulder problems while he worked for Respondent. T. 84. He never described stiffness or soreness in his shoulder. T. 85, 86.

Mr. Green testified Petitioner was a new employee and likely would have been subject to a seasonal layoff in December or January. T. 82. However, Mr. Green testified Petitioner's employment ended in October 2018 at Petitioner's request. T. 82. Petitioner could have continued working had he not requested a layoff. T. 82. There were additional opportunities for Petitioner to return to work after the weather improved had Petitioner not requested a layoff earlier. T. 83.

Testimony of Tyler Bankson

Tyler Bankson was called to testify on behalf of Respondent. T. 90. He has been employed at Midwest Seamless and Gutters since March 2017. T. 91. He has held his current job title as an installer since March of 2017. T. 91. Mr. Bankson knew Petitioner as he worked with and trained him at Midwest Seamless. T. 91. They worked together for a half a year, including in July 2018. T. 92. They worked on the Autumn Lakes Apartments project in Madison, Wisconsin in July 2018 to install gutters and downspouts. T. 92. Mr. Bankson has since worked at the Autumn Lakes project, most recently on November 9, 2021. T. 92. At Autumn Lakes, they installed gutters on the roof line 3.5 to 4 stories above the ground. T. 93. The roof line was accessed by a boom lift. T.93. Other parts of the project, like downspouts, were accessed by ladders. T.93. The highest ladder they used was a 20-footer and an 8-footer to extend to 28 feet. T. 93. They did not use 40-foot ladders on the Autumn Lakes Project. T. 94. The 40 foot ladder would never have been taken off the box truck for this project. T. 94, 95. He never used a 40-foot ladder on the Autumn Lakes Apartments project on any occasion he was there. T. 103.

Mr. Bankson observed Petitioner carrying a ladder at the Autumn Lakes project in July 2018. T. 95. However he never saw him lose control of one, drop one, or have a ladder hit him on the right shoulder. T. 95. He saw Mr. Swanborg carrying a ladder upright. T. 96. He never observed Petitioner lose control of a ladder due to a gust of wind while it was being carried upright. T. 96, 97. He never saw a ladder fall backwards over Petitioner. T. 97. He never saw a ladder fall while Petitioner was carrying it and strike his shoulder. Id. Petitioner never told Mr. Bankson that he was struck by a ladder at the Autumn Lakes job site. T. 97. He never told Mr. Bankson that he hurt his right shoulder while carrying a ladder on the jobsite. Id. He never told Mr. Bankson about an injury to his shoulder involving a ladder at the Autumn Lakes jobsite. T. 97.

Mr. Bankson never observed Petitioner acting in a manner as if his right shoulder was causing him pain or difficulty, nor did he ever seemed favoring his right shoulder. T. 97, 98. Mr. Bankson was the only installer working with Petitioner at the Autumn Lakes site. T. 98. Mr. Bankson continued to work with Petitioner five times a week for the duration of Petitioner's employment

after the Autumn Lake job. T.99. They worked together on 10 to 12 installation jobs per week. T.100. He never observed Petitioner favoring his right arm or shoulder during this period, nor was there ever any occasion Petitioner could not perform the demands of his job. T. 99.

Testimony of Patrick Raupp

Patrick Raupp testified on behalf of Respondent. T. 104. He was employed in sales for Midwest Seamless Gutters and Siding. T. 105. He was familiar with the Autumn Lake project. Id. He believed he visited the project site in July 2018. Id. Mr. Raupp identified Petitioner in the courtroom as an employee of Midwest Seamless. T.106. Mr. Raupp denied observing Petitioner be struck by a ladder in his right shoulder at the Autumn Lakes Apartment project. T. 107, 108. He denied ever being told by Petitioner of an injury to his right shoulder by a ladder, or more generally, to his right shoulder. T. 108. Mr. Swanborg never described any type of work injury while in any conversations with Mr. Raupp. T. 109.

Mr. Raupp testified that when he is on a job site, he usually arrived in the mornings to go over the client's expectations. T.110. These walk-throughs occurred before the installers touched any materials. T. 111. Installers performed their work duties, including set up, after he had left the job site. T. 111, 112.

Medical History

Petitioner introduced medical bills from Mercy health (Petitioner Exhibit 1) and medical records from Mercy Rockford Health Physicians (Petitioners Exhibit 2). Petitioner was seen on November 20, 2019, by Omar Perez, MD where his chief reported complaint was right shoulder pain for one year when he was hurt on a job. Pet. Ex. 2 at p. 8. He said the pain had not gone away and was an increasing dull pressure. Id. He denied numbness or tingling. Id. Dr. Perez's right shoulder examination found acromioclavicular joint tenderness on the right, active forward flexion to 180°, active internal rotation at L4, and passive external rotation on the side to 80°. Id at p.10. His

muscle strength was 5/5 in all planes. Id. He had a positive cross arm test and cervical spine exam was normal. Id.

The body of Dr. Perez's report also reflects an impression of a right shoulder MRI performed on November 17, 2019. Id at p.10. These images were interpreted to show a normal rotator cuff with no biceps tendon tear, subluxation, and no labral or capsular/ligament injury. Id at p. 10, 11. There was mild tendinosis of the supraspinatus tendon with mild degenerative geode cyst in the right femoral head and insertion point of the infraspinatus tendon and mild degenerative changes in the acromion clavicular joint. Id at p.11. Dr. Perez diagnosed pain related to AC joint arthritis and bone edema. Id. Dr. Perez performed a steroid injection and recommended a physician directed home exercise program. Id. Dr. Perez's noted Petitioner might be a candidate for arthroscopic distal clavicle excision if the injection provided short-term relief. Id.

II. CONCLUSIONS OF LAW

Issue C: *Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?*

With regards to Issue C, the Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that he suffered an accident arising out of and in the course of his employment for Respondent on, or around, July 1, 2018.

A claimant in a workers' compensation case has the burden of proving, by a preponderance of the evidence, all the elements of his claim. 820 ILCS 305/1(d) (West 2008). Burden of proof consists of producing sufficient evidence to establish a prima facie case for entitlement to benefits consisting of "evidence on all the necessary elements to establish the underlying cause of action." *City of Chicago v. Ill. Workers' Comp. Comm'n*, 373 Ill. App. 3d 1080, 1090-1091 (1st Dist. 2007). The "in the course of" and "arising out of" elements must both be present at the time of the claimant's injury to justify compensation. *Illinois Bell Telephone Co. v. Indus. Comm'n*, 131 Ill. 2d 478, 483 (1989).

Petitioner's allegation as to his mechanism of injury lacks credibility. He testified his right shoulder injuries occurred when a 40' ladder fell and struck him near his neck over his right collarbone. T.16. However, the credible testimony of Tyler Bankson contradicts these statements. Mr. Bankson was working with Petitioner at the Autumn Lake Apartments project in July 2018 and has since been back, most recently in November 2021. He credibly testified that the 40' ladder would never have been used at the Autumn Lake projects as the roofline was accessed by a boom lift and lower heights by a 20' and 8' foot ladder. The credible evidence shows Petitioner's accident could not have happened as alleged.

Petitioner also failed to credibly prove the date of his alleged incident. Petitioner testified on direct exam, alleged in his filed Application (AX2), and marked on the completed Request for Hearing form (AX1) that his injuries occurred on July 1, 2018. Petitioner denied he would have been working for Respondent on a Sunday, yet the Arbitrator took judicial notice that July 1, 2018, was a Sunday. Only on cross-examination did Petitioner state he could not pinpoint the date of his alleged incident, and that July 1, 2018, was an approximation. Petitioner's credibility is further diminished by his inability to identify a fact so basic to his claim like the day he was allegedly injured.

Patrick Raupp credibly denied he witnessed Petitioner's alleged injury, contradicting a key allegation of Petitioner's claim. Mr. Raupp would have only been onsite with Petitioner before any set up or work had begun, and thus, would not have been present to witness Petitioner's alleged incident. Similarly, Mr. Bankson credibly denied witnessing Petitioner's alleged occurrence despite being on-site with Petitioner all day. Both credibly denied being told of the alleged incident by Petitioner. He worked the full demands of his job for 4.5 months after the alleged occurrence. An accident history was not documented in a contemporaneous medical record and Petitioner did not describe his alleged occurrence in any text messages to Greg Green between July 2, 2018, and June 3, 2019. Thus, there is no evidence that would otherwise corroborate his allegations until June 3, 2019, and November 20, 2019. Resp. Ex. 2, p. 9 and Pet. Ex. 2, p. 8.

Petitioner's credibly is further damaged by multiple examples of evidence that is inconsistent with, and even contradictory to, his claims. He testified his employment ended when he was seasonally laid off; however, admitted he requested to be laid off in October 2018 due to financial reasons. Petitioner's admission was made only after he was shown text messages sent to Greg Green. He similarly denied ever seeking to return to work for Respondent after October 2018; however, he admitted that this was not true when shown multiple text messages exchanged with Mr. Green to the contrary. Petitioner showed himself to be forthcoming with the truth only after Respondent presented evidence to contradict him.

