

STATE OF ILLINOIS)
) SS.
COUNTY OF LA SALLE)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Joshua L. Dobbels,

Petitioner,

vs.

NO: 19 WC 036459
22 IWCC0192

Brice R. Weber, Kelly J. Weber,
Alpha Feed Mill Inc., and Michael
W. Frerichs, State Treasurer and ex-
Officio Custodian of the IWBF,

Respondent,

ORDER OF RECALL OF DECISION UNDER SECTION 19(f)

Pursuant to Section 19(f) of the Act, the Commission, upon motion of the Petitioner filed May 25, 2022, finds that a clerical error exists in the Decision and Opinion Under Section 4(d) dated May 25, 2022, in the above captioned matter, which incorrectly lists the named Respondents.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Section 19(f) motion filed by Petitioner on May 25, 2022 is hereby granted and that the Decision and Opinion Under Section 4(d) dated May 25, 2022 is hereby vacated and recalled pursuant to Section 19(f) for a clerical error contained therein.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Decision and Opinion Under Section 4(d) shall be issued simultaneously with this Order.

July 14, 2022

r: 7/13/22
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/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

STATE OF ILLINOIS)
) SS.
COUNTY OF LA SALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Joshua L. Dobbels,

Petitioner,

vs.

No. 19 WC 36459

Brice R. Weber, Kelly J. Weber,
Alpha Feed Mill Inc., and Michael
W. Frerichs, State Treasurer and ex-
Officio Custodian of the IWBF,

Respondents.

CORRECTED DECISION AND OPINION UNDER SECTION 4(d)

This matter comes before the Commission on Petitioner's petition pursuant to section 4(d) of the Workers' Compensation Act (the Act) (820 ILCS 305/4(d) (West 2018)). For the reasons that follow, the Commission grants the petition.

Petitioner filed a petition for immediate hearing pursuant to section 19(b) of the Act on July 1, 2021, alleging that he sustained injuries to his back, both upper extremities and both lower extremities on September 4, 2019, while working for Respondents Brice Webber, Kelly Weber, and Alpha Feed Mill Inc. On August 6, 2021, Petitioner filed his petition pursuant to section 4(d) of the Act, requesting that the Commission find that Respondents knowingly failed to comply with its legal obligation to carry workers' compensation insurance and declare that Respondents shall not be entitled to the benefits of this Act during the period of noncompliance, but shall be liable in an action under any other applicable law of this State. On May 10, 2022, Commissioner Carolyn M. Doherty held a hearing, with proper notice given.¹ Petitioner and the Injured Workers Benefit Fund were represented by counsel, and a record was made.

¹ See Petitioner's Exhibits 10, 11, and 12.

I. Findings of Fact

Petitioner testified that in September 2019, he was a little over 19 years old. Tr. 7. He stated that he understood that Respondent Alpha Feed Mill was owned by Respondents Brice Weber and Kelly Weber. Tr. 8-9. Petitioner submitted into evidence Petitioner's Exhibit 4, the results of a search executed on the Secretary of State's website indicating that Brice Weber and Kelly Weber were the President and Secretary, respectively, of Alpha Feed Mill, Inc. He also submitted Petitioner's Exhibit 5, a Warning Letter issued on March 5, 2019 retrieved from the website of the Food and Drug Administration (FDA), in which the agency identifies Brice Weber and Kelly Weber as co-owners, as well as the President and Secretary, respectively, of Alpha Feed Mill, Inc. Petitioner described Respondent Alpha Feed Mill as a feed storage warehouse. Tr. 10. He also testified that Respondents used "a forklift, all kinds of tractors, feed trucks and more" in the operation of the business. Tr. 10.

