18WC010060
21IWCC0133

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

Ashley Bridges,

Petitioner,

vs. NO. 18WC010060
21IWCC0133

State of Illinois/Choate Mental Health Center,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

A Timely Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Decision and Opinion on Review dated March 18, 2021 has been filed by Respondent herein. Upon consideration of said Petition, the Commission is of the opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated March 18, 2021 is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein.

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

Pursuant to Section 19(f)(l) of the Act, there shall be no right of appeal as the State of Illinois is Respondent in this matter.

APRIL 23, 2021

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

SM/msb
o-1/19/21
44

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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ASHLEY BRIDGES,

Petitioner,

vs. NO: 18 WC 10060
21IWCC0133

STATE OF ILLINOIS/CHOATE
MENTAL HEALTH CENTER,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, 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.

Permanent Disability

The Commission views the evidence of disability differently with respect to the Section 8.1b(b) factor (iv).

(iv) the employee's future earning capacity

No evidence was presented to support a finding that Petitioner's injuries have or would detrimentally affect her future earning capacity. The Arbitrator engaged in speculation in concluding that negative repercussions would manifest in the near future. At the time of hearing

Petitioner has returned to full-duty and has not sustained a loss of earnings. The Commission finds that less weight should have been given to this factor. This factor weighs heavily in favor of decreased permanent disability.

Having weighed the evidence and analyzed the Section 8.1b(b) factor (iv), the Commission finds that Petitioner sustained a 20% loss of the use of the left great toe, and 30% loss of the use of the left foot under Section 8(d)2 of the Act.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $418.31 per week for 50.1 weeks, because the injuries sustained caused 30% loss of the use of the left foot, and the sum of $418.31 for 7.6 weeks because the injuries sustained caused the loss of use of 20% of the left great toe.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the respective medical providers the medical expenses outlined in Petitioner's Exhibit 1, subject to the Illinois medical fee schedule or PPO agreement, whichever is less, as stipulated by the parties, for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given credit for medical benefits that have been paid through its group carrier, 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 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)(l) of the Act, there shall be no right of appeal as the State of Illinois is Respondent in this matter.

APRIL 23, 2021

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

SM/msb
o-1/19/21
44

/s/*Thomas Tyrrell*
Thomas Tyrrell

19WC009771
21IWCC0133

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

Ashley Bridges,

Petitioner,

vs. NO. 19WC009771
21IWCC0133

State of Illinois/Choate Mental Health Center,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

A Timely Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Decision and Opinion on Review dated March 18, 2021 has been filed by Respondent herein. Upon consideration of said Petition, the Commission is of the opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated March 18, 2021 is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein.

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

Pursuant to Section 19(f)(l) of the Act, there shall be no right of appeal as the State of Illinois is Respondent in this matter.

APRIL 23, 2021

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

SM/msb
o-1/19/21
44

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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ASHLEY BRIDGES,

Petitioner,

vs. NO: 19 WC 09771
21IWCCC0133

STATE OF ILLINOIS/CHOATE
MENTAL HEALTH CENTER,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, 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.

Permanent Disability

The Commission views the evidence of disability differently with respect to the Section 8.1b(b) factor (iv).

(iv) the employee's future earning capacity

No evidence was presented to support a finding that Petitioner's injuries have or would detrimentally affect her future earning capacity. The Arbitrator engaged in speculation in concluding that negative repercussions would manifest in the near future. At the time of hearing

Petitioner has returned to full-duty and has not sustained a loss of earnings. The Commission finds that less weight should have been given to this factor. This factor weighs heavily in favor of decreased permanent disability.

Having weighed the evidence and analyzed the Section 8.1b(b) factor (iv), the Commission finds that Petitioner sustained a 20% loss of the use of the left great toe, and 30% loss of the use of the left foot under Section 8(d)2 of the Act.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $418.31 per week for 50.1 weeks, because the injuries sustained caused 30% loss of the use of the left foot, and the sum of $418.31 for 7.6 weeks because the injuries sustained caused the loss of use of 20% of the left great toe.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the respective medical providers the medical expenses outlined in Petitioner's Exhibit 1, subject to the Illinois medical fee schedule or PPO agreement, whichever is less, as stipulated by the parties, for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given credit for medical benefits that have been paid through its group carrier, 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 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)(l) of the Act, there shall be no right of appeal as the State of Illinois is Respondent in this matter.

APRIL 23, 2021

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

SM/msb
o-1/19/21
44

/s/*Thomas Tyrrell*
Thomas Tyrrell

18WC017792

21IWCC0157

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

Ivette Perez Rodriguez,

Petitioner,

vs. NO. 18WC017792
21IWCC0157

Illinois Department of Transportation,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

A Timely Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Decision and Opinion on Review dated April 6, 2021 has been filed by Petitioner herein. Upon consideration of said Petition, the Commission is of the opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated April 6, 2021 is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein.

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

APRIL 23, 2021

SM/sj
44

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

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 Causal connection	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

IVETTE PEREZ RODRIGUEZ,

Petitioner,

vs. NO: 18WC 017792
21IWCC0157

ILLINOIS DEPARTMENT OF TRANSPORTATION,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petitioner for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability and permanent disability, and being advised of the facts and law, reverses the Decision of the Arbitrator for the reasons stated below.

On June 10, 2018 Petitioner filed an application for adjustment of claim alleging repetitive trauma to the right hand and thumb with a manifestation date of April 16, 2018. On June 15, 2018 Petitioner filed an application for benefits asserting that she sustained injury to her left thumb on November 13, 2017 that occurred while carrying GPS equipment. The matters were consolidated for trial.

Petitioner had been employed by IDOT as a land surveyor for 18 eighteen years and is 53 years of age. She testified that in her work she utilizes a device known as a controller. This is a

GPS device attached to a pole which combine to weigh 10-15 lbs. and is carried from one location to another over the course of her workday. Petitioner uses both hands to type and rotates her wrists continually while recording data which measure roads, buildings, sidewalks and trees on the controller.

On November 13, 2017 Petitioner consulted Dr. Michael Birman for symptoms of numbness, tingling and pain in both hands. Dr. Birman diagnosed Petitioner with left carpal tunnel syndrome, trigger finger in the left thumb and right de Quervain's tenosynovitis. Dr. Birman administered a steroid injection in Petitioner's left thumb.

Petitioner returned to Dr. Birman in follow up on December 20, 2017 at which time a recommendation was made for surgery on Petitioner's left hand. On April 16, 2018 Petitioner underwent a bilateral EMG of the upper extremities which revealed moderate to severe bilateral median neuropathies at the wrist. The left wrist was more symptomatic. Petitioner elected to proceed with surgery. Throughout this time Petitioner continued to work full duty.

On May 1, 2018 Dr. Birman performed a left carpal tunnel release and left trigger finger release. Post-operatively Petitioner had work restrictions which included no forceful grip and no lifting, pushing or pulling. On June 12, 2018 Petitioner had surgery on her right hand which included trigger thumb release, carpal tunnel release, and first extensor tunnel release. Petitioner was off work and undergoing occupational therapy. She returned to full-duty work on August 27, 2018 and was discharged from care by Dr. Birman in September 2018.

Petitioner testified that she continues to experience occasional numbness and pain in both thumbs which she treats with Tylenol. She also experiences a loss of hand strength overall which is more pronounced on the right.

Dr. Birman, Petitioner's treating physician authored a report on August 5, 2019 which was received in evidence (PX4) which expressed the opinion that her described work activities "could have" aggravated the condition in her hands. He notes that an EMG performed on April 16, 2018 which was diagnostic for bilateral carpal tunnel syndrome. He additionally diagnosed right and left trigger thumbs, right de Quervain's tenosynovitis, and right and left thumb carpometacarpal joint arthritis.

In his report Dr. Birman comments that Petitioner's description of her work activities which include forceful and sustained use of her thumbs could be aggravating factors in her symptomatology. Petitioner's testimony at hearing describes work activities that would support causal connection.

Respondent retained Dr. Andrew Zelby as a Section 12 expert who examined Petitioner on May 22, 2019. Dr. Zelby characterized the EMG study as "equivocal" and did not believe that

her subjective complaints could be ascribed to any kind of neurological condition of her neck or upper extremities. He maintained that Petitioner had undergone bilateral carpal tunnel releases and had "essentially normal motor and sensory exams of both hands" and failed to demonstrate causal connection. The Commission finds it notable that Dr. Zelby did not offer any opinion concerning Petitioner's de Quervain's tenosynovitis or trigger fingers.

The Arbitrator denied Petitioner's claims on both hands finding that the medical opinion on causal connection stated by Dr. Birman was equivocal and ambiguous. He found the opinions expressed by Dr. Zelby to be persuasive. The Commission views the evidence differently and finds that the causation opinion expressed by Dr. Birman concerning Petitioner's condition of ill-being in her right and left thumbs supports the claim. Petitioner has met her burden of proof and the Commission hereby reverses the Arbitrator's Decision on the causal connection concerning injury to Petitioner's thumbs and affirms all else.

As to the nature and extent of Petitioner's injury, the Arbitrator did not consider the five factors under Section 8.1(b) of the Act as he considered the issue of nature and extent moot. The Commission having found accident and causal connection in this claim, and taking into consideration the following five factors listed under Section 8.1(b) of the Act, awards Petitioner 30% loss of the use of the right thumb and 30% loss of the use of the left thumb.