Yet, these examples are neither the only, nor the most damning, evidence against Petitioner's credibility on accident. Petitioner was proven to be physically active in ways completely contradictory with his testimony about his right shoulder injuries. Though he testified on direct examination that his right shoulder was painful during such tasks as driving or throwing darts, Petitioner admitted on cross-examination he weight trained at Peak Fitness utilizing his right upper extremity at least one time per week for 6 months following the alleged incident. He further admitted he grappled and wrestled in the style of jiu jitsu at least one time per week for 3-4 months after his alleged occurrence. He demolished and remodeled a bathroom in April 2019. These facts are probative of Respondent's denial that Petitioner suffered an incident causing injury on, or around, July 1, 2018. Ultimately, Petitioner's admissions to frequent performance of these physically demanding activities cannot be reconciled with his testimony elsewhere; and as such, erodes any remaining credibility Petitioner might have had concerning his accident allegations.

For all the reasons detailed herein, Petitioner has been shown to be an unreliable witness as to accident. He has therefore failed to prove by a preponderance of the evidence that he suffered an accident arising out of or in the course of his employment for Respondent on or around July 1, 2018. Petitioner is denied all benefits and compensation under the Act.

Issue E: *Was timely notice of the accident given to Respondent?*

With regard to Issue E, the Arbitrator concludes that Petitioner failed to prove by a preponderance of the credible evidence he gave Respondent timely notice of his accident.

The credible testimony reflects Respondent did not receive notice of Petitioner's accident until on, or around, June 3, 2019, when Petitioner left Greg Green a voicemail with details of his injuries and seeking guidance on medical care. This timeframe is supported by the text exchange between Mr. Green and Petitioner on June 3, 2019. Resp. Ex. 2, p. 9. Petitioner's testimony that he met in-person with Greg Green approximately the day after his accident to notify him is therefore not credible. The conclusion that Petitioner did not notify Respondent of his accident within 45 days of the occurrence is supported by the entirety of text messages between Petitioner and Greg Green which, though they discuss a number of topics, make no mention to the accident, his symptoms, or need for treatment, until June 3, 2019. Resp. Ex. 2.

Because Petitioner cannot show he provided any notice to Respondent until on, or around, June 3, 2019, approximately 338 days after this accident, the inquiry on notice is complete. However, Petitioner cannot prove he gave even *deficient* notice to Respondent during this timeframe. The credible testimony of Tyler Bankson and Patrick Raupp show Petitioner never reported the accident to them. Petitioner worked the full demands of his job until his employment ended by request on October 31, 2018. Mr. Bankson credibly testified Petitioner gave no indication of injury or limitations in his right shoulder during the considerable period they worked together after the accident.

For the reasons cited herein, Petitioner has failed to prove by a preponderance of the credible evidence that he gave timely notice of his accident to Respondent. Petitioner is therefore denied all benefits and compensation.

Issue F: *Is Petitioner's current condition of ill-being causally related to his accident?*

With regard to Issue F, the Arbitrator concludes Petitioner has failed to prove by a preponderance of the credible evidence that his current condition of ill-being is causally related to his accident.

Petitioner bears the burden to prove his entitlement to benefits. *Navistar Int'l Transp. Corp. v. Industrial Comm'n,* 315 Ill. App. 3d 1197, 1202 (1st Dist. 2000). For an injury to arise out of employment, it must originate in some risk connected to the employment so that there is a causal connection between the employment and the injury. *Id.* at 1203. A chain of events that "demonstrated 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. Industrial Comm'n*, 93 Ill.2d 59, 63-64 (1982).

Most importantly in this case, the credible evidence does not support a causal link of Petitioner's condition of ill-being based on the chain of events. Petitioner worked the full demands of his job for approximately 3.5 to 4 months following his accident. Further, the medical records introduced into evidence by Petitioner show he did not seek any medical attention for his right shoulder until a visit to Dr. Perez on November 20, 2019, though Petitioner testified he first sought care in July 2019. Whether in July or November 2019, Petitioner's treatment was not contemporaneous to his accident. Thus, Petitioner cannot establish by credible evidence a condition of good health, an accident, and a subsequent injury resulting in disability. *Id.*

As such, medical expert testimony is necessary in this case to establish a causal link because only a medical expert has the knowledge to explain how his condition could have been caused by an incident in July 2018 where there had been no treatment prior to November 2019. *Interlake Steel Co. v. Industrial Comm'n*, 136 Ill. App.3d 740, 744 (1st Dist. 1985). But Petitioner does not offer into evidence a credible opinion of a medical expert to establish the causal link of his right shoulder condition to his accident.

For the reasons stated herein, the Arbitrator finds Petitioner has failed to prove by a preponderance of the credible evidence that the current condition of ill-being of his right shoulder is causally related to any accident arising out of and in the course of his employment with Respondent. Petitioner is denied all benefits and compensation.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC013042
Case Name	Juan Hernandez v. National Power Rodding
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	22IWCC0454
Number of Pages of Decision	14
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Michael Nicholson
Respondent Attorney	Karen Haarsgaard

DATE FILED: 11/29/2022

/s/ Christopher Harris, Commissioner

Signature

22IWCC0454

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JUAN HERNANDEZ,

Petitioner,

vs. NO: 19 WC 13042

NATIONAL POWER RODDING,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, benefit rate, medical (including whether Petitioner exceeded his choice of two physicians), causal connection, temporary total disability (TTD), and permanent partial disability (PPD), 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 finds that the evidence supports a reduction in the PPD award relating to Petitioner's cervical injury. Based upon his injuries, the Commission finds that Petitioner sustained 2% loss of use of the person-as-a-whole pursuant to Section 8(d)(2) of the Act. The Commission has considered the five factors under Section 8.1b of the Act:

(i) Impairment Rating: Neither party submitted an impairment rating. As such, the Commission assigns no weight to this factor and will assess Petitioner's permanent disability based upon the remaining enumerated factors.

(ii) Occupation of Injured Employee: At the time of the injury, Petitioner was employed as a truck driver, which required manual labor. The Petitioner is currently employed as a full-time truck driver with a different company. The Commission assigns some weight

to this factor as Petitioner's cervical injury will have some impact on his ability to perform the job duties of a truck driver.

(iii) Petitioner's Age: Petitioner was 38 years old at the time of the injury. The Commission assigns some weight to this factor as Petitioner has a longer work career remaining in which to encounter the effects of the injury.

(iv) Petitioner's Future Earning Capacity: The Commission assigns no weight to this factor as there is no evidence of a diminished future earning capacity.

(v) Evidence of Disability: Following the injury, Petitioner received an injection into the cervical spine and underwent several diagnostic tests due to ongoing cervical pain. On August 17, 2020, Dr. Andrew Johnson ("Dr. Johnson") of the Swedish Medical Group reviewed the MRI of the cervical spine. (PX.4.) Dr. Johnson noted that the MRI demonstrated a congenitally small spinal canal with minimal disc disease and moderate-to-severe stenosis at C1-C2. (*Id.*) Dr. Johnson also noted that the EMG was negative for cervical radiculopathy. (*Id.)* Dr. Johnson's assessments were cervical spinal stenosis and myelopathy. (*Id.*) The Respondent obtained two Section 12 examinations from Dr. Daniel Troy ("Dr. Troy"). Dr. Troy was of the opinion that the MRI of the cervical spine did not show any objective, traumatically induced changes to support any type of objective findings. (RX.2.) Based upon his Section 12 examination on January 27, 2020, Dr. Troy diagnosed Petitioner with posterior cervical neck pain. (*Id.)* The Petitioner testified that he made a good recovery and has no complaints with respect to his neck. (T.57.) The Commission finds that the objective evidence supports that the work injury resulted in minor neck pain for the Petitioner. Therefore, the Commission assigns significant weight to this factor.

In light of the foregoing, with no single enumerated factor being the sole determinant of disability, the Commission awards Petitioner 2% loss of use of the person-as-a-whole pursuant to Section 8(d)(2) of the Act.

The Commission also writes to correct the clerical error on page 9 of the Arbitrator's Decision. The Decision incorrectly lists the PPD rate as $1,025.48 and not $813.87. Therefore, the Commission corrects the Decision to reflect the correct PPD rate of $813.87.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed April 6, 2022, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,139.20 per week for a period of 66 weeks, July 15, 2019 through October 20, 2020, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner

the sum of $813.87 per week for a period of 100 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the loss of use of 20% person-as-a-whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $813.87 per week for a period of 10 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the loss of use of 2% person-as-a-whole.

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 $75,000.00. 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.

November 29, 2022
CAH/tdm
O: 11/17/22
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC013042
Case Name	HERNANDEZ, JUAN v. NATIONAL POWER RODDING
Consolidated Cases	
Proceeding Type	
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Michael Nicholson
Respondent Attorney	Karen Haarsgaard

DATE FILED: 4/6/2022

THE INTEREST RATE FOR THE WEEK OF APRIL 5, 2022 1.11%

/s/William McLaughlin, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Cook**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Juan Hernandez
Employee/Petitioner

v.

National Power Rodding
Employer/Respondent

Case # **19** WC **13042**

Consolidated cases:

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 **William McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **January 28, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **4-15-2019**, 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 $**88,857.60**; the average weekly wage was $**1,708.80**.

On the date of accident, Petitioner was **38** years of age, ***married*** with **2** dependent children.

