

**ILLINOIS WORKERS' COMPENSATION COMMISSION**  
**DECISION SIGNATURE PAGE**

Case Number	18WC013234
Case Name	Jose Felix v. Crystal Lake Chrysler
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	CORRECTED DECISION
Commission Decision Number	23IWCC0079
Number of Pages of Decision	13
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	David Martay
Respondent Attorney	Michael Chalcraft II

DATE FILED: 2/23/2023

*/s/ Carolyn Doherty, Commissioner*  

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*Signature*

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF McHENRY )

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

**BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION**

JOSE FELIX,  
  
Petitioner,

vs.

NO: 18 WC 13234

CRYSTAL LAKE CHRYSLER,  
  
Respondent.

**CORRECTED DECISION AND OPINION ON REVIEW**

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

While affirming and adopting the Decision of the Arbitrator, the Commission writes additionally on the issue of temporary total disability. The Arbitrator awarded temporary total disability benefits for the period from November 29, 2017, through May 1, 2018, and stated that the award represented 21 and 6/7ths weeks of disability. The Commission only corrects the calculation, as the period awarded represents 22 weeks of disability.

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 September 6, 2022, is hereby affirmed and adopted, but changed with respect to the calculation of the temporary total disability period.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,410.00 per week commencing November 29, 2017, through May 1, 2018, a period of 22 weeks, 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 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 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.

**February 23, 2023**

o: 2/16/23

CMD/kcb

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	18WC013234
Case Name	Jose Felix v. Crystal Lake Chrysler
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	David Martay
Respondent Attorney	Michael Chalcraft II

DATE FILED: 9/6/2022

THE INTEREST RATE FOR THE WEEK OF AUGUST 30, 2022 3.23%

*/s/ Paul Seal, Arbitrator*\_\_\_\_\_  
Signature

STATE OF ILLINOIS )

)SS.

COUNTY OF MCHENRY )

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

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

**Jose Felix**  
Employee/Petitioner

Case # **18 WC 13234**

v.

Consolidated cases:

**Crystal Lake Chrysler**  
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 **Arbitrator Seal**, Arbitrator of the Commission, in the city of **Woodstock**, on **July 6, 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 16, 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 **\$109,980.00**; the average weekly wage was **\$2,115.00**.

On the date of accident, Petitioner was **47** 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 of **\$0.00** under Section 8(j) of the Act.

**ORDER****F.**

The Arbitrator finds Petitioner has proven by a preponderance of the evidence that his current condition of ill-being as it relates to his bilateral shoulder injuries are causally related to his repetitive trauma work-injury on January 16, 2017.

**J.**

The Arbitrator finds Respondent is responsible for unpaid bills to IBJI totaling \$19,138.03, Hawthorn Surgery Center totaling \$49,729.00 and to Praxis Physical Therapy totaling \$8,347.00. These bills shall be paid to Petitioner per the statutory medical fee schedule.

**K.**

The Arbitrator finds Petitioner has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from November 29, 2017, through May 1, 2018. This represents 21 and 6/7<sup>th</sup> weeks of disability at a weekly disability rate of \$1,410.00 totaling \$30,818.51.

**L.**

The Arbitrator finds Petitioner sustained a permanency loss of 17.5% loss of a man as a whole pursuant to Section 8(d)(2) of the Act. This award amounts to 87.5 weeks of permanency at the maximum rate of \$775.18 totaling \$67,828.25.

**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.



**SEPTEMBER 6, 2022**

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Signature of Arbitrator

### FINDINGS OF FACT

Petitioner, Jose Felix, was a 47-year-old married man with no children under the age of 18 and employed by Crystal Lake Chrysler on January 16, 2017. He worked for the car dealership as a technician and had been employed by the Respondent for twelve years prior to his alleged work injury. (TR 12)

As a technician, Petitioner testified that he, “did everything from engine rebuilds to transmission rebuilds to wiring diagrams and anything from differentials to heavy work as a level three technician.” (TR 12-13)

Petitioner testified that his workday began at 8:00 am and he would typically work eleven hours per day until he clocked out at 7:00 pm. His job required him to spend more than half his day doing overhead work using impact guns that weighed up to 25 pounds, hand tools, air tools, and battery tools.

