

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF WILLIAMSON )

<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  
Douglas Coffey,

Petitioner,

vs.

NO: 13 WC 17872

State of Illinois/Menard Correctional Center,

**14IWCC0991**

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 permanent partial disability, causal connection, and credit from Illinois Workers' Compensation claim in case number 11WC 1100 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 March 7, 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.

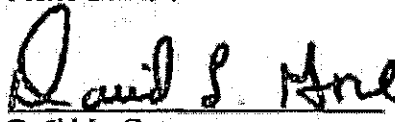
No bond or summons for State of Illinois.

DATED: NOV 19 2014

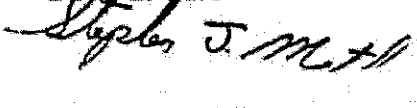
MB/mam  
o:9/25/14  
43



Mario Basurto



David L. Gore



Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

COFFEY, DOUGLAS

Employee/Petitioner

Case# 13WC017872

**14IWCC0991**

SOI/MENARD CORRECTIONAL CENTER

Employer/Respondent

On 3/7/2014, 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 0.08% 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:

0969 THOMAS C RICH PC  
#6 EXECUTIVE DR  
SUITE 3  
FAIRVIEW HTS, IL 62208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS  
2101 S VETERANS PARKWAY\*  
PO BOX 19255  
SPRINGFIELD, IL 62794-9255

0558 ILLINOIS ATTORNEY GENERAL  
FARRAH L HAGAN  
601 S UNIVERSITY AVE SUITE 102  
CARBONDALE, IL 62901

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

**MAR 07 2014**



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

# 14IWCC0991

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF WILLIAMSON )

<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)1B)
<input checked="" type="checkbox"/>	None of the above

## ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

DOUGLAS COFFEY

Employee/Petitioner

Case # 13 WC 17872

v.

STATE OF ILLINOIS/  
MENARD CORRECTIONAL CENTER

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 **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Herrin**, on **January 15, 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

# 14IWCC0991

## FINDINGS

On April 18, 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 \$57,369.00; the average weekly wage was \$1,103.25.

On the date of accident, Petitioner was 29 years of age, *married* with 3 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 for all medical bills paid under Section 8(j) of the Act.

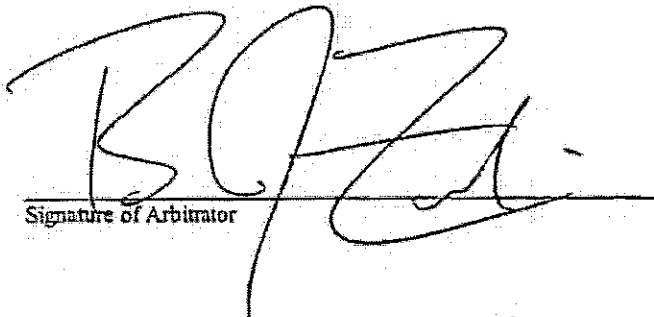
## ORDER

Respondent shall pay Petitioner permanent partial disability benefits of \$661.95/week for 63.25 weeks because the injuries sustained caused the 12.65% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act. Respondent's request for credit for a prior award on the basis of a Section 8(e) injury in Case Number 11 WC 1100 is denied.

Respondent shall pay Petitioner compensation that has accrued from October 16, 2013 through January 15, 2014, 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

03/04/2014  
Date

MAR 7 - 2014

14IWC0991

STATE OF ILLINOIS )  
 )SS  
COUNTY OF WILLIAMSON )

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

DOUGLAS COFFEY  
Employee/Petitioner

v.

Case # 13 WC 17872

STATE OF ILLINOIS/  
MENARD CORRECTIONAL CENTER  
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

At the time of the undisputed accident, Petitioner, Douglas Coffey, was a right-hand-dominant 29-year-old Correctional Officer. He sustained a right supraspinatus tendon tear on April 18, 2013, when his right arm became pinned underneath another officer during an inmate assault. (Petitioner's Exhibit (PX) 5). Petitioner testified to a prior right shoulder injury which he sustained while playing high school sports in 2001. He testified that he recovered fully and had no further right shoulder problems until the incident of April 18, 2013.

Petitioner sought treatment with Dr. George Paletta, who recommended an MRI. Dr. Paletta noted that if there was no significant structural injury, such as a tearing, then Petitioner could benefit from conservative care such as injection and physical therapy; however, if Petitioner sustained a significant tear of an aspect of his rotator cuff, then he would be a surgical candidate. (PX 4). Following the results of the MRI, which showed partial thickness tearing of the supraspinatus tendon of the rotator cuff, Petitioner underwent a rotator cuff repair with debridement on July 9, 2013. (PX 5; PX 6). The post-operative diagnosis was right shoulder pain, rotator cuff tear, and impingement syndrome with subacromial bursitis, as well as a labral tear of the posterior-superior labrum. (PX 6). Petitioner's condition improved following physical therapy, and he was released to return to work light duty on August 12, 2013, and full duty on October 16, 2013. (PX 5).

Petitioner testified that despite the improvement from surgery, he continues to experience soreness and stiffness in the mornings and in the evenings after a full day's work. He testified that these symptoms significantly disturbed his ability to sleep, and that he wakes through the night to change positions in the attempt to get comfortable. He testified that he has suffered a loss of range of motion and strength which negatively affects his ability to care for his family and his hobby of coaching little league baseball. He takes Aleve or Ibuprofen on a daily basis for his symptoms.

# 14IWCC0991

## CONCLUSIONS OF LAW

### Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Based upon the medical records and testimony, Petitioner's right shoulder condition is causally related to the accident on April 18, 2013.

### Issue (L): What is the nature and extent of the injury?; and

### Issue (N): Is Respondent due any credit?

Petitioner's date of accident after September 1, 2011, and therefore Section 8.1b of the Act shall be discussed concerning the permanent partial disability (PPD) award being issued. It is noted when discussing the permanency award being issued that no PPD impairment report pursuant to Sections 8.1b(a) and 8.1b(b)(i) of the Act was offered into evidence by either party. This factor is thereby waived.

Concerning Section 8.1b(b)(ii) of the Act (Petitioner's occupation), Petitioner continues to be employed as a Correctional Officer for Respondent, and he continues to be at risk for injury due to inmate assaults. The Arbitrator places great weight on this factor when determining the permanency award.

Concerning Section 8.1b(b)(iii) of the Act (Petitioner's age at the time of the injury), Petitioner was 29 years old on April 18, 2013. The Arbitrator considers Petitioner to be a younger individual, who will have to live and work with the disability longer than an older individual. Great weight is afforded this factor when determining the PPD award.

Concerning Section 8.1b(b)(iv) of the Act (Petitioner's future earning capacity), there is no direct evidence of diminished future earning capacity in the record. Accordingly, no weight is placed on this factor when determining the PPD award.