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

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

Respondent shall be given a credit of $**11,392.00** for TTD, $**3,254.85** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**14,646.85**.

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

ORDER

PETITIONER IS ENTITLED TO 66 WEEKS OF TTD FROM 7-15-2019 THRU 10-20-2020 OR 66 X $1,139.20 = $75,187.20

PETITIONER SHALL RECEIVE 15% MAW FOR HIS CERVICAL INJURY OR 75 WEEKS X $813.87 PPD = $61,040.25

PETITIONER SHALL RECEIVE 20% MAW FOR HIS RIGHT SHOULDER INJURY OR 100 WEEKS X $813.87 PPD = $81387.00

RESPONDENT SHALL PAY 0% IN PENALTIES AND FEES.

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.

APRIL 6, 2022

Signature of Arbitrator

Findings of Fact

On April 15, 2019, Petitioner, Juan Hernandez, a 38 year old full time truck driver, employee of Respondent, severely injured his right shoulder and upper back while working down in a manhole pulling a boulder (p12-13-15 Tscpt). Petitioner screamed out in pain to the coworkers above (p19 Tscpt). He was then pulled up by the rope to the top of the manhole where he was instructed to drive a truck to the company offices. Petitioner was instructed to go to the company clinic, Concentra, where he was examined (p30 Tscpt). Petitioner was told to get MRIs, given pain medication and sent for physical therapy (p30 Tscpt).

Petitioner was told the MRIs requested were not approved by Respondent and subsequently released from care (p35 Tscpt). Petitioner went to Dr. Mitchell Goldflies, a specialist at Norwegian Hospital and was given additional pain medication (p37 Tscpt). After his appointment with Dr. Goldflies, Petitioner went to a chiropractor who referred him to pain specialist, Dr. Andrew Johnson (p. 39-40 Tscpt). After receiving no relief from his pain, Petitioner saw orthopedic Dr. Williams at Norwegian Hospital who administered an epidural injection into his right shoulder (p. 42 Tscpt) (PX3-4).

Petitioner had right shoulder surgery (arthroscopy) on June 1, 2020 receiving an implanted internal fixation device into his right shoulder and a pain block (p. 42 Tscpt). Petitioner received physical therapy for his right shoulder (p. 43 Tscpt). Petitioner testified that the surgery helped him with his shoulder pain (p. 46 Tscpt). In addition to the surgery, Petitioner received an additional epidural injection which relieved his upper back, neck and right shoulder pain. Petitioner was given work restrictions by Dr Goldflies, which his employer was unable to accommodate (p. 51 Tscpt).

Petitioner was unemployed and began to look for work within his restrictions. Petitioner had a self-pay MRI on 1-7-2020.

Evidence indicated that Petitioner had prior workers compensation cases to this accident. One in which he injured his shoulder while moving a couch (14 WC 18451), but testified he had fully recovered from this shoulder injury which is why as he testified, he never got the recommended surgery (REX 1-2). Another case involved a previous lower back case (07 WC 9213 and 08 WC

25606) wherein Petitioner severely injured his lower back which required a fusion of his lower spine.

Prior to working for Respondent, Petitioner never had any permanent restrictions from previous workers compensation claims.

Petitioner testified (p. 51 Tscpt) that he received temporary total disability from April 15, 2019 to July 15, 2019, but nothing further after that time while he continued on with his restrictions until March 10, 2020, when he received a full duty release having made a full recovery from his work injuries while working for Respondent.

CONCLUSIONS OF LAW

The Arbitrator incorporates his findings of fact herein. The Arbitrator has fully considered the entirety of the evidence in coming to the conclusions herein.

It is well established that it is the employee's burden to establish the elements of his claim by a preponderance of the credible evidence. *Illinois Bell Tel. Co. v. Industrial Comm' n*, 265 Ill. App. 3d 681; 638 N.E. 2d 307 (1st Dist. 1994). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports such a finding, there is no right to recover. *Board of Trustees v. Industrial Comm' n*, 44 Ill.2d 207, 214 (1969). The Commission is not required to give more weight to a treating physician's opinion over another examining physician's opinion. *Prairie Farms Dairy v. The Industrial Commission,* 279 Ill.App.3d 546 (5th Dist. Ind. Comm. Div. 1996).

Credibility is the quality of a witness that renders his evidence worthy of belief. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Comm' n*, 39 Ill.2d 396, 405 (1968); *Swift v. Industrial Comm' n*, 52 Ill.2d 490 (1972). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks*, 08 Il.W.C. 004187 (Ill.Indus. Comm'n 2010). Arbitrator finds the Petitioner's testimony to be credible and makes the following findings.

C. Whether Petitioner suffered an accident that occurred out of employed by Respondent on April 15, 2019?

The Arbitrator finds that Petitioner proved that he suffered an accident while working for Respondent on April 15, 2019. Accordingly, the Arbitrator finds that Petitioner proved by a preponderance of the evidence that the Petitioner sustained an at work accident while down in a manhole working for Respondent on April 15, 2019.

F. Whether Petitioner's current condition of ill-being is causally related to this injury?

The Arbitrator finds that the Petitioner proved by a preponderance of the evidence that the Petitioner's current condition of ill-being is directly related to this accident which Petitioner suffered while working for Respondent on April 15, 2019.

The Arbitrator notes that the previous lower back case, which required a lumbar fusion 07 WC 9213 and 08 WC 52601, is clearly a 'man as a whole' case on a different part of the body. Arbitrator notes the previous shoulder case resulted in a flat lump sum payment in the amount of $10,000. The Petitioner clearly indicated that he did not get a shoulder surgery for the previous accident because he had fully recovered and did not need surgery.

Accordingly, the Arbitrator finds that the Petitioner proved by a preponderance of the evidence that the April 15, 2019 accident is causally related to Petitioner's current condition of ill-being.

K. Whether the Petitioner is entitled to Temporary Total Disability from the Respondent?

The Arbitrator finds that the Petitioner proved by a preponderance of the evidence that the Petitioner is entitled to 66 weeks of temporary total disability from July 15, 2019 thru October 20, 2020, this period representing the unpaid temporary total disability which started on July 15, 2019 wherein Petitioner attempted to return to work for the Respondent with the existing restrictions and terminating on October 20, 2020. After which the Petitioner was then unemployed.

The Petitioner testified that he tried to go back to work for the Respondent on July 15, 2019, but that the Respondent would not take him back to work with the valid restrictions imposed by his

treating physician. The restrictions were not rebutted by the Respondent, and that which lasted up to March 8, 2020 (PX3).

Additionally, Petitioner's tax returns as well as his testimony establish that he earned no income between July 15, 2019 and October 20, 2020, aside from unemployment compensation.

The Arbitrator notes that Petitioner testified credibly that he received temporary total disability in the amount of $1,139.20 from April 15, 2019 thru July 15, 2019 but thereafter received no temporary total disability.

Accordingly, the Arbitrator finds that the Petitioner is due 66 weeks of temporary total disability at $1,139.20 per week which equates to $75,187.20.

L. What is the Nature and Extent of the injury?

With respect to this Issue, the Arbitrator applies the five factors as outlined in Sec. 8.1b:

1. The reported level of impairment;
2. Petitioner's occupation;
3. Petitioner's age at the time of the injury;
4. Petitioner's future earning capacity; and
5. Petitioner's evidence of disability corroborated by treating medical records.

The Arbitrator considers the above five criteria and makes the following findings: Petitioner, per his testimony and his medical records, made a good recovery from his injuries in this case, however he now has internal metal fixation in his right shoulder, a rotator cuff tear, rotator cuff tendonopothy and has had arthroscopic surgery on his shoulder (PX2-3) he also has a bulging cervical disc in his cervical spine, and the Arbitrator notes that the Respondent receives no credit on his previous lower back injury which was paid on a man as a whole, nor on his shoulder injury which indicated no percentage of loss and that shoulder injuries are also paid as and on man as a whole. Accordingly, the Petitioner shall receive from the Respondent 15% MAW for his upper back/cervical injuries, or 75 weeks x $1,025.48 (PPD) which equals $76,911.00, and 20% MAW for his right shoulder injury or 100 weeks x $1,025.48 = $102,548.00.

M. Whether Penalties and Fees should be imposed upon Respondent?

The Arbitrator finds that neither penalties nor fees shall be imposed upon Respondent.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC026038
Case Name	Alicia Gonzalez Ortiz v. Smithfield Foods
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	22IWCC0455
Number of Pages of Decision	15
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Michelle Porro
Respondent Attorney	Heather Boyer

DATE FILED: 11/30/2022

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Alicia Gonzalez Ortiz,
Petitioner,

vs. NO: 19 WC 26038

Smithfield Foods,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, medical and temporary disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 25, 2022, is hereby affirmed and adopted.

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

There is no bond for the removal of this cause to the Circuit Court by Respondent. 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.

November 30, 2022
o11/9/22
DLS/rm
046

/s/*Deborah L. Simpson*
Deborah L. Simpson

/s/*Stephen J. Mathis*
Stephen J. Mathis

/s/*Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC026038
Case Name	GONZALEZ ORTIZ, ALICIA v. SMITHFIELD FOODS
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Michelle Porro
Respondent Attorney	Heather Boyer

DATE FILED: 4/25/2022

THE INTEREST RATE FOR THE WEEK OF APRIL 19, 2022 1.25%

/s/Stephen Friedman, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **DuPage**)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Alicia Gonzalez Ortiz
Employee/Petitioner

v.