(i) Impairment rating: The Commission gives no weight to this factor as neither party offered any evidence or opinion relative to impairment.

(ii) Occupation of the Injured Employee:
(iii) Petitioner's Age:
(iv) Petitioner's Future Earning Capacity:
(v) Evidence of Disability:

In light of the foregoing factors, with no single enumerated factor being the sole determinant of disability, the Commission awards 30% loss of the use of the right thumb and 30% loss of the use of the left thumb for Petitioner's bilateral hand condition.

For the foregoing reasons the Commission reverses the Decision of the Arbitrator filed on January 28, 2020 in claim numbers 18 WC 17792 and 18 WC 17917 with regard to the condition of ill being in Petitioner's right and left thumbs and affirms all else.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 28, 2020 is reversed in part for the reasons stated above, as to the causal

connection of the condition of ill-being in Petitioner's right and left thumbs and is affirmed in all else.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $843.84 per week for a period of 17 weeks, commencing May 1, 2018 through August 27, 2018, 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 all reasonable and necessary medical expenses detailed in Petitioner's Exhibits 1 & 2, namely the bill from Alexian Brothers Medical Center totaling $11,685.43, and Hand to Shoulder Medical Associates totaling $4,696.00, pursuant to Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit for amounts paid on behalf of Petitioner on account of said accidental injuries under its group health plan pursuant to Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $759.45 per week for a period of 22.8 weeks, as provided in Section 8 (e) of the Act, for the reason that the injuries sustained caused the thirty percent (30%) loss of use of the right thumb. Respondent shall also pay Petitioner the sum of $759.45 per week for a period of 22.8 weeks, as provided in Section 8(e) of the Act, for the reason that the injuries sustained caused the thirty percent (30%) loss of use of the left thumb.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall 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 other amounts paid, if any, to or on behalf of Petitioner on account of said accidental injuries.

APRIL 23, 2021

SJM/msb
D: 2-16-21
44

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

/s/ *Mark Parker*
Mark Parker

18WC017917

21IWCC0157

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

Ivette Perez Rodriguez,

Petitioner,

vs. NO. 18WC017917
21IWCC0157

Illinois Department of Transportation,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

A Timely Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Decision and Opinion on Review dated April 6, 2021 has been filed by Petitioner herein. Upon consideration of said Petition, the Commission is of the opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated April 6, 2021 is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein.

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

APRIL 23, 2021

SM/sj
44

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

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 Causal connection	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

IVETTE PEREZ RODRIGUEZ,

Petitioner,

vs. NO: 18 WC 17917
21IWCC0157

ILLINOIS DEPARTMENT OF TRANSPORTATION,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petitioner for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability and permanent disability, and being advised of the facts and law, reverses the Decision of the Arbitrator for the reasons stated below.

On June 10, 2018 Petitioner filed an application for adjustment of claim alleging repetitive trauma to the right hand and thumb with a manifestation date of April 16, 2018. On June 15, 2018 Petitioner filed an application for benefits asserting that she sustained injury to her left thumb on November 13, 2017 that occurred while carrying GPS equipment. The matters were consolidated for trial.

Petitioner had been employed by IDOT as a land surveyor for 18 eighteen years and is 53 years of age. She testified that in her work she utilizes a device known as a controller. This is a

GPS device attached to a pole which combine to weigh 10-15 lbs. and is carried from one location to another over the course of her workday. Petitioner uses both hands to type and rotates her wrists continually while recording data which measure roads, buildings, sidewalks and trees on the controller.

On November 13, 2017 Petitioner consulted Dr. Michael Birman for symptoms of numbness, tingling and pain in both hands. Dr. Birman diagnosed Petitioner with left carpal tunnel syndrome, trigger finger in the left thumb and right de Quervain's tenosynovitis. Dr. Birman administered a steroid injection in Petitioner's left thumb.

Petitioner returned to Dr. Birman in follow up on December 20, 2017 at which time a recommendation was made for surgery on Petitioner's left hand. On April 16, 2018 Petitioner underwent a bilateral EMG of the upper extremities which revealed moderate to severe bilateral median neuropathies at the wrist. The left wrist was more symptomatic. Petitioner elected to proceed with surgery. Throughout this time Petitioner continued to work full duty.

On May 1, 2018 Dr. Birman performed a left carpal tunnel release and left trigger finger release. Post-operatively Petitioner had work restrictions which included no forceful grip and no lifting, pushing or pulling. On June 12, 2018 Petitioner had surgery on her right hand which included trigger thumb release, carpal tunnel release, and first extensor tunnel release. Petitioner was off work and undergoing occupational therapy. She returned to full-duty work on August 27, 2018 and was discharged from care by Dr. Birman in September 2018.

Petitioner testified that she continues to experience occasional numbness and pain in both thumbs which she treats with Tylenol. She also experiences a loss of hand strength overall which is more pronounced on the right.

Dr. Birman, Petitioner's treating physician authored a report on August 5, 2019 which was received in evidence (PX4) which expressed the opinion that her described work activities "could have" aggravated the condition in her hands. He notes that an EMG performed on April 16, 2018 which was diagnostic for bilateral carpal tunnel syndrome. He additionally diagnosed right and left trigger thumbs, right de Quervain's tenosynovitis, and right and left thumb carpometacarpal joint arthritis.

In his report Dr. Birman comments that Petitioner's description of her work activities which include forceful and sustained use of her thumbs could be aggravating factors in her symptomatology. Petitioner's testimony at hearing describes work activities that would support causal connection.

Respondent retained Dr. Andrew Zelby as a Section 12 expert who examined Petitioner on May 22, 2019. Dr. Zelby characterized the EMG study as "equivocal" and did not believe that

her subjective complaints could be ascribed to any kind of neurological condition of her neck or upper extremities. He maintained that Petitioner had undergone bilateral carpal tunnel releases and had "essentially normal motor and sensory exams of both hands" and failed to demonstrate causal connection. The Commission finds it notable that Dr. Zelby did not offer any opinion concerning Petitioner's de Quervain's tenosynovitis or trigger fingers.

The Arbitrator denied Petitioner's claims on both hands finding that the medical opinion on causal connection stated by Dr. Birman was equivocal and ambiguous. He found the opinions expressed by Dr. Zelby to be persuasive. The Commission views the evidence differently and finds that the causation opinion expressed by Dr. Birman concerning Petitioner's condition of ill-being in her right and left thumbs supports the claim. Petitioner has met her burden of proof and the Commission hereby reverses the Arbitrator's Decision on the causal connection concerning injury to Petitioner's thumbs and affirms all else.

As to the nature and extent of Petitioner's injury, the Arbitrator did not consider the five factors under Section 8.1(b) of the Act as he considered the issue of nature and extent moot. The Commission having found accident and causal connection in this claim, and taking into consideration the following five factors listed under Section 8.1(b) of the Act, awards Petitioner 30% loss of the use of the right thumb and 30% loss of the use of the left thumb.

(i) Impairment rating: The Commission gives no weight to this factor as neither party offered any evidence or opinion relative to impairment.

(ii) Occupation of the Injured Employee:
(iii) Petitioner's Age:
(iv) Petitioner's Future Earning Capacity:
(v) Evidence of Disability:

In light of the foregoing factors, with no single enumerated factor being the sole determinant of disability, the Commission awards 30% loss of the use of the right thumb and 30% loss of the use of the left thumb for Petitioner's bilateral hand condition.

For the foregoing reasons the Commission reverses the Decision of the Arbitrator filed on January 28, 2020 in claim numbers 18 WC 17792 and 18 WC 17917 with regard to the condition of ill being in Petitioner's right and left thumbs and affirms all else.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 28, 2020 is reversed in part for the reasons stated above, as to the causal

connection of the condition of ill-being in Petitioner's right and left thumbs and is affirmed in all else.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $843.84 per week for a period of 17 weeks, commencing May 1, 2018 through August 27, 2018, 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 all reasonable and necessary medical expenses detailed in Petitioner's Exhibits 1 & 2, namely the bill from Alexian Brothers Medical Center totaling $11,685.43, and Hand to Shoulder Medical Associates totaling $4,696.00, pursuant to Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit for amounts paid on behalf of Petitioner on account of said accidental injuries under its group health plan pursuant to Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $759.45 per week for a period of 22.8 weeks, as provided in Section 8 (e) of the Act, for the reason that the injuries sustained caused the thirty percent (30%) loss of use of the right thumb. Respondent shall also pay Petitioner the sum of $759.45 per week for a period of 22.8 weeks, as provided in Section 8(e) of the Act, for the reason that the injuries sustained caused the thirty percent (30%) loss of use of the left thumb.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall 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 other amounts paid, if any, to or on behalf of Petitioner on account of said accidental injuries.

APRIL 23, 2021

SJM/msb
D: 2-16-21
44

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

/s/ *Mark Parker*
Mark Parker

STATE OF ILLINOIS)
) SS
COUNTY OF DU PAGE)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROSARIO JIMENEZ,

Petitioner,

vs. NO: 18 WC 13761
21 IWCC 0168

CHICAGO MARRIOTT OAK BROOK,

Respondent.

ORDER

This matter comes before the Commission on Petitioner's Petition to Recall the Commission Decision to Correct Clerical Error Pursuant to Section 19(f). The Commission grants Petitioner's Petition.

With regard to the Petition to Correct Clerical Errors, the Commission agrees with the alleged clerical errors, and thus grants said Petition.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision and Opinion dated April 7, 2021, is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner Maria E. Portela.