With regard to Section 8.1b(b)(v) of the Act (evidence of disability corroborated by Petitioner's treating medical records), Petitioner sustained a right supraspinatus tendon tear which necessitated a rotator cuff repair with debridement on July 9, 2013. The post-operative diagnosis was right shoulder pain, rotator cuff tear, and impingement syndrome with subacromial bursitis, as well as a labral tear of the posterior-superior labrum. Petitioner testified that despite the improvement from surgery, he continues to experience soreness and stiffness in the mornings and in the evenings after a full day's work. He testified that these symptoms significantly disturbed his ability to sleep, and that he wakes through the night to change positions in the attempt to get comfortable. He testified that he has suffered a loss of range of motion and strength which negatively affects his ability to care for his family and his hobby of coaching little league baseball. He takes over-the-counter pain medication daily for his symptoms. Although the record of Petitioner's last visit with Dr. Paletta on October 16, 2013 does not completely mirror Petitioner's testimony at trial, Petitioner was not released to work full-duty until that very day of October 16, 2013; the record of Petitioner's final visit shows that Petitioner had resumed neither his full occupational duties nor his non-occupational activities. Petitioner confirmed same during cross-examination. Therefore, neither Petitioner nor Dr. Paletta could have had a true and accurate impression of the extent of Petitioner's permanent disability or working functionality at the time of the October 16<sup>th</sup> visit. Hence, Petitioner's testimony of continued symptoms following his return to full activity is reasonable. The Arbitrator places significant weight on this factor when determining the PPD award.

# 14IWCC0991

Based upon the foregoing, the Arbitrator finds that Petitioner sustained serious and permanent injuries that resulted in the 12.65% loss of the person as a whole, the equivalent of the 25% loss of an arm, pursuant to *Will County Forest Preserve Dist. v. Ill. Workers' Comp. Comm'n*, 2012 IL App (3d) 110077WC, 970 N.E.2d 16, 23-24, (3d Dist. 2012). With regard to the credit Respondent requests for a previous arm award received by Petitioner, the Arbitrator finds that such a request is not permissible under the Act. As the Commission noted in *Dobczyk v. Lockport Township Fire Protection Dist.*, 12 IWCC 1367 (Dec. 10, 2012), in the matters of *Consolidated Freightways v. Industrial Comm'n*, 237 Ill. App. 3d 549, 553-554, 604 N.E.2d 962, 964-965 (3d Dist. 1992), and *Killian v. Industrial Comm'n*, 148 Ill. App. 3d 975, 978, 500 N.E.2d 450, 453 (1st Dist. 1986), the Appellate Court narrowly construed Section 8(e) of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act") as only providing credit against permanency for losses to a "member" listed under Section 8(e); since a shoulder is not a "member" under Section 8(e), the Commission stated that the employer could not claim credit for a prior recovery under Section 8(e)17 of the Act. *Dobczyk*, cited *supra*. Similarly, Respondent cannot claim credit for payment of an award for a scheduled injury against an award under Section 8(d)2 of the Act for which no credit provision exists. Respondent's request for credit is denied.

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF )  
CHAMPAIGN )

<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  
Steve Maynard,  
Petitioner,

vs.  
Danville Housing Authority,  
Respondent,

NO: 12 WC 25946

**14IWCC0992**

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of the nature and extent of petitioner's disability, and whether the award should be based on §8(e) or 8(d)2 of the Act 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 January 10, 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.

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: **NOV 19 2014**

MB/mam  
o:9/24/14  
43

Mario Basurto

  
David L. Gore  
Stephen Mathis



ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

MAYNARD, STEVE

Employee/Petitioner

Case# 12WC025946

**14IWCC0992**

DANVILLE HOUSING AUTHORITY

Employer/Respondent

On 1/10/2014, 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 0.08% 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:

1551 STOKES LAW OFFICES

GARY J STOKES

200 N GILBERT

DANVILLE, IL 61832

RUSIN MACIOROWSKI & FRIEDMAN LTD

MARK COSIMINI

2506 GALEN DR SUITE 108

CHAMPAIGN, IL 61821

14IWCC0992

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF CHAMPAIGN )

<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

Steve Maynard  
Employee/Petitioner

Case # 12 WC 025946

v.

Consolidated cases: N/A

Danville Housing Authority  
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 **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Urbana**, on **December 20, 2013**. By stipulation, the parties agree:

On the date of accident, **03/20/12**, 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 **\$25,812.80**, and the average weekly wage was **\$496.40**.

At the time of injury, Petitioner was **59** years of age, *married* with **1** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

# 14IWCC0992

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.


## ORDER

Respondent shall pay Petitioner the sum of \$297.84/week for a further period of 87.5 weeks, as provided in Section 8(e) and 8(d)(2) of the Act, because the injuries sustained caused a 17.5% loss of use of the person as a whole.

Respondent shall pay Petitioner compensation that has accrued from 03/20/12 through 12/20/13, and shall pay the remainder of the award, if any, in weekly payments.

**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

JAN. 3, 2014  
\_\_\_\_\_  
Date

JAN 10 2014

# 14IWCC0992

In support of the Arbitrator's decision relating to the nature and extent of the injury, the Arbitrator makes the following findings:

On the date of accident Petitioner was a 59 year old renovation specialist for the Danville Housing Authority. Petitioner's job was to repair housing units or apartments and generally prepare them for the occupants of public housing. Petitioner's job duties included stripping and scrubbing floors, mopping and waxing, hanging doors, hanging, finishing and painting drywall and installing or repairing plumbing and electrical within the apartments.

Prior to the date of accident Petitioner had never experienced any problems with his right arm and shoulder. Petitioner is right-hand dominant and he typically performed overhead duties like painting, changing light fixtures, etc. without problems of any sort. Petitioner had never experienced weakness in the right upper extremity or seen a physician for any complaint relative to the right shoulder or right arm.

On March 20, 2012, Petitioner was cleaning out an apartment. Petitioner carried a set of metal bed rails out to the dump truck. When Petitioner tried to throw the rails onto the truck he experienced a sharp pain in his right shoulder. Petitioner finished his shift, however, his right shoulder continued to hurt so he reported the injury to his work. On the following day the right shoulder pain persisted and Petitioner asked for permission to see a physician. Respondent sent Petitioner to see Dr. Allison Jones at the Carle Clinic (PX1).

Dr. Jones initially diagnosed an acute shoulder strain, ordered work restrictions and directed Petitioner to take Tylenol and Advil (PX1). When Petitioner's pain failed to improve, Dr. Jones referred Petitioner to an orthopedic surgeon, Dr. Paul Plattner. Dr. Plattner injected Petitioner's right should and ordered an MRI of Petitioner's right arm and shoulder (PX2).

The MRI report of April 17, 2012 reported a "complete tear of the supraspinatus tendon with a large fluid gap. . . . The long head of the biceps tendon is severely torn with little if any appreciable intact tendon within the bicipital groove . . ." (PX3). Dr. Plattner recommended surgery. Respondent, in turn, scheduled an independent medical examination with another orthopedic surgeon, Dr. Mitchell Rotman, in St. Louis.