Smithfield Foods
Employer/Respondent

Case # **19** WC **026038**

Consolidated cases: **See Decisions**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Wheaton**, on **March 10, 2022**. 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 _____

FINDINGS

On the date of accident, **February 1, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident ***was not*** given to Respondent.

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

In the year preceding the injury, Petitioner earned $**34,857.68**; the average weekly wage was $**670.34**.

On the date of accident, Petitioner was **42** years of age, ***married*** with **2** dependent children.

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

Respondent has paid of $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**4,800.24** for other benefits, for a total of $**4,800.24**.

Respondent has paid $**3,255.74** under Section 8(j) of the Act.

ORDER

BECAUSE PETITIONER FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT SHE SUSTAINED ACCIDENTAL INJURIES ON FEBRUARY 1, 2019, FAILED TO PROVE THAT SHE PROVIDED NOTICE OF AN ALLEGED ACCIDENT ON FEBRUARY 1, 2019, AND FAILED TO PROVE THAT ANY CONDITION OF ILL-BEING IS CASUALLY RELATED TO AN ACCIDENT ON FEBRUARY 1, 2019, PETITIONER'S CLAIM FOR COMPENSATION IS HEREBY DENIED.

Petitioner's claims for compensation for dates of accident of August 16, 2019 and August 13, 2019 are addressed in the decisions of the consolidated cases 20WC015645 and 21WC002885 decided in conjunction with this matter.

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.

/s/ Stephen J. Friedman **APRIL 25, 2022**

Signature of Arbitrator

ICArbDec19(b)

Statement of Facts

This matter was tried in conjunction with Consolidated cases 20WC015645 (DOA: 8/16/19) and 21WC002885 (DOA: 8/13/19). A single transcript was prepared. The Arbitrator has issued separate decisions for each case. Petitioner Alicia Gonzalez Ortiz testified in Spanish through an interpreter.

Petitioner testified that on February 1, 2019, she was working for Respondent on the peeling table. She had worked for Respondent since May 2018. She worked between 40 and 48 hours per week. Petitioner moved to a Stuffer/Hanger February 11, 2018 (RX 5).

Petitioner testified that on her way to work on February 1, 2019, she hit a deer when she was unable to stop on a slippery road. The impact broke her bumper on the right side. She arrived at work at 6:00 AM. She testified she did not have any pain after the incident with the deer. Petitioner testified that she went out to the parking lot to take a picture of the damage when she took her break after 8:00 AM. She testified there is no sign that says they are not allowed to go outside. Other employees go out to smoke or eat. She testified that she was walking back to work when her foot slipped in the snow about 3 meters outside the company door. She fell, hitting her right arm and hand on the ground and landed on her right knee. She testified a supervisor Raoul helped her up and called the main supervisor Cheryl and told her there was ice in the parking lot and to send maintenance to pour salt. No accident report was prepared. She testified she then went into the plant and told her supervisor Corey that she had fallen, who sent her to Sara the company nurse. Petitioner testified she had pain in her right knee when walking. She testified she could not perform her job because she had to open her hand. She testified that Sara gave her an Ace wrap, ice, and Ibuprofen and sent her back to work.

Petitioner testified that PX 9 is a picture she took of her car on that morning in the company parking lot. The photo shows damage to the right front of the car. The screen shot indicated 7:41 AM on February 1, 2019. The photo does not include her phone number and does not show the license plate of the car. There is nothing in the photo identifying Respondent's parking lot. When Petitioner was advised the picture says it was taken at 7:41 AM, Petitioner testified she was going back to work at 8:00 AM. She did not recall what time her break was each day. If she needed to take a break earlier than her scheduled break time, Petitioner testified she would need to get permission from her Supervisor, Corey Stanton. Petitioner testified she could not recall whether she asked Mr. Stanton for an early break on February 1, 2019.

Corey Stanton testified on behalf of Respondent. Mr. Stanton testified he was employed by Smithfield Foods as the Production Supervisor and had been in that capacity for the last six years, including February 1, 2019. On February 1, 2019, he worked first shift, 6:00 a.m. to 2:30 p.m., the same shift as Petitioner. If one of his employees sustains an accident at work or on the property, he is required to fill out a Discomfort Form if the injury is small requiring no medical care. After completing the form, he then escorts the employee to the safety office. If the employee has more than just discomfort, an incident report will be completed. the safety manager will be notified, and she will decide whether the employee should be sent to urgent care or the hospital.

Mr. Stanton testified he was Petitioner's direct supervisor on February 1, 2019, and up until February 11, 2019, when she was transferred to manufacturing. Mr. Stanton testified Petitioner never reported a slip and fall injury in the parking lot of Smithfield to him on or after February 1, 2019. Mr. Stanton testified Petitioner never even mentioned pain in her bilateral hands or arms on or after February 1, 2019. Petitioner worked eight and a half hour shifts, with a half hour for lunch and two 15-minute breaks. The first break of the day started at 7:45 AM and was then staggered every 15-minutes until everyone got a department break. Petitioner never asked for an

early break, at any point, on February 1, 2019. Petitioner never reported being involved in a motor vehicle accident before she arrived at work that morning, nor did she report hitting a deer. Petitioner never requested to be seen at the ART Program. Petitioner never requested ibuprofen, or a wrist wrap from him. Mr. Stanton testified nothing out of the ordinary occurred on February 1, 2019.

Mr. Stanton testified there was no Nurse by the name of Sara at the factory. Dr. Hanson was onsite two days per week, including Tuesdays and Thursdays with no other medical professional on site at any other time. He testified the Safety Manager was Sara Neff. Ms. Neff could pass out bandages or ibuprofen. At no point on February 1, 2019, did Petitioner ever request to be seen by Ms. Neff. Petitioner never spoke to him about pain in her wrist. He never saw her wearing a wrist wrap.

Petitioner testified she was first seen for medical treatment by Nurse Sara at the "company clinic/office" (later identified at the ART Program), on February 5, 2019, and February 12, 2019. During both of those February visits, Petitioner testified she reported her accident to Nurse Sara, including pain in the right wrist and right knee. Petitioner testified Nurse Sara failed to document her slip and fall. Petitioner denied she was treated for her foot. She testified she say Sara about 7 times.

The records of the ART program were admitted at PX 5. Petitioner was seen on January 29, 2019 for 8/10 pain in her left foot. She did not recall anything associated with the onset. Petitioner was treated with active release and was recommended for 3 additional treatments. Petitioner was seen on February 5, 2019 and February 12, 2019 with treatment and complaints solely to the left foot. No slip and fall injury was reported. No complaints or examination of the right hand or knee was recorded (PX 5, p 8-12).

Petitioner testified she was having issues with her left shoulder. After the February 1,2019 accident she changed how she did her work. She would use her left hand primarily when pulling and pushing to make boxes and pack.

Petitioner testified she bid on a new job titled Stuffer/Hanger in mid-February 2019, but claimed she only worked in the job for a few days. She testified her supervisor in that position was Samuel Gonzalez. Petitioner testified that on August 13, 2019, she was working at a table, which was different than the Stuffer/Hanger position, but when asked to label the job, she could not recall the name of her actual position with the company. Petitioner testified her job duties while working for Mr. Gonzalez included working at a table filling in guts and her job specifically was to insert a metal rod into eight pieces of meat. She would then take the tip out of the metal rod, hold it with both arms and then put it on the elevator. She testified each piece of meat weighed seven to eight pounds and the elevator she put the meat on was chest high. Petitioner testified she inserted the rod just below waist level about table height while standing and then lifted it to about chest height.

Petitioner was shown Respondent's Exhibits 8A-8E, pictures of the Stuffer/Hanger job. She confirmed the metal rod testified to on direct was in fact a wooden stick, four feet long, weighing three pounds. In RX 8C, Petitioner testified there were long sticks of meat laying on a conveyor belt and at the end of each stick of meat there was a string with a loop on the end. The Stuffer/Hanger takes the wooden stick and slides it through the holes/loops. After that is done, the final product is a wooden stick carrying either five or 6 pieces of meat. The Stuffer/Hanger takes the wooden stick with five or six pieces of meat on it, lifts it up four to six inches off the conveyor belt and places the stick into little metal brackets on the end. When lifting the stick with meat attached four inches off the conveyor, the Stuffer/Hanger would be lifting a total of 8.9 pounds and when lifting the stick with meat attached six inches off the conveyor, the Stuffer/Hanger would be lifting a total of 11.2

pounds. Petitioner testified the Stuffer/Hanger Job was the position listed in all her medical records and the position she told each doctor caused repetitive trauma to her right wrist and left shoulder.

Petitioner sought no treatment until August 13, 2019 when she was seen at the ART clinic complaining of wrist discomfort after slipping and catching herself on the floor. She reported discomfort around her wrists, worse on the right as a result of slipping inside the factory four months prior and breaking the fall by landing on outstretched hands. The examination also noted tenderness in the shoulders. Dr. Hanson recommended Petitioner have one session, but advised he would speak with Sara and refer the matter back to her in "SM" (Safety Management) (PX 5, p 13-15). Petitioner testified on direct examination that she was referring to the February 1, 2019 fall. She then testified that she did fall inside the factory in April 2019. On re-direct examination, Petitioner testified she slipped inside of the factory in April 2019, but she was unsure whether she sustained any injuries.