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

DATED: 4/23/2021
MEP/dmm
049

/s/ *Maria E. Portela*

P: 041421
049

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	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROSARIO JIMENEZ,

Petitioner,

vs. NO: 18 WC 13761
21 IWCC 0168

CHICAGO MARRIOTT OAK BROOK,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability benefits, medical expenses, and prospective medical treatment 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 a clarification as outlined below. 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).

The Commission affirms the Arbitrator's decision with the following clarification:

On April 12, 2018, Petitioner was working as a banquet server for Respondent. She testified she was working in the VIP room and that she was directed by her supervisor to go to Starbucks to find lids for the coffee cups as there were none in the VIP room or storage. (T. 10) Petitioner went to Starbucks and obtained lids and some cups. Petitioner subsequently realized they were not the correct lids so she grabbed the lids, advised her supervisor that they were not the correct lids, and went to Starbucks for a second time. (T. 11)

On this second trip to Starbucks Petitioner was carrying the cups and lids she was going to return and as she was walking, she tripped. (T. 8) Her leg went to the side, her left knee popped and Petitioner was unable to continue walking. (T. 8-9) After advising her general manager and Human Resources, she was put in a taxi cab to go to the occupational health clinic for an examination. (T. 12-13)

On April 12, 2018 the same day the accident occurred, Petitioner was examined at Advocate Occupational Health where she was taken off work, diagnosed with a left knee sprain and instructed to follow up with an orthopedic surgeon should problems persist. (Px1) She reported that the incident occurred while she was walking rapidly and felt a pop in her knee. (Px1) Petitioner followed up with orthopedic surgeon, Kevin Tu, M.D., on May 10 2018, at which time he ordered an MRI and placed Petitioner on restricted duty. (Px2) Petitioner described her accident as quickly walking and tripping over the junction between the hard floor and carpet. (Px2) Petitioner underwent an MRI on May 15, 2018 which showed a torn meniscus. (Px3) On May 24, 2018, Petitioner returned to Dr. Tu, at which point he recommended conservative treatment consisting of physical therapy. He continued restrictions. (Px2) Petitioner returned on June 28, 2018, at which point physical therapy was discontinued and surgery was recommended. Restrictions were again continued. Petitioner returned to Dr. Tu on August 9, 2018 and September 20, 2018, and authorization for the recommended surgery was still pending. Petitioner's restrictions remained in place. (Px2)

On cross-examination, Petitioner testified that she was walking very fast at the time she hurt her knee. She wasn't walking or jogging. (T. 18) She was walking fast because of customer's complaints. (T. 23) She didn't fall, but she tripped and then her foot got stuck and she couldn't move. (T. 27) Petitioner did not testify as to any defects in the floor.

The Respondent does not dispute that the evidence establishes that at the time the Petitioner sustained her knee injury she was at work – i.e. in the course of her employment. As the parties do not dispute that Petitioner's knee injury occurred in the course of her employment, the Commission will only address the second element that must be proved to find the case compensable --whether the Petitioner's knee injury arose out of her employment.

The *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848 (9/24/20) case provides the proper analysis to be applied in this instance. In *McAllister* at ¶60, the court held that *Caterpillar Tractor* prescribes the proper test for analyzing whether an injury "arises out of" a claimant's employment when the claimant is injured performing job duties involving common bodily movements or routine "everyday activities." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill.2d 52 (1989), stands for the proposition that an injury arises out of a claimant's employment for purposes of the Act if, at the time of injury, the claimant was performing an act that he might reasonably be expected to perform incident to his employment or causally connected to what the claimant must do to fulfill his assigned job duties, even if the act involves an everyday activity.

In analyzing whether an injury resulting from an everyday activity or common bodily movement arises out of a claimant's employment it must first be determined whether the employee was injured performing one of the three categories of employment-related acts delineated in *Caterpillar Tractor. Caterpillar Tractor*, 129 Ill.2d at 58; *see also The Venture - Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Comm'n*, 2013 IL 115728, ¶ 18; *Sisbro v. Industrial Comm'n*, 207 Ill.2d 193, 204 (2003). "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 (citing *Caterpillar Tractor*, 129 Ill.2d at 58) *see also Baggett v. Industrial Comm'n*, 201 Ill.2d 187, 194 (2002) ("An injury 'arises out of' one's employment if it originates from a risk connected with, or incidental to, the employment, involving a causal connection between the employment and the accidental injury.").

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. *Orsini v. Industrial Comm'n*, 117 Ill.2d 38, 45 (1987). To determine whether a claimant's injury arose out of his or her employment, we must categorize the risks to which the claimant was exposed. *Dukich v. Illinois Workers' Compensation Comm'n*, 2017 IL App (2d) 160351WC ¶31; *Mytnik v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 152115WC, ¶38; *Baldwin v. Illinois Worker's Compensation Comm'n*, 409 Ill.App.3d 472,478 (2011); *First Cash Financial Services v. Industrial Comm'n*, 367 Ill.App.3d 102, 105 (2006).

Petitioner's knee injury arose out of her employment because at the time she injured her knee while in the process of retrieving coffee cup lids for customers, she was at work performing an act her employer might reasonably expect her to perform incident to her assigned job duties as a banquet server, and in fact, was directed to perform. Therefore, the knee injury was employment related, as it was caused by retrieving coffee cup lids for the customers in the VIP concierge room — an act that was incident to and causally connected to Petitioner's job duties as a banquet server. *Caterpillar Tractor*, 129 Ill.2d at 58; *Memorial Medical Center v. Industrial Comm'n*, 72 Ill.2d 275, 280 (1978) (" 'to come within the statute the employee need only prove that some act or phase of the employment was a causative factor of the resulting injury' " (quoting *County of Cook v. Industrial Comm'n*, 69 Ill.2d 10, 17 (1977))).

Sisbro and *Caterpillar Tractor* make it clear that common bodily movements and everyday activities are compensable and employment related if the common bodily movement resulting in an injury had its origin in some risks connected with, or incidental to, employment so as to create a causal connection between the employment and the accidental injury. *Sisbro*, 207 Ill.2d at 203 (citing *Caterpillar Tractor*, 129 Ill.2d at 58). *Caterpillar Tractor* does not require a claimant to provide additional evidence establishing that she was exposed to the risk of injury, either qualitatively or quantitatively, to a greater degree than the general public, once she has presented proof that she was involved in an employment-related accident. *Caterpillar Tractor*, 129 Ill.2d at 58.

In addition to proving accident, Petitioner met her burden that her current condition of ill-being is causally related to her work injury. Petitioner reported directly to occupational health, wherein she was diagnosed with a "sprain of unspecified collateral ligament of left knee." (Px1) She followed up with orthopedic surgeon Dr. Tu, who ordered an MRI and ultimately diagnosed that she had a torn medial meniscus. (Px2, 5/24/18 visit) On August 9, 2018, Dr. Tu opined that Petitioner's mechanism of injury was consistent with the development of a medial meniscus tear. (Px2) Respondent did not offer any medical opinion to refute this causation opinion.

Based on the finding of accident and causation, the Arbitrator appropriately awarded medical expenses as all were in furtherance of the treatment of Petitioner's knee injury. He also appropriately awarded prospective treatment in the form of left knee arthroscopic surgery and

attendant care, as well as temporary total disability benefits from the day following the injury through the date of trial.

In addition to the foregoing, the Commission corrects a scrivener's error contained in the Arbitration Decision in the second to last sentence of the second paragraph on page 11. The Commission replaces the word "hear" with the word "heard".

IT IS THEREFORE ORDERED BY THE COMMISSION that the Corrected Decision of the Arbitrator filed June 15, 2020 is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $21,122.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: 4/23/2021

/s/ *Maria E. Portela*

MEP/dmm
O: 022321
49

/s/ *Thomas J. Tyrrell*

/s/ *Kathryn A. Doerries*

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

21IWCC0168

JIMENEZ, ROSARIO Case# **18WC013761**
Employee/Petitioner

CHICAGO MARRIOTT OAK BROOK
Employer/Respondent

On 6/15/2020, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.18% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

2512 THE ROMAKER LAW FIRM
JASON BRISKI
211 W WACKER DR SUITE 1450
CHICAGO, IL 60606

2461 NYHAN BAMBRICK KINZIE & LOWRY
BRIAN A RUDD
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602-4195

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
CORRECTED ARBITRATION DECISION
19(b)

Rosario Jiminez
Employee/Petitioner

v.

Chicago Marriott Oak Brook
Employer/Respondent

Case # **18** WC **13761**

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 **Charles Watts**, Arbitrator of the Commission, in the city of **Wheaton**, on **October 23, 2018**. 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, **April 12, 2018,** Respondent ***was*** operating under and subject to the provisions of the Act.

On **April 12, 2018**, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On **April 12, 2018**, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent on **April 12, 2018**.

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

In the year preceding the injury, Petitioner earned $31,092.88 and the average weekly wage was **$597.94**.

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

Petitioner ***has not*** received all reasonable and necessary medical services.

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

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

ORDER

Accident

Petitioner was injured in a work related accident on April 12, 2018, while working as assigned for Respondent when she injured her left knee. Based upon Petitioner's consistent and credible testimony at trial and the histories of the accident that Petitioner gave to Respondent, the Occupational Clinic and Dr. Tu, the Arbitrator holds that Petitioner had an accident that arose out of and in the course of the employment by Respondent on April 12, 2018.

