

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF McCLEAN )

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

**BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION**

CHAD TRANCHANT,

Petitioner,

**15IWCC0006**

vs.

NO: 12 WC 27179

STATE OF ILLINOIS – PONTIAC CORRECTIONAL CENTER,

Respondent.

**DECISION AND OPINION ON REVIEW**

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's 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.

Petitioner was a Correctional Officer at Respondent facility. On July 13, 2012, he was involved in an altercation with an inmate. Petitioner suffered injuries to his elbow, shoulder, low back and coccyx. The medical records showed that he suffered left shoulder sprain/separation, low level degenerative changes of the lumbar spine with tiny left paracentral disc bulge at L4-5 and right paracentral disc bulge at L5-S1 with no bony fracture, a coccyx fracture, and right elbow epicondylitis during work hardening.

The medical records also reveal that by July 30, 2012, Petitioner told Dr. Newcomer that his shoulder was "doing much, much better" but his tailbone was still sore and still bothered him with prolonged sitting. By September 7, 2012, Dr. Newcomer noted Petitioner's shoulder was "fantastic" and he was at maximum medical improvement. On October 29, 2012, Petitioner reported in physical therapy that his shoulder was not bothering him much at all, but his tailbone still wakes him and it is sore to sit. His back gets stiff but is not painful. On May 30, 2013, Petitioner reported he was "feeling really good now" though he still had pain at the tailbone. He believed he could return to work at full duty. Dr. Carmichael released him to work without restrictions and from further treatment.

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Petitioner testified that his tailbone is not what it was before and he did "know if it ever will be." He has pain every day. Just about everything he does hurts his tailbone. He has kept up with his home exercise program for his tailbone, as well as all other parts of his body that were injured. However, he has not sought treatment since May of 2013.

Petitioner further testified he did not have pain in his left shoulder as he sat during arbitration. However, if he is overdoing workouts or lifting heavy weights he will "feel it the next day." The pain limits him "from doing things just as easy as pull ups;" any activity causes pain in his shoulder. His "back is nothing like it used to be." Numerous activities including running a long time, rowing, and softball hurt his back. Petitioner still experiences symptoms of right elbow epicondylitis that he suffered in work hardening. Playing softball, overdoing activities, and continuously turning keys hurt his elbow. He takes Ibuprofen and an anti-inflammatory prescribed by Dr. Newcomer.

Petitioner transferred from Pontiac Correctional Center, a maximum security prison, to Danville Correctional Center, a medium security prison about six to seven months prior to arbitration. His duties are almost the same at the new prison, but the inmates are a lot less violent; he does not have to worry about getting into a fight with an inmate every day. Petitioner testified his transfer was not the result of his work injuries. Petitioner notices his various symptoms every time he has to move property, pick anything up, or "do anything continuously with keys." He also has to travel a lot more now transporting inmates in a van. Sitting in the van seat for hours is very painful to his tailbone and back. He does not feel much pain in his left shoulder unless he is lifting overhead. Petitioner also testified he takes over-the-counter medication almost every day. He only takes the prescription medication when his elbow hurts. He understands that it can take up to 5-10 years for the coccyx to completely heal and he hopes it does not hurt for the rest of his life.

The Arbitrator awarded Petitioner 10% loss of the use of the right arm for the lateral epicondylitis and 25% loss of the person-as-a-whole. The person-as-a-whole award was appropriated at 7.5% for the left shoulder sprain/separation, 7.5% for the coccyx fracture, and 10% for the lumbar spine. The Arbitrator noted that Petitioner was 26 years old and would have to live with his disability for a longer period of time than an older worker; his work was physically demanding and would affect him to a greater degree than a worker in a less strenuous job; and Petitioner "credibly testified" to current complaints of his shoulder, occasional residual right elbow symptoms, and low back and coccyx pain.

The Commission acknowledges that Petitioner had to have extensive physical therapy/work hardening and was not able to return to work for about 10½ months. However, the length of therapy and convalescence was largely based on the physical nature of Petitioner's job as Correctional Officer and possible danger to his person if he returned to that position in a physically compromised condition. The Commission notes that there was no surgery performed and Petitioner testified that he still works in a highly physically demanding and engages in what appears to be strenuous physical workouts. The fact that he is still able to engage in such activities and only takes over-the-counter medication "almost every day," suggests that he is not permanently disabled to the degree of 10% of the right arm and 25% of the person-as-a-whole.

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In addition, Petitioner testified to only some shoulder pain with overhead activities and when he overdid physical activity and that his elbow only really bothered him when he engaged in heavy lifting, continuous key turning, and playing softball. The herniated discs were characterized as "tiny" and there was no treatment except for injections and physical therapy. According to the medical record and Petitioner's testimony, it appears that Petitioner's coccyx injury is currently the most problematic condition of ill being from which Petitioner suffers.

Based on the entire records before us, the Commission finds the Arbitrator's permanent partial disability award is excessive. Accordingly, the Commission reduces the award to the loss of 15% of the person-as-a-whole apportioned at 7.5% for the coccyx condition, 5% for the lumbar spine condition, and 2.5% for the shoulder condition. The Commission also reduces the award for the epicondylitis to 7.5% loss of use of the right arm, resulting in a total permanent partial disability award of 93.975 weeks.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$547.89 per week for a period of 75 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the loss of 15% of the use of the person-as-a-whole (apportioned at 7.5% for the fractured coccyx, 5% for the lumbar spine condition, and 2.5% of the left shoulder condition).

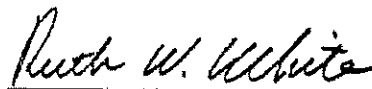
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$547.89 per week for a period of 18.975 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of 7.5% of the use of the right arm.

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.

DATED: JAN 8 - 2015

RWW/dw  
O-12/2/14  
46

  
Ruth W. White

  
Daniel R. Donohoo

  
Charles J. DeVriendt

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

TRANCHANT, CHAD

Employee/Petitioner

Case# 12WC027179

15IWCC0006

ST OF IL PONTIAC CORRECTIONAL

Employer/Respondent

On 4/7/2014, 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 0.06% 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:

0190 LAW OFFICES OF PETER F FERRACUTI 0502 ST EMPLOYMENT RETIREMENT SYSTEMS  
THOMAS M STROW 2101 S VETERANS PARKWAY\*  
110 E MAIN ST PO BOX 19255  
OTTAWA, IL 61350 SPRINGFIELD, IL 62794-9255

5116 ASSISTANT ATTORNEY GENERAL  
GABRIEL CASEY  
500 S SECOND ST  
SPRINGFIELD, IL 62706

0498 STATE OF ILLINOIS  
ATTORNEY GENERAL  
100 W RANDOLPH ST  
13TH FLOOR  
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT  
WORKERS' COMPENSATION CLAIMS  
PO BOX 19208  
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy  
pursuant to 820 ILCS 305 / 14

APR 7 2014



*Ronald A. Rascia*  
RONALD A. RASCIA, Acting Secretary  
Illinois Workers' Compensation Commission

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF McLean )

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

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
NATURE AND EXTENT ONLY

**15IWCC0006**

Chad Tranchant  
Employee/Petitioner

Case # 12 WC 27179

v.

Consolidated cases: N/A

State of Illinois Pontiac Correctional  
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **Bloomington, Illinois**, on **February 26, 2014**. By stipulation, the parties agree:

On the date of accident, **July 13, 2012**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned **\$47,483.80**, and the average weekly wage was **\$913.15**.

At the time of injury, Petitioner was **26** years of age, *single* with **0** children under 18.

Necessary medical services and temporary compensation benefits have been provided by Respondent. Respondent has stipulated to payment of any unpaid and related charges as outlined in Petitioner's Exhibit #1.

Petitioner was temporary and totally disabled between July 14, 2012 through May 30, 2013, or 45-6/7 weeks, and was paid full service-connected leave benefits during that period.

ICArbDecN&E 2/10 100 W. Randolph Street #8-200 Chicago, IL 60601 312/814-6611 Toll-free 866/352-3033 Web site: www.Ivcc.il.gov  
Downstate offices: Collinsville 618/346-3450 Peoria 309/671-3019 Rockford 815/987-7292 Springfield 217/785-7084

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

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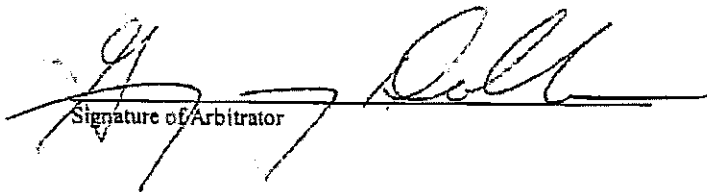
**ORDER**

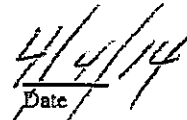
Respondent shall pay Petitioner the sum of \$547.89/week for a further period of 125 weeks, as provided in Section 8(d)(2) of the Act, because the injuries sustained caused the permanent partial disability of said Petitioner to the extent of 25% person-as-a-whole (7-1/2% for his fractured coccyx; 7-1/2% for the left shoulder AC joint sprain and grade-1 shoulder separation; and 10% for two herniated disks).

Respondent shall pay Petitioner the sum of \$547.89/week for a further period of 25.3 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused 10% loss of use of Petitioner's right arm thereof.

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

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

  
Signature of Arbitrator

  
Date

APR 7 - 2014

15IWCC0006

STATEMENT OF FACTS

Petitioner, Chad Tranchant, testified that he became employed by Respondent, State of Illinois Pontiac Correctional Center, on August 18, 2009. He testified that he was employed as a correctional officer, and that his duties included maintaining security and control of the inmates.

Petitioner testified that on Friday, July 13, 2012, while undertaking his regular duties at the facility, he was confronted by an inmate who was found to have contraband. Petitioner further testified that this particular inmate stood over 6 feet tall and weighed roughly 300 pounds, and had recently been transferred to the facility due to an assault on another individual. Petitioner testified that this inmate was highly agitated and noncompliant. Petitioner testified that the inmate assaulted him while he was attempting to execute his orders. Petitioner further testified that the inmate struck him numerous times about the head and upper body before Petitioner was able to wrestle the inmate to the ground. Petitioner testified that the inmate landed on him and then continued to strike and kick him while on the ground. Petitioner testified that this entire altercation probably took 3-4 minutes before help arrived and the inmate was secured.

Petitioner testified that he suffered numerous injuries as a direct result of altercation at work, for which he sought medical attention immediately after the altercation ended. Petitioner testified at trial that he never had any issues with his tailbone, left shoulder, lumbar, or right elbow prior to the accident.