Samuel Gonzalez testified on behalf of Respondent. Mr. Gonzalez testified he was employed by Smithfield Foods for the last twenty-eight years and as the Manufacturing Supervisor for the last twenty-six years, including February 1, 2019, August 13, 2019, and August 16, 2019. On February 1, 2019, he worked first shift, 5:30 a.m. to 3:00 p.m. Mr. Gonzalez testified that if one of his employees sustains an accident at work or on the property, he applies first aid, if necessary, notifies the Safety Manager and he fills out an incident investigation report. If the injury is not severe, the employee is given an initial report of discomfort which will then go to the Safety Manager.

Mr. Gonzalez testified he was Petitioner's direct supervisor from February 11, 2019, through August 2019. Mr. Gonzalez testified Petitioner never reported a slip and fall injury in the parking lot of Smithfield to him on or after February 1, 2019. Mr. Gonzalez testified Petitioner never even mentioned pain in her bilateral hands or arms on or after February 1, 2019. Mr. Gonzalez testified Petitioner never reported any trouble with her tasks as a Stuffer/Hanger, never asked for a less demanding job, never asked for any accommodations and he never saw her ask a co-worker for help.

Mr. Gonzalez testified about the Stuffer/Hanger position by using Respondent's Exhibits 8A though 8E. He testified a Poly-Clip Machine stuffs meat into a casing. As it stuffs, it clips both ends of the product and puts a loop on one end. Depending on the product, it's going to drop down onto the index conveyor where the meat is laying, as depicted in RX. 8A. One employee will loop the string onto the stick for five pieces and the other employee will loop the string on the stick for six pieces. After eleven pieces are looped, the machine will advance underneath the hanging system, as depicted in RX. 8C. The employee then lifts the stick up approximately six inches onto the lifting lugs, hits a button on the machine, and it would raise up into the hanging system. The most Petitioner would have to lift would be 11.2 pounds. He testified the Stuffer/Hanger job was the position Petitioner was performing from February 11, 2019, through August 16, 2019.

Mr. Gonzalez testified it was possible that Petitioner also could have been in the natural casing department, putting stocking nets (like a sock) over a piece of meat and tying it off. He testified the natural casing job did not require any lifting, as it was all pushing and sliding. The most amount of weight Petitioner would have to push, or slide would be eleven pounds. Mr. Gonzalez testified Petitioner rotated back and forth from Stuffer to Hanger and vice versa. He testified the hanging procedure for the natural casing position was a little different. Instead of a loop, the employee speared/penetrated the stocking net (sock) which holds the product to the stick. The spear was described as a metal spearhead that goes on the end of a stick. Once the employee spears six pieces of meat, the rest of the job is identical to the stuffer/hanger position.

Mr. Gonzalez testified Dr. Hanson was the onsite chiropractor who saw employees with minor discomforts. He testified the Safety Manager was Sara Neff, and she would pass out ibuprofen and bandages if needed. He testified Ms. Neff would be the person who handed out medical referrals and who set up appointments with Dr. Hanson. Petitioner never reported any issues to him with her hands or arms on August 13, 2019. Petitioner never asked him to see Ms. Neff on August 13, 2019, about problems with her arms or hands. Mr. Gonzalez testified that at no point in April 2019 did Petitioner report slipping or falling inside the factory on outstretched hands of falling anywhere on outstretched hands. Mr. Gonzalez testified there was no documentation of an accident involving Petitioner inside the factory in April 2019.

Petitioner worked her full duty position until August 16, 2019. Petitioner was seen on August 16, 2019 by Dr. De La Cruz D.C. (PX 2). Petitioner reported that she fell on ice in a parking lot while at work on February 1, 2019. After falling Petitioner reported experiencing a hot feeling with pain in her right hand and wrist. She worked through her pain and after work went to see the nurse and was given a support and Ibuprofen. Petitioner told Dr. De La Cruz she saw the company doctor on Tuesday who said she needed an MRI. She also began experiencing left shoulder pain in her shoulder blade and mid-back, with upper extremity swelling, and numbness of her upper extremity. Petitioner claimed her job required her to use her shoulders and wrist repetitively. The initial onset was right wrist pain due to a fall at work. Left shoulder onset was repetitive use and compensating for the right. Petitioner stated she has to use her upper extremity with repetitive motion at work and has been loading of that left side after her slip and fall. Her examination demonstrated pain, weakness, and loss of range of motion in the left shoulder. Dr. De La Cruz ordered an MRI of the right hand and wrist. Petitioner was to attend therapy three times per week for four to six weeks to decrease swelling and inflammation to the affected areas. Petitioner was advised to avoid activities which aggravate the condition (PX 2, p 245-255). Petitioner testified that she took her restricted duty slip to Sara, the company nurse on August 17, 2019. She testified that Sara tore it up. She was not provided work within her restrictions.

On August 21, 2019, Petitioner complained of intense right wrist, right hand, and right forearm pain with spasms. She also had left shoulder pain and was experiencing weakness with numbness of the right hand. Petitioner claimed she was very stressed at work that day and was yelled at by a nurse (PX 2). Petitioner admitted at trial that she did not work on that day since her last date was August 16. She received chiropractic adjustment and manual therapy (PX 2). Petitioner had an MRI of the right wrist on August 22, 2019. The radiologist noted an irregularity along the TFCC and ulnar attachments indicating a sprain (PX 3, RX 7). MRI of the right hand on August 21, 2019 was negative (PX 3, RX 5). On August 28, 2019, Petitioner reported she had tried light mopping after a liquid spill and her pain increased significantly. She stated her left shoulder pain had decreased. Petitioner was to receive chiropractic adjustments and therapeutic exercises as well as ultrasound. On August 31, 2019, she reported numbness in her middle finger on the right hand. On September 4, 2019, she reported to Dr. De La Cruz right wrist pain worse with rotating motions and sharp pain. She also reported weakness of the right wrist along with numbness and pain in the middle finger. The left shoulder pain continued. She also reported left hand numbness on and off. On September 11, 2019, she had not experienced any significant improvement and had expansion of her symptoms and claimed it was affecting her activities of daily living and family life. She was not able to perform home chores as usual and had to depend on her family. She continued to receive chiropractic adjustments (PX 2).

Petitioner continued therapy and chiropractic manipulation. On October 2, 2019, she reported her primary complaint was the right wrist. The right forearm pain and spasms have improved. Her left shoulder pain has also improved, but is not pain free. Her mid back and left shoulder blade pain has decreased. On October 14, 2019, she reported significant left shoulder joint, mid back and shoulder blade pain. On December 13, 2019,

Dr. De La Cruz felt Petitioner needed a left shoulder MRI. She noted Petitioner could return to work light duty. (PX 2). The December 23, 2019 MRI of the left shoulder was interpreted to reveal slight posterior subluxation of the humeral head in relation to the center glenoid. Petitioner had a possible non-displaced labral tear noted on one axial image at the level of the anterior equator. She also had mild capsular hypertrophic changes at the acromioclavicular joint and lateral down-sloping of the acromion (PX 2, p 108, PX 3, RX 7).

Petitioner continued treatment with Dr. De La Cruz. On December 27, 2019, she reported pulsating pain of the right wrist and with lifting. She complained of left shoulder pain and fatigue, with spasm. On January 10, 2020, Petitioner was carrying her nine-month-old grandchild and had increased left shoulder pain. She was not able to sleep on the left side or abdomen. She was sleeping on her back and using many pillows. She was taking Tylenol at least once a day so she could sleep. On January 20, 2020, her complaints of pain remained the same. Her left shoulder pain increased from lifting somewhat heavy pots. On January 24, 2020, Dr. De La Cruz notes Petitioner is under stress which is increasing her pain. On February 17, 2020, Petitioner states she want to return to work ASAP but still has significant pain (PX 2).

Dr. Craig Phillips authored a record review on March 7, 2020 (RX 7). He reviewed records of Dr. De La Cruz from August 16, 2019 through November 13, 2019, records of ART, MRI reports of the hand, wrist, and left shoulder. Dr. Phillips stated Petitioner has diffuse pain in multiple muscle groups in her neck, back, left shoulder and right forearm, wrists and hand, and middle finger, and, on occasion, left forearm. He stated it was not scientific to provide an accurate diagnosis. He opined it would be bizarre and beyond a reasonable degree of medical and surgical certainty for an individual to hurt their wrist to a point where she has 10/10 pain and not seek treatment from February 1, 2019, until August 2019. His opinion was supported by the fact that Petitioner was seen at the ART Program multiple times in February 2019 and made no mention of her upper extremity complaints. He opined it is beyond a reasonable degree of medical and surgical certainty that an individual who injures the right wrist, assuming that to be true, would develop structural pathology in the left upper extremity from overuse unless a pre-existing problem is present. He opined there was no causal connection between Petitioner's complaints of pain in the right wrist and left shoulder as a result of an accident at work on February 1, 2019, or due to an aggravation, exacerbation, or acceleration of a pre-existing condition. Based upon the records he reviewed, he did not feel Petitioner was in need of treatment related to an accident at work. He stated Petitioner needs to be seen by an orthopedic or hand surgeon to perform a thorough examination of the shoulder and wrist. He made no recommendations regarding work restrictions (RX 7).