Is Petitioner's Current Condition of ill-being causally related to the injury?

Based upon the totality of the evidence, including medical opinions, and the witness testimony, the Arbitrator concludes that Petitioner has established a causal connection between the work accident of April 12, 2018, and Petitioner's current condition of ill-being of left knee injury.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability (TTD) benefits of $398.62 per week for a Petitioner 27 and 5/7th weeks, commencing April 13, 2018 to the date of trial as provided in Section 8(b) of the Act. Total TTD owed is $11,047.35.

Medical Benefits

Petitioner's medical bills were admitted as Petitioner's Exhibits 1,2,3 and 4. The Arbitrator awards the medical bills in Exhibits 1,2,3 and 4. The Respondent shall pay the reasonable and necessary medical services of **$9,974.03** to Petitioner and The Romaker Law Firm as provided in Section 8(a) and 8.2 of the Act.

Prospective Medical Care

Petitioner's treating surgeons, Dr. Tu has opined that Petitioner requires surgery as a result of the work injury of April 12, 2018. Respondent has not provided any rebuttal medical evidence or testimony. Therefore, the Arbitrator concludes that Respondent shall authorize Petitioner's left knee surgery and related post-surgical medical treatment as provided in Sections 8(a) 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

June 5, 2020
Date

JUN 15 2020

PROOF OF SERVICE

If the person who signed the *Proof of Service* is not an attorney, this form must be notarized.
If you prefer, you may submit the front of this application form with the *Proof of Service* on a separate page.

I, **Jason Briski**, an attorney, affirm that I emailed and ☐ delivered ☐ mailed with proper postage in the city of **Chicago** a copy of this form at **5:00pm** on **November 15, 2018** to the Respondent listed on this application and to each additional party, if any, at the address listed below.

TO: Mr. Brian Rudd
Nyhan Bambrick Kinzie and Lowry
20 N. Clark Street, Suite 1000
Chicago, IL 60602
Via E-Mail to bar@nbkllaw.com

Arbitrator Charles Watts
Illinois Workers' Compensation Commission
100 W. Randolph
Chicago, IL 60601
Via E-Mail to charles.watts@illinois.gov

_____
Signature of person completing *Proof of Service*

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rosario Jimenez	)	
	)	
Petitioner,	)	
	)	
vs.	)	Nos. 18 WC 13761
	)	
Chicago Marriott Oak Brook	)	
	)	
Respondent.	)	

FINDINGS OF FACT

The parties stipulated that on April 12, 2018, the Respondent, Chicago Marriott Oak Brook, was operating under and subject to the provisions of the Act, and that an employee-employer relationship existed between Respondent and Petitioner. (*See* Request for Hearing Form, Arb. Ex. 1,). The parties also stipulated that Respondent was given notice of the accident within the time limits stated in the Act. (*See* Request for Hearing Form, Arb. Ex. 1,). Additionally, the parties stipulated that Petitioner's average weekly wage to be considered is $597.94. (*See* Request for Hearing Form, Arbitrator's Ex. 1). Further, the parties stipulated that at the time of the injury Petitioner was 61 years old, married, with zero dependent child. (*See* Request for Hearing Form, Arb. Ex. 1). The Request for Hearing Form was entered as Arbitrator's Exhibit #1. (Tr. p 5). Petitioner's list of outstanding medical bills was attached to Arbitrator's Exhibit #1. (Tr. p. 6). The Application for Adjustment of Claim for the case was entered as Arbitrator's Exhibit #2. (Tr. p. 6). An interpreter was used for the hearing named Paula Riordan. (Tr. p. 7).

On October 23, 2018, Petitioner submitted Exhibits #1 through #4 and all Petitioner's Exhibits were admitted into evidence. (Tr. pp. 79-82). Respondent withdrew Exhibits #1, #2 and #3; and submitted Exhibits #4 through #8; however, Respondent's Exhibit #8 was rejected and not admitted into evidence. (Tr. pp. 82-86). Petitioner objected to Exhibit # 6(a) and 6(b) based on lack of foundation; however, the Arbitrator over ruled the objection and allowed the exhibit to be admitted. (Tr. pp. 83-85).

On October 23, 2018, Petitioner testified that she worked at Marriott International in Oak Brook as a banquet server for approximately 14 years. (Tr. pp. 7-8). Petitioner testified that she

injured her left knee on April 12, 2018. (Tr. p. 8). Petitioner testified that the injury occurred when she was walking very fast to Starbucks in the hotel while she was carrying some cups and lids (Tr. p. 8).

Petitioner testified that she as she was walking, carrying the cups and lids, she tripped on a carpet and her leg went to the side and she heard a popping sound. (Tr. pp. 8-9). Petitioner testified that she felt a sharp pain and was not able to walk anymore. (Tr. p. 9). Petitioner testified that she tried to take two steps but she could not move. (Tr. p. 9). Petitioner testified that the carpet she tripped on was a mat to clean feet at the entrance of the hotel. (Tr. p. 9).

Petitioner testified that she was going to Starbucks to return the cups and lids because they did not match the cups in the VIP room. (Tr. p. 10). Petitioner testified that the Starbucks was within the Marriott Oak Brook Hotel. (Tr. p. 10). Petitioner testified that she was working in the concierge room for people that have a key that are VIP to go into. (Tr. p. 10).

Petitioner testified that she went to the storage room looking for lids but could not find any and she had to go to other departments to get lids for the cups (Tr. p. 10). Petitioner testified that her supervisor Megan told her to go to Starbucks. (Tr. p. 10). Petitioner testified that she went to Starbucks and got some lids and cups but did not realize that the lids did not fit until customers started complaining about it. (Tr. p. 10). Petitioner testified that she spoke to her supervisor Megan again. (Tr. p. 11) Petitioner testified that Megan directed her to go back to Starbucks. (Tr. pp. 11-12). Petitioner testified that it was her second trip going back to Starbucks when she tripped and injured herself. (Tr. p. 12).

Petitioner testified that after she tripped she could not walk so she was looking around to see who could come and help her. (Tr. p. 12). Petitioner testified that she did not fall down and the clients at Table 15 saw her trip and asked if she was ok. (Tr. p. 12). Petitioner testified that she reported the accident and they took her to tell the general manager, Christina Duncan. (Tr. p. 12). Petitioner testified that HR was called and she spoke to Diana and was told they would write an accident report and she could go to the hospital. (Tr. p. 13). Petitioner testified that she was sent in a taxi for medical treatment. (Tr. pp. 13-14).

Petitioner testified that she was seen at Advocate Occupational Health on the same day that she hurt her knee. (Tr. p. 14). Petitioner testified that the occupational clinic kept her off work and told her to follow up with an orthopedic surgeon. (Tr. p. 14). Petitioner testified that she sought care from Dr. Tu, an orthopedic surgeon, on May 10, 2018. (Tr. p. 14). Petitioner

testified that Dr. Tu ordered an MRI of her left knee, which was performed on May 15, 2018. (Tr. pp. 15). Petitioner testified that Dr. Tu gave her work restrictions and she sent the restrictions to Respondent, however, Respondent did not offer her light-duty work. (Tr. p. 15). Petitioner testified that Dr. Tu diagnosed her with a medial meniscus tear and she began physical therapy. (Tr. p. 15). Petitioner testified that she did physical therapy for approximately a month at Total Rehab. (Tr. p. 16).

Petitioner testified that when she saw Dr. Tu at the end of June 2018, he recommended surgery for her left knee. (Tr. p. 16). Petitioner testified that she has continued to treat with Dr. Tu, but she has not been able to have surgery for her left knee because it has not been authorized by Workers' Compensation insurance. (Tr. p. 16). Petitioner testified that she has not received any Workers' Compensation disability pay. (Tr. pp. 16-17). Petitioner testified that she wants the surgery so she can go back to work (Tr. p. 17).

On cross-examination, Petitioner testified that she was claiming an accident dated April 12, 2018, and she began her shift at six o'clock in the morning. (Tr. pp. 17-18). Petitioner testified that she was working in the restaurant area near the Starbucks and she received customer complaints that coffee lids need to be restocked. (Tr. p. 18). Petitioner testified that she was walking fast, but she was not running or jogging. (Tr. p. 19). Petitioner testified that she went to Advocate Occupational Health and spoke to Dr. Piotrowski. (Tr. p. 19). Petitioner testified that she told Dr. Piotrowski that she was walking rapidly on carpet at work and felt a pop in her left knee. (Tr. p. 19). Petitioner was asked by Respondent's counsel if she tripped on a carpet or a mat and Petitioner testified that it was a mat but she was not sure what it was called. (Tr. pp. 19-20). The interpreter explained on the record that the Spanish word Petitioner was using, "Alfombra", can be a mat or a carpet used for either. (Tr. p. 20).

On cross-examination, Petitioner testified that x-rays of her left knee were taken and she did not break any bones or have any fractures. (Tr. p. 20). Petitioner testified that she was initially diagnosed with a left knee sprain. (Tr. p. 20). Petitioner testified that she sought treatment with Dr. Tu for the first time on May 10, 2018. (Tr.21-22). Petitioner testified that she gave Dr. Tu a description of her accident and told him that she was walking quickly between the floor and the carpet when she tripped over a junction between the carpet and the hard floor. (Tr. p. 21). Petitioner testified that she told her treating doctors that she tripped when she crossed from the floor to the carpet. (Tr. p. 22).

