



2 of 100 DOCUMENTS

THOMAS HEGLAND, PETITIONER, v. FEDERAL EXPRESS, RESPONDENT.

NO. 10WC 13266

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF WINNEBAGO

15 IWCC 103; 2015 Ill. Wrk. Comp. LEXIS 102

February 5, 2015

**JUDGES:** Kevin W. Lamborn; Thomas J. Tyrrell; Michael J. Brennan

**OPINION:** [\*1]

**DECISION AND OPINION ON REVIEW**

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident arising in and out the course of employment, medical expenses, causal connection, prospective medical, temporary total disability, cervical injury and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 9, 2013, is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$ 100.00. 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: FEB 5 - 2015

ATTACHMENT: [\*2]

**ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION**

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 **Douglas J. Holland**, Arbitrator of the Commission, in the city of **Rockford**, on **March 19, 2013**. 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**

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. What temporary benefits are in dispute?

TTD

## **FINDINGS**

On **1-6-10**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did* sustain an [\*3] accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned \$ **34,195.72**; the average weekly wage was \$ **657.61**.

On the date of accident, Petitioner was **56** years of age, *married with 2* dependent children.

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

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

Respondent shall be given a credit of \$ **54,174.96** for TTD, \$ **0** for TPD, \$ **0** for maintenance, and \$ **0** for other benefits, for a total credit of \$ **54,174.96**.

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

## **ORDER**

*The Arbitrator finds that the Petitioner sustained a compensable accident at work on January 6, 2010, resulting in injuries to his lower back and right shoulder.*

*The Arbitrator finds that the Petitioner failed to prove a causal relationship between the accident of January 6, 2010 and his current [\*4] condition of ill-being regarding his neck.*

*Respondent shall pay temporary total disability benefits of \$ 438.41 per week for 75-3/7 weeks commencing January 14, 2010 to April 12, 2010 and May 5, 2010 to August 9, 2011, as provided in Section 8(b) of the Act. Additional claimed TTD benefits related to the unrelated neck condition are hereby denied.*

*Respondent shall be given a credit of \$ 54,174.96 for previously paid TTD benefits, any future TTD benefits and any future PPD benefits.*

*Submitted medical expenses related to the unrelated neck condition are hereby denied.*

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

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

Signature of [\*5] Arbitrator

4-9-13

Date

The Petitioner was sent for an MRI of his shoulder, which revealed no new findings, and then was referred to Dr. Burnstine for additional consultation involving his neck. Dr. Burnstine recommended epidural injections for the cervical spine.

The Petitioner was ultimately sent for an MRI of his neck, and was then sent for an EMG study, which revealed a C5 radiculopathy, a change from the prior EMG. (Pet. Ex. 2) Thereafter, the Petitioner was referred to Dr. Jonathon Citow for further consultation.

Dr. Citow first examined the Petitioner on May 25, 2012, and after reviewing the diagnostic studies and performing an examination, recommended surgery in the form of a cervical fusion for the Petitioner. (Pet. Ex. 4) Dr. Citow suggested a causal relationship between the Petitioner's reported work accident and the neck condition, based on a history that the right arm radiating pain occurred with the accident. (Pet. Ex. 4)

The Petitioner was seen for an independent medical evaluation with Dr. Avi Bernstein on October 1, 2012. Dr. Bernstein felt the Petitioner's MRI scan revealed a neuroforaminol stenosis that may be responsible for the Petitioner's symptoms of a right [\*6] C5 radiculopathy, but Dr. Bernstein felt that the scan revealed routine degenerative changes and the Petitioner should undergo a CT myelogram for a more definitive diagnosis. But Dr. Bernstein felt that any radiographic findings would not be the result of the Petitioner's reported work accident in 2010. (Res. Ex. 1)

After review of the Petitioner's updated EMG, Dr. Bernstein noted there were symptoms of a radiculopathy. (Res. Ex. 2) But on the issue of causation, he felt the current symptoms were unlikely to be related to the Petitioner's initial work accident. Dr. Bernstein noted that although the Petitioner had symptoms and features of a cervical radiculopathy early on, he recovered after a shoulder surgery and completed an FCE indicating that he was able to perform unrestricted activity. Dr. Bernstein noted that it was only in 2012 that the Petitioner had worsening symptoms and a positive EMG study, suggesting aggravation at a later date unrelated to his initial work incident. Dr. Bernstein concluded that the Petitioner's symptoms were likely the result of chronic degenerative change. (Res. Ex. 2)

The Petitioner ultimately underwent the recommended CT myelogram on December 21, 2012. [\*7]

Upon further review, Dr. Citow did not change his recommendations for surgery.