Petitioner had additional visits with Dr. De La Cruz on March 16, 2020, June 20, 2020, and June 27, 2020, with no change in her symptoms. She noted she was in Mexico in late February and had COVID. She was having issues with the distance and money (PX 2).

Petitioner was seen for an examination by Dr. Ankur Chhadia at Suburban Orthopedics on August 19, 2021 at her attorney's request (PX 3). Petitioner complained of left shoulder pain and right wrist pain that began on February 1, 2019. Petitioner reported coming out of work early in the morning and claimed it was hard for her to see. There was ice on the ground on the step outside of her work. She slipped and fell forward on the ice onto her right wrist in an outstretched manner. Secondary to her right wrist injury, impairment, and disability, she began using her left shoulder and arm for most of her work functions and activities of daily living which resulted in left-sided shoulder pain that was progressive and persisting (PX 3). Petitioner stated that her occupation was a stuffer/hanger where she worked as a packer working with pepperoni. Each pepperoni stick weighed about 10 pounds. She would carry a total of six sticks into an elevator machine next to her. She would be lifting and pushing a total of 60 pounds every 45 minutes. She would stand in line for 8 to 10 hours a day

and did this work for approximately 40 hours per week. This involved lifting and repetitive motions which aggravated her left shoulder and right wrist (PX 3).

Physical examination noted mild swelling on the right hand with tenderness to palpation on the radiocarpal joint, ulnar greater that radial, and over the distal radioulnar joint. There was mild limitation of motion. The left shoulder noted positive tenderness with mild range of motion limitation. There were positive Neer and Hawkins impingement signs, some weakness on supraspinatus resistance, mild crepitation and grinding on range of motion, and positive Cross arm, Speed's, and O'Brien tests. Dr. Chhadia diagnosed Petitioner with right wrist synovitis, right wrist tendonitis and right wrist TFCC tear with ongoing persisting pain, dysfunction, impairment, and disability. He diagnosed left shoulder subacromial bursitis, impingement, rotator cuff tendonitis, labral tearing, acromioclavicular joint aggravation and left shoulder synovitis and capsulitis (PX. 3).

Dr. Chhadia recommended a formal physical therapy program for four to eight weeks, two to three times per week for both the right hand and left shoulder. He recommended over the counter or prescription anti-inflammatory nonsteroidal medications, daily icing, and a corticosteroid injection into the left shoulder subacromial space and right wrist joints. If she continued to have pain, he recommended MRI arthrogram for the right wrist and left shoulder. Based upon those studies, he would evaluate surgical intervention. He opined she was disabled from work and should have restrictions including no lifting with the bilateral arms, no repetitive work with the bilateral arms and no gripping/grasping with the right hand. Dr. Chhadia opined that the conditions he had diagnosed are causally related to the occupational injury and the repetitive overuse occupational conditions being performed by Petitioner (PX 3)

Dr. Chhadia testified by evidence deposition taken November 1, 2021 (PX 1). He testified to the history he took from Petitioner, including the fall on ice on February 1, 2019 and her job duties lifting 60 pounds every 45 minutes for 8 to 10 hours per day involving lifting and repetitive motions. He testified to his examination, diagnoses, and recommendations in accordance with his report. He opined that the right hand condition was directly caused from the fall on the outstretched hand primarily, and secondarily from the repetitive occupational functions described to him as part of her job. The left shoulder condition was causally connected to the repetitive occupational functions described to him as well as the overloading from a normal state, given the right arm disability and her working with the right arm disability which was secondary to the fall on ice (PX 1).

Dr. Chhadia testified that he relied on the Petitioner's history. He relied on her truthfulness. If the reporting was not truthful it could or might change his opinions. He did not review a job description or video. He reviewed the medical records of Dr. De La Cruz, and the MRI reports and films. He never reviewed the ART Program records. He was unaware Petitioner was seen at the ART Program on February 5, 2019, and February 12, 2019. Dr. Chhadia had no knowledge Petitioner only complained of non-work-related left foot pain on those dates and did not report any issues with her right wrist or left shoulder. He had no knowledge she failed to mention any slip and fall on February 1, 2019, when she was seen on those two alleged post-accident dates of treatment. If those records existed, they would be inconsistent with what she reported to him. If the ART Program records showed no treatment to her right wrist or left shoulder on February 5, or February 12, 2019, that would also be inconsistent with what she reported to him. He was unaware that on August 13, 2019, she reported slipping inside the Smithfield plant four months prior and falling on both outstretched hands. He testified that at no point in his report, or his examination of Petitioner did she ever mention slipping inside the plant at work in April 2019 or falling onto outstretched hands. She never mentioned any other slip and fall (PX 1).

Petitioner testified that she was off work between August 17, 2019 and January 1, 2021. She is now working for DoorDash and SLS, an employment agency. She earns about $325 per week from those 2 jobs. Petitioner admitted her 2021 1099 from DoorDash (PX 6) and her W-2 from SLS (PX 7). Petitioner does food delivery for DoorDash. SLS placed her packing swabs for COVID tests. Petitioner testified she has pain in her right hand and wrist. It hurts when it is cold or she uses it with force, like sweeping or mopping. It will swell. Her left shoulder hurts when she gets up and does her chores. Petitioner testified she stopped having treatment because the insurance company was denying it. She would like more treatment for her right hand and left shoulder including therapy and, if recommended, surgery.

Conclusions of Law

In support of the Arbitrator's decision with respect to (C) Accident, (D) Date of Accident, and (E) Notice, the Arbitrator finds as follows:

The claimant in a workers' compensation case has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. *O'Dette v. Industrial Comm'n, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 38 Ill. Dec. 133 (1980)*. Included within that burden is proof that his current condition of ill-being is causally connected to a work-related injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003).

Petitioner is seeking compensation for a claimed specific injury on February 1, 2019. Petitioner testified that she went out to the parking lot to take a picture of the damage to her car when she took her break. She testified that she was walking back to work when her foot slipped in the snow about 3 meters outside the company door, and she fell hitting her right arm and hand on the ground and landed on her right knee. Respondent has disputed the validity of this testimony and disputed that this accident occurred.

It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07, 459 N.E.2d 963, 76 Ill. Dec. 828 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041, 721 N.E.2d 1165, 242 Ill. Dec. 634 (1999).

Having heard the testimony and reviewed the totality of the evidence, the Arbitrator does not find the Petitioner's testimony credible. The Arbitrator notes that virtually every other piece of evidence entered contradicts Petitioner's testimony. Petitioner's testimony of the events of February 1, 2019 are contradicted by the testimony of Corey Stanton, the ART records, her own testimony, and the reasonable inferences taken from the testimony. Petitioner claims to have fallen outside while returning to the plant after taking a picture of the damage to her car caused by hitting a deer on the way to work during her break. She initially testified this break was just after 8:00 AM, then, when confronted with the fact her picture states it was taken at 7:41 AM, she said that she was returning to work about 8:00, then testified she was not sure of the exact time. Mr. Stanton credibly testified that no break would start before 7:45 and that Petitioner did not ask to take her break early. Given that her work is on an assembly line, such permission would be critical. Petitioner testified that she reported the fall immediately to Mr. Stanton. He denied any such reporting. She claims to have seen the nurse Sara, yet there is no nurse named Sara and the ART records do not show any visit on February 1. There is a visit prior for an unrelated foot injury. Mr. Stanton testified that any reported injury required an incident report to be completed. Petitioner would have us believe that no less than 4 supervisors were aware of her injury and

yet none completed this report. Petitioner testified that she was unable to use her hand and was in an ace wrap. Mr. Stanton credibly testified that he did not observe any wrap on her hand and that Petitioner at no time raised any complaints of problems with her right hand. Petitioner testified she was treated at the ART program for this injury on February 5 and 12, 2019, but the records do not reflect anything beyond the scheduled follow up for her unrelated foot injury. Petitioner reports 7 visits with Sara the nurse which are not documented anywhere. When Petitioner does raise complaints in her right hand and left shoulder, she reports a fall 4 months prior onto both arms inside the plant, which would be April, not February (over 6 months prior). Petitioner at first testified she meant the February 1 incident, but then testified that she did have another fall inside the plant in April, but cannot recall if she had any injuries. Petitioner's testimony of continued complaints until August are contradicted by her ability to work for 6 months without seeking any treatment and Mr. Gonzalez credible testimony that she performed full duty work without any complaints or evidence of disability. Claimant's "varied and inconsistent histories of the incident undermine her claim that she suffered accidental injuries arising out of and in the course of her employment. See *Todd Werneburg v. George Young & Sons*, 2019 Ill. Wrk. Comp. LEXIS 147, 19 IWCC 0138, affirmed *Werneburg v. Ill. Workers' Comp. Comm'n*, 2020 Il App 3d 190529WC-U, 2020 Ill. App. Unpub. LEXIS 1710. The Arbitrator also notes the inconsistencies, inaccuracies, and contradictions in her testimony as to her job duties as a stuffer/hanger which are more fully discussed in the decision in consolidated case 20WC015645 as further evidence of her lack of credibility.