On cross-examination petitioner testified that she had a conversation with Respondent that was recorded. (Tr. p. 23). Petitioner testified that she told Respondent that customers were complaining about coffee lids and she was walking fast because of the customer complaints. (Tr. p. 23). Petitioner testified that her foot got stuck and she could not move anymore. (Tr. p. 23). Petitioner testified that she did not remember what she told respondent and she answered what Respondent asked her while she was in a lot of pain. (Tr. p. 26). Petitioner testified that she did not say that her foot simply got stuck and when she tripped it did get stuck. (Tr. p. 27).

On cross-examination Petitioner testified that her accident took place about 10 to 15 feet from the outside of the Starbucks. (Tr. p. 27). Petitioner testified that the hostess stand and computer were near where her accident occurred and she held on to it. (Tr. pp. 27-28). Petitioner testified that the hostess stand and computer were at the entrance door and by the door going to Starbucks. (Tr. p. 28). Petitioner testified that she did not know the distance from where the accident occurred to the hotel entrance door and restaurant Table 15 was ten to fifteen feet away. (Tr. p. 29).

On cross-examination Petitioner testified that she spoke with the general manager Christina, immediately after she was hurt, who called HR and then Cathy and Megan arrived. (Tr. p. 29). Petitioner testified that she told the HR person, Diane Wnek that she tripped on a mat near the exit door. (Tr. p. 29). Petitioner testified that when she hurt her knee she stumbled but did not fall to the ground. (Tr. p. 29).

On cross-examination Petitioner said she did not remember that well if the photograph marked Respondent's Exhibit 5E showed the floor by Table 15, but it appeared so. (Tr. p. 31). Petitioner said she walked on the floor many times and it was the floor that went to the hostess stand. (Tr. p. 32). Petitioner testified that she did not know if the carpet started after the wooden dividing wall and she did not know if the floor tiles were broken. (Tr. p. 33).

On redirect examination, Petitioner testified that there was carpeting on top of the tile floor and that was away from the area of the floor shown in Respondent's Exhibit 5E. (Tr. p. 34). Petitioner further testified that that the carpeting is what she tripped on. (Tr. p. 34). Petitioner testified again that she tripped on the carpeting after re-cross and re-direct examination. (Tr. p. 36).

The Market Director for Human Resources, Diane Wnek testified for the Respondent. (Tr. p. 38). Ms. Wnek testified that she oversees recruiting, talent management, performance

development, associate issues, disciplinary actions, terminations, hiring, Workers Comp, and other human resources situations. (Tr. p. 38).

Ms. Wnek testified that she has interacted with the Petitioner. (Tr. p. 38). Ms. Wnek testified that on April 12, 2018, she was working at the Chicago Marriott Oak Brook location and received a call at about 8:00 am from the general manager regarding an associate injury. (Tr. p. 39). Ms. Wnek testified that she spoke to Petitioner in the hallway behind the restaurant concierge lounge and Petitioner was sitting on a chair with ice on her knee. (Tr. p. 39). Ms. Wnek testified that Petitioner, general manager, Kristin Duncan and herself were present for the conversation. (Tr. p. 40).

Ms. Wnek testified that Petitioner told her it was very busy that morning, she was rushing around to get lids for to-go coffee cups for guests, and that while she was walking through the restaurant her knee gave out and began hurting her, and that she had made it as far as the mat where she could not continue any farther and that was where she stayed until she got assistance to move from that spot. (Tr. p. 40).

Ms. Wnek testified that her conversation with Petitioner was in English without an interpreter and she was able to communicate with the Petitioner in English. (Tr. p. 41). Ms. Wnek testified that it was her impression that Petitioner was capable of understanding and communicating in English. (Tr. p. 41). Ms. Wnek testified that Petitioner told her she was walking through the front portion of the restaurant which would have been on tile floor that goes past the hostess stand towards Starbucks when she hurt her knee. (Tr. p. 42). Ms. Wnek testified this is near an exit door that leads to the outside just outside the Starbucks entrance. (Tr. p. 42). Ms. Wnek testified that the exit door would be probably ten to fifteen feet away from where Petitioner said she hurt her knee. Ms. Wnek testified there is not carpeting or a mat in that area. (Tr. p. 42).

Ms. Wnek testified that there are walk off mats used at the hotel at the exits particularly during the winter months. (Tr. p. 43). Ms. Wnek testified the walk off mats are flat and they take moisture off guest's shoes as they come in and out the door. (Tr. p. 43). Ms. Wnek testified there is not any transition or junction between the tile and carpet in the area where she understood that Petitioner was walking. (Tr. p. 43). Ms. Wnek testified that the area where Petitioner hurt her knee was open to the public. (Tr. p. 43).

Ms. Wnek testified that the hotel has security cameras and as an HR representative she has access to the surveillance video. (Tr. pp. 43-44). Ms. Wnek testified that she reviewed the surveillance footage dated April 12, 2018, and saw Petitioner walking to the Starbucks, then she stops and catches herself and then continues walking to the Starbucks entrance where the mat was. (Tr. p. 44). Ms. Wnek testified that based on what she saw in the video the floor where Petitioner stumbled was tile. (Tr. p. 44). Ms. Wnek testified that there were not any mats in the area. (Tr. p. 45). Ms. Wnek testified that the camera was pointed down in the Starbucks and you can see the servers through the window. (Tr. p. 47). Ms. Wnek testified that Petitioner was seen stumbling through the window. (Tr. p. 49). Ms. Wnek testified that Petitioner caught herself in the video and then goes to the mat and stayed there. (Tr. p. 49). Ms. Wnek testified that she thought she saw Petitioner leaning on the door and her co-worker took her to the back. (Tr. p. 49). Ms. Wnek testified that the co-worker that helped Petitioner was named Marco. (Tr. p. 50).

Ms. Wnek then testified that the photograph marked Exhibits 5A showed the tile floor next to Table 15 along with Table 15, as it looked on April 12, 2018. (Tr. p. 54). Ms. Wnek testified that she took the photograph marked Exhibits 5A-5F after Petitioner was hurt. (Tr. p. 55). Ms. Wnek testified that photograph 5B was an accurate representation of the floor on the date of the accident. (Tr. pp. 55-56). Ms. Wnek testified that photograph 5C was the tile floor by the hostess stand on the date of the accident and photograph 5D was a photograph of the floor next to the hostess stand and towards the Starbucks. (Tr. p. 56). Ms. Wnek testified that photographs 5E and 5F show the floor by Table 15 on the date of the accident. (Tr. p. 57).

Ms. Wnek testified that a supervisor's accident report related to Petitioner's knee injury was drafted by Megan Orr, Petitioner's supervisor. (Tr. p. 58). Ms. Wnek said the only inaccuracy in the report is that it says Rosario (Petitioner) was seen by Megan talking to Marco immediately prior to her fall and fall is erroneous because Petitioner never said she fell but stumbled. (Tr. pp. 58-59).

On cross-examination, Ms. Wnek testified that she was responsible for performance management or performance appraisals employees. (Tr. p. 60). Ms. Wnek testified that safety is not part of the performance management system, but Marriott tracks safety incidents. (Tr. p. 61). Ms. Wnek testified that all the Marriott properties are measured against each other for safety incidents, lost time and restricted duty statistics. (Tr. p. 61). Ms. Wnek testified that five OSHA

recordable injuries have occurred at the Marriot Oak Brook in 2018. (Tr. p. 62). Ms. Wnek denied that high levels in the organization would ask about injuries if the properties she was responsible for started to have more OSHA reportables than the other properties. (Tr. p. 63).

On cross-examination, Ms. Wnek testified that she would normally use a translator for meetings with Petitioner and her co-workers if it was needed. (Tr. p. 64). Ms. Wnek testified that she did not speak Spanish, however, she felt that Petitioner was able to respond accurately to her questions about the accident. (Tr. p. 64). Ms. Wnek testified that Petitioner said she was very busy rushing to get lids. (Tr. pp. 64-65).

On cross-examination, Ms. Wnek testified there is not a camera by the entrance door to the hotel and the camera in Starbucks is the only camera in that area. (Tr. p. 65). Ms. Wnek testified that the exit door for the hotel is on the edge of the video frame. (Tr. p. 66). Ms. Wnek testified that a runner mat was located at the doorway. (Tr. p. 67)

On cross examination, Ms. Wnek testified that she did not recall if she took the pictures on the day of the accident or the next day, or a couple days later. (Tr. p. 69). Ms. Wnek testified that she did not take a picture of the pathway to the Starbucks because the Petitioner did not say the accident occurred in the Starbucks. (Tr. p. 69). However, Ms. Wnek testified that Petitioner did say she was walking towards the Starbucks. (Tr. p. 69). Nevertheless, Ms. Wnek testified that she did not take any pictures in the direction of the Starbucks. (Tr. p. 70). Ms. Wnek testified that the mats at the entrance doors are used during the wet months of the year; but she did not have knowledge of who maintains the mats or if they are changed periodically. (Tr. p. 70). Ms. Wnek testified that it is possible for the mats to move. (Tr. p. 70).

On cross-examination, Ms. Wnek testified that she did not talk to the customers at Table 15 that saw Petitioner injure herself. (Tr. p. 70). Ms. Wnek testified that she did not know why Megan Orr, Petitioner's Supervisor that completed the accident report was not present for the arbitration hearing, yet Ms. Orr still works for Marriott. (Tr. p. 71).