Petitioner saw Dr. Rotman on May 10, 2012. Dr. Rotman's report included the following findings "He most likely sustained a biceps rupture which was not completely visualized at the time of the initial exam, but was made apparent later on. He might have had a few fibers of intact biceps initially after the incident and then those fully ruptured especially after the steroid injection was given . . ." (PX4, p.4). In addition to the ruptured biceps tendon, Dr. Rotman confirmed that Petitioner sustained a tear of the rotator cuff in his right shoulder. Though Dr. Rotman believed the thinness of the rotator cuff tissue may have pre-existed the incident, "This particular incident on March 20, 2012 would be equivalent to the straw that broke the camel's back." (PX4, p. 4). Dr. Rotman described the tear as ". . . a good sized tear, greater than a half dollar, and may not even be repairable." (PX4, p. 4).

Petitioner felt more comfortable with Dr. Rotman and agreed to let him perform the right shoulder surgery. Surgery was performed on June 13, 2012. Dr. Rotman described the surgery as a subacromial decompression and rotator cuff repair with the placement of anchors and sutures through holes in the greater tuberosity. He was able to reattach the torn tendon to its normal insertion point. He went on to describe some fraying of the biceps tendon, which he treated by debridement. (PX5).

Petitioner participated in approximately six months of post-operative physical therapy and work hardening before being released from care in January, 2013 (PX6-9). Dr. Rotman, in his final exam, noted Petitioner's ongoing weakness and losses in range of motion (PX9). Though Dr. Rotman thought Petitioner might see

# 14IWCC0992

improvement in both areas over the succeeding six months, Petitioner testified that there has been no improvement.

On August 5, 2013 Petitioner was sent by Respondent to Dr. Richard Katz, for an AMA impairment rating (RX1). Dr. Katz noted Petitioner's ongoing weakness, pain and diminished range of motion in the right arm and shoulder. Petitioner completed a Quick Dash Report, at Dr. Katz' instruction, acknowledging moderate to severe difficulty in nine of the eleven relevant activities (PX11). Dr. Katz assessed Petitioner's AMA impairment rating to be 6% of the arm (RX1). The highest impairment rating available under the AMA guidelines for full thickness tears of the rotator cuff is 7% (PX10, p. 3).

Petitioner testified to the ongoing difficulties he has experienced since being released from care by Dr. Rotman in January, 2013. Petitioner now suffers constant pain in his right upper extremity at a level of approximately '2' on a 0 to 10 scale with pain progressing to a '4' while performing his daily job duties. Petitioner takes Advil and hot showers to moderate his pain.

Normal daily activities have been compromised significantly. Petitioner now uses his left arm and hand, for instance, to lift milk containers from the refrigerator or to snap his seat belt in the car. Petitioner notices the right arm and shoulder are too weak to do either. Petitioner has difficulty dressing him-self and washing his hair because of losses in the normal range of motion in the right arm and shoulder. Pain and numbness in the right arm and right shoulder interrupt Petitioner's sleep. Petitioner can no longer bowl or play catch with his 15 year old son because of pain in the right shoulder.

Petitioner notices considerable difficulties at work as well. He said that although he was released without restrictions by Dr. Rotman, the Respondent allowed him to perform lighter work for an unspecified period of time. Installing a light bulb causes extreme fatigue in the right arm and shoulder if performed overhead. Petitioner must now use his left upper extremity to lift lids on garbage containers and place trash into the containers. Using a screw driver or drill with his right hand and arm causes his biceps to immediately tighten and appear deformed. Petitioner estimates that he now performs three times more with his left arm and hand than he did before the injury. Petitioner credibly testified that he experienced none of these problems prior to the accident and injury on March 20, 2012. Petitioner also acknowledged that his pay had increased due to an across the board raise since his return to work.

For injuries occurring on and after September 1, 2011 the Commission shall base its determination of permanent partial disability on five listed factors:

- (1) Reported level of impairment in accordance with the AMA impairment ratings. Petitioner was judged by Respondent's medical evaluator to have a six percent (6%) AMA impairment rating of the upper extremity. Seven percent (7%) impairment of the arm is the maximum impairment rating available in cases of full thickness rotator cuff tears (PX10).

The Arbitrator has some issues with the impairment rating found by Dr. Katz. The rating is premised on the Petitioner having a normal range of motion in the right shoulder. In his exam, Dr. Katz reported such a finding. However, it appears from the report, that Dr. Katz only tested the Petitioner's right shoulder. The AMA Guides require the examiner to test both shoulders so as to accurately determine what is normal for each individual. See AMA Guide, Sixth Edition, Section 15.7 (a), p. 461. More importantly, Dr. Katz' numbers are inconsistent with those found on several occasions by Dr. Rotman, who did examine both shoulders. On January 28, 2013, Dr. Rotman found 140 degrees of flexion and abduction of the right shoulder and 150 on the left. He found 45 degrees of external rotation on the right shoulder and 60 degrees on the left. (PX 9)

# 14IWCC0992

The Arbitrator cannot see how Dr. Katz was able to produce 180 degrees of flexion and 90 degrees of external rotation during his exam. Those numbers greatly exceed those found by Dr. Rotman on the Petitioner's good arm.

It is much more likely that the Petitioner experiences a restricted range of shoulder motion. He testified to a number of overhead activities both at work and at home which cause him problems. His physical therapy evaluation of November 29, 2012, after nearly six months of therapy, show some limits in flexion, adduction and external rotation. (PX 7) Dr. Rotman's abnormal findings are referenced above. If the Petitioner were to achieve a normal ROM, it is much more likely that it would be seen by his treating providers immediately after therapy than by Dr. Katz in his exam eight months later. While Dr. Rotman did suggest that the Petitioner might improve his strength and endurance with a home exercise program, the Petitioner testified that he did not receive any instruction on such a program and he did not engage in one.

Dr. Katz' range of motion findings are suspicious for the above reasons. The impairment rating used presumes a normal range of motion. For those reasons, the Arbitrator places very little weight on the rating.

- (2) The occupation of the injured employee. Petitioner's job is physically demanding and obviously involves significant use of Petitioner's upper extremities on a daily basis. Fortunately, for now, Petitioner has been able to partially compensate for his disability by using his left upper extremity approximately three times as much as he did pre-injury. This is a factor maximizing his disability.
- (3) The age of the employee at the time of injury. Petitioner was 59 years of age at the time of injury. Though Petitioner testified that he has no plans to retire at age 65, his advanced age is a factor to minimize his disability.
- (4) The employees' future earning capacity. The Petitioner has substantial functional limitations of which he testified. He is at a point of maximum medical improvement. If his job were to end, it is not likely that he would be able to handle unrestricted full construction work. The Arbitrator believes this is a minor factor in maximizing his disability.
- (5) Evidence of disability corroborated by the treating medical records. The Arbitrator has had the opportunity to observe Petitioner and finds his testimony to be credible and consistent with his extensive injuries. In addition to the biceps tendon damage, Dr. Rotman found a large, retracted rotator cuff tear. In his post operative office note, the doctor said it would take five to six months of rehab since it was such a big chronic tear. (PX 9) He did the therapy, showed good attendance, and is still left with restrictions of motion and decreases in strength.

After applying the five factors set forth in the statute, the Arbitrator finds the Petitioner disabled to the extent of 17.5 % Person As A Whole.

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="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)13)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal-denied.
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jacqueline Camacho,

Petitioner,

**14IWCC0994**

vs.