Petitioner further testified that he obtained a job with Respondents on September 3, 2019, at which time a woman named Mary employed by Respondents took his Social Security and driver's license information and made a time card for him. Tr. 10-12, 14. Petitioner submitted his time card, stamped for September 3, 2019, as Petitioner's Exhibit 13. He testified that he was going to be paid on an hourly basis, which is why he was given a time card. Tr. 11, 15. Petitioner did not know the exact pay rate, but a co-worker named Zach had mentioned that he was making approximately \$11.00 or \$12.00 per hour. See Tr. 13, 15. He testified that his brother had previously worked for Respondents and had received a check weekly or bi-weekly. Tr. 16. According to Petitioner, Mary had taken his Social Security information so they could withhold taxes and intended to hold his first check for a week. Tr. 17.

Petitioner stated that Kelly Weber showed him around the facility before he started working that day. Tr. 10-11. Petitioner testified that on his first work day, he did a lot of cleaning and organizing the warehouse, sweeping up, and moving around pallets. Tr. 12. He added that there were at least two other employees working at the facility aside from the Webers. Tr. 13. He later stated that he had received no payment from Respondents for his work. Tr. 24.

Petitioner testified that on the afternoon of September 4, 2019, Kelly Weber told him, Zach and a co-worker named Blake to clear the warehouse because a semi-trailer truck was coming in. He stated that Kelly ordered Zach to instruct him on how to switch grain bins because the current bin was full and the truck was going to be unloading grain. Tr. 18. According to Petitioner, Zach showed him how to switch bins, which involved using a "manlift," which he described as similar to a rope-operated grain elevator within the facility. Tr. 18-19. Petitioner estimated the manlift as being 40 feet in height. Tr. 18-19. He testified that after Zach showed him how to switch bins, he and Zach were headed down, but the manlift collapsed when he entered it by himself. Tr. 18-19.

Petitioner stated that he suffered numerous injuries as a result of the 40-foot fall. Tr. 20. He testified that he broke his left arm, had two rods in his back, and a rod in his left leg. Tr. 21. According to Petitioner, both of his heels were shattered and repaired. Tr. 21. He added that his Achilles tendon was surgically removed. Tr. 21. He stated that he has not worked since his fall and has received no workers' compensation benefits from Respondents or affiliated insurers. Tr. 21-22.

Jennifer Dobbels, Petitioner's mother, also testified that Petitioner's brother, James Dobbels, had worked for Respondents a year or two before Petitioner's injury. Tr. 25-26. Ms. Dobbels recalled that James was paid an hourly wage, though she did not recall the rate. Tr. 26. She also recalled that James received a check bi-weekly and that Respondent withheld taxes. Tr. 26. She testified that she contacted Kelly about obtaining the name of Respondents' workers' compensation carrier or adjustor, but never received an answer. Tr. 26-27, 29. Ms. Dobbels testified that she never received any workers' compensation benefits on behalf of Petitioner. Tr. 28.

Petitioner further submitted into evidence Petitioner's Exhibit 6, an affidavit from Zack Milner, an employee of the National Council on Compensation Insurance (NCCI), the Commission's agent for the purpose of collecting proof of insurance information on Illinois employers who have purchased workers' compensation insurance from carriers. Millner stated that his search of business records for the period of May 30, 2012 through December 15, 2020 produced no policy information showing proof of workers' compensation insurance for Alpha Feed Mill for the period from April 5, 2020 through December 15, 2020. Petitioner additionally submitted the results of searches executed on the Commission's Employer Insurance Coverage Search web page, which provides information regarding: (1) employers that have bought a workers' compensation insurance policy, based on the NCCI database; and (2) employers (parent companies and their subsidiaries) that have obtained Commission approval to self-insure. Petitioner's Exhibit 1, Exhibit A indicates that no results were found for Brice Weber, Kelly Weber, or any employer containing the terms Alpha Feed for the coverage date of September 4, 2019.

II. Conclusions of Law

Pursuant to section 4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance. See 820 ILCS 305/4(a) (West 2018). Section 4(d) of the Act provides in part that "[e]mployers who are subject to and who knowingly fail to comply with this Section shall not be entitled to the benefits of this Act during the period of noncompliance, but shall be liable in an action under any other applicable law of this State." 820 ILCS 305/4(d) (West 2018). Accordingly, in order for the Commission to grant a motion pursuant to section 4(d) of the Act, Petitioner must establish that: Respondents were subject to the Act; Petitioner was an employee of Respondents on September 4, 2019; and Respondents knowingly failed to provide workers' compensation insurance which would have covered the injuries Petitioner sustained when the manlift collapsed.