Ms. Wnek testified that she did not know why the question on page 2 of the accident report asking, "Was the person carrying anything when injured?" was not marked. (Tr. p. 72). However, Ms. Wnek testified that Petitioner told her that she was carrying lids. (Tr. p. 72). Ms. Wnek testified that she did not know why the accident report says that Petitioner was talking to Marco prior to her fall as an "unsafe work practice", although she previous testified that was incorrect. (Tr. p. 72). Further, Ms. Wnek testified that Petitioner was not talking to Marco in the

video shown. (Tr. p. 72). Ms. Wnek testified that the supervisor's accident report was marked yes for the question, "Did a time constraint, hurrying to complete a task, contribute to the injury?" (Tr. p . 73).

On cross-examination, Ms. Wnek testified that the accident report was marked yes for the question, "Did an unsafe work practice contribute to this injury?" (Tr. p. 73). Ms. Wnek testified that it was important to capture the information for the supervisor's accident report as part of the investigation to see if there was anything out of the ordinary or something that could be prevented. (Tr. p. 73). Ms. Wnek testified that if employees engaged in hurrying to complete something, it could increase the risk of an injury occurring. (Tr. p. 74).

On re-direct, Ms. Wnek testified that she took the photographs for Respondent's Exhibits 5A-5F after she spoke to the Petitioner to show there were no defects or an unsafe condition in the area. (Tr. p. 75). Ms. Wnek testified that the mats were in the proper location. (Tr. p. 75). Ms. Wnek testified that it was recommend that Petitioner practice safe walking, but she did not know what training took place besides that listed for 2017. (Tr. p. 76).

Ms. Wnek testified that it did not appear in the video that Petitioner was working or moving in a hurried manner. (Tr. p. 78). However, on cross-examination Ms. Wnek was asked how she could tell that it didn't appear that Petitioner was hurry although she was looking through a window on the video for a brief amount of time and Ms. Wnek testified that it was her interpretation that Petitioner was walking normally. (Tr. p. 78). Ms. Wnek testified that if there were not proper lids in the VIP rooms, it was an issue that needed to be corrected quickly. (Tr. p. 78-79).

Medical Treatment

Petitioner testified that she was sent by Respondent in a taxi to Advocate Occupational Health on April 12, 2018. (Tr. pp. 13-14). Petitioner testified that she went to Advocate Occupational Health and the treaters kept her off work and referred her for orthopedic treatment. (Tr. p. 14, PX1).

Petitioner testified that she saw Dr. Tu for treatment on May 10, 2018, and Dr. Tu ordered a MRI for her left knee and gave her work restrictions. (Tr.15, PX2 at 5/10/18). Dr. Tu's notes indicate that he gave Petitioner restrictions of sitting 50% of the time and no lifting, kneeling or squatting activities. (PX2 at 5/10/18). Petitioner testified that she had the MRI

performed for her left knee on May 15, 2018. (Tr.15, PX3). Petitioner testified that Dr. Tu diagnosed her with a medial meniscus tear and had Petitioner begin physical therapy. (Tr. 15, PX2 at 5/24/18) Petitioner testified that she did physical therapy for approximately a month at Total Rehab. (Tr. 16, PX4). Petitioner testified that Dr. Tu recommended surgery for her left knee as reflected by the treatment records. (Tr. 16, PX2 at 6/28/18).

ISSUES

Based upon the Stipulation Sheet signed by the Parties, as amended, the matters in dispute are as follows:

(C) Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
(F) Is Petitioner's current condition of ill-being causally related to the injury?
(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? TTD

(*See* Arbitrator's Exhibit 1, Request for Hearing form).

Regarding Issue (C)

Regarding the issue "Did an Accident Occur that Arose Out of and in the Course of the Employment by Respondent," Petitioner testified that she injured her left knee during the scope of her employment on April 12, 2018, the Arbitrator finds the following:

A. Petitioner's Testimony Was Consistent and Credible Proving That Her Employment Exposed Her To A Risk Greater Than The General Public

For an injury to be compensable under the Workers' Compensation Act, it generally must occur within the time and space boundaries of the employment. Sisbro, Inc. v. Industrial Comm'n, 207 Ill.2d 193, 203, 278 Ill.Dec. 70, 797 N.E.2d 665 (2003). The requirement under the Workers' Compensation Act that a compensable injury arise out of the employment concerns the origin or cause of the claimant's injury. Adcock vs. IWCC, 2015 Ill. App.2nd 130884WC citing Parro v. Industrial Comm'n, 167 Ill.2d 385, 393, 212 Ill.Dec. 537, 657 N.E.2d 882 (1995). Whether an injury arose out of and in the course of a claimant's employment is a question of fact to be resolved by the Workers' Compensation Commission. Adcock vs. IWCC, 2015 Ill. App.2nd

130884WC citing Illinois Institute of Technology Research Institute v. Industrial Comm'n, *314 Ill.App.3d 149, 164, 247 Ill.Dec. 22, 731 N.E.2d 795 (2000).*

For an injury to arise "out of" the employment, the injury must have occurred from some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. Typically, an injury arises out of the employment if, at the time of the incident or accident, the employee was performing acts he or she was instructed to perform by his or her employer, acts he or she had a common law or statutory duty to perform, or acts the employee might reasonably be expected to perform incident to his or her assigned duties. O'Fallon School Dist. No. 90 v. Industrial Commission, *313 Ill.App.3d 413729 N.E.2d 523246 Ill.Dec. 150 (2000).* In O'Fallon, Petitioner was a school hall guard and injured her back when she quickly twisted and turned to stop a student that ran past her. Id. Compensation was denied under the theory of common risk, but the Commission reversed its decision following a Circuit Court mandate. Id. The appellate court affirmed stating that the Petitioner was subject to enhanced risk inherent in her duties. Id.

In Nascote Indutries, compensation was awarded due to frequency of usage although there was no "defect." In that case, Petitioner was required to pick up bumpers, walk to her work station and step up onto a rack. Petitioner stepped down from the rack and her foot turned causing a fractured metatarsal. The court affirmed compensation because Petitioner's foot injury "arose out of the course of employment" based on increased risk to foot, despite employer's claim that there was nothing unusual about the premises which contributed to the injury, where claimant stepped on to floor off part of a machine or platform that she was required to load as part of her job duties, claimant's work was fast-paced and involved quick turnaround rate, and claimant had to keep pace with parts press. Nascote Industries v. Industrial Commission *353 Ill.App.3d 1056, 820 N.E.2d 531, 289 Ill.Dec. 755 (2004).*

The court addressed an unexplained fall down stairs that occurred while Petitioner was moving hastily for her job in William G. Ceas and Company v. Industrial Commission, *261 Ill. App. 3d 630, 199 Ill. Dec. 198, 633 N.E. 2nd 994 (1994).* The Commission found the claim compensable due to Petitioner's hurried departure to deposit packages at her supervisor's request. Id. However, the appellate court then reversed, but after a rehearing was allowed, the court reversed the earlier decision and opined that the employer's last minute assignment caused

her to descend the stairs in a hastily manner and therefore the risk of injury was increased as a result of her work duties. Id.

Additionally, Petitioner has the burden of proving, by a preponderance of the evidence, all the elements of her claim. O'Dette v. Industrial Commission, *79Ill. 2d 249, 253.* Preponderance is evidence which is of greater weight or more convincing that the evidence offered in opposition to it, evidence which as a whole shows the fact to be proved as more probable than not. Houck v. Nationwide Rail Service, *No. 11 I.W.C.C. 0249*, citing Kordrey Jones v. J. Rubin Co, *98 IL W.C. 7779.* Factors to consider in determining whether a Petitioner has sufficiently carried the burden is credibility. Id.

In the case before the Arbitrator, Petitioner was credible and consistent. Petitioner testified that on April 12, 2018, she was hurrying to Starbucks while carrying cups and lids, when she tripped on carpeting and twisted her left knee causing injury. (Tr. pp. 8-12). Petitioner testified that the carpet was a mat located at the entrances of the hotel. (Tr. p. 9). Petitioner testified that she was hurrying because the lids did not fit the cups for customers in the VIP room. (Tr. pp. 8-12). Petitioner testified that she had received customer complaints about the coffee lids. (Tr. p. 18). Petitioner testified that she when she tripped her leg went to the side , she hear a popping sound and she felt immediate pain and could not walk. (Tr. pp. 8-9). Further, Petitioner testified that the carpeting she was referring to was a mat used by the hotel entrances. (Tr. p. 9).

The Medical records show that Petitioner consistently gave the same mechanism for her accident and injury which was that she tripped on carpet. Petitioner gave the same history of accident to Respondent's Occupational Clinic and Dr. Tu. (PX1 and PX2) The Occupational Clinic records report the description of the accident as "walking rapidly on carpet at work when I felt a pop in my knee," and the work status form states, "severe left knee pain after tripping at work no fall reported." (PX1). The history in Dr. Tu's notes stated, "she was walking quickly in between the floor and she tripped over the junction on the hard floor and the carpet." (PX2). Respondent questioned Petitioner about the differences between the descriptions. Although the records have slight differences, the medical records were not prepared in anticipation of litigation and the differences are negligible. Both histories state that Petitioner was walking rapidly or quickly when she tripped.