Medical records from Dr. Lacie Shanks, who saw Petitioner the same day as the accident, indicate that Petitioner had complaints of pain in multiple areas: including his left shoulder, low back, right lower abdomen, and buttock. (PX5, at 34) X-ray taken of the buttock area showed possible coccygeal fracture. (PX5, at 35) Petitioner was diagnosed with a tailbone injury, left shoulder contusion, abdominal pain, and a low back strain. (PX5, at 36) Petitioner was advised to rest and use ice/heat packs, given pain medication, told to use a donut pillow while sitting, and ordered to do a follow up his primary care physician within a week. (PX5, at 36)

On July 16, 2012, Petitioner presented to Dr. Joseph Newcomer at McLean County Orthopedics. Dr. Newcomer, after an examination and obtaining addition x-rays, diagnosed Petitioner with: 1) left shoulder AC joint sprain and grade 1 separation; 2) left low back pain and spasm; 3) low back SI join strain; and 4) coccyx fracture. It was recommended that Petitioner undergo physical therapy for the pain and inflammatory reduction modalities for the shoulder and low back. (PX3, at 12)

Petitioner followed up with Dr. Newcomer on July 30, 2012. At that time Dr. Newcomer noted Petitioner returned following a coccyx fracture and shoulder separation. Dr. Newcomer noted Petitioner's shoulder was improving, but the tailbone was still sore and still bothered Petitioner when he sat for prolonged periods of time. (PX3, at 13)

On August 13, 2012, Petitioner returned to Dr. Newcomer for a progress check. Dr. Newcomer indicated that Petitioner had been doing physical therapy, rehabbing the lower extremity, and recovering from a coccyx fracture. At that time Petitioner reported that the pain in his tailbone had improved, but he was still tender to palpation. Petitioner also reported an uncomfortable popping sensation over the AC join of the left shoulder. Dr. Newcomer recommended addition physical therapy with functional strength and condition exercises, and a follow-up in three weeks. (PX3, at 14)

Petitioner followed up with Dr. Newcomer on September 7, 2012. At this time, Dr. Newcomer noted that Petitioner had reached MMI on his shoulder. Regarding his coccyx fracture, an additional x-ray was done which showed it to be slightly displaced. Dr. Newcomer noted point tenderness to palpation in the same region

as the fracture with pain at 4/5 at its worst and 3 to 4 when Petitioner was sleeping and sitting. Dr. Newcomer was concerned that Petitioner could have a slightly malangulated coccyx, but indicated that he wanted to give it another four weeks to see if the symptoms would abate. (PX3, at 15)

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Dr. Newcomer saw Petitioner again on September 24, 2012. A CT scan of his coccyx and sacrum had been done which showed a healed fracture, but one that had healed in a flexed position. Dr. Newcomer noted that he believed that most of the symptomatology at that point was SI joint related, and also noted that he believed there was enough force with the trauma to have thrown his sacroiliac joint out of whack. Dr. Newcomer further noted that Petitioner had a lot of stiffness in his sacroiliac joint, and hurts when he goes from a sitting to a standing position or if he is supine for a period of time and has to get up. Dr. Newcomer recommended a therapeutic and diagnostic injection into the SI joint. (PX3, at 16)

On October 31, 2012, Petitioner saw Dr. Newcomer for another follow-up. Dr. Newcomer noted that Petitioner's AC joint pain was improving. Petitioner continued to complain of pain over the coccyx as well as the SI joint. Dr. Newcomer noted that Petitioner continued to complain of quite a bit of pain with any forward trunk flexion for any length of time, and pain upon returning to extension directly upon the SI joint. Petitioner indicated that the pain is worst first thing in the morning or after prolonged sitting. Dr. Newcomer observed that more functional quicker movements aggravated Petitioner's SI joint pain in physical therapy. Dr. Newcomer continued to recommend the injections. (PX3, at 17)

On December 7, 2012, Job Bolles, MS-PAC for Dr. Newcomer saw Petitioner in regard to his right lateral elbow pain. Petitioner reported complaints of lateral elbow pain began after beginning work conditioning. Mr. Bolles noted, upon examination, that Petitioner was exquisitely tender over the lateral epicondyle and ECRB tendon, mild pain in the middle finger provocative testing, and reproducible pain with resisted grip and wrist extension. Petitioner was diagnosed with right elbow lateral epicondylitis and a corticosteroid injection into the ECRB tendon was performed. (PX3, at 18)

At that same visit on December 7, 2012, Petitioner was also evaluated on the progress of his SI joint, coccyx pain, and left shoulder issues. Mr. Bolles noted Petitioner had been doing work conditioning with upper and lower extremity strengthening. Petitioner was still dealing with quite a bit of stiffness and soreness in the mornings when he first gets out of bed, mainly in the SI joint area. Petitioner also continued to have some coccyx pain as well. Petitioner's reported that his primary complaint was SI joint when he was active. He reported pain when walking up an incline, moving from sitting to standing, forward flexion, trunk and return to extension, and pain with squatting. It was again recommend that Petitioner receive a SI joint injection for the SI joint pain. Continued work conditioning over the next month was also recommended. (PX3, at 18)

On January 7, 2013, Petitioner returned to Dr. Newcomer over a flare-up with his back. Dr. Newcomer observed that just doing some light shoveling recently caused Petitioner a flare-up in his back that caused sharp, stabbing, mechanical type of back pain that took his breath away. Dr. Newcomer also noted that Petitioner's coccyx was also very painful when sitting and had not improved much at all. With regard to the lateral epicondylitis of the right elbow, which according to Dr. Newcomer occurred as a result of the work conditioning program's repetitive tasks, Petitioner received an injection with 1% 1 cc of Celestone and 3 cc of Lidocaine. Dr. Newcomer then referred Petitioner to a pain specialist, Dr. Carmichael, for an evaluation and injection for Petitioner's mechanical back and coccyx pain. (PX3, at 19)

On January 17, 2013, Petitioner saw Dr. Carmichael at McLean County Orthopedics for his back pain. Petitioner had complaints of pain at the lumbosacral junction and also at the lower tailbone. Dr. Carmichael noted that aggravating factors included prolonged sitting, laying down, standing, and bending. Upon physical examination, Dr. Carmichael diagnosed Petitioner with discogenic pain and a coccyx injury. Dr. Carmichael recommended an intercoccyx injection that day. The doctor also recommended a MRI of the lumbar noting that



Petitioner had undergone about five months of physical therapy and work conditioning but was still not back to work. Dr. Carmichael performed the intercocyx injection on Petitioner without complication. (PX2, at 80)

At a follow-up on January 24, 2013, with Dr. Carmichael, Petitioner reported that his back was still sore, and that his tailbone pain increased for a couple of days following the injection, but was better at this visit. The MRI results were reviewed and showed shallow right paracentral herniation at L5-S1 and shallow left paracentral herniation at L4-5. Dr. Carmichael recommended right and left transforaminal epidurals. (PX2, at 79)

Petitioner returned to Dr. Carmichael on January 28, 2013. At that time, Dr. Carmichael performed a fluoroscopically guided, contrast controlled left L5 and right S1 transforaminal epidural. (PX2, at 84)

Petitioner followed up with Dr. Newcomer on February 4, 2013. At this time, Dr. Newcomer noted that Petitioner was being seen by a pain specialist for his back, that Petitioner had two bulged disks that had been injected, and that he was to have one addition injection. The doctor noted the injections had not helped much with the pain and that a discectomy is being considered. With respect to Petitioner's ECRB and tendonitis of the right elbow, Dr. Newcomer noted that Petitioner was feeling much better. Dr. Newcomer recommended a Thera-Band program to work on conditioning. He also noted however, that if Petitioner's symptomatology of lateral epicondylitis returned, then an PRP would be considered. (PX3, at 20)

On February 12, 2013, Petitioner returned to Dr. Carmichael for his continuing back pain. Petitioner reported that he was still having severe back pain and tailbone pain and substantial difficulty sleeping. After an examination and further review of the MRI, Dr. Carmichael recommended a discogram with intradiscal cortisone injection at L4-5 and L5-S1 combined with a left L5 transforaminal epidural. Dr. Carmichael noted that if these procedures were not adequate, Petitioner would get a surgical referral. (PX2, at 78)

On February 28, 2013, Petitioner returned to Dr. Newcomer with persistent elbow complaints and flare-ups that began as soon as he started doing exercises with extension. Upon examination, Dr. Newcomer noticed tenderness to palpation in area of complaint, and tenderness with resisting wrist extension and middle finger extension. Given that Petitioner had already been given two Cortisone injections without much benefit, Dr. Newcomer recommended a PRP as an alternative to surgery. (PX3, at 21)

Petitioner returned to Dr. Carmichael on April 18, 2013 with continuing complaints of severe back pain over the sacrum and tailbone. Dr. Carmichael once again recommended a discogram with intradiscal cortisone injection at L4-5 and L5-S1 combined with a left L5 transforaminal epidural. (PX2, at 77)

On April 22, 2013, Petitioner underwent a fluoroscopically guided, contrast controlled left L4-5 and L5-S1 discogram with intradiscal cortisone injections and left L5 transforaminal epidural steroid injection and tailbone injection done by Dr. Carmichael. (PX2, at 82)

On May 5, 2013, Petitioner returned to Dr. Newcomer for the PRP procedure. Dr. Newcomer removed twelve cc of blood, spun down and injected the platelet-rich plasma under strict sterile technique into the right lateral epicondylar region of Petitioner's elbow. Petitioner was then instructed to do a follow up where he would receive stretching and icing instructions. (PX3, at 22)

On May 22, 2013, Petitioner was returned to work without any restrictions by Dr. Newcomer. (PX3, at 24) Petitioner then was released by McLean County Orthopedics on May 30, 2013 with no restrictions. (PX2, at 30-32)

At trial, Petitioner testified that he currently experiences pain in his left shoulder when he is working out or if he overdoes things. Specifically, Petitioner testified that the pain limits what he can do physically with his

left shoulder, and that he most recently felt the pain the previous day while performing chest exercises at the gym. Petitioner further testified that he continues to do therapy to strengthen his left shoulder. Petitioner also testified to occasional residual symptoms in his right elbow.

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With respect to the coccyx fracture, Petitioner testified that that whole general area feels different than it did prior to the accident. Petitioner testified that he continues to feel pain every day around his tailbone. He testified that he has pain in his tailbone area when he is driving, running, or sitting. Petitioner described the pain as a very dull and aggravating pain. Petitioner continues to perform the suggested therapy for this injury.

Petitioner testified that his back tightens up when running, when he does rows, and when he plays softball. Petitioner testified that he had no such problems before the accident.

### What is the Nature and Extent of Petitioner's Injuries?

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

- (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment.
- (b) Also, the Commission shall base its determination on the following factors:
  - (i) The reported level of impairment;
  - (ii) The occupation of the injured employee;
  - (iii) The age of the employee at the time of injury;
  - (iv) The employee's future earning capacity; and
  - (v) Evidence of disability corroborated by medical records.

With regards to paragraph (i) of Section 8.1(b) of the Act:

- i. In this case, neither party submitted an AMA impairment rating.

With regards to paragraph (ii) of Section 8.1(b) of the Act:

- ii. Petitioner continues to be employed in his pre-injury employment as a Correctional Officer with Respondent. The Arbitrator takes judicial notice that this position is a physically demanding position and concludes Petitioner's permanent partial disability ("PPD") will be larger than an individual who performs lighter work.

With regards to paragraph (iii) of Section 8.1(b) of the Act:

- iii. Petitioner was only 26 years old at the time of his injuries. The Arbitrator considers Petitioner to be a younger individual and concludes that Petitioner will likely have to live and work for a longer period of time than an older individual with the same injuries.

With regards to paragraph (iv) of Section 8.1(b) of the Act:

- iv. At the present time, there is no evidence that Petitioner's future earning capacity has diminished as a result of this injury.

With regards to paragraph (v) of Section 8.1(b) of the Act:

15IWCC0006

- v. On July 13, 2012, while undertaking his regular duties Petitioner was involved in an altercation with a 6 foot, 300 pound inmate. The inmate struck him numerous times about the head and upper body. Petitioner sought treatment and diagnosed with 1) left shoulder AC joint sprain and grade 1 separation; 2) left low back pain and spasm; 3) low back SI joint strain; and 4) coccyx fracture. Dr. Newcomer, one of his treating physicians believed that there was enough force with the trauma to have thrown his sacroiliac joint out of "whack." During the course of treatment, a CT scan of his coccyx and sacrum showed a healed fracture, but one that had healed in a flexed position. A lumbar MRI performed revealed a shallow right paracentral herniation at L5-S1 and shallow left paracentral herniation at L4-5. Petitioner developed pain over the lateral epicondyle and ECRB tendon during the course of work conditioning. Right elbow lateral epicondylitis was added to his diagnoses. To treat his multiple diagnoses, Petitioner underwent a course of conservative treatment consisting of physical therapy; corticosteroid injection into the ECRB tendon; a SI joint injection for the SI joint pain; an injection with 1% 1 cc of Celestone and 3 cc of Lidocaine; an intercoccyx injection; a fluoroscopically guided, contrast controlled left L5 and right S1 transforaminal epidural; a discogram with intradiscal cortisone injection at L4-5 and L5-S1 combined with a left L5 transforaminal epidural; and a PRP procedure. Petitioner was ultimately returned to work without any restrictions. He credibly testified to current complaints regarding his left shoulder, occasional residual symptoms in his right elbow, low back pain and pain every day around his tailbone.

The determination of PPD is not simply a calculation, but an evaluation of all five factors as stated in the Act. In making this evaluation of PPD, consideration is not given to any single enumerated factor as the sole determinant. Therefore, after applying Section 8.1b of the Act, 820 ILCS 305/8.1b and considering the relevance and weight of all these factors, the Arbitrator finds Petitioner sustained 10% loss of use of the right arm for the right elbow epicondylitis under Section 8(e) of the Act. The Arbitrator further finds that Petitioner is permanently disabled to the extent of 25% (7-1/2% for his fractured coccyx; 7-1/2% for the left shoulder AC joint sprain and grade-1 shoulder separation; and 10% for two herniated disks) under Section 8(d)2 of the Act.