In January 2017, Petitioner noted he began to experience numbness in his fingers and arms, with pain primarily on the left side. Petitioner elected to file an Application for Adjustment of claim and alleged a repetitive trauma injury dating to January 16, 2017, which is the date that he reported his injuries to his employer. (RX1)

Two days after reporting his work injuries to his employer, Petitioner reported to Dr. Christ Pavlatos at the Illinois Bone and Joint Clinic. (PX1) At the initial evaluation, Dr. Pavlatos provided Petitioner with an injection into his left shoulder and prescribed physical therapy. *Id.* Petitioner returned to Dr. Pavlatos on June 29, 2017, with continued left shoulder pain. Petitioner was prescribed physical therapy for both his left and right shoulders and was given an epidural

injection to his left shoulder on that date. *Id.* In addition, Dr. Pavlatos prescribed MRIs of both left and right shoulder.

Petitioner underwent an MRI of each shoulder on November 10, 2017. (Px 1) Petitioner returned to Dr. Pavlatos on November 19, 2017, and he was given an injection to his right shoulder and prescribed surgery for the left shoulder. In addition, Dr. Pavlatos authorized Petitioner off work.

On December 18, 2017, Petitioner underwent surgery which included an arthroscopy of the left shoulder, debridement of the labrum, subacromial decompression distal clavicle resection along with rotator cuff repair. (PX3) Petitioner had follow up appointments with Dr. Pavlatos on January 31, 2018 and February 28, 2018 at which time the doctor continued to authorize Petitioner off work and prescribed physical therapy. (PX1) On April 26, 2018, Dr. Pavlatos prescribed an updated MRI of the right shoulder as well as prescribing physical therapy for the left shoulder. In addition, Dr. Pavlatos released Petitioner to return to work on May 1, 2018. *Id.* Petitioner has not sought any additional medical care with Dr. Pavlatos or any other physician for his shoulders since April 2018.

Petitioner returned to work for the Respondent in his same job as a technician on or around May 2, 2018. (TR 20)

Petitioner testified that prior to undergoing his surgery, he was called into the office by the owner of the company, Gary Rosenberg, (Tr. 21) At that time, Petitioner filled out leave forms for AFLAC. (RX2) Petitioner testified that he was ordered by his employer to fill out the forms for AFLAC. However, Petitioner testified that when he originally was requesting leave, he requested to receive benefits from workers' compensation (Tr. 22-23) Petitioner testified that he



was ordered by his employer to fill out the forms for AFLAC indicating the injury was not work related in order to obtain lost time benefits. (Tr. 23)

Subsequent to his employment with Respondent, Petitioner took a job with Gurnee Dodge which was near his home. At the time of hearing, Petitioner was employed by Woodstock Kunes Chrysler. (Tr. 27) Petitioner's current job is a foreman position which is a less physical than the job he was doing when employed by Respondent. *Id.* Additionally, Petitioner's current job requires him to do less overhead work than he was performing prior to his work injury and surgery. Petitioner further testified that since his surgeries, he does not work as quickly as he once did. He requires some help with the types of tools he is using, "because I can't keep my hands above my head for a long period of time." (Tr. 28) Petitioner further testified that in his current job he works on two to three cars per day versus the six or seven cars that he was working on for respondent before his work injury. (Tr. 29). When Petitioner performs overhead work, he notices numbness in his arms primarily in the left arm. Petitioner is left hand dominant.

Regarding his medical bills, Petitioner testified he has unpaid medical bills. He has medical bills due and owing to Illinois Bone & Joint Institute totaling \$19,138.03, Hawthorne Surgery Center totaling \$49,729.00, and Praxis Physical Therapy totaling \$8,347.00. (PX1, 3, 4)

On cross-examination, Petitioner testified that he had previously filled out forms for AFLAC regarding lost time pertaining to a bunion he had on his foot. (Tr. 37) Petitioner also confirmed that when he initially sought medical care with Dr. Pavlatos on January 18, 2017, the intake forms that he filled out did not contain a statement that his injuries were "work related." (Tr. 41-44) Petitioner further testified that when he initially saw his doctors, "I had pain in my shoulders. I just didn't know how, when and what was causing it. We had definitive answer when we got my MRI done and we did the ink or whatever and they injected into me at that

time.” (Tr. 48) Petitioner also was provided with a medical report from his physical therapist indicating he had been doing yard and some farm work in August 2017. (Tr. 53)

**Regarding the issue (F), Is Petitioner’s current condition of ill-being causally related to the injury, the Arbitrator finds the following:**

Petitioner credibly testified that his work as a technician for a Respondent required him to perform overhead duty work at least five to six hours per day. In addition, Petitioner testified that he would use power tools that sometimes weighed up to 25 pounds in order to repair cars while doing work overhead. The Arbitrator notes that in the report from Dr. Pavlatos dated November 29, 2017, the doctor wrote, “At this point, it is my feeling that the patients both shoulder problems are a result of this overhead activity related to the work he does as a mechanic.” (PX1) The Arbitrator further notes that Respondent did not offer any expert opinions to rebut the report and/or opinion of Dr. Pavlatos.