In addition to Petitioner's testimony and treatment records, Respondent's Exhibit 4, the supervisor's accident report documented that Petitioner was walking in a hurried manner causing an unsafe work practice as testified to by Respondent's witness, Ms. Wnek. (Tr. pp. 72-73, RX4). Further, the report listed suggested training for Petitioner to prevent future accidents and safety concerns. (Tr. pp. 73-74, RX4). Respondent's witness acknowledged that employees that work in a hurried manner are more likely to suffer injuries. (Tr. pp. 73-74).

Respondent's witness, Ms. Wnek, was simply not credible when testifying about Petitioner's accident. First, Ms. Wnek did not witness the accident and only spoke to Petitioner following the injury occurred. (Tr. pp. 13,39). Additionally, Ms. Wnek testified that she does not speak Spanish and did not use a translator when she spoke to Petitioner about the accident (Tr. pp. 63-64). However, Ms. Wnek testified that she would use translators for important employee meeting with Petitioner and her co-workers. (Tr. pp. 63-64). Apparently Ms. Wnek did not feel that an accident investigation was important enough to have a translator for her discussion with Petitioner.

Further, Ms. Wnek testified that she did not take pictures of the walkway leading to the Starbucks submitted as Respondent's Exhibit 5, because it was not her understanding of where the Petitioner tripped. (Tr. pp. 69-70). This is not credible since the records from Respondent's Occupational Clinic list the description as walking rapidly on carpeting and Ms Wnek was listed as a company contact. Therefore, Ms. Wnek would have reviewed the Occupational Clinic records as part of the accident investigation. As the site HR Director, Ms. Wnek would have been aware after Petitioner's treatment at the Occupational Clinic on April 12, 2018, that Petitioner tripped on carpeting. However, Ms. Wnek choose to take photographs that were limited in scope, without providing a picture of the run off mat that she testified was at the entrance of the hotel. Further, Ms. Wnek could not accurately testify as to when she took the photographs, only that they might have been taken the day of, or the day after, or within a few days. (Tr. p. 69).

Additionally, Ms. Wnek's testimony regarding the surveillance video was not credible. The view was a downward angle inside Starbucks and Petitioner was only visible through a small window. On cross-examination, Ms. Wnek testified that based on her interpretation of the video, the Petitioner did not appear to be hurrying although Petitioner was only visible for a few seconds. (Tr. p. 78). The surveillance video provided a limited and brief view of the Petitioner.

In fact, the surveillance video does not even show the actual floor at the moment the Petitioner is seen tripping. (PX7). Therefore, it is impossible from the surveillance video to see whether there was a mat at the point where Petitioner tripped. (PX7).

Much of Respondent's argument against finding accident is that Petitioner gave conflicting statements about the nature of her tripping incident. Respondent is correct that all of the various accounts do not perfectly align in terms of words chosen, descriptions used, or exact location where Petitioner tripped. The Arbitrator finds, however, that this is an exercise in splitting hairs and will not let the perfect defeat what amounts to good evidence in Petitioner's favor. Petitioner claimed she was in a hurry and tripped in such a manner that she hurt her knee while going to fetch lids as part of her job. She reported the incident, was treated near in time to the injury and was in fact hurt. The vast majority of all evidence in the record aligns with Petitioner's account of what happened.

Petitioner's testimony at trial and the histories of the accident that Petitioner gave to Respondent, the Occupational Clinic and Dr. Tu where consistent and credible. Similar to the O'Fallon, Nascote Indutries and William G. Ceas cases discussed above, Petitioner was engaged in activity on behalf of the employer that increased her risk of injury beyond the risk to the general public. In this case, Petitioner was working in a hurried manner carrying cups and lids as was testified to by Petitioner and Respondent's witness. Moreover, Petitioner was engaged in activities directed by her supervisor. Further, Petitioner accident was documented in the Respondent's supervisor report as the result of working in a hurried manner.

Based upon all of the above, the Arbitrator finds that the Petitioner suffered a left knee injury that arose out of and in the course of her employment, as a result of the work related accident of April 12, 2018.

B. Respondent's Exhibits 6(a) and 6(b) Were Properly Admitted as Evidence By the Arbitrator As an Admission by a Party Opponent

Under the Illinois rules of evidence, proper foundation must be laid to show authentication and identification for audio recordings to be admitted as evidence. Geary & Graham's Handbook of Illinois Evidence 9th Edition. Sound recordings of voices are authenticated if a proper foundation is laid, including the identification of the speakers. Id. Further, a transcript of the sound recording may be admitted in evidence if a sufficient

foundation is presented establishing the accuracy of the transcript and the identity of the speakers. Id. Communications by telephone do not authenticate themselves; the person speaking must be identified. Id.

Relevant and material audio recordings are admissible "if a proper foundation has been laid to assure the authenticity and reliability of the recording." People v. Viramontes, *410 Ill.Dec. 221, 69 N.E.3d 446 (2017)* citing, People v. Aliwoli, *238 Ill.App.3d 602, 623, 179 Ill.Dec. 515, 606 N.E.2d 347 (1992).* A sufficient foundation is laid when "a participant to the conversation or a person who heard the conversation while it was taking place identifies the voices of the people in the conversation and testifies that the tape accurately portrays the conversation." Id. citing In re C.H., *398 Ill.App.3d 603, 607, 339 Ill.Dec. 139, 925 N.E.2d 1260 (2010).*

In a recent case before the commission concerning proper foundation, Dinaz Ravji v. United Airlines, Inc., *No. 05 W.C. 54051, No. 12 I.W.C.C. 0094, (2012)* the Illinois Workers Compensation Commission ruled that the Arbitrator was in error to admit still photographs from surveillance video introduced as exhibits by Respondent. In Ravji v. United Airlines, Respondent argued that the foundation was laid when Petitioner identified herself in the video; however, the commission disagreed citing People v. Flores 406 Ill.App.3d 566, 941 N.E.2d 375 (2010).

The court in Flores found that the trial court improperly admitted a video. The court opined that witness testimony was sufficient foundation for admission of the videotape for use as *demonstrative* evidence, and the court cited M. Graham, Geary & Graham's Handbook of Illinois Evidence as follows: "A sufficient foundation is laid for a still photograph, a motion picture, or a videotape by testimony of any person with personal knowledge of the photographed object at a time relevant to the issues that the photograph is a fair and accurate representation of the object at that time [.]" [citation omitted] Flores, 406 Ill.App.3d at 572, 941 N.E.2d at 381. However, the Flores court noted that foundation for admitting the tape to be used as *substantive* evidence, however, required "something more rigorous than the witnesses' testimony that the video in evidence truly and accurately depicted that which it purported to depict." 406 Ill.App.3d at 576, 941 N.E.2d at 384. The court indicated that, "visual recordings, when treated substantively, are real evidence requiring a proper foundation, including evidence that the proposed exhibit is substantially unaltered." Flores, 406 Ill.App.3d at 572, 941 N.E.2d at 381. The witness testified

that the copy he produced was altered because he omitted portions from the original tape. The court held that the trial court abused its discretion when it considered the tape as substantive evidence, and stated that "an adequate foundation must show that the original has been preserved without change, addition, or deletion and that, if a copy is introduced into evidence, there must be a cogent explanation of any copying such that the court is satisfied that during the copying process there were no changes, additions, or deletions." Flores, 406 Ill.App.3d at 577, 941 N.E.2d at 385.

In the present matter before the arbitrator, Respondent's Exhibits 6(a) and 6(b) are a recorded audio statement with a translator and a transcript. At the hearing on October 23, 2018, Respondent did not lay a proper foundation to admit the recorded statement, translation and transcript. Respondent did not provide a witness to testify to the authenticity and accuracy of the recorded statement. The speakers on the recorded statement were not identified. Respondent did not provide a witness to testify about the accuracy of the Spanish to English translation of the recorded statement or the transcript. Further, because Respondent did not have a witness, Petitioner was not afforded the opportunity to cross-examine the individuals responsible for creating the recorded statement. Additionally, Petitioner could not cross-examine the translator with respect to his or her qualifications.

Respondent argued at Arbitration that Petitioner testified that she gave a statement and therefore it was an admission by a party opponent. (Tr. p. 24) Further, Respondent's counsel argued at Arbitration that Petitioner admitted it was her on the recorded statement. (Tr. p. 84) The Arbitrator finds this admission by a party opponent sufficient to admit the recorded statement into evidence despite the lack of foundation testimony that was outlined in the discussion above.

Based upon all of the above, the Arbitrator finds that Respondent's Exhibits 6(a) and 6(b) were properly admitted at Arbitration and should not be stricken from the record.

Regarding Issue (F)

Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds the following:

For an injury to be compensable under the Workers' Compensation Act, it generally must occur within the time and space boundaries of the employment. Sisbro, Inc. v. Industrial

Comm'n,207 Ill.2d 193, 203, 278 Ill.Dec. 70, 797 N.E.2d 665 (2003). The "arising out of" component for obtaining compensation under the Workers' Compensation Act is primarily concerned with causal connection; to satisfy that 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.) Claimant need only prove some act or phase of his employment was a causative factor in the ensuing injury to recover benefits under the Act. He need not prove it was the sole causative factor, nor even that it was the principal causative factor of his injury. Republic Steel Corp. v. Industrial Comm'n, *et al.*, 26 Ill.2d at 45, 185 N.E.2d at 884 (1962).