Petitioner's lack of credibility is equally applicable to her claim to have provided notice of the accident to Corey Stanton, or any of the other claimed supervisors she testified were aware of her injury.

Based upon the record as a whole, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence that she sustained accidental injuries arising out of and in the course of her employment with Respondent on February 1, 2019 and further failed to prove that she provided notice of any such accident within the time limits stated in the Act.

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

A Workers' Compensation Claimant bears the burden of showing by a preponderance of credible evidence that his current condition of ill-being is causally related to the workplace injury. *Horath v. Industrial Commission*, 449 N.E.2d 1345, 1348 (Ill. 1983) citing *Rosenbaum v. Industrial Com.* (1982), 93 Ill.2d 381, 386, 67 Ill. Dec. 83, 444 N.E.2d 122). While the Arbitrator has found that Petitioner failed to prove accident or notice due to her lack of credibility, in light of the overlapping causation opinions provided between this specific February 1, 2019 slip and fall and the consolidated claims for repetitive trauma, the Arbitrator also will address the issue of Causal Connection.

Despite her testimony that she had continued disability to her right hand such that she had to overuse her left side in doing her job, which overuse caused her left shoulder problems, Petitioner worked full duty without complaint or request for aid for 6 months before seeking any medical care. The Commission has considered such a gap in care in determining causal connection. See: *Richard Olcikas v. Dominick's Finer Foods, Inc*., 2009 Ill. Wrk. Comp. LEXIS 1098, affirmed *Olcikas v. IWCC*, 2012 Ill. App. Unpub. LEXIS 26; 2011 IL App (1st) 103274WC-U; 2012 WL 6951575; *Jacob Haltom v. Center for Sleep Medicine*, 2013 Ill. Wrk. Comp. LEXIS 509; 13 IWCC 563, affirmed *Haltom v. IWCC*, 2015 IL App (1st) 133954WC-U; 2015 Ill. App. Unpub. LEXIS 1568; *Jose Ruben Meraz vs. Minute Men Staffing*, 2015 Ill. Wrk. Comp. LEXIS 30; 15 IWCC 30.

Petitioner presented the opinions of Dr. Chhadia who opined that the right hand condition was directly caused from the fall on the outstretched hand primarily, and secondarily form the repetitive occupational functions described to him as part of her job. The left shoulder condition was causally connected to the repetitive occupational functions described to him as well as the overloading from a normal state, given the right arm disability and her working with the right arm disability which was secondary to the fall on ice. Respondent offered the opinions of Dr. Phillips who opined it would be bizarre and beyond a reasonable degree of medical and surgical certainty for an individual to hurt their wrist to a point where she has 10/10 pain and not seek treatment from February 1, 2019, until August 2019. He opined it is beyond a reasonable degree of medical and surgical certainty that an individual who injures the right wrist, assuming that to be true, would develop structural pathology in the left upper extremity from overuse unless a pre-existing problem is present. He opined there was no causal connection between Petitioner's complaints of pain in the right wrist and left shoulder as a result of an accident at work on February 1, 2019, or due to an aggravation, exacerbation, or acceleration of a pre-existing condition.

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

The Arbitrator finds the opinions of Dr. Chhadia unpersuasive and adopts those of Dr. Phillips. Dr. Chhadia testified that he relied on the Petitioner's history. He relied on her truthfulness. If the reporting was not truthful it could or might change his opinions. He never reviewed the ART Program records. He was unaware Petitioner was seen at the ART Program on February 5, 2019, and February 12, 2019. Dr. Chhadia had no knowledge Petitioner only complained of non-work-related left foot pain on those dates and did not report any issues with her right wrist or left shoulder. He had no knowledge she failed to mention any slip and fall on February 1, 2019, when she was seen on those two alleged post-accident dates of treatment. That is inconsistent with what she reported to him. He was unaware that on August 13, 2019, she reported slipping inside the Smithfield plant four months prior and falling on both outstretched hands. He testified that at no point in his report, or his examination of Petitioner did she ever mention slipping inside the plant at work in April 2019 or falling onto outstretched hands. Also as more fully discussed in the decision in consolidated case 20wC015645, Dr. Chhadia was provided an inaccurate description of her job duties as a stuffer/hanger. Dr. Chhadia's opinions are based on incomplete and inaccurate information and are given no weight.

Based upon the record as a whole, the Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that she has any condition of ill-being to either her right hand or left shoulder that is causally related to the alleged accident on February 1, 2019.

In support of the Arbitrator's decision with respect to (J) Medical, (N) Credit, (K) Prospective Medical, and (L) Temporary Compensation, the Arbitrator finds as follows:

Based upon the Arbitrator's findings with respect to Accident, Notice and Causal Connection above, the remaining issues of Medical, Credit, Prospective Medical, and Temporary Compensation are moot.

Petitioner's claim for compensation for an accident on February 1, 2019 is hereby denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC015645
Case Name	Alicia Gonzalez Ortiz v. Smithfield Foods
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	22IWCC0456
Number of Pages of Decision	8
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Michelle Porro
Respondent Attorney	Heather Boyer

DATE FILED: 11/30/2022

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Alicia Gonzalez Ortiz,
Petitioner,

vs. NO: 20 WC 15645

Smithfield Foods,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, medical and temporary disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 25, 2022, is hereby affirmed and adopted.

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

There is no bond for the removal of this cause to the Circuit Court by Respondent. 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.

November 30, 2022
o11/9/22
DLS/rm
046

/s/*Deborah L. Simpson*
Deborah L. Simpson

/s/*Stephen J. Mathis*
Stephen J. Mathis

/s/*Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC015645
Case Name	GONZALEZ ORTIZ, ALICIA v. SMITHFIELD FOODS
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Michelle Porro
Respondent Attorney	Heather Boyer

DATE FILED: 4/25/2022

THE INTEREST RATE FOR THE WEEK OF APRIL 19, 2022 1.25%

/s/Stephen Friedman, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **DuPage**)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Alicia Gonzalez Ortiz
Employee/Petitioner

v.

Smithfield Foods
Employer/Respondent

Case # **20** WC **015645**

Consolidated cases: **See Decisions**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Wheaton**, on **March 10, 2022**. 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 _____

FINDINGS

On the date of accident, **August 16, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

In the year preceding the injury, Petitioner earned $**34,857.68**; the average weekly wage was $**670.34**.

On the date of accident, Petitioner was **42** years of age, ***married*** with **2** dependent children.

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

Respondent paid $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**4,800.24** for other benefits, for a total credit of $**4,800.24**.

Respondent is paid $**3,255.74** under Section 8(j) of the Act.

ORDER

BECAUSE PETITIONER HAS FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT SHE SUFFERED ACCIDENTAL INJURIES ARISING OUT OF AND IN THE COURSE OF HER EMPLOYMENT ON AUGUST 16, 2019, AND FAILED TO PROVE ANY CONDITION OF ILL-BEING IS CAUSALLY CONNECTED TO AN ACCIDENTAL INJURY ON AUGUST 16, 2019, PETITIONER'S CLAIM FOR COMPENSATION IS DENIED.

Petitioner's claims for compensation for dates of accident on February 1, 2019 and August 13, 2019 are addressed in the decisions in consolidated cases 19WC026038 and 21WC002885 decided in conjunction with this matter.

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.

/s/ Stephen J. Friedman APRIL 25, 2022
Signature of Arbitrator

ICArbDec19(b)

Statement of Facts

This matter was tried in conjunction with Consolidated cases 19WC026038 (DOA: 2/01/19) and 21WC002885 (DOA: 8/13/19). A single transcript was prepared. The Arbitrator has issued separate decisions for each case. Petitioner Alicia Gonzalez Ortiz testified in Spanish through an interpreter. The Arbitrator incorporates the Statement of Facts from the decision in 19WC026038 as if fully set forth herein.

Conclusions of Law

In support of the Arbitrator's decision with respect to (C) Accident and (D) Date of Accident, and (F) Causal Connection, the Arbitrator finds as follows:

The claimant in a workers' compensation case has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. *O'Dette v. Industrial Comm'n, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 38 Ill. Dec. 133 (1980)*. Included within that burden is proof that his current condition of ill-being is causally connected to a work-related injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003).In a repetitive trauma case, issues of accident and causation are intertwined. Therefore, a review of the evidence allows both issues to be resolved together." *Boettcher v. Spectrum Property Group and First Merit Venture Realty Group,* 97 W.C. 44539, 99 I.I.C. 0961.

In addition to the specific injury alleged on February 1, 2019 (19WC026038), Petitioner has filed 2 additional claims alleging repetitive trauma with manifestation dates on August 16, 2019 and August 13, 2019 (21WC002885). August 13, 2019 is the date Petitioner was seen at the ART clinic and provided a history of the fall in the plant on outstretched hands. She reported discomfort around her wrists, worse on the right as a result of slipping inside the factory four months prior and breaking the fall by landing on outstretched hands August 16, 2019 is the date that Petitioner saw Dr. De La Cruz with pain in her right wrist and left shoulder. Petitioner claimed her job required her to use her shoulders and wrist repetitively. The initial onset was right wrist pain due to a fall at work. Left shoulder onset was repetitive use and compensating for the right. Petitioner stated she has to use her upper extremity with repetitive motion at work and has been loading of that left side after her slip and fall.