Dr. Bernstein issued an addendum report following a review of the CT myelogram which he felt supported a diagnosis of a right-sided neuroforaminol stenosis consistent with a right C5 radiculopathy. But Dr. Bernstein continued to indicate that he does not believe there was a medical causation with the original accident, as his review of the case medical records suggested that the Petitioner's condition of the right-sided radiculopathy after at a time removed from the Petitioner's reported work accident. (Res. Ex. 6)

The Petitioner was treated conservatively by Dr. Collins with physical therapy, and was ultimately allowed to return to work on April 10, 2011.

But the Petitioner's symptoms returned, and he was ultimately taken to surgery by Dr. Collins on May 14, 2010. Dr. Collins performed an arthroscopic rotator cuff repair to the right shoulder, with decompression/acromioplasty. Post-operative diagnosis was 80% partial thickness undersurface tear involving supraspinatous tendon. (Pet. Ex. 1)

The Petitioner still had complaints of tingling in the right hand post-operatively, and was sent for an EMG of his [\*8] right upper extremity on June 11, 2010, which was interpreted as normal. No cervical radiculopathy was found. (Res. Ex. 4)

The Petitioner continued follow-up care with Dr. Collins, but testified that he was not improving after surgery. Dr. Collins' chart note of August 18, 2010, indicates that the Petitioner was improving, but had developed an adhesive capsulitis or frozen shoulder post-operatively. At that time, the Petitioner complained of intermittent numbness going down the arm, which was not present on the date of examination. (Pet, Ex. 1)

When next seen on September 22, 2010, by Dr. Collins, the Petitioner still complained of some intermittent tingling extending down the arm to the fingertips, indicating that some days he would have none, and other days it may bother him more. The Petitioner continued to have range of motion problems with the shoulder. (Pet. Ex. 1)

Due to the issue with the frozen shoulder, the Petitioner underwent a second procedure by Dr. Collins on January 10, 2011, which involved a manipulation of the shoulder due to the adhesive capsulitis. (Pet. Ex, 1)

The Petitioner testified that after the second procedure his symptoms were worse. But he received physical [\*9] therapy and then went to a work conditioning program.

Dr. Collins ultimately recommended a functional capacity evaluation, which the Petitioner underwent on July 8, 2011. Following the evaluation, the FCE recommended the Petitioner be allowed to return to full-time work without restrictions. (Pet. Ex. 5)

The Petitioner testified that he was subsequently seen by Dr. Collins, who released him to return to full duty work but with a restriction of no lifting greater than 70 pounds. The Petitioner returned to work in a part-time courier position with the Respondent, which he testified involved less packages and packages that were smaller.

While working, the right shoulder pain continued, including tingling in the right upper extremity. On December 12, 2011, the Petitioner was experiencing extreme pain in the right upper extremity and went to the Condell Hospital Emergency Room. (Pet. Ex. 6)

### **FINDINGS OF FACT**

The Petitioner is a 59 year old male who was employed as a handler for the Respondent since 1993. His job duties included loading trucks, sorting packages and helping out couriers. He would drive from building to building loading different trucks. The packages ranged in weight, [\*10] with some packages being light, but up to a limit of 75 pounds.

The Petitioner testified that on January 6, 2010, he was working an unusually heavy day, loading trucks in three buildings. The Petitioner had to load a truck in 20 minutes and deliver it to the airport. The Petitioner testified that he was unhappy about the fact that he had to load a truck in such a short time frame without assistance and he complained about the assignment.

The Petitioner testified that while performing that task, he experienced pain in his back and right shoulder. The Petitioner was not able to identify a specific package that he was lifting or a specific activity he was performing when he first experienced the pain. The Petitioner did not seek any emergency medical care on that date and did not report any accident.

The following day, the Petitioner reported the pain in his back and obtained medical treatment at Condell Immediate Care Center. The initial presenting complaint at Condell indicates "patient complains of lower back pain, patient states hurt back loading truck last night, patient now complains of generalized aches." (Res. Ex. 5) Under the physician's entry of chief complaint mechanism of [\*11] injury, the history indicates loading a package (lifting) 22 hours prior. The Petitioner was diagnosed with back pain and muscle spasm, and instructed to return the following day.