To dispute causation, Respondent offered forms Petitioner and Respondent’s employees filled out for AFLAC. (RX2) The Arbitrator specifically notes that Petitioner signed forms indicating that his injuries were not work related. The Arbitrator also takes into consideration the fact that Petitioner did not state on the initial intake forms with his doctor that his injuries were “work related.”

Rather, Petitioner testified that he was directed by his employer to fill out the AFLAC forms indicating that his injuries were not work related in order to receive disability payments while he was off work. Petitioner credibly testified that when he initially reported the injury to his employer, he advised he wanted to receive workers' compensation benefits, but was directed to fill out the AFLAC forms stating otherwise. There was no testimony proffered by the

Respondent to rebut Petitioner's testimony that he was ordered by his employer to fill out the AFLAC forms indicating his injuries were not work related.

The Arbitrator places the most weight on the causation issue with respect to the report generated by Dr. Pavlatos stating that the injuries were "work related." Petitioner's testimony was credible that he was directed to fill out the AFLAC forms denying that his injuries were work related. Further, Petitioner's testimony regarding his job and job duties for the Respondent were substantial enough to justify a repetitive trauma injury to his shoulders resulting in a left shoulder surgery and a torn right shoulder labrum. (PX1)

The Arbitrator finds that Petitioner has proven by the preponderance of the evidence that his current condition of ill-being as it relates to his bilateral shoulders is causally related to his repetitive trauma work injury on January 16, 2017.

**Regarding the issue (J), were the medical services that were provided to Petitioner reasonable and necessary, the Arbitrator finds the following:**

Having found Petitioner's current condition of ill being is related to his work injury on January 16, 2017, all medical care provided to Petitioner in order to resolve his bilateral shoulder injuries has been reasonable and necessary. The Arbitrator places the greatest weight regarding causation on the opinions of Dr. Pavlatos. The Arbitrator finds that Respondent is responsible for unpaid medical bills to Illinois Bone & Joint Institute \$19,138.03, Hawthorne Surgery Center \$49,729.00 and Praxis Physical Therapy \$8,347.00. (PX1, 3, 4) These bills shall be paid to Petitioner per the statutory medical fee schedule.

**Regarding the issue (K), what temporary benefits are in dispute, the Arbitrator finds the following:**

Having found Petitioner suffered injuries to his bilateral shoulders on January 16, 2017, the Arbitrator finds that Petitioner should have been paid proper TTD benefits for the time that

he was authorized off work by Dr. Pavlatos. Petitioner credibly testified that he was off work from November 29, 2017, through May 1, 2018. This period of lost time is confirmed by the treating medical records from Dr. Pavlatos. (PX1) Further, having found that Petitioner's bilateral shoulder injuries are work related, the Arbitrator awards Petitioner his lost time benefits.

The Arbitrator finds that Petitioner has proven by the preponderance of the evidence that he is entitled to temporary total disability benefits from November 29, 2017, through May 1, 2018. This represents 21 6/7<sup>th</sup> weeks of disability at a rate of \$1,410.00 totaling \$30,818.51.

**Regarding the issue (I), what is the nature and extent of the injury, the Arbitrator finds the following:**

Section 8.1(b) of the Act 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 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."

For factor (i), no AMA rating was introduced into evidence, so no weight is given to this factor.

As for factor (ii), Petitioner testified that he worked in the same position following his work injury although he was working at a slower rate of pace, but not suffering any wage loss. Some weight is given to this factor.

As for factor (iii), Petitioner suffered this work injury at age 47. Petitioner's young age means he will have to live with these bilateral shoulder issues for several years. More weight is given to this factor.

As for factor (iv), Petitioner presumably did not suffer loss of future earning capacity. Less weight is given to this factor.

As for factor (v), Petitioner testified that he continues to suffer some bilateral shoulder numbness when he does work overhead. He does not take any prescribed medications. He is back to work, but now as a foreman which does not require him to perform as much physical work on a daily basis. Some weight is given to this factor.

The Arbitrator finds Petitioner sustained a permanency loss of 17.5% man as a whole. As noted, Petitioner underwent a left shoulder surgery with a rotator cuff repair and was also diagnosed with a right shoulder tear per the MRI. (PX1) This award amounts to 87.5 weeks of permanency at the maximum rate of \$775.18 totaling \$67,828.25.