NO: 12WC 10751

Bar Toma,

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 accident, medical expenses, temporary total disability, permanent partial disability, maintenance, 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 January 31, 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.

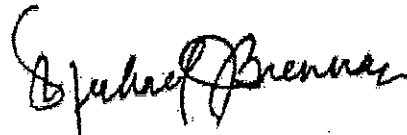
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

**14IWCC0994**

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$31,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:  
MJB/bm  
6-11/18/14  
052

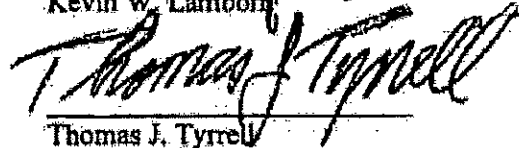
NOV 21 2014



Michael J. Brennan



Kevin W. Lamborn



Thomas J. Tyrrell



ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

CAMACHO, JACQUELINE

Employee/Petitioner

Case# 12WC010751

BAR TOMA

Employer/Respondent

14IWCC0994

On 1/31/2014, 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:

0059 BAUM RUFFOLO & MARZAL LTD

JOEL HERRERA

33 N LASALLE ST SUITE 1710

CHICAGO, IL 60602

0210 GANAN & SHAPIRO PC

ELAINE T NEWQUIST

210 W ILLINOIS ST

CHICAGO, IL 60654

STATE OF ILLINOIS )

**14IWCC0994**

)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)(8))         |
| <input checked="" type="checkbox"/> | None of the above                     |

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION**

Jacqueline Camacho

Employee/Petitioner

v.

Bar Toma

Employer/Respondent

Case # 12 WC 10751

Consolidated cases: D/N/A

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 Molly C. Mason, Arbitrator of the Commission, in the city of Chicago, on 11/22/13 & 1/6/14. 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 \_\_\_\_\_

14IWCC0994

**FINDINGS**

On 3/14/12, 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 \$16,432.52; the average weekly wage was \$316.01.

On the date of accident, Petitioner was 30 years of age, *single* with 0 dependent children.

Petitioner *has in part* received reasonable, necessary and causally related medical services.

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

Respondent shall be given a credit of \$1,760.00 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$1,760.00.

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

**ORDER**

***Temporary Total Disability***

Respondent shall pay Petitioner temporary total disability benefits of \$220/week from March 15, 2012 through March 20, 2012, from March 22, 2012 through May 3, 2012 and from June 7, 2012 through November 27, 2012, a total of 31 6/7 weeks, with Respondent receiving credit for the \$1,760.00 in benefits it paid prior to trial. Arb Exh 1.

***Maintenance Benefits***

Respondent shall pay Petitioner maintenance benefits of \$220/week from June 12, 2013 through June 19, 2013, from July 10, 2013 through July 17, 2013, from August 11, 2013 through August 12, 2013 and from August 29, 2013 through November 21, 2013, a total of 14 5/7 weeks, as provided in § 8(a) of the Act.

***Medical Benefits***

See pages 14-15 of the attached decision for the Arbitrator's medical award.

***Permanent Partial Disability***

Respondent shall pay Petitioner permanent partial disability benefits of \$220.00/week for 112.5 weeks, because the injuries sustained caused the 22.5% loss of use of the person as a whole, as provided in § 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.

14IWCC0994

Molly C. Missa  
Signature of Arbitrator

1/31/14  
Date

ICArbDec p. 2

JAN 31 2014

**Arbitrator's Findings of Fact**

Petitioner testified she obtained an associate's degree in baking and pastry preparation from Kendall College in 2009. She began working as a pastry chef for Respondent's parent organization, Levy Restaurants, in May of 2011. She began working in the same capacity at Respondent restaurant in November of 2011. She began her workday at 4:30 or 5:00 AM and stopped working at 2:30 or 3:00 PM.

Petitioner testified she injured her back while lifting a gelato base at work in December 2011. She testified she did not lose time from work or undergo any treatment as a result of this injury. She denied sustaining any other back injuries prior to March 14, 2012.

Petitioner testified she felt good when she woke up on March 14, 2012. She arrived at work at 4:30 AM that day and began performing her regular duties. At about 8:00 AM, she began pulling a series of fourteen gelato bases out of the cooler. Each base weighed between 40 and 50 pounds. As she bent over in order to pull out the bottom base from a stack of three, she felt pain in her lower back and leg. She informed Lupe, her manager, of her injury. [Notice is not in dispute. Arb Exh 1.] Shortly after the accident, she took three Advils due to intense pain. She denied taking any other medication earlier that morning. At about 10:30 AM, she took one Tylenol with codeine. She testified that her supervisor, Susan, gave her this pill. Susan had injured her back the previous summer.

Petitioner testified she continued working after taking the Tylenol with codeine. She finished her shift at about 2:30 PM. She called her brother to ask for a ride since she was in a lot of pain. Her brother's girlfriend picked her up and started driving her home. At some point, she telephoned Respondent's chef but he did not answer her call. While she was still on the road, she received a call from Respondent. Three Respondent employees, including Lupe, Drew (the "front of the house" manager) and Effi (a male employee who worked in the pizza area) were on the line. They asked her when she reported the accident to Lupe and why no paperwork had been completed. She subsequently called Drew back. Drew instructed her to come back to work. She had her brother's girlfriend drive her back to the restaurant. When they pulled up, Drew met them outside, at which point she completed paperwork concerning the accident. At Respondent's direction, she then went to the Emergency Room at Northwestern Memorial Hospital.

An Emergency Room triage note bearing the time 5:28 PM sets forth the following history:

"Pt comes in with lower back pain. Pt states she was lifting a box at work today. Pt complains of increased pain to lower back with radiating pain to upper back. Pt denies numbness or tingling to

14IWCC0994

legs. Pt denies loss of bowel or bladder function. Pt up with slow steady gait."

The triage nurse noted that Petitioner rated her pain level at 10/10. PX 2, p. 8. At about 6:09 PM, another nurse noted that Petitioner "suddenly threw her back out" while lifting a box at work that day. This nurse indicated that Petitioner complained of pain only in her lower back. PX 2, p. 7.

At about 6:17 PM, a resident evaluated Petitioner under the supervision of Dr. Lareau, an Emergency Room physician. The resident's history reflects that Petitioner denied any alcohol/drug use or medications and described her past medical history as negative. PX 2, p. 10. On lumbar spine examination, the resident noted mild paraspinal muscle spasm and no focal neurological deficit. He reached a differential diagnosis of back sprain/strain. At about 7:00 PM, Petitioner received an injection of Toradol, Dilaudid and Valium. At about 8:40 PM, the resident noted Petitioner was "still having some pain after IM Dilaudid, Toradol and Valium." He also noted: "given Acosta testing request at this time from patient. Nursing to notify Acosta. Will dose Dilaudid IV now." At about 9:00 PM, Petitioner was given another injection of Dilaudid. A clinical note bearing the time 9:24 PM (PX 2, p. 16) states: "Injured back at work. Needs drug and alcohol screening workmen comp. Patient has chain of custody form." A technician performed an "Acosta drug screen" at Petitioner's bedside at 9:28 PM. PX 2, p. 23; PX 1, p. 1. The drug screen was positive for codeine and morphine and otherwise negative. The drug screen report is dated April 6, 2012. PX 1, p. 1.