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
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<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION  
Ramon Rodriguez,  
Petitioner,  
vs.

**15IWCC0023**  
NO: 13 WC 11119

Aramark,  
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 8, 2014 is hereby affirmed and adopted.

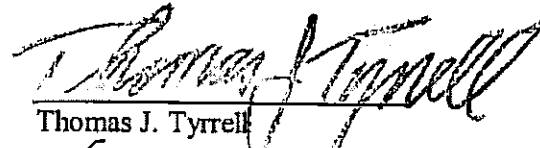
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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 \$27,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **JAN 12 2015**  
KWL/vf  
O-1/6/15  
14

  
Kevin W. Lamborn

  
Thomas J. Tyrrell

  
Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**15 IWCC0023**  
Case# 13WC011119

**RODRIGUEZ, RAMON**

Employee/Petitioner

**ARAMARK**

Employer/Respondent

On 4/8/2014, 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 0.05% 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:

2675 COVEN LAW GROUP  
LARRY J COVEN  
180 N LASALLE ST SUITE 3650  
CHICAGO, IL 60601

1739 STONE & JOHNSON CHTD  
PATRICK DUFFY ESQ  
111 W WASHINGTON ST SUITE 1800  
CHICAGO, IL 60602

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF COOK )

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

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

**15 IWCC0023**

Case # 13 WC 11119

Ramon Rodriguez  
Employee/Petitioner

v.

Consolidated cases: N/A

Aramark  
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **February 21, 2014**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

Ramon Rodriguez  
13 WC 11119

15 IWCC0023

FINDINGS

On February 26, 2013, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned \$88,658.44; the average weekly wage was \$1,704.97.

On the date of accident, Petitioner was 43 years of age, *married* with 2 dependent children.

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

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

Respondent shall be given a credit of \$11,691.26 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$11,691.26.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$1,136.64/week for 10 2/7 weeks, commencing April 15, 2013 through June 25, 2013, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner PPD benefits of \$712.55/week for 43 weeks, because the injuries sustained caused a 20% loss of use of the right leg, as provided in Section 8(e)(12) of the Act.

Respondent shall be given a credit of \$11,691.26 for temporary total disability paid to Petitioner.

Respondent shall be given a credit of \$3,509.71 for temporary partial disability paid to Petitioner.

**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.

**Statement of Facts**

The disputed issues in this matter are: 1) causal connection; 2) temporary total disability; and 3) the nature and extent of Petitioner's injury. See, AX1.

Petitioner testified that he has worked as a route service representative for Aramark for almost ten (10) years. He works in the Franklin Park area, selling and delivering floor mats, towels, and uniforms. He has two children, ages 12 and 17.

On February 26, 2013, he was driving a step van, which is similar to a UPS van. The step to enter and/or exit the van is about one and one-half (1-1/2) feet higher than the step into an automobile. He enters and exits the van approximately forty (40) times per shift. At about 7:00 a.m. he was stepping out of the van, planted his foot, and felt pain in his right knee. He had had no prior injuries to or symptoms in his knee. He testified that he had not had any prior treatment to his right knee. He hobbled throughout the day. When he finished working, he told the district manager. He worked with assistance on February 27, 2013; and at the end of the day, he was sent to Concentra.

Petitioner provided a history at Concentra that he slipped, twisting, and injuring his right knee, while stepping out of a truck. Petitioner reported hearing a popping sound and located the pain on the medial joint line and patellar tendon. The physician at Concentra, Dr. Osama Thanlij, diagnosed a sprain/strain of the right knee, ordered physical therapy and light duty. PXA.

Aramark accommodated the light duty by giving the petitioner a filing assignment. He was not working the route. The parties agree that Petitioner sustained a temporary wage loss while working light duty; and received the appropriate amount of TPD.

Petitioner followed-up at Concentra for the next three weeks. He testified that he attended physical therapy and at some point, an MRI was prescribed. It is his understanding that the MRI revealed a torn meniscus. He was referred to an orthopedist. PXA.

A friend had recommended Dr. Jimenez at Illinois Bone & Joint Institute therefore; petitioner chose to see Dr. Jimenez. Petitioner first presented to Dr. Jimenez on April 2, 2013 and provided a consistent history of accident. Dr. Jimenez noted the MRI showed a partial, medial meniscal tear. He diagnosed a torn medial meniscus and recommended surgery. PXB.

Dr. Jimenez performed an arthroscopic partial medial meniscectomy on April 15, 2013. Following surgery, Petitioner attended physical therapy at AthletiCo. On April 23, 2013, Dr. Jimenez recommended Petitioner continue physical therapy and remain off work. PXB.



At the Respondent's request, Petitioner attended an independent medical evaluation ("IME") with Dr. Lawrence Lieber, on May 22, 2013. After reviewing medical records and examining Petitioner, Dr. Lieber concluded that Petitioner needed no additional treatment and was able to return to work in a full duty capacity. RX1.

Dr. Jimenez disagreed and kept Petitioner off work until June 11, 2013. Effective June 11, 2013 Dr. Jimenez permitted Petitioner to return to light duty. Petitioner followed the advice of Dr. Jimenez, stayed off work and continued to attend physical therapy. On or about June 25, 2013 Dr. Jimenez released Petitioner to return to work in a full duty capacity. PXB.

Petitioner testified that the extra month of physical therapy resulted in improvement in his condition. On cross-examination Petitioner agreed that he does not know how he would have progressed if he did not attend the extra month of physical therapy.

On May 20, 2013, Petitioner told the physical therapist that he had been increasing his activities and had started jogging. Petitioner rated his pain at 4/10 to 8/10. Petitioner reported improvement on the dates of May 21 and May 28, 2013, respectively and on May 30, 2013, told the therapist that he did not feel prepared to return to work. PXC.

Petitioner returned to work on June 26, 2013 and has worked in a full duty capacity, since that date.

Currently, he feels pain while using stairs and entering/exiting his truck. At home, he uses Ibuprofen and ice. He can no longer play basketball with his children.

He returned to Dr. Jimenez on January 21, 2014 for the first time since June 2013. Dr. Jimenez administered a shot, but Dr. Jimenez spoke about a future knee replacement. Petitioner plans to delay the knee replacement as long as possible.

Petitioner attended a second examination with Dr. Lieber on October 23, 2013. Dr. Lieber's examination found full range of motion and some tenderness. Petitioner completed a lower limb questionnaire. He concluded that Petitioner sustained a 2% functional impairment of the right lower extremity pursuant to the AMA Guidelines. RX2.

**Conclusions of Law**

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

It is within the province of the Commission to determine the factual issues, to decide the weight to be given to the evidence and the reasonable inferences to be drawn there from; and to assess the credibility of witnesses. *See, Marathon Oil Co. v. Industrial Comm'n*, 203 Ill. App. 3d 809, 815-16 (1990). And it is the province of the Commission to decide questions of fact and causation; to judge the credibility of witnesses and to resolve conflicting medical evidence. *See, Steve Foley Cadillac v. Industrial Comm'n*, 283 Ill. App. 3d 607, 610 (1998).

It is established law that at hearing, it is the employee's burden to establish the elements of his claim by a preponderance of credible evidence. *See, Illinois Bell Tel. Co. v. Industrial Comm'n.*, 265 Ill. App. 3d 681; 638 N.E. 2d 307 (1<sup>st</sup> Dist. 1994). This includes the issue of whether Petitioner's current state of ill-being is causally related to the alleged work accident. *Id.* A claimant must prove causal connection by evidence from which inferences can be fairly and reasonably drawn. *See, Caterpillar Tractor Co. v. Industrial Comm'n.*, 83 Ill. 2d 213; 414 N.E. 2d 740 (1980). Also, causal connection can be inferred. Proof of an employee's state of good health prior to the time of injury and the change immediately following the injury is competent as tending to establish that the impaired condition was due to the injury. *See, Westinghouse Electric Co. v. Industrial Comm'n*, 64 Ill. 2d 244, 356 N.E.2d 28 (1976). Furthermore, a causal connection between work duties and a condition may be established by a chain of events including Petitioner's ability to perform the duties before the date of the accident and inability to perform the same duties following that date. *See, Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 193 (1986).

Petitioner sustained a twisting injury to his right knee that resulted in a torn medial meniscus. Petitioner had surgery and attended physical therapy. Dr. Jimenez and Dr. Lieber agree that Petitioner's right knee condition is related to the accident. Therefore, the Arbitrator finds Petitioner's condition of ill-being is related to the accident.

**K. What TTD benefits are in dispute?**

Petitioner's lost time commenced on April 15, 2013; i.e., the date of surgery. Petitioner lost time through June 25, 2013. TTD was paid through May 22, 2013; i.e., the date of Dr. Lieber's IME. The issue is whether Petitioner was able to work full duty between May 23 and June 25, 2013.

Dr. Lieber concluded Petitioner was able to work full duty. According to the AthletiCo records, Petitioner was able to jog during this period and reported consistent improvement. However, his treating doctor, Dr. Jimenez did not agree and kept him off work, in a full duty capacity, until June 25, 2013. Petitioner followed his doctor's advice and did not attempt to return to full duty work until

June 25, 2013. The Arbitrator finds Dr. Jimenez' opinions to be more persuasive than those of Dr. Lieber. The Arbitrator concludes that Petitioner has established that he was entitled to TTD between May 23 and June 25, 2013.

**L. What is the nature and extent of the injury?**

Petitioner attended a second examination with Dr. Lieber on October 23, 2013. Dr. Lieber's examination found full range of motion and some tenderness. Petitioner completed a lower limb questionnaire. He concluded that Petitioner sustained a 2% functional impairment of the right lower extremity pursuant to the AMA Guidelines.

Pursuant to Section 8.1b of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereinafter the "Act"), for accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:

- (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.
- (b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as report by the physician must be explained in a written order.

With respect to Section 8.1(b)(i), Dr. Lieber assessed a PPI rating of 2% functional impairment of the right lower extremity. No other physician offered an assessment of Petitioner's impairment, pursuant to the AMA Guidelines. While the Arbitrator places some weight on this factor, the Arbitrator finds and concludes that the functional impairment assessment, performed by Dr. Lieber, is woefully lacking, pursuant to Section 8.1b of the Act. The doctor's report should have included an evaluation of medically defined and professionally appropriate measurements of impairment, including, but not

limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment.

With respect to Section 8.1(b)(ii), Petitioner's occupation, he works as a route salesman and has returned to work and continues to work in a full duty capacity, albeit with some pain. The Arbitrator places some weight on this factor.

With respect to Section 8.1(b)(iii), Petitioner's age, 43, suggests that Petitioner is in the middle of his work life.

With respect to Section 8.1(b)(iv), Petitioner's future earning capacity, there is no evidence that Petitioner will sustain future wage loss. Petitioner mentioned that he will need future surgery, and he told Dr. Jimenez that he is concerned about his ability to continue to work. Any earning capacity is speculative at this time and there is no evidence of a future wage loss.

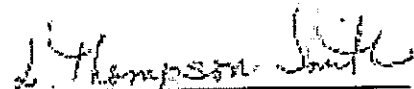
With respect to Section 8.1(b)(v), evidence of disability corroborated by Petitioner's treating records, Petitioner has been working without restriction. He has continued complaints that he associates with arising from a chair, walking long distances and using stairs and other daily activities. The Arbitrator places some weight on this factor.

The Arbitrator finds that Petitioner has sustained a 20% loss of use of the right leg.

Ramon Rodriguez  
13 WC 11119

15IWCC0023

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
13WC11119  
SIGNATURE PAGE

  
Signature of Arbitrator

April 8 2014  
Date of Decision

APR 8 - 2014

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF KANE )

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KEITH LITTLEJOHN,  
Petitioner,

vs.

NO: 13 WC 2732

ABF FREIGHT, INC.,  
Respondent.

**15IWCC0028**

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of wages, penalties and permanent partial disability (PPD), and being advised of the facts and applicable law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission has considered all of the testimony, exhibits, pleadings and arguments submitted by the parties. Based on the totality of the evidence, the Commission finds that the Petitioner is entitled to penalties of \$8,280.00 pursuant to Section 19(l) of the Act for the non-payment of the ATI Physical Therapy (ATI) bill of \$1,490.50, which reflects the amount due pursuant to the Fee Schedule.