The Commission finds that Respondents were engaged in the operation of a warehouse or general or terminal storehouse, as well as a business or enterprise in which electric, gasoline or other power-driven equipment is used in the operation thereof, and therefore were subject to the Act and required to provide workers' compensation insurance to their employees. See 820 ILCS 305/3(4),(15) (West 2018).

The Commission also finds that Petitioner was an employee of Respondents on September 4, 2019. Based on the testimony from Petitioner and his mother, including reasonable inferences

to be drawn from the prior employment of Petitioner's brother, Respondents controlled the manner in which Petitioner was to work (*e.g.*, having ordered a co-worker to instruct him on switching grain bins), provided a time card from which he was to be paid hourly, and obtained his Social Security information in order to withhold taxes—evidencing an employer-employee relationship under the *Roberson*² test.

Finally, an employer is presumed to be aware of the laws to which it is subject. *E.g.*, *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 157 (2000). Respondents are thus presumed to have known of their obligations under section 4 of the Act. Petitioner submitted an NCCI affidavit and search results from the Commission's web site which found no results which would indicate proof that Respondents carried workers' compensation insurance for September 4, 2019. There is no evidence in this record indicating that Respondents were operating under the mistaken belief that they were maintaining workers' compensation insurance on the accident date or any other date. Accordingly, the Commission concludes that Respondents knowingly failed to provide workers' compensation insurance which would have covered the injuries Petitioner sustained while employed by Respondents on September 4, 2019. As such, Respondents "are no longer entitled to the benefits and protections of the Act and may be sued in civil court." See *Keating v. 68th and Paxton L.L.C.*, 401 Ill. App. 3d 456, 466 (2010).

IT IS THEREFORE FOUND THAT Respondents knowingly failed to comply with Section 4(d) of the Act and therefore Respondents shall not be entitled to the benefits of this Act during the period of noncompliance, including September 4, 2019, but shall be liable in an action under any other applicable law of this State.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's petition pursuant to section 4(d) of the Act is granted.

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.

July 14, 2022

r: 7/13/22

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/s/ Carolyn M. Doherty
Carolyn M. Doherty

/s/ Marc Parker
Marc Parker

/s/ Christopher A. Harris
Christopher A. Harris

² *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 174-75 (2007).

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22 IWCC 0219
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STATE OF ILLINOIS
COUNTY OF COOK

) BEFORE THE ILLINOIS WORKERS'
)SS. COMPENSATION COMMISSION

ANGELA HIGLEY,

Petitioner,

vs.

Nos. 11 WC 22921
22 IWCC 0219

WAL-MART STORES INC. #1955,
Respondent.

ORDER

The Commission on the Motion of Respondent recalls the Decision and Opinion On Review of the Illinois Workers' Compensation Commission dated June 16, 2022, pursuant to Section 19(f) of the Act due to a clerical error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Order on Review dated June 16, 2022, is hereby recalled and a Corrected Decision and Opinion on Review is hereby issued simultaneously.

July 20, 2022

/s/ Stephen J. Mathis
Stephen J. Mathis

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANGELA HIGLEY

Petitioner,

vs.

NO: 11 WC 22921
22 IWCC 0219

WAL-MART STORES, Inc.
#1955

Respondent.

CORRECTED DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Cook County. Respondent filed a Petition for Review before the Commission on March 14, 2019, seeking review of the issues of medical expenses, prospective medical care, and temporary total disability. The Commission affirmed the Arbitrator's Decision with corrections and ordered (in pertinent part) that "Respondent shall authorize and pay for reasonable and necessary prospective medical care per the direction of Dr. Michael Rock." Respondent Walmart filed for review of the Commission's Decision in the Circuit Court of Cook County.