Petitioner was discharged from the Emergency Room with prescriptions for Ibuprofen, Valium and Norco and instructions to follow up with Corporate Health Services. PX 2, p. 5.

On March 15, 2012, Petitioner saw Dr. Joseph Mitton at Northwestern Memorial Corporate Health Services. The doctor's note reflects that Petitioner experienced an immediate onset of lower back pain at 8:00 AM the previous day while trying to lift a gelato base at work. The note also reflects that Petitioner underwent care at the Emergency Room, where she was given prescriptions.

Dr. Mitton noted that Petitioner had taken Ibuprofen for pain but had not yet taken the prescribed Norco or Valium. He also noted that Petitioner complained of lower back pain radiating "up the back." He indicated that Petitioner denied leg pain but described her legs as having felt weak the night before. He further indicated that Petitioner had experienced a similar lifting injury in December 2011 "but did not do a written report and did [sic] resolved completely."

On examination, Dr. Mitton noted tenderness in the paraspinals, left greater than right, negative straight leg raising and intact sensation bilaterally. He diagnosed a lumbar strain. He demonstrated various range of motion exercises to Petitioner and released her to work with no lifting over 10 pounds, no repetitive bending, twisting or leaning and the ability to change position as needed. PX 3, p. 8.

14IWCC0994

On March 16, 2012, Petitioner saw Dr. Jane Cullen at Corporate Health Services, with the doctor indicating that Petitioner was now experiencing pain "down left lateral thigh" as well as tingling in the medial area of both thighs. Dr. Cullen described Petitioner's gait as antalgic. She noted that seated straight leg raising produced pain only in the back.

Dr. Cullen recommended that Petitioner discontinue the Ibuprofen and start a Medrol Dosepak. She also indicated that Petitioner could take two Valiums three times daily, to be supplemented with one Norco as needed. She recommended some walking and gentle exercises. She noted that Petitioner only worked Tuesday through Thursday. She continued the previous work restrictions and instructed Petitioner to return the following Monday. PX 3, pp. 11-12.

Petitioner returned to Corporate Health Services on March 19, 2012 and again saw Dr. Cullen. The doctor's lengthy note of that date reflects that, when she first entered the examination room, Petitioner had her "eyes almost closed" and was "speaking very softly, complaining of pain in back and shakiness and nausea and some constipation," but, as the examination progressed, Petitioner began speaking normally and seemed alert and oriented. At some later point, however, Petitioner "started sobbing that she was stressed because work was going to make her come back and she still had pain." On further discussion, Petitioner "stated that she did feel better than when she first went to the ER."

On examination, Dr. Cullen noted tenderness in the left lumbar area, a limited but improved range of motion in all directions, intact heel and toe walking, intact sensory, negative seated straight leg raising and a positive Waddell's sign for overreaction.

Dr. Cullen directed Petitioner to finish the Medrol Dosepak, discontinue the Norco and take Valium and Ibuprofen as needed. She continued the previous restrictions and instructed Petitioner to return on Friday. She indicated that Petitioner called the office within ten minutes of leaving, indicating that work was going to have her come in. Dr. Cullen noted she called Ed Gilaty "and discussed restrictions which he said would be fully accommodated." The doctor noted she then called Petitioner, who was crying. She described Petitioner as complaining of nothing other than that she was "going to have to work." PX 3, pp. 13-14.

Petitioner returned to Corporate Health Services on March 21, 2012 and saw Dr. Milton. The doctor noted that Petitioner reported improvement but complained of drowsiness secondary to the medication and "more pain when stuck in one position at a time." The doctor indicated that Petitioner complained of pain over the left lower back radiating into the left posterior thigh. He described seated straight leg raising as negative. He described Petitioner's strength as "decreased due to pain and meds." He increased Petitioner's lifting capacity to 15 pounds and otherwise continued the previous restrictions. He instructed Petitioner to return on April 3, 2012. PX 3, pp. 15, 20.

14INCC00894

Petitioner testified she returned to work on March 21, 2012 and was fired due to the drug test results. The following day, Petitioner consulted Dr. Newman, an orthopedic surgeon affiliated with the Illinois Bone and Joint Institute.

Dr. Newman's initial history of March 22, 2012 reflects that Petitioner was pulling some containers of gelato out of a cabinet on March 14, 2012 when she felt a sudden onset of low back pain, worse on the left than the right. The history also reflects a prior episode of back pain in December 2011 which "got better without active intervention."

Dr. Newman noted that, per Corporate Health Services, Petitioner resumed restricted duty on March 21, 2012 but experienced pain while working and increased symptoms after work.

Dr. Newman described Petitioner as morbidly obese. He noted she did not limp and was able to heel and toe walk. On range of motion examination, he noted flexion to 45 degrees, extension to 10 degrees and lateral bending to 15 degrees to either side. He described Waddell signs as "negative x 3." He also described straight leg raising as negative. He concluded Petitioner was primarily suffering a soft tissue strain. He indicated Petitioner had some left leg symptoms but found these symptoms "not typical of a nerve root type pain." He prescribed two weeks of physical therapy and instructed Petitioner to remain off work for that period of time. He also prescribed anti-inflammatories. PX 4, pp. 87-89.

On March 26, 2012, Petitioner filed an Application for Adjustment of Claim alleging a low back injury of March 14, 2012. Arb Exh 2.

Petitioner testified she began a course of therapy at United Rehab on March 29, 2012. PX 5, pp. 4-10.

Petitioner returned to Dr. Newman on April 5, 2012. Dr. Newman noted that Petitioner was still having back pain but described her left leg pain as having resolved. The doctor examined Petitioner and described her back strain as "slowly resolving." He instructed Petitioner to remain off work, continue therapy and return to him in two weeks. PX 4, p. 78. Petitioner continued attending therapy thereafter. PX 5, pp. 14-18.

Petitioner returned to Dr. Newman as directed on April 19, 2012. The doctor described the previous leg symptoms as "much improved." He noted, however, that Petitioner "still gets up from a sitting position very slowly." He recommended that Petitioner stay off work, continue therapy and return to him in two weeks. PX 4, p. 75. Petitioner continued attending therapy thereafter. PX 5, pp. 19-21.

On May 3, 2012, Petitioner returned to Dr. Newman. The doctor's note of that date reflects that Petitioner "has very little in the way of symptoms at the present time" and "feels that she could resume her full work duties." On examination, the doctor noted a normal range of lumbar spine motion, with "no suggestion of radicular pain." He found Petitioner to be at



# 14IWCC0994

maximum medical improvement but recommended she attend two more therapy sessions that had already been scheduled. He released Petitioner to full duty and indicated he did not need to see her again. PX 4, pp. 69-70. Petitioner testified she began looking for work online as of May 3, 2012. On May 5, 2012, the therapist discharged Petitioner from care with a home exercise program. PX 5, p. 24.