According to Petitioner's exhibit 5, Petitioner's attorney submitted the outstanding ATI bill to Arkansas Best Corporation (ABC) on February 8, 2013. In a response letter dated February 12, 2013, ABC indicated they were paying bills pursuant to the fee schedule when all documentation has been provided. The Commission notes that the bills were provided to ABC on February 8, 2013. The Commission further notes that the Respondent did not dispute the liability of the bill. The Respondent offered no evidence during the November 14, 2013 Arbitration hearing indicating that the bill has been paid. Therefore, Petitioner is entitled to penalties of \$8,280.00 pursuant to Section 19(l) of the Act. The bill has remained unpaid for 276 days,

February 12, 2013 through November 14, 2013.

15IWCC0028

The Commission declines to award penalties pursuant to Section 19(k) and Section 16 of the Act. The Commission notes there was a legitimate dispute as to Petitioner's average weekly wage. Once Petitioner's average weekly wage was confirmed, Respondent issued to Petitioner a check for the temporary total disability shortage.

The Commission further modifies the Decision of the Arbitrator and finds that Petitioner is entitled to receive 17% loss of use person as a whole, pursuant to Section 8(d)2 of the Act. The Commission finds that the Arbitrator provided a thorough analysis of the Petitioner's condition pursuant to Section 8.1(b) of the Act, and relies upon same. However, the Commission believes that additional PPD is required, as Petitioner sustained multiple tears to the ligaments and tendons of the shoulder, requiring repair, as noted in the operative report. The operative report also demonstrates that the Petitioner underwent an excision of the distal clavicle in the left shoulder. Based upon all of these reported repairs, the Commission finds that Petitioner sustained a loss of 17% man as a whole pursuant to Section 8(d)2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 27, 2014, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$892.99 per week for a period of 13-1/7 weeks, commencing July 18, 2012 through October 17, 2012, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner temporary partial disability benefits totaling \$17,307.41, representing 33-1/7 weeks, March 14, 2012 through July 17, 2012 and October 18, 2012 through February 3, 2013, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$695.78 per week for a period of 85 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the loss of use of 17% of the man-as-a-whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,490.50 for medical expenses under §8(a) of the Act. This represents the Fee Schedule amount.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to the Petitioner penalties of \$8,280.00 pursuant to Section 19(l) 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

# 15IWCC0028

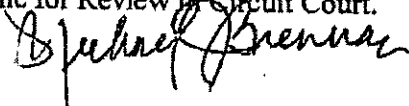
for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$62,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:

**JAN 15 2015**

MJB/tdm  
O:11/18/14  
052



Michael J. Brennan



Thomas J. Tyrrell



Kevin W. Lamborn



ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

LITTLEJOHN, KEITH

Employee/Petitioner

Case# 13WC002732

ABF FREIGHT INC

Employer/Respondent

**15IWCC0028**

On 1/27/2014, 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 0.06% 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:

0154 KROL BONGIORNO & GIVEN LTD

CHARLIE GIVEN

120 N LASALLE ST SUITE 1150

CHICAGO, IL 60602

2965 KEEFE CAMPBELL BIERY & ASSOC

TIMOTHY J O'GERMAN

118 N CLINTON ST SUITE 300

CHICAGO, IL 60661

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF KANE )

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

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

Keith Littlejohn  
Employee/Petitioner

Case # 13 WC 2732

v.

ABF Freight, Inc.  
Employer/Respondent

Consolidated cases: \_\_\_\_\_

**15IWCC0028**

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 **Gregory Dollison**, Arbitrator of the Commission, in the city of **Geneva, Illinois**, on **November 14, 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

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

15IWCC0028

FINDINGS

On February 22, 2012, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned \$76,952.59; the average weekly wage was \$1,339.48.

On the date of accident, Petitioner was 60 years of age, *married* with 0 dependent children.

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

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

Respondent shall be given a credit of \$11,296.15 for TTD, \$15,694.93 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$26,991.08.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$892.99/week for 13 and 1/7 weeks, commencing July 18, 2012 through October 17, 2012, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner temporary partial disability benefits totaling \$17,307.41. Petitioner is entitled to benefits for 33 and 1/7 weeks, for the periods between March 14, 2012 and July 17, 2012 and October 18, 2012 through February 3, 2013, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$695.78/week for 75 weeks, because the injuries sustained caused the Petitioner 15% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

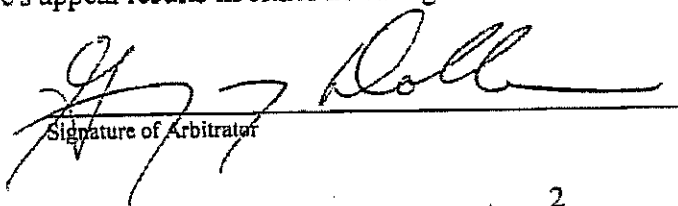
Respondent shall pay to Petitioner penalties of \$1,662.40, as provided in Section 16 of the Act; \$2,770.68, as provided in Section 19(k) of the Act; and \$10,000.00, as provided in Section 19(l) of the Act.

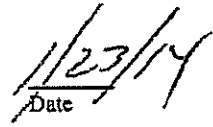
Respondent shall pay to Petitioner \$1,490.50 for the reasonable and necessary medical services of ATI Physical Therapy, as provided in Section 8(a) of the Act. This is the Fee Schedule amount for the bills submitted in Petitioner's Exhibits 3, 5 and 6.

Respondent shall pay Petitioner compensation that has accrued from February 22, 2012 through November 14, 2013, and shall pay the remainder of the award, if any, in weekly payments.

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

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

  
Signature of Arbitrator

  
Date

**15IWCC0028**

**FINDINGS OF FACT:**

Keith Littlejohn ("Petitioner") is claiming an accidental left shoulder injury on February 22, 2012, while employed with ABF Freight, Inc. ("Respondent") as a Truck Driver-Dock Man. At the time of the accident, Petitioner was 60 years old and had worked for Respondent since February 2, 1990. Petitioner's employment duties include driving a company truck to make deliveries and loading and unloading the truck trailer by hand and forklift. Petitioner is right hand dominant.

Petitioner testified that on the day of his accident, he was unloading a trailer when he released a clip to undo a cross bar that held freight. When he released the clip, the boxes he was standing on gave way, causing Petitioner to stumble. In order to catch himself and not drop the freight, he reached for the trailer wall with his left arm and hand. When he hit the wall he felt a sharp pain in his left shoulder. He was holding the freight on his right shoulder when the accident happened. Timely notice of the accident was given to Respondent.

Petitioner's initial medical treatment was at Dreyer Medical Clinic on March 14, 2012. X-rays of the left shoulder were performed and revealed mild degenerative changes but no acute bony abnormalities. Petitioner was provided with light duty work restrictions of no lifting more than 10 pounds with the left arm. (PX1)

Petitioner was prescribed physical therapy which he began on March 26, 2012 at ATI Physical Therapy. (PX3) On April 12, 2012, Petitioner was re-examined at Dreyer Medical Clinic with little improvement from physical therapy. The doctor prescribed a MRI arthrogram of the left shoulder that was performed on April 17, 2012. The MRI arthrogram revealed: 1.) A tear of the superior labrum extending from anterior to posterior; 2.) Mild tendinosis of the supraspinatus tendon with partial thickness bursal surface tearing; 3.) Mild tendinosis of the subscapularis tendon; 4.) Mild degenerative changes of the posterior and lateral aspect of the humeral head; and 5.) Moderate to severe degenerative change of the acromioclavicular joint with associated marrow edema suggestive of an acute arthritic process. (PX1)

Petitioner was referred by Dreyer Medical Clinic to Dr Arif Saleem, an orthopaedic surgeon with Castle Orthopedic. On May 3, 2012, Dr Saleem examined Petitioner and reviewed the MRI arthrogram findings. Dr Saleem prescribed and performed an AC joint injection and provided light duty work restrictions of no use of the left arm. The injection did not provide Petitioner with lasting relief and Dr Saleem prescribed left shoulder surgery. (PX2)

Dr Saleem performed left shoulder surgery on July 18, 2012. The procedures performed included: 1.) Left shoulder arthroscopic debridement of partial rotator cuff tear as well as anterior and posterior labrum; 2.) Left shoulder arthroscopic distal clavicular excision; and 3.) Left shoulder open tenodesis. During the surgery it was discovered that Petitioner had left shoulder AC arthritis, superior labral tear, partial thickness articular sided supraspinatus tear as well as superior subscapularis partial tear and degenerative anterior posterior labral tear. A 6.25 Arthrex biotenodesis screw was inserted at the time of the surgery and remains in place. (PX2)

Post surgery, Petitioner completed a course of physical therapy and work conditioning at ATI Physical Therapy. On January 17, 2013, Petitioner completed a functional capacity evaluation that tested him at the Heavy physical demand level (PX3). Dr Saleem examined Petitioner for the final time on January 31, 2013 and provided Petitioner with a release to return to full duty work effective February 4, 2013 (PX2). Petitioner testified that the ATI Physical Therapy bill (PX6) was submitted to the insurance company and remains unpaid as of the hearing date.

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Petitioner was off work between July 18, 2012 and October 17, 2012. Respondent was able to accommodate Petitioner's light duty work restrictions between March 14, 2012 and July 17, 2012 and between October 18, 2012 and February 3, 2013. Petitioner returned to work in a full duty capacity February 4, 2013 and remains in a full duty position as of the date of the hearing.

Petitioner testified that he notices constant weakness in his left arm. He estimates that he lifts 25% to 33% of what he used to be able to lift with the left arm before the accident. He is afraid to lift heavy items with his left arm for fear of dropping the items. Petitioner has to use his right arm more at work now due to his left arm condition. Petitioner testified that he has hardware in his shoulder that he fears will cause a re-tear if he lifts too much or overuses the left arm. Petitioner testified that he gets sharp pain if he sleeps on his left side. At work, if there is a heavy item to lift then Petitioner will ask for assistance before lifting the object.

As of the hearing date, Petitioner works full duty as a Truck Driver-Dock Man. He is a member of Local Union 179 out of Joliet. Petitioner testified that per Union contract he is scheduled to work at a minimum a 10.5 hour day with a 30 minute mandatory lunch (PX8). His normal schedule is 6:00AM to 4:30PM, Monday through Friday. As a Truck Driver, Petitioner is provided with a load and is expected to deliver the load before returning to the yard. All drivers are eligible to be sent on an additional run if they are in the yard before their 10.5 hour shift is completed (the "Tenth Hour"). In Petitioner's case, if he is in the yard before 4:30PM then he is eligible to be sent on another run and he is not allowed to refuse the work. If he is asked to perform a run after 4:30PM then he can refuse to perform the work. Petitioner testified that he always refuses the voluntary overtime. Petitioner testified that the last time he volunteered for any overtime was 15 to 20 years ago. In the 52 weeks before his accident he did not perform any overtime that was not considered mandatory.

Ms. Deborah McCoy testified on behalf of Respondent. Ms. McCoy testified she worked as an operations manager and was a direct supervisor of Petitioner. Ms. McCoy testified Petitioner never complained about being unable to do something at work or being in pain while at work since his return. She testified she would be the appropriate manager at ABF that Petitioner would contact about any complaints he may have.

Ms. McCoy also testified to Respondent's overtime policies. Ms. McCoy testified ABF overtime policies are dictated by the Union contract. She provided that the drivers have to work at least ten (10) hours a day, "if we need them to if business dictates if we're busy." She provided that their "runs" are based upon when they start their shifts. Ms. McCoy indicated that if someone is coming in on their eight hour, Respondent tries to assign a job that's going to take about two hours to complete. Ms. McCoy also testified that there are times when a driver will be required to stay out past their 10<sup>th</sup> hour and can't refuse.

At Respondent's request, Petitioner underwent a Section 12 examination with Dr. Ram Aribindi on May 31, 2013. Dr. Aribindi also performed an AMA permanent partial impairment rating. Dr. Aribindi was deposed on August 9, 2013. Dr. Aribindi testified Petitioner had full range of motion and a normal physical examination. Dr. Aribindi testified Petitioner was at MMI at the time he saw him, he was capable of returning to work full duty and he did not need any more treatment for his left shoulder. (RX 1)

Dr. Aribindi testified to his history of performing impairment ratings and explained the process of how an impairment rating is generated. Dr. Aribindi explained how according to the physical examination and subjective complaints of Petitioner, he was placed in a class according to the AMA Guidelines 6<sup>th</sup> Edition and applied different modifiers according to his clinical history. Dr. Aribindi provided an impairment rating of 3% of the upper extremity and 2% of the person as a whole. (RX 1)

With respect to (G.) What were Petitioner's earnings, the Arbitrator finds as follows:

Petitioner and Respondent did not agree on Petitioner's earnings during the year preceding the injury and did not agree on the average weekly wage ("AWW"). Petitioner claims his earnings in the year preceding the injury were \$76,952.59 and the AWW calculated pursuant to Section 10 of the Act is \$1,339.48. Respondent claims Petitioner's AWW calculated pursuant to Section 10 is \$1,289.23.