Per the remand order, dated December 16, 2021, Honorable Daniel P. Duffy confirmed the Commission's Decision of October 2, 2020, relative to causation, medical expenses, and temporary total disability. The Court set aside the Commission's Decision relative to the award of prospective medical care pursuant to Section 8(a) of the Act. The Court remanded the matter

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to the Commission for further proceedings and fact finding on the issue of prospective medical care, namely “identifying whatever specific medical procedures or treatments are reasonable and necessary (including, but not limited to the neuropsychological examination and trial spinal cord stimulator recommended by Dr. Rock and/or the spinal cord stimulator recommended by Dr. Mark Cirella)- and entry of an award for any such care.”

Procedurally, this matter was tried on a 19(b) petition before Arbitrator Hegarty on October 16, 2018. Petitioner sustained a work-related accident on March 27, 2011, when a wood pallet fell on her left foot causing a contusion and non-specific bone marrow edema of the posterior talus. Petitioner was 27 years of age at the time of her injury. She developed the clinical indicia of complex regional pain syndrome in her left foot and ankle. Petitioner was referred to Dr. Mark Cirella, an anesthesiologist, and underwent a course of treatment for pain management issues. She also consulted Dr. Sean MacKenzie, a physiatrist with specialization in interventional pain management. Both Dr. Cirella and Dr. MacKenzie have opined that Ms. Higley may benefit from placement of a spinal cord stimulator to manage her chronic pain. Dr. MacKenzie commented in his charting that Petitioner’s young age made the use of a spinal cord stimulator preferable to long-term management with narcotic pain medications.

In 2017 Petitioner presented to Dr. Michael Rock, an anesthesiologist at the Chicago Institute for Neuropathic Pain. Dr. Rock agreed with the diagnosis of complex regional pain syndrome. Both Dr. Cirella and Dr. Rock testified that Petitioner’s current condition of ill-being i.e., CRPS is causally related to her work accident of March 27, 2011.

Dr. Cirella and Dr. Rock each testified to the opinion that Petitioner might benefit from placement of a spinal cord stimulator. The medical decision to place a permanent SCS requires that the patient first undergo a neuropsychological examination to determine if major depression, secondary gain, or psychosis are issues with the patient. Following the psychological assessment, a trial stimulator is placed to evaluate patient response and determine whether she is a candidate for placement of a permanent spinal cord stimulator.

The Commission, having reviewed the facts and evidence finds that a neuropsychological assessment and trial placement of a spinal cord stimulator are reasonable and necessary to treat Petitioner’s condition of complex regional pain syndrome. The Commission further finds that if the assessment and trial placement indicate that Petitioner is a candidate for placement of a permanent spinal cord stimulator that said procedure is reasonable and necessary based upon the recommendation of Dr. Rock, and that Petitioner is entitled to this prospective medical care.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of \$255.91 per week for a period of 387 4/7 weeks, commencing April 8, 2011 through April 15, 2011, and commencing May 22, 2011 through October 16, 2018; that being the period of temporary total incapacity to work under Section 8(b), and that as provided in Section 19(b) of the Act. This award in no instance shall be a bar to a further hearing and

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determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent is due a credit for some TTD already paid in the amount of \$24,894.72

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$2,941.11 billed by IWP, for medical expenses under Sections 8(a) and 8.2 of the Act. These bills shall be paid to Petitioner per the statutory medical fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for a neuropsychological examination and trial spinal cord stimulator placement followed by permanent spinal cord stimulator implantation, if medically indicated based upon the recommendations of Dr. Michael Rock, as well as the reasonable and necessary cost of medical services associated with the foregoing procedures.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Honorable Daniel P. Duffy of the Circuit Court of Cook County, or any judge sitting in his stead, for final decision on the pending appeal. The record shall be sent back to the Circuit Court of Cook County.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under Section 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 the Circuit Court.

July 20, 2022

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/s/ Stephen J. Mathis
Stephen J. Mathis

/s/ Deborah J. Baker
Deborah J. Baker

/s/ Deborah L. Simpson
Deborah L. Simpson