Petitioner testified she was no longer experiencing any "shooting pain" as of May 3, 2012. She discontinued her medication the same day, only to have her symptoms return three days later.

Petitioner returned to Dr. Newman on May 22, 2012. The doctor recorded the following interval history:

"[Petitioner] was discharged on her last visit but, when she stopped her medication, she found that her left low back pain returned. She was concerned. She was not given a home exercise program when she left physical therapy."

On examination, Dr. Newman noted a good range of motion with some complaint of left-sided low back pain with forward flexion. He recommended a "serious weight loss program" and one additional therapy visit "to learn a good home exercise program." He again released Petitioner to full duty. He released Petitioner from care on a "PRN" basis. PX 4, pp. 67, 68.

Petitioner testified that Dr. Newman prescribed a lumbar spine MRI on May 22, 2012 but there is no mention of such a prescription in the doctor's note of that date. Petitioner attended a therapy session that day.

Dr. Newman prescribed a lumbar spine MRI on May 24, 2012, noting that Petitioner's pain was "not relieved by NSAIDS or PT." PX 5, p. 65. The MRI, performed without contrast on June 5, 2012, demonstrated "mild lumbosacral degenerative disc disease," a "small central disc protrusion" at L3-L4 producing mild central canal stenosis and a "small right central disc protrusion" and annular fissure at L4-L5, with apparent mild central canal stenosis. PX 4, pp. 62-63. The MRI report states that the study was performed due to "low back pain radiating down to the left leg." PX 4, p. 62. PX 6-7.

Petitioner returned to Dr. Newman on June 7, 2012. The doctor indicated that Petitioner was still experiencing left-sided lower back pain and that "therapy feels they have nothing further to offer her." The doctor described Petitioner's pain as "suggestive of a radiculopathy." He again recommended weight loss. He targeted Petitioner's weight as "the primary reason that she has the degenerative changes in her lumbar spine." He referred Petitioner to a pain center for purposes of an epidural injection. He instructed Petitioner to return to him in six weeks, at which point he anticipated being able to release her to full duty. PX 4, pp. 59-61.

14IWCC0994

Petitioner saw Dr. Singh, a physiatrist, on June 18, 2012. The doctor's note of that date sets forth a consistent history of the March 14, 2012 work accident and subsequent care. The doctor indicated that Petitioner continued to complain of left-sided radicular pain despite doing home exercises. He also noted that Petitioner denied any new traumatic episodes or hospitalizations since her last visit to Dr. Newman. He indicated that Petitioner was hesitant about undergoing any type of injection.

Dr. Singh described Petitioner as obese. On examination, he noted minimal tenderness to palpation along the lumbosacral region paraspinal on the left, intact sensation and a normal gait. After reviewing the MRI, he referred Petitioner to his colleague, Dr. Alzoubi, for injections since Petitioner was "insisting on sedation." He prescribed Flexeril. PX 4, pp. 56-57.

On July 19, 2012, Petitioner returned to Dr. Newman. The doctor noted that Petitioner "is not getting better and in fact she has numbness down to her foot." He also noted that an injection had been scheduled for July 24<sup>th</sup>. He instructed Petitioner to remain off work and return to him in four weeks. PX 4, pp. 54-55.

Petitioner underwent additional epidural injections at St. Joseph Hospital on July 24 and August 23, 2012. PX 8, pp. 19-22. PX 9.

At Respondent's request, Petitioner saw Dr. Phillips for a Section 12 examination on August 28, 2012. Dr. Phillips is a spine surgeon affiliated with Midwest Orthopaedics at Rush. In his report (RX 1), he referenced the Emergency Room records, Dr. Newman's note of April 3, 2012, the MRI report and Dr. Singh's note of June 18, 2012.

Dr. Phillips' history reflects that Petitioner's back went out at work on March 14, 2012 while she was "carrying a gelato mixer." Dr. Phillips noted that Petitioner had undergone therapy and two epidural injections but was still complaining of 5-6/10 left-sided lower back pain radiating down her left leg with paresthesias in the left foot.

Dr. Phillips described Petitioner's posture and gait as normal. He noted no obvious Waddell's signs. He noted some mild left buttock tenderness to palpation, painful flexion and extension, intact sensation and negative straight leg raising.

Dr. Phillips described Petitioner as presenting "with back pain and possible radiculopathy." He lacked the MRI but opined that Petitioner "has at least a lumbar sprain/strain." He indicated that, if the MRI showed no consistent neural compression, he would recommend a formal rehabilitation program followed by a return to full duty. He found "no spinal contraindication to [Ppetitioner] currently working with a 30-pound lifting restriction." He asked that the MRI scan be sent to him. He did not criticize any of the care rendered to date. RX 1.

14IWCC0994

Dr. Phillips issued a second report the same day, after reviewing additional records authored by Dr. Newman. His review of these records did not prompt him to change any of his previously stated opinions. He again requested the MRI, RX 2.

On September 14, 2012, Petitioner saw Dr. Fisher, a spine surgeon affiliated with Illinois Bone and Joint Institute, at Dr. Newman's referral.

Dr. Fisher's report sets forth a consistent account of the work accident and subsequent care. Dr. Fisher noted that Petitioner rated her pain level at 6-8/10 and reported deriving some relief from the second injection.

Dr. Fisher described Petitioner's gait as normal. On examination, he noted tenderness to the paraspinal muscles from L3-S1, 5/5 lower extremity strength, intact sensation and a reported increase of pain with straight leg raising.

Dr. Fisher interpreted the MRI as showing a "left paracentral disc herniation at L3-L4." He indicated this abnormality could best be seen on sagittal T2 weighted images. He obtained lumbar spine X-rays, which revealed mild disc space narrowing at L5-S1 without osteophyte formation.

Dr. Fisher diagnosed lumbago, left sciatica and a left paracentral disc herniation at L3-L4. He recommended a third epidural injection and discussed the possibility of performing an L3-L4 discectomy in the future if Petitioner experienced only limited improvement. He instructed Petitioner to return to him following the third injection. PX 4, pp. 44-50. He completed a work status report indicating both that Petitioner was unable to work and that Petitioner could perform light duty with no lifting over 10 pounds and no repetitive bending, twisting or lifting. PX 4, p. 43.

On October 11, 2012, Petitioner underwent an EMG at Dr. Alzoobi's recommendation. PX 8, p. 15. Dr. Arayan performed the EMG. His report sets forth a consistent account of the work accident and subsequent care. He described the EMG results as normal, noting evidence of a left L5-S1 radiculopathy. PX 4, pp. 37-42. PX 11.

On October 13, 2012, Petitioner went to the Emergency Room at Lutheran General Hospital. Petitioner testified she went to the Emergency Room because she had fallen a couple of times due to bilateral leg weakness. The Emergency Room records reflect that Petitioner provided a history of her back injury and injections. The records also reflect that Petitioner had been experiencing headaches since the injections and questioned whether she could have contracted meningitis from the injected medication, referencing a recent outbreak reported in the news. She also reported having fallen secondary to dizziness the previous Monday, striking her knee and twisting her ankle. PX 12A, p. 29. The examining nurse described Petitioner's back as non-tender. She noted no evidence of meningitis. She contacted Dr. Alzoobi, who assured her that none of the medications he had injected into Petitioner had come from the pharmacy where the contamination occurred. Petitioner underwent X-rays of her right knee

14IWCC0994

and ankle. The X-rays were negative. Petitioner was diagnosed with headaches and was discharged with instructions to follow up with both Dr. Alzoobi and her family physician. PX 12A, p. 44.