In Petitioner's Exhibit 4, Petitioner presented wage information for the year preceding his injury. In calculating the AWW under Section 10, the Arbitrator used the check stubs starting on PX4, p. 3 and ending on PX4, p. 54. These checks cover the period between February 19, 2011 and February 18, 2012. This is the best evidence to use to calculate the AWW. The checks reflect the following:

1. The total gross earnings for this period are \$76,952.59. All overtime is considered in this amount, paid at a rate of "time and a half".
2. Petitioner earned an hourly wage of \$25.33 for the period between February 19, 2011 and March 26, 2011.
3. Petitioner earned an hourly wage of \$25.73 for the period between March 27, 2011 and February 18, 2012.
4. Petitioner worked overtime in 47 of the 52 weeks in the year preceding his accident. The only weeks Petitioner did not work overtime were the weeks he took vacation.
5. For the weeks Petitioner took vacation, Petitioner was paid for 50 hours per week at his normal hourly rate of pay.
6. Petitioner averaged 12.02 overtime hours per week in weeks the 47 weeks he worked overtime.
7. The lowest amount of overtime worked by Petitioner in a week was 7.12 hours.
8. The highest amount of overtime worked by Petitioner in a week was 17.36 hours.

Petitioner testified that he is a member of Local Union 179 out of Joliet. Petitioner testified that per Union contract he is scheduled to work at least a 10.5 hour day. Petitioner has to take a 30 minute mandatory lunch every day (PX8). His normal schedule is 6:00AM to 4:30PM, Monday through Friday. As a Truck Driver-Dock Man, Petitioner is provided with a load and expected to deliver the load before returning to the yard. All drivers are eligible to be sent on a run if they are in the yard before their "Tenth Hour". In Petitioner's case, if he is in the yard before 4:30PM then he is eligible to be sent on another run and he is not allowed to refuse the work. If he is asked to perform a run after 4:30PM then he can refuse to perform the work. Petitioner testified that the last time he volunteered for any overtime was 15 to 20 years ago. In the 52 weeks before his accident he did not perform any overtime that was not considered mandatory.

Respondent's witness, Deborah McCoy, confirmed Petitioner's testimony in all respects. She confirmed that Petitioner did not volunteer for overtime in the year preceding his accident. She confirmed that any overtime on Petitioner's pay check stubs would have been the result of being sent on additional runs before his "tenth hour" was completed, and returning to the terminal after his "tenth hour".

The Arbitrator has reviewed all of the testimony and evidence regarding Petitioner's earnings and finds that based on the relevant case law, all of Petitioner's overtime hours should be included in the AWW calculation under Section 10 of the Act. All of the overtime hours were mandatory. Petitioner was scheduled and required to complete these hours. The Arbitrator finds that all overtime hours should be included at the standard hourly rate of pay for the period the overtime hours were worked (i.e., not at "time and a half"). Therefore, the AWW is calculated at \$1,339.48. The calculations are as follows:

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Period Ending	Rate of Pay	Regular Hours.	Overtime	Vacation	Holiday	Sick	Gross	OT at Flat Rate	
2/26/2011	\$25.33	40		10.14			\$ 1,401.02	\$ 1,270.05	
3/5/2011	\$25.33	40		11.18			\$ 1,440.56	\$ 1,296.39	
3/12/2011	\$25.33	40		10.86			\$ 1,425.83	\$ 1,288.28	
3/19/2011	\$25.33	40		10.36			\$ 1,406.83	\$ 1,275.62	
3/26/2011	\$25.33	40		7.12			\$ 1,285.94	\$ 1,193.55	
4/2/2011	\$25.73	40		9.61			\$ 1,382.82	\$ 1,276.47	
4/9/2011	\$25.73	40		9.91			\$ 1,411.69	\$ 1,284.18	
4/16/2011	\$25.73	40		10.3			\$ 1,426.73	\$ 1,294.22	
4/23/2011	\$25.73	40		10.05			\$ 1,417.09	\$ 1,287.79	
4/30/2011	\$25.73				50		\$ 1,286.50	\$ 1,286.50	
5/7/2011	\$25.73	40		8.08			\$ 1,341.05	\$ 1,237.10	
5/14/2011	\$25.73	40		11.81			\$ 1,487.62	\$ 1,333.07	
5/21/2011	\$25.73	40		12.68			\$ 1,518.59	\$ 1,355.46	
5/28/2011	\$25.73	40		12.5			\$ 1,511.64	\$ 1,350.83	
6/4/2011	\$25.73	32		9.94		8	\$ 1,415.60	\$ 1,284.96	
6/11/2011	\$25.73	40		13.59			\$ 1,553.71	\$ 1,378.87	
6/18/2011	\$25.73	40		14.11			\$ 1,579.28	\$ 1,392.25	
6/25/2011	\$25.73	40		14.24			\$ 1,581.37	\$ 1,395.60	
7/2/2011	\$25.73	40		15.66			\$ 1,633.59	\$ 1,432.13	
7/9/2011	\$25.73	32		13.73		8	\$ 1,559.11	\$ 1,382.47	
7/16/2011	\$25.73	40		15.61			\$ 1,631.65	\$ 1,430.85	
7/23/2011	\$25.73	40		16.14			\$ 1,654.93	\$ 1,444.48	
7/30/2011	\$25.73				50		\$ 1,286.50	\$ 1,286.50	
8/6/2011	\$25.73	40		17.36			\$ 1,699.19	\$ 1,475.87	
8/13/2011	\$25.73	32		11.29		8	\$ 1,464.94	\$ 1,319.69	
8/20/2011	\$25.73	40		16.08			\$ 1,653.01	\$ 1,442.94	
8/27/2011	\$25.73	40		14.22			\$ 1,583.43	\$ 1,395.08	
9/3/2011	\$25.73	40		12.79			\$ 1,522.84	\$ 1,358.29	
9/10/2011	\$25.73	32		10.3		8	\$ 1,426.73	\$ 1,294.22	
9/17/2011	\$25.73	40		14.61			\$ 1,593.07	\$ 1,405.12	
9/24/2011	\$25.73	40		11.78			\$ 1,486.48	\$ 1,332.30	
10/1/2011	\$25.73	32		12.85		8	\$ 1,527.99	\$ 1,359.83	
10/8/2011	\$25.73	40		14.02			\$ 1,572.89	\$ 1,389.93	
10/15/2011	\$25.73	40		13.52			\$ 1,553.59	\$ 1,377.07	
10/22/2011	\$25.73	40		11.62			\$ 1,477.68	\$ 1,328.18	
10/29/2011	\$25.73				50		\$ 1,286.50	\$ 1,286.50	
11/5/2011	\$25.73	32		11.94		8	\$ 1,490.04	\$ 1,336.42	
11/12/2011	\$25.73	40		14.72			\$ 1,600.14	\$ 1,407.95	
11/19/2011	\$25.73	40		11.27			\$ 1,464.17	\$ 1,319.18	
11/26/2011	\$25.73				50	16	\$ 1,698.18	\$ 1,698.18	
12/3/2011	\$25.73	24		8.69			\$ 955.59	\$ 841.11	
12/10/2011	\$25.73	40		11.46			\$ 1,471.50	\$ 1,324.07	
12/17/2011	\$25.73	40		11.55			\$ 1,474.98	\$ 1,326.38	
12/24/2011	\$25.73	32		11.57		8	\$ 1,684.40	\$ 1,532.74	
12/31/2011	\$25.73				50	8	\$ 1,491.34	\$ 1,492.34	
1/7/2012	\$25.73	32		9.51	8		\$ 1,396.23	\$ 1,273.89	
1/14/2012	\$25.73	32		10.64	8		\$ 1,439.86	\$ 1,302.97	
1/21/2012	\$25.73	40		12.31			\$ 1,506.96	\$ 1,345.94	
1/28/2012	\$25.73	40		8.85			\$ 1,373.39	\$ 1,256.91	
2/4/2012	\$25.73	32		10.89	8		\$ 1,449.49	\$ 1,309.40	
2/11/2012	\$25.73	40		12.24			\$ 1,504.55	\$ 1,344.14	
2/18/2012	\$25.73	40		11.26			\$ 1,463.78	\$ 1,318.92	
		1,784.00		564.96	274.00	56.00	32.00	\$ 76,952.59	\$ 69,653.14
								\$ 1,479.86	\$ 1,339.48

With respect to (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 expenses, the Arbitrator finds as follows:

Petitioner presented medical bills from ATI Physical Therapy that were outstanding as of the date of the hearing (PX3 and PX6). The evidence shows that Petitioner received treatment at ATI between November 28, 2012 and January 17, 2013. Bills in the amount of \$3,938.60 for the dates of service between January 7, 2013 and January 11, 2013, remain outstanding. The evidence shows that these bills were submitted to Respondent on February 8, 2013 and August 7, 2013 (PX5). The Arbitrator finds the treatment Petitioner received at ATI Physical Therapy was reasonable, necessary and causally related to the work accident. Specifically, this treatment was for the work conditioning completed in advance of the functional capacity evaluation. The bills are awarded pursuant to the Medical Fee Schedule in the amount of \$1,490.50.

With respect to (K.) Underpayment of TTD and TPD benefits, the Arbitrator finds as follows;

TTD benefits of \$892.99/week were awarded for 13 and 1/7 weeks, commencing July 18, 2012 through October 17, 2012, as provided in Section 8(b) of the Act. Respondent is entitled to a credit of \$11,296.15 for temporary total disability benefits paid before the date of the hearing. The total amount awarded in TTD benefits, based on the AWW findings in Section "G" above, is \$11,736.43. Therefore there is a TTD underpayment of \$440.28.

Petitioner is awarded TPD benefits for 33 and 1/7 weeks, for the periods between March 14, 2012 and July 17, 2012 and October 18, 2012 through February 3, 2013, as provided in Section 8(a) of the Act. Based on the AWW findings in Section "G" above, the total TPD payable is \$17,307.41. Respondent is entitled to a credit of \$15,694.93 for TPD benefits paid before the date of the hearing. Therefore there is a TPD underpayment of \$1,612.48. The calculations are below.

TPD Calculations									
Period Ending	Rate	Reg. Hrs.	Overtime	Vacation	Holiday	Sick	Gross Earnings	TPD Due	
3/17/2012	\$9.69	40	3.18				\$817.28	\$	348.13
3/24/2012	\$9.69	40					\$387.40	\$	634.72
3/31/2012	\$9.69	32				8	\$484.88	\$	569.73
4/7/2012	\$10.07	40					\$402.70	\$	624.52
4/14/2012	\$10.07	40					\$402.70	\$	624.52
4/21/2012	\$10.07	40					\$402.70	\$	624.52
4/28/2012	\$10.07			50			\$1,286.50	\$	35.32
5/5/2012	\$10.07	40					\$402.70	\$	624.52
5/12/2012	\$10.07	40					\$402.70	\$	624.52
5/19/2012	\$10.07	40					\$402.70	\$	624.52
5/26/2012	\$10.07	40					\$402.70	\$	624.52
6/2/2012	\$10.07	32				8	\$528.00	\$	540.99
6/9/2012	\$10.07			50			\$1,286.50	\$	35.32
6/16/2012	\$10.07	40					\$402.70	\$	624.52
6/23/2012	\$10.07	40					\$402.70	\$	624.52
6/30/2012	\$10.07	40					\$402.70	\$	624.52
7/7/2012	\$10.07	24			8	8	\$622.42	\$	478.04
7/14/2012	\$10.07	32				8	\$500.16	\$	559.55
7/21/2012	\$26.18	8				8	\$161.08	\$	147.75
10/20/2012	\$10.07	16					\$161.08	\$	147.75
10/27/2012	\$10.07	40					\$402.70	\$	624.52
11/3/2012	\$10.07	40					\$402.70	\$	624.52
11/10/2012	\$10.07	40					\$402.70	\$	624.52
11/17/2012	\$10.07	40					\$402.70	\$	624.52
11/24/2012	\$10.07			30	16		\$932.98	\$	271.00



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12/1/2012	\$10.07	24				20	\$756.70	\$	388.84
12/8/2012	\$10.07	40					\$420.70	\$	612.52
12/15/2012	\$10.07	32					\$500.18	\$	559.53
12/22/2012	\$10.07	40					\$420.70	\$	612.52
12/29/2012	\$10.07					30	\$932.98	\$	271.00
1/5/2013	\$10.07	16				20	\$756.22	\$	388.84
1/12/2012	\$10.07	32					\$402.70	\$	624.52
1/19/2013	\$10.07	32					\$322.16	\$	678.21
1/26/2013	\$10.07					50	\$1,286.50	\$	35.32
2/2/2013	\$10.07	32					\$402.70	\$	624.52
TOTAL		1,032.00	3.18	250.00	72.00	40.00	\$19,007.14		\$17,307.41
							TOTAL TPD PAID		\$15,694.93
							TOTAL TPD DUE		\$1,612.48

With respect to (L.) What is the nature and extent of Petitioner's injury, the Arbitrator finds as follows:

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

- (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment.
- (b) Also, the Commission shall base its determination on the following factors:
  - (i) The reported level of impairment;
  - (ii) The occupation of the injured employee;
  - (iii) The age of the employee at the time of injury;
  - (iv) The employee's future earning capacity; and
  - (v) Evidence of disability corroborated by medical records.