Petitioner testified that on April 12, 2018, she was hurrying to the Starbucks in Respondent's hotel to get cups and lids for guests when she tripped on mat causing injury to her left knee. (Tr. p. 8). Petitioner testified that when she tripped, her left leg went to the side and she heard a pop followed by immediate pain. (Tr. pp. 8-9).

Petitioner testified that Respondent sent her by taxi to Advocate Occupational Health on the same day of the accident. (Tr. pp. 13-14). The records indicate that Petitioner was walking rapidly on carpet when she tripped injuring her left knee. (PX1). Petitioner testified that she went to Advocate Occupational Health and the treaters kept her off work and referred her for orthopedic treatment. (Tr. p. 14, PX1).

Petitioner testified that she saw Dr. Tu for treatment on May 10, 2018, and Dr. Tu ordered a MRI for her left knee and gave her work restrictions. (Tr.15, PX2 at 5/10/18). Dr. Tu's notes indicate that he gave Petitioner restrictions of sitting 50% of the time and no lifting, kneeling or squatting activities. (PX2 at 5/10/18). Petitioner testified that she had the MRI performed for her left knee on May 15, 2018. (Tr.15, PX3). Petitioner testified that Dr. Tu diagnosed her with a medial meniscus tear and had Petitioner begin physical therapy. (Tr. 15, PX2). Petitioner testified that she did physical therapy for approximately a month at Total Rehab. (Tr. 16, PX4). Petitioner testified that Dr. Tu recommended surgery for her left knee as reflected by the treatment records. (Tr. 16, PX2 at 6/28/18). Petitioner testified that she has not been able to have the surgery because the insurance did not authorize it. (Tr. pp. 16-17).

Respondent offered no rebuttal testimony or medical evidence regarding Petitioner's need for left knee surgery as recommended by Dr. Tu.

Based upon the totality of the evidence, including medical opinions, and the witness testimony, the Arbitrator concludes that Petitioner has established a causal connection between the work accident of April 12, 2018, and Petitioner's current condition of ill-being of left knee injury. This is supported by the medical records and opinions of Petitioner's testimony at trial, the treaters at Advocate Occupational Health and Dr. Tu.

Regarding Issue J:

Were the Medical Services Reasonable and Necessary, The arbitrator holds the following:

For all the reasons stated above, Petitioner suffered a work related injuries on April 12, 2018. As a result of those injuries, Petitioner has the following unpaid medical bills:

Provider	Dates of Service	Balance
Advocate Occupational Health	4/12/2018	$387.00
Dr. Kevin Tu	5/10/2018 to 9/20/2018	$1,820.00
Premier Imaging & Open MRI	5/15/2018	$1,626.03
Total Rehab	5/29/2018 to 6/29/2018	$6,141.00
	Total outstanding:	**$9,974.03**

Petitioner had admitted medical bills from Advocated Occupational Health (PX1) that had a balance of $387.00, Dr. Kevin Tu (PX2) with a balance of $1,820.00, Premier Imaging and Open MRI (PX3) with a balance of $1,626.03, and Total Rehab (PX4) with a balance of $6,141.00. Petitioner's treatment at Advocate Occupational Health was at the direction of and authorized by Respondent. (PX1) Respondent's clinic directed petitioner to follow up with an orthopedic doctor, which is Dr. Tu. (PX1) The MRI for her left knee was ordered, by Dr. Tu, Petitioner's treating physician. (PX2) The physical therapy at total rehab was recommended by Dr. Tu. (PX4).

In sections C and F above, the Arbitrator found that Petitioner did suffer a work related injury and her condition of ill being is causally connected to that injury. Respondent did not produce any medical opinions or testimony. Therefore, based upon the totality of the evidence, including medical opinions, and witness testimony, the Arbitrator concludes that all of Petitioner's medical charges are reasonable and necessary to attempt to cure her left knee injury

and the Arbitrator awards the $9,974.03 of the medical bills listed above, as provided in Sections 8(a) and 8.2 of the Act.

Regarding Issue K:

Is Petitioner entitled to any Prospective Medical Care?

Section 8(a) of the Act entitles a claimant to compensation for all necessary medical, surgical, and hospital services "thereafter incurred" that are reasonably required to cure or relieve the effects of injury. Specific procedures or treatments that have been prescribed by a medical service provider are "incurred" within the meaning of the statute, even if they have not yet been paid for. Plantation Manufacturing Co. v. Industrial Comm'n, 294 Ill.App.3d 705, 710, 229 Ill.Dec. 77, 691 N.E.2d 13 (1997).

The ability for the Commission to award and order prospective was also decided in Homebrite Ace Hardware v. Industrial Commission 351 Ill.App.3d 333, 814 N.E.2d 126 (2004), and the court relied on Bennett Auto Rebuilders v. Industrial Comm'n, 306 Ill.App.3d 650, 655–56, 239 Ill.Dec. 767, 714 N.E.2d 1064 (1999), the court held that the Commission's order directing the employer to provide written authorization for a prescribed surgery was proper.

In the current case before the Arbitrator, Petitioner's treating surgeons, Dr. Tu has opined that Petitioner requires surgery as a result of the work injury of April 12, 2018. (PX10). Respondent has not provided any rebuttal medical evidence or testimony.

The arbitrator found in sections C and F that an accident occurred on April 12, 2018, that arose out of and in the course of Petitioner's employment by Respondent and Petitioner's left knee injury and current ill-condition is causally related. Therefore, the Arbitrator concludes that Respondent shall authorize Petitioner's left knee surgery and related post-surgical medical treatment as provided in Sections 8(a) Act.

Regarding Issue L:

What temporary benefits are in dispute? The Arbitrator finds the following:

A claimant is entitled to TTD when a "disabling condition is temporary and has not reached a permanent condition." Manis v. Industrial Comm'n, 230 Ill.App.3d 657, 660, 172 Ill.Dec. 95, 595 N.E.2d 158, 160-61 (1st Dist. 1992) The time during which a claimant is

temporarily totally disabled is a question of fact for the Commission; and to be entitled to TTD, claimant must prove not only that he did not work but that he was unable to work. City of Granite City v. Industrial Comm'n, 279 Ill.App.3d 1087, 1090, 217 Ill.Dec. 158, 666 N.E.2d 827, 828-29 (5th Dist. 1996). The dispositive test is whether the condition has stabilized, because the Commission reviews the evidence to ascertain whether claimant has reached maximum medical improvement, *i.e.,* the condition has stabilized. Beuse v. Industrial Comm'n, 299 Ill.App.3d 180, 183, 233 Ill.Dec. 453, 701 N.E.2d 96, 98 (1998).

Petitioner testified that she was sent by Respondent to Advocate Occupational Health on April 12, 2018. (Tr. pp. 13-14). Petitioner testified that she went to Advocate Occupational Health, the treaters ordered her off work and referred her for orthopedic treatment. (Tr. p. 14, PX1).

Petitioner testified that she saw Dr. Tu for treatment on May 10, 2018, and Dr. Tu ordered a MRI for her left knee and gave her work restrictions. (Tr.15, PX2 at 5/10/18). Dr. Tu's notes indicate that he gave Petitioner restrictions of sitting 50% of the time and no lifting, kneeling or squatting activities. (PX2 at 5/10/18). Petitioner testified that she had the MRI performed for her left knee on May 15, 2018. (Tr.15, PX3).

Petitioner testified that Dr. Tu diagnosed her with a medial meniscus tear and had Petitioner begin physical therapy. (Tr. 15, PX2). Petitioner testified that she did physical therapy for approximately a month at Total Rehab. (Tr. 16, PX4). Petitioner testified that Dr. Tu recommended surgery for her left knee as reflected by the treatment records. (Tr. 16, PX2 at 6/28/18).

Petitioner's medical records from Advocate Occupational Health and Dr. Tu all demonstrate that Petitioner was kept off work or on restricted duty beginning April 12, 2018. (PX1, PX2). Petitioner testified that she faxed her restrictions to Respondent, but she was not offered light-duty work and she has not received any Workers' Compensation disability pay. (Tr. pp. 15-17).

The Arbitrator holds, for the reasons stated in the "Accident", "Causation" and "Prospective Care" sections and based upon all testimony and medical evidence, Petitioner is awarded temporary total disability (TTD) benefits from April 13, 2018, up to the date of trial or 27 and 5/7 weeks times Petitioner's TTD rate of $398.62 per week (AWW of $597.94 as stipulated, Arb EX1) for a total of $11,047.35 in TTD benefits due.

CONCLUSION

In conclusion, the Petitioner's testimony was credible and convincing. Petitioner's medical records and testimony corroborate that she injured her left knee working for Respondent on April 12, 2018. The Arbitrator finds that Petitioner was injured in the course of her employment with Respondent on April 12, 2018.

The Arbitrator finds that Petitioner proved that her left knee injuries were caused by the work accident of April 12, 2018. The Arbitrator holds that Respondent shall authorize Petitioner's recommended left knee surgery, post-surgery physical therapy and other related post-surgical medical treatment as provided in Section 8(a) Act.

The Arbitrator concludes that all of Petitioner's medical charges are reasonable and necessary to attempt to cure her left knee injuries and the Arbitrator awards the $9,974.03 of medical bills listed in Section J above, as provided in Sections 8(a) and 8.2 of the Act.

The Arbitrator finds that Petitioner is owed temporary total disability (TTD) benefits due and owing of $11,047.35 for the period of disability from April 13, 2018, up to the date of trial on October 23, 2018.