On October 16, 2012, Respondent's examiner, Dr. Phillips, issued a third report, after reviewing the MRI. He indicated the MRI "confirmed some disc desiccation at L3-L4, L4-L5 and L5-S1. He described the overall disc height as "well maintained." He noted a diffuse disc bulge causing some mild effacement of the thecal sac at L3-L4, a diffuse disc bulge somewhat more prominent to the right at L4-L5 "not causing any frank compression," and a mild diffuse disc bulge at L5-S1 with no neurocompression. Based on the MRI, he again found it likely that Petitioner sustained a lumbar sprain/strain. He recommended a six-week course of therapy, to include work conditioning if necessary. He found no contraindication to Petitioner resuming full duty once she completed this therapy. He again found no contraindication to Petitioner currently working with a 30-pound lifting restriction. He did not criticize any of the care rendered to date. RX 3.

On October 18, 2012, Petitioner presented to Dr. Alzoobi and complained of worsening symptoms. The doctor noted that Petitioner had fallen three weeks earlier after becoming dizzy and had sought Emergency Room care for lower leg pain. He also noted that Petitioner complained of weakness in both legs and was awaiting a gynecological evaluation for excessive menorrhagia. On examination, he noted no radicular symptoms, negative straight leg raising, some bruising of the right leg and weakness with lateral eversion of the right leg. He ordered a coagulation profile and CBC to check for a bleeding disorder. PX 9, p. 67. He recommended that Petitioner stay off work and engage in work hardening, to be followed by a functional capacity evaluation. PX 8, pp. 8-9, 31.

Petitioner returned to Dr. Fisher on October 26, 2012. Petitioner complained of left-sided lower back pain and recurrent numbness in her left leg and all toes. Dr. Fisher's examination findings were essentially unchanged. He reviewed the EMG. On re-review of the MRI, he noted a broad-based herniation at L4-L5, slightly larger on the right, and a subtle left paracentral disc herniation at L5-S1, along with the previously noted L3-L4 left paracentral disc herniation. Dr. Fisher recommended a weight loss program, work conditioning and follow-up with pain management. He found Petitioner capable of light duty with no lifting over 10 pounds and no repetitive bending, twisting or lifting. PX 4, pp. 34-36.

Petitioner underwent a therapy evaluation at United Rehab Providers on October 23, 2012. Petitioner began a course of work conditioning thereafter. Petitioner testified she had difficulty walking fast and lifting certain amounts while undergoing work conditioning. On November 9, 2012, the therapist noted that Petitioner complained of "more than usual lower back pain and pain radiating to the lower extremities." He also noted that Petitioner had made no progress. PX 5.

On November 29, 2012, Petitioner returned to Dr. Alzoobi. The doctor noted that work conditioning had been discontinued because it was causing Petitioner's symptom to worsen.

# 14IWCC0994

On examination, he noted positive straight leg raising and moderate tenderness over the paravertebral muscle in the lumbar spine. He recommended that Petitioner pursue aggressive therapy for two more months. He increased Petitioner's Gabapentin dosage and prescribed Baclofen and Norco. PX 8, p. 7.

On December 7, 2012, Petitioner returned to Dr. Fisher and reported a significant increase in pain secondary to work conditioning. The doctor's examination findings were unchanged. He recommended a repeat lumbar spine MRI and continued the previous work restrictions. PX 4, pp. 30-33. Petitioner resumed work conditioning on December 11, 2012. PX 5, p. 86.

The repeat MRI, performed on December 19, 2012, demonstrated mild left foraminal stenosis at L5-S1, secondary to a "small left paracentral-left medial foraminal disc protrusion and facet arthrosis" and a small left paracentral disc extrusion at L3-L4 contacting the ventral cord surface but with no direct nerve root impingement or stenosis. PX 4, pp. 28-29.

On January 4, 2013, Dr. Fisher reviewed the repeat MRI results with Petitioner. Dr. Fisher did not find Petitioner to be a candidate for any form of surgery. He again discussed the importance of weight loss, noting that Petitioner's "morbid obesity is causing excessive forces on her lumbar spine and most likely aggravating her pain symptoms." He prescribed home exercises, to be continued indefinitely, and a functional capacity evaluation. He continued the previous work restrictions. PX 4, pp. 24-27.

Petitioner underwent the recommended functional capacity evaluation at United Rehab Providers on January 8, 2013. The evaluator found that Petitioner put forth full and consistent effort. He further found that Petitioner "demonstrated the ability to perform 30.2% of the physical demands of her job as a pastry cook." He noted poor lifting mechanics and 1/5 positive Waddell signs. Based on the Dictionary of Occupational Titles, he rated Petitioner's pastry cook position as a medium physical demand job. He found Petitioner able to perform within a light physical demand level. PX 4, pp. 13-23.

Petitioner continued undergoing work hardening thereafter. PX 5.

On January 24, 2013, Dr. Alzobi noted that Petitioner was still attending therapy and had undergone a functional capacity evaluation. He recommended that Petitioner continue therapy. He did not recommend surgical intervention. He released Petitioner to light duty with no lifting over 20 pounds and no prolonged walking, sitting or standing. PX 8, pp. 6, 32.

On February 18, 2013, Dr. Fisher reviewed the functional capacity evaluation with Petitioner. He noted that Petitioner reported exercising three times weekly. He again recommended weight loss. He found Petitioner to be at maximum medical improvement and continued the previous work restrictions. PX 4, pp. 10-12.

14IWCC0994

On February 26, 2013, Petitioner's therapist conducted a re-evaluation, noting that work hardening had been put "on hold for a while for exaggeration of symptoms." PX 5, p. 167. At the hearing, Petitioner acknowledged that work hardening did not go well.

Petitioner returned to Dr. Alzoobi on April 11, 2013 and indicated she was still taking Gabapentin, Baclofen and Norco for radicular pain. On examination, the doctor noted moderate tenderness with pressure over the facet joint of the lumbar spine and positive straight leg raising on the left. He concluded that Petitioner had plateaued in therapy. He discharged Petitioner to a home exercise program and indicated she could resume her part-time job with no lifting over 20 pounds and no prolonged standing. PX 8, p. 33. He noted that Petitioner's pastry cook job requires lifting and prolonged standing. PX 8, p. 5.

Petitioner returned to Dr. Fisher on April 15, 2013. Petitioner rated her pain level as ranging from 2-8/10, depending on her activity level. The doctor's examination findings were unchanged. He diagnosed lumbar degenerative disc disease, lumbar disc herniation, morbid obesity and lumbago. He recommended continued weight loss and anti-inflammatories as needed. He found no need for injections or surgery, noting that Petitioner was continuing to undergo pain management. He continued the previous work restrictions. PX 4, pp. 7-9.