With regards to paragraph (i) of Section 8.1(b) of the Act:

- i. Dr Ram Aribindi's AMA report and deposition were admitted into evidence (RX1). Dr Aribindi concluded that Petitioner's impairment is 3% of the left upper extremity or 2% whole person impairment. Dr Aribindi testified that he used the Guides to the Evaluation of Permanent Impairment, Sixth Edition, in reaching his conclusions ("Guides") Dr Aribindi used a Diagnosis Based Impairment to determine the Impairment Class and Impairment Range in his calculations. On page 387 of the Guides, on the bottom of the right hand column, it indicates that "If a patient has two significant diagnoses; for example rotator cuff tear and biceps tendinitis, the examiner should use the diagnosis with the highest causally related impairment rating for the impairment calculation." In reaching a Diagnosis Based Impairment, Dr Aribindi used Table 15-5, Shoulder Regional Grid, pages 401-405 of the Guides. Dr Aribindi testified that in his opinion he could have used AC joint arthritis (pg. 403), AC joint tendinitis (pg. 402) or biceps tendon dislocation-subluxation (pg. 404), and the results would have been the same (RX1, pg. 40-46 of deposition). This is true but Dr Aribindi should have used acromioclavicular (AC) joint injury or disease as the diagnosis (pg. 403). Since the Petitioner is status post distal clavicle resection (PX2), he would still have been considered a Class 1, but the range would have increased to between 8% and 12%. Obviously, this is a higher range

than that provided under AC joint arthritis (pg. 403), AC joint tendinitis (pg. 402) or biceps tendon dislocation-subluxation (pg. 404). Dr Aribindi should have used acromioclavicular (AC) joint injury or disease as the diagnosis (pg. 403) because it yields the highest impairment rating. Using Dr Aribindi's findings for Functional History, Physical Examination and Clinical Studies, the PPI rating is 10% of the upper extremity, or 6% whole person impairment.

With regards to paragraph (ii) of Section 8.1(b) of the Act:

- ii. Petitioner continues to be employed in his pre-injury employment as a Truck Driver-Dock Man with Respondent. The Arbitrator takes judicial notice that this position is heavy work and concludes the Petitioner's PPD will be larger than an individual who performs lighter work.

With regards to paragraph (iii) of Section 8.1(b) of the Act:

- iii. Petitioner is 61-years old. The Arbitrator considers the Petitioner to be an older individual and is less likely to live and work longer than an individual with the same injuries. Thus Petitioner's PPD is not as extensive than that of a younger individual.

With regards to paragraph (iv) of Section 8.1(b) of the Act:

- iv. At the present time, there is no evidence that Petitioner's future earning capacity has diminished as a result of this injury. Petitioner continues to work with Respondent driving a truck and working the docks. Petitioner has remained in a full duty capacity with Respondent.

With regards to paragraph (v) of Section 8.1(b) of the Act:

- v. Evidence of disability in Petitioner's treating medical records finds Dr Saleem performed left shoulder surgery on July 18, 2012. The procedures performed included: 1.) Left shoulder arthroscopic debridement of partial rotator cuff tear as well as anterior and posterior labrum; 2.) Left shoulder arthroscopic distal clavicular excision; and 3.) Left shoulder open tenodesis. During the surgery it was discovered that Petitioner had left shoulder AC arthritis, superior labral tear, partial thickness articular sided supraspinatus tear as well as superior subscapularis partial tear and degenerative anterior posterior labral tear. A 6.25 Arthrex biotenodesis screw was inserted at the time of the surgery and remains in place as of the date of the hearing.

Post surgery, Petitioner completed a course of physical therapy and work conditioning at ATI Physical Therapy. On January 17, 2013, Petitioner completed a functional capacity evaluation that tested him at the Heavy physical demand level. Dr Saleem examined Petitioner for the final time on January 31, 2013 and provided Petitioner with a release to return to full duty work effective February 4, 2013.

The determination of PPD is not simply a calculation, but an evaluation of all five factors as stated in the Act. In making this evaluation of PPD, consideration is not given to any single enumerated factor as the sole determinant. Therefore, after applying Section 8.1b of the Act, 820 ILCS 305/8.1b and considering the relevance and weight of all these factors, including Dr Aribindi's AMA impairment rating, the Arbitrator concludes that Petitioner has sustained a 15% loss of use to the person as a whole, or 75 weeks of PPD benefits.

With respect to (M.) Should penalties or fees be imposed upon Respondent, the Arbitrator finds as follows:

After reviewing the testimony and the evidence submitted by the parties, the Arbitrator finds Petitioner is entitled to attorney's fees under Section 16 in the amount of \$1,662.40 and penalties under Sections 19(k) and 19(l) in the amounts of \$2,770.68 and \$10,000.00 respectively.

In reaching said Decision, the Arbitrator finds that Respondent failed to pay the outstanding medical bills of ATI Physical Therapy. Respondent failed to provide a legitimate defense as to why the bills were not paid. In addition, Respondent's conduct with its underpayment of TTD and TPD was unreasonable and vexatious.

Petitioner presented the outstanding ATI Physical Therapy bill to Respondent on February 8, 2013 and August 7, 2013. Respondent confirmed receipt of the medical bill (PX5). The evidence shows that the bills were related to Petitioner's work conditioning after his surgery (PX3). There is no dispute that the treatment was related to Petitioner's work accident.

Respondent claimed at the time of the hearing that the medical bills had been paid (AX1). A review of the records clearly shows that payments were never made for the dates of service between January 7, 2013 and January 11, 2013 (PX6 and RX8). Respondent's Exhibit 8 clearly shows that payment was never made for these dates of service. Per the Medical Fee Schedule, the outstanding medical bills should have been paid in the amount of \$1,490.50.

The records show that Respondent paid TTD benefits between July 18, 2012 and October 17, 2012, at a weekly rate of \$707.42, based on an AWW of \$1,061.13. The evidence shows that Respondent recalculated the AWW on the eve of hearing and issued a TTD underpayment check that assumed an AWW of \$1,289.23 (RX4). Based on the Arbitrator's findings in Section "G", there is still a TTD underpayment in the amount of \$440.28. In Respondent's Exhibit 2, "Response to Petitioner's Petition for Section 8(a)/19(k)/19(l) Penalties and Section 16 Fees", Respondent claims Petitioner was paid TTD benefits pursuant to an AWW commensurate with the amount he made in a 40 hour work week. Respondent was put on notice by Petitioner of the underpayment no later than August 7, 2013 (PX5). However, Respondent was also aware of the Union contract requiring Petitioner to be eligible for a minimum of 50 hours per week (PX8). Respondent's own witness, Deborah McCoy testified that she is familiar with the Union contract requiring 50 hours per week and is also familiar with Petitioner's overtime all being mandatory. Respondent has no defense for not basing the AWW and TTD payments on all of the hours worked by Petitioner.

TPD benefits were paid between March 14, 2012 and July 17, 2012 and between October 18, 2012 and February 3, 2013 (RX4). Respondent maintains that they issued TPD benefits based on a collective bargaining agreement with the Union. Respondent maintains they paid more in TPD benefits than they would have under the Act, without the Union contract. Specifically, Respondent maintains Petitioner was paid 85% of his salary while working in the Alternate Work Program (RX2). Petitioner received salary at a reduced rate while working light duty and received a supplemental TPD check while he was in the Alternate Work Program (PX4 and RX4). The amount paid by Respondent in TPD benefits was less than that required under the Act. Specifically, based on the findings in Section "G" and the evidence presented at the time of the hearing, Respondent has underpaid TPD benefits in the amount of \$1,612.48. Respondent has no defense for the underpayment.

For the forgoing reasons, the Arbitrator finds Respondent liable for the following penalties and attorney's fees:

Section 19(k):

The Arbitrator found the non-payment of medical bills and the underpayment of TTD and TPD benefits to be unreasonable and vexatious. The evidence shows that Respondent recalculated the AWW on the eve of hearing and issued a TTD underpayment check that assumed an AWW of \$1,289.23. Respondent should not be able to avoid penalties by issuing a check on the eve of hearing. The Arbitrator awards 50% of the unpaid medical bills, TTD and TPD benefits payable as of November 13, 2013 as penalties under Section 19(k). The total unpaid benefits as of November 13, 2013 were \$5,541.36, leaving a penalty under Section 19(k) of \$2,770.68.

**Section 19(l):**

Having found that the underpayment of TTD and TPD benefits from March 14, 2012 through February 3, 2013 were unreasonable and vexatious. The Arbitrator awards \$30.00 a day for each day that TTD and TPD was underpaid. The period from March 14, 2012 through November 14, 2013 is 975 days. \$30.00 per day x 975 days would be \$29,250.00. However, the maximum allowed under Section 19(l) is \$10,000.00. Therefore, the total amount awarded under Section 19(l) is \$10,000.00

**Section 16:**

Having found the Respondent's actions towards Petitioner to be unreasonable and vexatious, the Arbitrator awards attorney's fees under Section 16 in the amount of penalties, or \$1,662.40 [20% x (\$5,541.36 unpaid amounts + 2,770.68 (19k))].

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL GRIFFIN,  
Petitioner,

vs.

NO: 12 WC 44101

KOPPERS INDUSTRIES,  
Respondent.

**15IWCC0060**

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of nature and extent, 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner had been employed by Respondent for 14 years as an Oiler at the time of the accident. He oils pumps and greases motors of various sizes. He works 5 days a week, 8 hours per day and spends all day on his feet.
2. On December 11, 2012 Petitioner was walking from one large compressor to another to check the fluids. In between the compressors are large aluminum pipes. Petitioner stooped down to pass through, but when he stood up the front of his safety helmet hit the pipe and pushed his head down into his neck. Petitioner became dizzy and had a queasy feeling in his stomach. He also developed a headache. He reported the incident to his supervisor and was instructed to call the triage nurse.

**15IWCC0060**

3. Petitioner completed his shift and went home. He had developed a tremendous headache by that time. He also had stiffness and soreness in his neck.
4. On December 14, 2012 Petitioner sought treatment from his family doctor, Dr. Smith. On December 17, 2012 Respondent sent Petitioner to Excel Rehab, the company clinic. There, he was provided medication and instructed to return to light duty work. He was instructed to file paperwork in the office. After 3 days, Excel Rehab continued light duty and prescribed physical therapy, which was agreed to by Dr. Smith.
5. Petitioner was diagnosed with a cervical strain and fatigue concussion.
6. On December 21, 2012 Dr. Smith took Petitioner off of work for 2 weeks. Petitioner presented the off work slip to Respondent and went home. Later that day he received a call from Respondent's superintendent asking if he could return to work because their lost time accident record was really good. He wanted Petitioner to be a team player. Petitioner agreed and returned to work, but was placed on full duty.
7. After returning to work Petitioner noticed that his pain was worsening.
8. Physical therapy helped Petitioner's pain, however, and on February 5, 2013 Dr. Smith released Petitioner to full duty. Nevertheless, Petitioner testified that he was still enduring 2-3 headaches per week, as well as neck stiffness, soreness and swelling. Petitioner has worked full duty ever since. He takes low dose aspirin for the pain, and also rubs methanol gel on his neck 2-3 times per week.
9. During an Independent Medical Examination (IME) performed by Dr. Bernstein on September 16, 2013, Petitioner indicated that he still suffers from minor stiffness and soreness in the back of his neck every morning.