The Petitioner completed an accident report on January 17, 2010, indicating a date of injury of January 6, 2010. When describing how the injury occurred, the Petitioner indicated that he was "loading a truck, gave me only ten minutes to load." (Res. Ex. 3) When asked when he first realized he was injured, the Petitioner responded "when I was driving truck to airport." The Petitioner listed injuries to his lower back and right shoulder, and indicated that he reported the accident the following day. (Res. Ex. 3)

The Petitioner testified that his low back pain resolved while receiving treatment at Condell over the next month, but that his right shoulder complaints increased.

The Petitioner then sought treatment with Dr. Roger Collins on February 3, 2010 at which time he was sent for an MRI of his right shoulder.

The Petitioner testified that it was about this time, 30 days from the date of accident, at which time he first experienced complaints of pain tingling in his right hand bilaterally. The Petitioner [\*12] denied experiencing neck pain at that time.

At present, the Petitioner testified that he remains disabled from working and wishes to undergo the prescribed surgery by Dr. Citow. The Petitioner testified that he previously had group health insurance available through the Respondent to which he could have submitted the surgical cost when it was first recommended, but he chose not to do so. The Petitioner testified that he currently has group health insurance available through his wife, but that he had not submitted the proposed surgery for consideration through that coverage.

**In support of the Arbitrator's decision relating to (C) Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?, the Arbitrator finds as follows:**

On January 6, 2010, the Petitioner was performing his work activities as a handler loading packages into a truck. The Petitioner testified that it was an unusually heavy day and that he was required to complete a job task in a short period of time without assistance. While the Petitioner cannot identify a specific occurrence for the cause of injury to his right shoulder, low back and neck, he testified that he felt pain [\*13] in his low back and right shoulder at or about that time.

The Petitioner reported the incident the following day and obtained medical treatment at Condell. When the Petitioner first reported for medical treatment the following day, he indicated that he had hurt his lower back the following day loading packages.

While the Petitioner is not able to identify a specific incident that led to his claimed injuries, the Arbitrator finds that the Petitioner complained of pain while completing a job task either during or shortly thereafter, which involved loading packages, and that his initial reporting of the incident was reasonably consistent.

As such, the Arbitrator finds that the Petitioner sustained an accident that arose out of and in the course of his employment by Respondent on January 6, 2010.

**In support of the Arbitrator's decision relating to (F) Is Petitioner's current condition of ill-being causally related to the injury?, the Arbitrator finds as follows:**

The Petitioner testified that he initially felt pain in his low back, and somewhat in his right shoulder. When the Petitioner first obtained medical treatment the following day, his complaints mainly involved the low back, [\*14] and there is a mention of right shoulder pain. The Petitioner testified at arbitration that initially his back pain was worse than the shoulder.

When the Petitioner completed the accident report on January 17, 2010, he only listed injured body parts as his lower back and right shoulder.

The Petitioner admitted at arbitration that he had no complaints of neck pain until later in the year of 2012 and that he had no complaints of tingling in his right upper extremity and fingertips until at least one month after his alleged injury.

The medical records of Advocate Condell Medical Center, which document the Petitioner's initial treatment from January 7, 2010 to February 7, 2010, detail an initial diagnosis of low back pain, changing to right shoulder pain with the low back pain resolving, but there are no documented complaints of any radiating pain in the right upper extremity or tingling in the fingertips, or neck pain.

The Arbitrator notes that there is no documented complaints of any tingling in the fingertips until the Petitioner was first seen by Dr. Collins on February 3, 2010.

Dr. Collins' treatment focused on the Petitioner's complaints of right shoulder pain, and he could not [\*15] explain the complaints of pain involving the tingling in the fingertips. Dr. Collins performed surgery to the Petitioner's right shoulder on May 14, 2010, which revealed an 80% partial thickness undersurface tear of the supraspinatous tendon of the rotator cuff, clearly a basis for the Petitioner's right shoulder complaints.

After the surgery, the Petitioner obtained an EMG of his right upper extremity on June 10, 2010 which was interpreted as entirely normal.

The Petitioner continued treatment with Dr. Collins primarily for issues involving a lack of mobility with his right shoulder post-operatively, and the medical records of Dr. Collins reflect that while the Petitioner's complaints of tingling into his fingers continued, it was intermittently and sometimes not present.