An employee who suffers a repetitive trauma injury still may apply for benefits under the Act, but must meet the same *standard of proof* as an employee who suffers a sudden injury. *Durand v. Industrial Comm'n, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924, 308 Ill. Dec. 715 (2006)*. "In cases relying on the repetitive-trauma concept, the claimant generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability." *Williams v. Industrial Comm'n, 244 Ill. App. 3d 204, 209, 614 N.E.2d 177, 180, 185 Ill. Dec. 43 (1993)*.

The application in this matter alleges repetitive trauma. The Arbitrator is at a loss to determine if there is any difference in the allegations raised in 21WC002885, which also was presented as a claim for repetitive trauma, other that the manifestation date. The Arbitrator notes that Petitioner's expert provided two theories of causation for the Petitioner's shoulder condition. The left shoulder condition was causally connected to the repetitive occupational functions described to him as well as the overloading from a normal state, given the right arm disability and her working with the right arm disability which was secondary to the fall on ice. The Arbitrator will address accident and both theories of causation.

As more fully described in the decision in the consolidated case 19WC026038 decided in conjunction with this matter, Petitioner's testimony with respect to her claimed slip and fall on February 1, 2019 is contradicted by virtually every other element of the record including the ART clinic records and the credible testimony of both her supervisors, Corey Stanton, and Samuel Gonzalez. Petitioner's testimony with respect to her work activities thereafter through August 2019 is even less credible. She testified to continued problems with her right hand which required her to modify her work activities to favor her left hand. Yet she failed to seek any medical attention for 6 months. Mr. Gonzalez credibly testified that she performed her full duty functions without complaint, request for accommodation, request for medical attention, or noticeable disability for that entire time. He credibly testified that she never reported any work difficulty, injury, or pain. Even more incredible was Petitioner's false description of her job. She testified and reported to her doctors that she had to do heavy, repetitive lifting. She reported 60 pound lifting to chest level. She described her job as requiring this repetitive lifting. Yet the credible testimony of Mr. Gonzalez supported by the photos of the job clearly demonstrate that she was not lifting more that a few inches, and that much of her job was hooking the sausages onto the machine which did all of the rest of the lifting. The weigh involved was between 8 and 11.2 pounds. Petitioner's credibility was further diminished by her inconsistent descriptions of her job title, job duties, and responsibilities. The Arbitrator gives little if any weight to her testimony.

Dr. Chhadia specifically testified that he based his opinions on the history he took which includes the inaccurate job descriptions he received from Petitioner. He relied on her truthfulness. If the reporting was not truthful, it could or might change his opinions.

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

In *Nelson v. County of De Kalb, 363 Ill. App. 3d 206, 211, 840 N.E.2d 795, 298 Ill. Dec. 682 (2005),* the court found that none of the doctors who saw [claimant] had sufficient evidence regarding her work activities to form a reliable causation opinion, and held absent credible evidence, the burden of proof, which is on claimant, is dispositive. The Commission has determined a claimant fails to prove causation from repetitive trauma when the treating physician testified repetitive motions caused the injuries but failed to detail what repetitive motions the petitioner engaged in and the frequency of the motions. *Gambrel v. Mulay Plastics*, 97 IIC 238. Dr. Chhadia's opinions are based upon inaccurate and incomplete facts, including that Petitioner's suffered an accident on February 1, 2019, had continued disabling complaints through August 2019 and had a job

requiring repetitive lifting of 60 pounds every 45 minutes. The Arbitrator gives his causation opinion no weight. Respondent's opinion from Dr. Phillips, that it is beyond a reasonable degree of medical and surgical certainty that an individual who injures the right wrist, assuming that to be true, would develop structural pathology in the left upper extremity from overuse unless a pre-existing problem is present. He opined there was no causal connection between Petitioner's complaints of pain in the right wrist and left shoulder as a result of an accident at work on February 1, 2019, or due to an aggravation, exacerbation, or acceleration of a pre-existing condition, is persuasive.

Based upon the record as a whole, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence that she suffered accidental injuries arising out of and in the course of her employment on August 16, 2019, and failed to prove any condition of ill-being is causally connected to an accidental injury on August 16, 2019.

In support of the Arbitrator's decision with respect to (E) Notice, (J) Medical and (N) Credit, (K) Prospective Medical, and (L) Temporary Compensation, the Arbitrator finds as follows:

Based upon the Arbitrator's findings with respect to Accident and Causal Connection, the remaining issues are moot.

Petitioner's claim for compensation for a date of accident on August 16, 2019 is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC002885
Case Name	Alicia Gonzalez Ortiz v. Smithfield Foods
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	22IWCC0457
Number of Pages of Decision	6
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Michelle Porro
Respondent Attorney	Heather Boyer

DATE FILED: 11/30/2022

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Alicia Gonzalez Ortiz,
Petitioner,

vs. NO: 21 WC 2885

Smithfield Foods,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, medical and temporary disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 25, 2022, is hereby affirmed and adopted.

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

There is no bond for the removal of this cause to the Circuit Court by Respondent. 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.

November 30, 2022
o11/9/22
DLS/rm
046

/s/*Deborah L. Simpson*
Deborah L. Simpson

/s/*Stephen J. Mathis*
Stephen J. Mathis

/s/*Deborah J. Baker*
Deborah J. Baker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC002885
Case Name	GONZALEZ ORTIZ, ALICIA v. SMITHFIELD FOODS
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	4
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Michelle Porro
Respondent Attorney	Heather Boyer

DATE FILED: 4/25/2022

THE INTEREST RATE FOR THE WEEK OF APRIL 19, 2022 1.25%

/s/Stephen Friedman, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **DuPage**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Alicia Gonzalez Ortiz
Employee/Petitioner

v.

Smithfield Foods
Employer/Respondent

Case # **21** WC **002885**

Consolidated cases: **See Decisions**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Wheaton**, on **March 10, 2022**. 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 _____

FINDINGS

On the date of accident, **August 13, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

In the year preceding the injury, Petitioner earned $**34,857.68**; the average weekly wage was $**670.34**.

On the date of accident, Petitioner was **42** years of age, ***married*** with **2** dependent children.

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

Respondent paid $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**4,800.24** for other benefits, for a total of $**4,800.24**.

Respondent paid $**3,255.74** under Section 8(j) of the Act.

ORDER

BECAUSE PETITIONER HAS FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT SHE SUFFERED ACCIDENTAL INJURIES ARISING OUT OF AND IN THE COURSE OF HER EMPLOYMENT ON AUGUST 13, 2019, AND FAILED TO PROVE ANY CONDITION OF ILL-BEING IS CAUSALLY CONNECTED TO AN ACCIDENTAL INJURY ON AUGUST 13, 2019, PETITIONER'S CLAIM FOR COMPENSATION IS DENIED.

Petitioner's claims for compensation for dates of accident on February 1, 2019 and August 16, 2019 are addressed in the decisions in consolidated cases 19WC026038 and 20WC015645 decided in conjunction with this matter.

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.

/s/ Stephen J. Friedman **APRIL 25, 2022**
Signature of Arbitrator

ICArbDec19(b)

Statement of Facts

This matter was tried in conjunction with Consolidated cases 19WC026038 (DOA: 2/01/19) and 20WC015645 (DOA: 8/16/19). A single transcript was prepared. The Arbitrator has issued separate decisions for each case. Petitioner Alicia Gonzalez Ortiz testified in Spanish through an interpreter. The Arbitrator incorporates the Statement of Facts from the decision in consolidated case 19WC026038 as if fully set forth herein.

Conclusions of Law

In support of the Arbitrator's decision with respect to (C) Accident, (D) Date of Accident, and (F) Causal Connection, the Arbitrator finds as follows:

The Arbitrator notes that Petitioner has filed two claimed repetitive trauma claims. 20WC015645 alleging a manifestation date of August 16, 2019, and this matter alleging a manifestation date of August 13, 2019. To the extent that Petitioner presented to the ART Program on August 13, 2019 claiming that her complaints were sequelae of the February 1, 2019 fall, that theory is denied based upon the Arbitrator's findings in the decision in consolidated case 19WC026038 that Petitioner failed to prove that she sustained accidental injuries arising out of and in the course of her employment on that date. To the extent that that this claim involved an earlier date of manifestation of Petitioner's alleged repetitive trauma claim, the Arbitrator finds the issues raised identical to those of the alleged August 16, 2019 claim (20WC015645) and incorporates by reference his findings with respect to Accident and Causal Connection from 20WC015645 as if fully set forth herein.

Based upon the record as a whole, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence that she suffered accidental injuries arising out of and in the course of her employment on August 13, 2019, and failed to prove any condition of ill-being is causally connected to an accidental injury on August 13, 2019.

In support of the Arbitrator's decision with respect to (E) Notice, (J) Medical and (N) Credit, (K) Prospective Medical, and (L) Temporary Compensation, the Arbitrator finds as follows:

Based upon the Arbitrator's findings with respect to Accident and Causal Connection, the remaining issues are moot.

Petitioner's claim for compensation for a date of accident on August 13, 2019 is denied.