The issues of accident, causal connection, medical expenses are not on review, and are thus affirmed by the Commission.

The Commission, however, modifies the Arbitrator's ruling on permanent partial disability. There are five factors that must be considered in determining any permanent partial disability award. The factors are:

- 1) AMA Impairment Rating;
- 2) Occupation of injured employee;
- 3) Age of the employee at time of injury;
- 4) Employee's future earning capacity; and
- 5) Evidence of Disability corroborated by medical records.

In the case at bar, no AMA Impairment Rating was submitted into evidence by either party. Petitioner continues to work full duty as an Oiler, which requires him to stoop, bend, twist and turn his head continuously. Petitioner was 55 years old at the time of injury. He has returned to his pre-injury employment. Lastly, his complaints during the IME were not disputed

by Dr. Bernstein, and the complaints persisted through the date of trial.

Based on the analysis of these five factors, the Commission views the evidence slightly different than the Arbitrator. The current and continuous complaints of Petitioner, both at trial and in the medical records, indicate that there is some permanent disability that Petitioner suffers from. Taking in conjunction with the other factors that are considered when determining permanent partial disability, the Commission finds that Petitioner should be awarded a 2.5% loss of his person as a whole due to his cervical strain and ongoing complaints.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner is entitled to 12.5 weeks of permanent partial disability benefits at \$587.28 per week, as he suffered a 2.5% loss of use of his person as a whole under §8(d)(2) of the Act. The total amount of permanent partial disability benefits equals \$7,341.00.

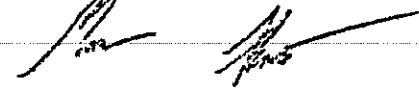
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

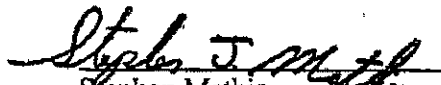
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 23 2015  
O: 11/20/14  
DLG/wde  
45

  
David L. Gore

  
Mario Basurto

  
Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**GRIFFIN, MICHAEL**

Employee/Petitioner

Case# **12WC044101**

**KOPPERS INDUSTRIES**

Employer/Respondent

**15 I W C C 0 0 6 0**

On 7/1/2014, 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 0.06% 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:

0311 KOSIN LAW OFFICE LTD  
DAVID X KOSIN  
134 N LASALLE ST SUITE 1340  
CHICAGO, IL 60602

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD  
DANIEL R EGAN  
10 S RIVERSIDE PLZ SUITE 1530  
CHICAGO, IL 60606



15IWCC0060

STATE OF ILLINOIS )

)SS.

COUNTY OF Cook )

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

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

**Michael Griffin**

Employee/Petitioner

v.

**Koppers Industries**

Employer/Respondent

Case # 12 WC 44101

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 **Deborah L. Simpson**, Arbitrator of the Commission, in the city of **Chicago**, on **November 27, 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

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

15IWCC0060

FINDINGS

On **December 11, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$50,897.60**; the average weekly wage was **\$978.80**.

On the date of accident, Petitioner was **55** years of age, *single* with **0** dependent children.

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

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

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

Respondent is entitled to a credit of **\$210.00** under Section 8(j) of the Act.

ORDER

*Medical benefits*

Respondent shall pay Petitioner reasonable and necessary medical services of **\$60.00**, as provided in Section 8(a) of the Act. Respondent shall pay to the providers reasonable and necessary medical services, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay to the providers reasonable and necessary medical services as provided in Sections 8(a) and 8.2 of the Act.

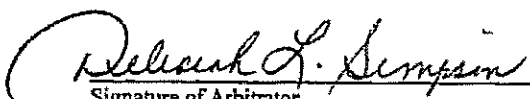
Respondent shall be given a credit of **\$210.00** for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

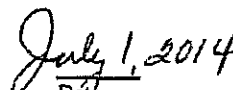
*Permanent Partial Disability*

Petitioner has failed to prove entitlement to permanent partial disability benefits. Claim for permanent partial disability benefits is denied.

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

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

  
Signature of Arbitrator

  
Date

JUL 1 - 2014

15IWCC0060

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Griffin,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 12 WC 44101
	)	
Koppers Industries,	)	
	)	
Respondent.	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on December 11, 2012, the Petitioner and the Respondent were operating under the Illinois Workers' Compensation or Occupational Diseases Act and their relationship was one of employee and employer. On that date the Petitioner sustained an accidental injury or was last exposed to an occupational disease that arose out of and in the course of the employment. They further agree that the Petitioner gave the Respondent notice of the accident within the time limits stated in the Act.

At issue in this hearing is as follows: (1) is the Petitioner's current condition of ill-being causally connected to this injury or exposure; (2) were the medical services that were provided to Petitioner reasonable and necessary; and has Respondent paid all appropriate charges for all reasonable and necessary medical services; and (3) the nature and extent of the injury.

STATEMENT OF FACTS

The Petitioner testified that he has been employed by the Respondent for approximately 14 years, since June 21, 1999. He described his job as an "oiler." He testified that he works with pumps of various sizes, greases motors and checks fuel levels. He testified that his job is five days per week, eight hours per day, and that he is on his feet during this time. He is required to wear a hard hat that weighs less than 10 lbs., and safety goggles. His job requires him to be able to look up and down, and to the left and right while wearing this safety gear. He testified this job requires him to perform some lifting in order to maintain the machines.

The Petitioner testified that on December 11, 2012, while in this position, he was required to move between machines. There was an aluminum pipe about four to five feet off the ground. Petitioner testified that he bent over to pass beneath this pipe, and he stood up too soon, striking the front of his hard hat against this pipe. In turn the hard hat struck his forehead. Petitioner testified that his head went backward and he felt like he was going to pass out. He began to experience a severe headache across the front of his head where his hard hat was. Petitioner testified that in time he began to feel sore.

# 15IWCC0060

The Petitioner testified that he spoke by telephone with a "triage nurse." He explained that felt bad; that his head hurt and his neck was sore and stiff.

On Friday, December 14, 2012, Petitioner presented for medical care with his primary care physician at Anointed Health Partners, Ltd (Px 1). He reported having hit his head at work. He reported losing no time from work. He was diagnosed as having a headache and a cervical strain.

On Monday, December 17, 2012, Petitioner went to the Respondent's occupational health clinic, Excel Occupational Health Clinic (Px 2). Here he again reported having hit his head on a pipe at work. He indicated he did not feel immediate pain, but began to feel it a few hours later. He described the pain has being on the left side of his forehead down to the left side (backside) of his head. He indicated he felt very tired. He indicated that ibuprofen helped. He was diagnosed as having a cervical strain and fatigue - concussion vs. diarrhea. He was given a prescription for a Medrol Dose Pack. He was not kept off work (Px 2).

On Thursday, December 20, 2012, Petitioner returned to Excel (Px 2). He continued to complain of neck pain as well as headache. He was offered trigger point injections into his neck which he declined. He received a referral for physical therapy. He was allowed to continue working in a light capacity (Px 2).

On Friday, December 21, 2012, Petitioner returned to his primary care physician at Anointed Health Partners. The record does not reflect any complaint of headache, only of neck pain (Px 1).

The Petitioner testified he lost no time from work. Petitioner testified that he performed his regular work activities after a couple days of light duty.

The Petitioner received physical therapy during the month of January 2013 at Maximum Rehabilitation Services (Px 3). On January 30, 2013, Petitioner was discharged from therapy, having met all goals.

On Tuesday, February 5, 2013, Petitioner saw his primary care provider (Px 1). The record reflects that Petitioner was better, and was working overtime. He was status post cervical strain.

The records from Anointed Health Partners reflect Petitioner was seen on Friday, March 22, 2013. This was for a blood pressure check up. There is no notation as to any neck pain or headache (Px 1).

Petitioner testified that he did not receive any MRI but that he did have x-rays performed in this matter.

15IWCC0060

Petitioner testified that he continues to perform his same job for Respondent. He has no expectation of losing his employment in the foreseeable future. He acknowledged that he has access to medical assistance for his condition if he required same.

At the Respondent's request, Petitioner saw Dr. Avi Bernstein (Rx 3). Dr. Bernstein's report reflects that Petitioner denied any significant residual symptoms.

Dr. Bernstein examined the Petitioner. Dr. Bernstein concluded that Petitioner's exam was entirely benign. Dr. Bernstein reviewed Petitioner's medical records. He concluded that the treatment that Petitioner received was reasonable and necessary and causally related to the work incident. Dr. Bernstein further concluded that Petitioner had not suffered a permanent injury (Rx 3).

### CONCLUSIONS OF LAW

The burden is upon the party seeking an award to prove by a preponderance of the credible evidence the elements of his claim. *Peoria County Nursing Home v. Industrial Commission*, 115 Ill.2d 524 91987). This includes the nature and extent of the petitioner's injury.

For treatment of an employee's workplace injury to be compensable under workers' compensation laws, Petitioner must establish the treatment is necessitated by the work injury and not some other cause or condition. *Hansel & Gretel Day Care Center v Industrial Commission*, (1991) 215 Ill.App.3d 284, 574 N.E.2d 1244.

In determining the level of permanent partial disability for injuries that occur on or after September 1, 2011, the Commission shall base its determination on the following factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order (820 ILCS 305/8.1b).

#### **Is Petitioner's current condition of ill-being causally related to the injury?**

The Arbitrator finds Petitioner's condition at the time of trial is causally related to the alleged accident of December 11, 2012. Petitioner denied any prior condition of ill-being with respect to his head or neck. All of the medical evidence herein supports that Petitioner sustained an accidental injury, for which he has received appropriate medical care.

# 15IWCC0060

Were the medical services that were provided to Petitioner reasonable and necessary; and has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Based upon the Arbitrator's findings above, the Arbitrator awards the petitioner medical bills in the amount of \$3,454.00 as itemized in Px4.

<u>EXHIBIT</u>	<u>PROVIDER</u>	<u>CHARGES</u>
1	Anointed Health Partners, Ltd. (Only the DOS: 12/14/12, 12/21/12 and 2/5/13)	\$270.00
2	Excel Occupational Health Clinic	\$682.00
3	Maximum Rehabilitation Services, Ltd.	<u>\$2,502.00</u>
	Grand Total:	\$3,454.00

The Arbitrator notes the stipulation of the parties that should any medical bill be awarded herein, the bill shall be paid in conformity with the prevailing Medical Fee Schedule amount as required by the Act. The parties further agree that payment shall be made directly to the provider subject to any previous payments or 8(j) credit the respondent can establish.

Rx1 is a compilation of medical payments made by the workers' compensation carrier.

Rx2 is a compilation of medical bills paid through petitioner's BC/BS policy for which the respondent is entitled to a credit pursuant to §8(j) for treatment with Anointed Health Partners.

Respondent has stipulated on the record that, should the medical bills be awarded, the Respondent will reimburse the petitioner for co-pays in the amount of \$60.00, as listed in Rx 2.

### What is the nature and extent of the injury?

The Arbitrator adopts by reference all prior findings and conclusions into this Section without restating them herein. This claim arose after September 1, 2011; therefore the five factors for determining Permanent Partial Disability shall be applied here. The Arbitrator notes the five factors to determine Permanent Partial Disability are: 1) AMA Impairment Rating; 2) Occupation of the injured employee; 3) Age of the

# 15IWCC0060

employee at the time of the injury; 4) Employee's future earning capacity and 5) Evidence of disability corroborated by the treating medical records. No one factor shall be controlling but a written explanation is required if an award is greater than the AMA Impairment Rating. 820 ILCS 305/8.1b(b).

It is the Petitioner's burden to prove all aspects of his claim for benefits. This includes entitlement to Permanent Partial Disability.