After the Petitioner's second procedure to the right shoulder, involving a manipulation for adhesive capsulitis, the Petitioner was able to complete a functional capacity evaluation on July 8, 2011, which found that the Petitioner could return to unrestricted work in his former position. The Petitioner's testimony that his right shoulder pain did not improve after both surgeries is inconsistent with the medical documentation [\*16] of Dr. Collins.

Thereafter, the Petitioner did return to work with the Respondent, albeit in a part-time position, which involved the same lifting requirements as his former position.

When the Petitioner had additional complaints involving tingling in his fingers in December of 2011, he was ultimately sent for a second EMG study in the Spring of 2012, which was interpreted as positive for a C5 radiculopathy, an objective change in the Petitioner's condition.

While the Petitioner's current treating physician, Dr. Citow, has issued an opinion indicating that he believes there is a causal connection between the Petitioner's original accident and his current recommendation for a cervical spine fusion, the Arbitrator notes that the doctor's opinion is predicated upon an inaccurate history that the Petitioner's complaints of neck pain and tingling began at the time of the original accident, and continued unabated. It is clear from the records of Dr. Collins that the tingling in the fingers would wax and wane.

The Arbitrator relies upon the opinion of Dr. Bernstein, who found that there was no causal connection between the original alleged injury and the Petitioner's subsequent cervical [\*17] spine condition, based upon the change in the EMG findings, the fact that the Petitioner appeared to recover from his shoulder surgery and was able to complete an FCE indicating that he could perform unrestricted activity, and the gap in time between the original accident and the Petitioner's subsequent complaints of tingling and later neck pain. Considering the Petitioner's age and the change in the diagnostic findings, the Arbitrator agrees with Dr. Bernstein that the condition may be the result of a chronic degenerative change versus an acute injury from January 6, 2010.

Most significantly, the Arbitrator finds that based upon the Petitioner's testimony and the treating medical records, the complaints involving the neck and fingertips did not occur until at least almost one month after the alleged accident. Based upon the lack of contemporaneous complaints involving the neck or fingertips at the time of the accident, a finding that the Petitioner's alleged accident either caused injury to the Petitioner's cervical spine or aggravated a pre-existing condition to the cervical spine is precluded.

Further, the Arbitrator finds it unlikely that the Petitioner sustained acute injuries [\*18] to his neck, low back and shoulder on January 6, 2010 based upon the Petitioner's vague specifics regarding the original accident.

The Arbitrator finds that based upon the available evidence, the Petitioner's initial low back injury and subsequent right shoulder condition are causally related to his work accident of January 6, 2010.

**In support of the Arbitrator's decision relating to (J) Were the medical services that were provided to Petitioner reasonable and necessary?, the Arbitrator finds as follows:**

The Arbitrator finds that the medical bill submitted from Highland Park Hospital in the amount of \$ 2,835, is related to current treatment related to the Petitioner's neck condition, and having herein found that there is no causal connection between the Petitioner's neck condition and his accident of January 6, 2010, this bill is hereby denied.

Further, the Petitioner seeks prospective medical care in the form of a cervical spine fusion as recommended by Dr. Citow for his neck condition. Having herein found that there is no causal connection between the Petitioner's cervical spine condition and his work accident of January 6, 2010, prospective medical care for the cervical [\*19] spine condition is hereby denied.

**In support of the Arbitrator's decision relating to (K) What temporary benefits are in dispute?, the Arbitrator finds as follows:**

The Arbitrator awards TTD benefits relating to the Petitioner's injury for his low back and right shoulder, from a period of January 14, 2010 to April 12, 2010 and May 5, 2010 to August 9, 2011, totaling 75-3/7 weeks, or \$ 49,602.60.

The Arbitrator finds that additional claimed TTD benefits after December 21, 2011 are related to the Petitioner's unrelated cervical spine condition, and hereby denied.

The Arbitrator notes the Respondent is entitled to a credit in the amount of \$ 54,174.96 for previously paid TTD benefits.

### **Legal Topics:**

For related research and practice materials, see the following legal topics:

Workers' Compensation & SSDI Administrative Proceedings Claims Time Limitations Notice Periods Workers' Compensation & SSDI Compensability Course of Employment General Overview Workers' Compensation & SSDI Compensability Injuries General Overview