**AMA Impairment Rating:** Neither side offered into evidence an AMA Impairment Rating *per se*; however, Respondent submitted into evidence a report from Dr. Bernstein, which reflects, *inter alia*, that Petitioner "has not suffered a permanent injury" (Rx 3). The Arbitrator infers that if there is no permanent injury, there is no impairment pursuant to AMA requirements, and thus a zero impairment rating.

**Occupation of the Injured Employee:** The Petitioner testified his job title is that of an "oiler." He testified that he works with pumps of various sizes, greases motors and checks fuel levels. He testified that his job is five days per week, eight hours per day, and that he is on his feet during this time. He is required to wear a hard hat that weighs less than 10 lbs., and safety goggles. His job requires him to be able to look up and down, and to the left and right while wearing this safety gear. He testified this job requires him to perform some lifting in order to maintain the machines.

**Age of the Injured Employee at Time of Accident:** The Petitioner was 55 years old at the time of the accident.

**Employee's Future Earning Capacity:** Petitioner testified he has returned to the position he held prior to the injury. He is able to perform his job duties, full time, with no restrictions. He returned to the same job, working with the same materials, working the same hours, with the same job title and rate of pay. He testified he works varying shifts, and the medical records (Px 1) reflect he works overtime when offered. Petitioner's future earning capacity has not been affected by the accidental injury.

**Evidence of Disability corroborated by the treating medical records:** Petitioner testified that he still has headaches. He testified that he has a stiff and sore neck in the morning for which he takes a low dose aspirin. He uses a menthol heat cream. Petitioner acknowledged that these were not prescribed by a doctor, and in fact do not appear in the treating doctors medical records. These ongoing complaints do not appear in the medical records. Petitioner testified that the base of his skull still swells; this is not reflected in the medical records either.

Given the nature of the injury that Petitioner suffered, and the lack of any permanent injury as noted by Dr. Bernstein, the Petitioner failed to prove that he sustained any Permanent Partial Disability as a result of the December 11, 2012 accidental injury.

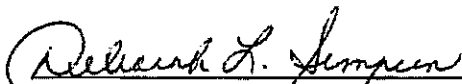
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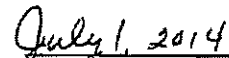
ORDER OF THE ARBITRATOR

Petitioner is entitled to \$60.00 for his out of pocket co pays as demonstrated in the Blue Cross & Blue Shield records (Rx 2).

Petitioner failed to prove he sustained any Permanent Partial Disability. Petitioner's claim for Permanent Partial Disability is denied.

Respondent to pay the petitioner's medical bills in the amount of \$3,454.00 as itemized in Px4, pursuant to the fee schedule as provided in the Act.

  
\_\_\_\_\_  
Signature of Arbitrator

  
\_\_\_\_\_  
Date



STATE OF ILLINOIS )  
) SS.  
COUNTY OF COOK )

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Darell Earhart,  
Petitioner,  
vs.  
Cassens Transport,  
Respondent,

NO: 12 WC 31747

**15IWCC0061**

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 issue of what is the nature and extent of the petitioner's permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 12, 2014 is hereby affirmed and adopted.

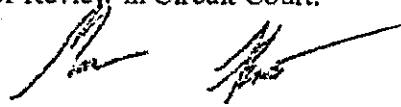
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

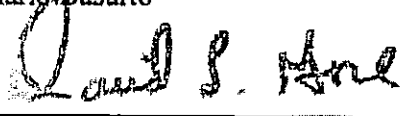
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

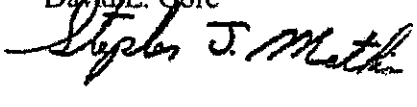
Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$14,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 23 2015

MB/mam  
o:1/15/15  
43

  
\_\_\_\_\_  
Mario Basurto

  
\_\_\_\_\_  
David L. Gore

  
\_\_\_\_\_  
Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**EARHART, DARELL**

Employee/Petitioner

Case# 12WC031747

**15IWCC0061**

**CASSENS TRANSPORT**

Employer/Respondent

On 6/12/2014, 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 0.06% 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:

0787 MEYERS & FLOWERS LLC

JOHN HARP III

3 N 2ND ST SUITE 300

ST CHARLES, IL 60174

2395 KNAPP OHL & GREEN

ETHAN J WILLENBORG

6100 CENTER GROVE RD

EDWARDSVILLE, IL 62025

15IWCC0061

STATE OF ILLINOIS )

)SS.

COUNTY OF COOK )

Injured Workers' Benefit Fund (54(d))

Rate Adjustment Fund (58(g))

Second Injury Fund (58(e)18)

None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

**Darell Earhart**

Employee/Petitioner

v.

**Cassens Transport**

Employer/Respondent

Case # 12 WC 31747

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 KETKI STEFFEN, Arbitrator of the Commission, in the city of CHICAGO, on May 9, 2014. 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?

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- I.  What was Petitioner's marital status at the time of the accident?
- J.  Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K.  What temporary benefits are in dispute?  
 TPD       Maintenance       TTD
- L.  What is the nature and extent of the injury?
- M.  Should penalties or fees be imposed upon Respondent?
- N.  Is Respondent due any credit?
- O.  Other \_\_\_\_\_

*ICarbDec 2/10 100 W. Randolph Street #8-200 Chicago, IL 60601 312/814-6611 Toll-free 866/352-3033 Web site: [www.iwcc.il.gov](http://www.iwcc.il.gov)*

*Downstate offices: Collinsville 618/346-3450 Peoria 309/671-3019 Rockford 815/987-7292 Springfield 217/785-7084*

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## FINDINGS

On July 4, 2012, Respondent *was* operating under and subject to the provisions of the Act.  
On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.  
On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.  
Timely notice of this accident *was* given to Respondent.  
Petitioner's current condition of ill-being *is* causally related to the accident.  
In the year preceding the injury, Petitioner earned \$83,497.96; the average weekly wage was \$1,605.73.  
On the date of accident, Petitioner was 47 years of age, single with 1 dependent children.  
Petitioner *has* received all reasonable and necessary medical services.  
Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.  
Respondent shall be given a credit of \$0 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$0.  
Respondent is entitled to a credit of \$0 under Section 8(j) of the Act.

## ORDER

Respondent shall pay Petitioner permanent partial disability benefits of \$ 712.55/week for 20 weeks, because the injuries sustained caused the 4% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

Kelli Steffen

Signature of Arbitrator

6.12.14

Date

JUN 12 2014

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## PROCEDURAL HISTORY

This matter was presented for a hearing on the merits before Arbitrator Ketki Steffen on May 8, 2014. Both parties were represented by counsel and have entered into several stipulations that are contained as Arbitrator's Exhibit No. 1 ("AX1") for the trial record. The only disputed issue is nature and extent of the injuries. The accident occurred on 7/4/12 a date which post-dates the September, 2011 AMA guidelines amendment to the Act. Neither sides have submitted an AMA rating.

## FACTUAL HISTORY

~~The Petitioner was 47 years old at the time of his work accident of July 4, 2012.~~

He worked as semi-truck driver that transports cars for Respondent Cassens Transportation Company. Petitioner was engaged in his work duties on his semi when he started falling from the semi trailer. He tried to catch himself from falling by grabbing a ladder with his right arm and in the process suffered an injury to his right shoulder and arm. The accident occurred at Stoney Island Avenue in Chicago, Illinois.

After the work accident, Petitioner completed an accident report for Respondent where he noted arm pain and indicated the pain was in his right elbow area. (R.Ex.2). Petitioner testified that the pain was going through his whole body, including his shoulder, stomach and leg, but he did not indicate these areas of pain on the pain diagram. (Tr.28-29).

Two days after the work accident Petitioner sought medical treatment at Regional Occupational Healthcare Center ("ROCC") on July 6, 2012. The medical provider noted the following: "He reports 9 out of 10 burning pain, which is constant, but then later on

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he tells me that the burning pain is intermittent and only occurs with certain movements." (P. Ex. 1) Petitioner was diagnosed with a right shoulder strain and neuropraxia. Petitioner was advised to take Ibuprofen 400 mg three times a day. No work restriction were place and the Petitioner returned to work full duty.

Petitioner followed up at ROCC on July 9, 2012. At that time, Petitioner complained of a burning pain from under his right arm down to his elbow. He was prescribed 40 mg of Prednisone for six days and Nucynta for pain control. Petitioner testified that he never took any Prednisone. (Tr.15).

On August 8, 2012, Petitioner was reevaluated at ROCC. Petitioner complained of continued pain and numbness in his right upper arm but the tingling had improved. The medical provider noted, "He did ride his motorcycle 532 miles and indicated that this irritated his arm some." (P.Ex.1). Petitioner testified that this motorcycle mileage came from a vacation due to being laid off at that time. (Tr.30-31 Petitioner denied that the motorcycle riding irritates his arm. He testified that "doing hard physical work" irritated his arm. (Tr.31-32)

Dr. Michael Krauss of ROCC examined Petitioner on September 12, 2012. He noted that that Petitioner's right upper extremity pain had dramatically improved over the past two months. Petitioner only noticed pain with prolonged lifting with the arm elevated at 90 degrees. Petitioner had denied any numbness or tingling. Dr. Krauss diagnosed Petitioner with a brachial plexus injury of the right arm and recommended a follow-up in four to six weeks.

In September 17, 2012 Petitioner had an unrelated injury to his right ankle. (T.19) He was first evaluated at ROCC for his right ankle on September 24, 2012.

Petitioner claims that he told the medical provider at ROCC about continued right upper extremity symptoms when he was evaluated on September 24, October 2, 9, and 22, and November 12 of 2014. (Tr.33-34). The medical provider did not note any of these continued complaints in his medical records. (P.Ex.1).

On December 10, 2012 underwent a medical examination at ROCC. At that time, Dr. Krauss noted that Petitioner complained of minimal symptoms in his right arm. ~~Dr. Krauss noted in Petitioner's physical examination, "His right arm reveals full range of~~ motion, excellent strength in all planes, no tenderness to palpation, [and] normal sensation throughout the upper extremity." (P.Ex.1). Petitioner had several follow-up appointments at ROCC through March 27, 2013.

Petitioner testified that he currently experiences burning, throbbing, and weakness in his right elbow, arm, and shoulder. He denies any loss of strength in his right upper extremity. (Tr.19). Petitioner acknowledged that in a Department of Transportation ("DOT") physical at ROCC on June 20, 2013 he claims to have no physical limitations. (R.Ex.5). He passed the DOT physical and was given a Medical Examiner's Certificate scheduled to expire on June 20, 2015.

## FINDINGS/ANALYSIS

**In support of the Arbitrator's decision relating to Issue (L), the nature and extent of Petitioner's injury, the Arbitrator finds the following:**

Accident, notice, causation and medicals are not in dispute. Petitioner was 47 years old when he suffered an injury to his right upper extremity after slipping off his



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truck and grabbing a ladder with his right hand. Two days after the work accident Petitioner sought medical treatment ROCC and was diagnosed with a right shoulder strain and neuropraxia. Petitioner was never restricted from his work duties and was allowed to work full duty but claims that he currently experiences burning, throbbing, and weakness in his right elbow, arm, and shoulder. A August 8, 2012, medical note from ROCC notes that Petitioner complained of continued pain and numbness in his right upper arm but the tingling has improved his condition. The Petitioner was treated conservatively and he passed the DOT physical and was given a Medical Examiner's Certificate scheduled to expire on June 20, 2015. Neither sides have submitted an AMA rating and the Respondent has proposed that there is no permanency.

As this case post-dates the September 1, 2011 amendment of Worker's Compensation Act ("Act") the Arbitrator has, pursuant to §8.1b of the Act, considered the following criteria and factors in determining the level of permanent partial disability.

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors;

- (i) the reported level of impairment pursuant to subsection (a);
- (ii) the occupation of the injured employee;
- (iii) the age of the employee at the time of the injury;
- (iv) the employee's future earning capacity; and

(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the

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level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

Based on the record as a whole, and as explained in detail above, the Arbitrator finds that Petitioner has established permanent partial disability to the extent of 4 % loss of use of the person as a whole pursuant to Section 8(d)(2). *Will County Forest Preserve District v. IWCC*, 2012 Ill.App. This finding is based in part on the fact that Petitioner was credible and clear in his testimony and that his testimony regarding his injury is supported by medical evidence. Although Petitioner has not suffered any loss of income, the Petitioner continues to suffer burning, throbbing, and weakness in his right elbow, arm, and shoulder.

Ketki Steffen  
Arbitrator Ketki Steffen

6.12.14  
Date