Petitioner continued attending work hardening through April 16, 2013. PX 5, p. 222.

Petitioner testified she has not undergone any additional treatment since mid-April 2013. She exercises on her own at United Rehab, where she uses a treadmill at no charge. She has been looking for work on her own but has not found a job. She identified PX 16 as a list of her job contacts. PX 16 consists of 6 ½ typed pages of job contacts. The listed contacts took place during the following intervals: June 12-19, 2013, July 10-17, 2013, August 11-12, 2013 and August 29-November 21, 2013. PX 16 reflects that nine of the contacts led to interviews, with Petitioner indicating that the owners or managers who interviewed her did not hire her due to her restrictions. Petitioner testified her medical and prescription bills are unpaid.

Petitioner testified she has difficulty sitting on a hard chair and standing for extended periods. Her left leg "goes numb" and she has to change positions. Her pain worsens in cold weather. She finds it difficult to carry bags of groceries. She used to love to travel but she would have to exceed her 10-pound lifting restriction in order to carry a suitcase. When friends ask her to go to a concert or movie, she has to inquire about the location and type of seating. She used to make specialty cakes for relatives and friends but no longer does this due to her lifting restriction and the difficulty of rolling fondant.

Under cross-examination, Petitioner testified she worked three days a week as of her claimed accident. Respondent had a set policy governing the reporting of work accidents. If an employee was injured, he was required to alert his manager and complete forms. Petitioner testified that Lupe, her manager, arrived at work at 8:00 AM on March 14, 2012. She reported her injury to Lupe but Lupe did not provide her with any forms. Lupe told her, "you took your Advil so keep working." The Advil relieved her pain for about half an hour. She told Lupe she

14IWCC0994

wanted to leave but Lupe told her to keep working. She continued working until about 10 or 10:30 AM, when she took the Tylenol with codeine. Susan gave her this pill. She does not know how Susan obtained this medication. She did not ask Susan if she could go to the hospital. She felt she had no choice but to keep working. She told the nurses and doctors at the Emergency Room she had taken Tylenol with codeine. After being released to light duty by Corporate Health, she received a call telling her she would be provided with a chair. She returned to work after she got this call but the chair was not initially provided. She did not continue working. She was released to full duty as of May 3, 2012. At this point, she had been terminated. She knew of Respondent's "zero tolerance" drug policy. She is aware of the cause of her termination. She returned to Dr. Newman on May 22, 2012 and indicated she began symptomatic again after discontinuing her medication. The first epidural injection caused her to experience headaches. This prompted her to go to an Emergency Room. Respondent's examiner, Dr. Phillips, recommended an MRI. She "barely got to see" Dr. Phillips. Dr. Fisher spoke about surgery as a possibility but did not actually recommend it. During the functional capacity evaluation, she told the evaluator she was in pain 100% of the time. All of the jobs listed on PX 16 were actual posted positions. She E-mailed her resume to some of the listed employers. Others told her "no" due to her restrictions. She has not returned to Kendall College to investigate their placement program. She worked as a bank teller for three or four years before attending Kendall. She did an internship while attending Kendall. After graduating, she worked for a little while at the same place where she did her internship. She then took time off due to family issues. She is 5 feet, 3 inches tall. She currently weighs about 260 pounds. As of March 14, 2012, she weighed about 270 pounds. When she went to the Emergency Room in October 2012, she complained of having fallen and injured her ankle secondary to dizziness. She also expressed concern about having been exposed to meningitis as a result of undergoing injections.

On redirect, Petitioner testified she obtained pain relief after taking the Tylenol with codeine on the morning of March 14, 2012. She was "fine" from about 10:30 AM until noon. She finished her shift that day because she was trained to not abandon a project. Susan was a supervisor. She has tried to lose weight. The internship she did was at Callahan Catering. She did this internship on and off until 2011. Her pain level varies from day to day. She spent only about five minutes with Dr. Phillips.

Under re-cross, Petitioner testified that Susan "works the line" in Respondent's "savory section." She and Susan worked in two different areas. Susan offered her the Tylenol with codeine.

Ronnie Rios, the interim deputy dean of students at the University of Chicago, testified on behalf of Petitioner. Rios testified she and Petitioner have been friends for 25 years. They are best friends. She has never known Petitioner to use drugs or abuse medication. She and Petitioner are in frequent communication.

Under cross-examination, Rios testified that Petitioner drinks alcohol socially but does not use illicit drugs. She is not always with Petitioner and thus has no direct knowledge as to Petitioner's medication intake.

In addition to the exhibits previous described, Petitioner offered into evidence an undated report from Neema Bayran, M.D., an interventional pain management physician, concerning Petitioner's urine toxicology examination. In this report, Dr. Bayran indicated he has practiced in the fields of anesthesiology and pain medicine for more than eleven years and has "vast experience in testing patients taking pain medication." Dr. Bayran addressed the urine toxicology results as follows:

"It is absolutely normal and expected to see the urine test results positive for codeine and morphine in a patient taking Tylenol with codeine.

I believe that [Petitioner's] story of injury in the morning and taking Tylenol with codeine about one or two hours later totally explains the presence of codeine and its metabolite morphine in her urine at 9:30 PM."

PX 1, p. 2.

No witnesses testified on behalf of Respondent on either November 22, 2013 or January 6, 2014.

#### Arbitrator's Credibility Assessment

The Arbitrator finds credible Petitioner's testimony that she injured her back at work on March 14, 2012 and was given Tylenol with codeine by a Respondent supervisor, Susan. Petitioner's description of the mechanism of injury finds support in the treatment records. Petitioner's testimony as to her interaction with Susan is plausible and uncontradicted. Petitioner provided Respondent's counsel with an affidavit concerning this interaction on December 18, 2012, long before the hearing. The affidavit identifies Susan Osowski and Lupe Tiscareno as the Respondent supervisors Petitioner interacted with on March 14, 2012. PX 1, p. 3. Respondent did not call either of these individuals at trial.

The Arbitrator also finds Petitioner generally credible with respect to her ongoing pain complaints. Dr. Cullen of Corporate Health Services questioned Petitioner's veracity but nevertheless recommended treatment and work restrictions. Respondent's examiner, Dr. Phillips, noted no obvious Waddell's signs. Neither Dr. Newman nor Dr. Fisher noted any exaggeration of symptoms. The functional capacity evaluator noted 1/5 positive Waddell's signs but described Petitioner as putting forth full effort.



Did Petitioner sustain an accident on March 14, 2012 arising out of and in the course of her employment?

Petitioner's testimony concerning her lifting-related back injury was detailed, credible and largely supported by her treatment records. Petitioner attributed her decision to continue working to her work ethic and her perception that she had no other alternative. Under cross-examination, Petitioner testified that, before she took the Tylenol with codeine, she told Lupe, her manager, she wanted to go home due to her pain, only to be told to continue working. She felt she had no choice but to take the medication that Susan offered and try to finish her shift. She completed accident-related paperwork at Respondent's direction before going to the Emergency Room.

In its proposed decision, Respondent maintains that the Arbitrator should deny benefits in accordance with Section 19(d) of the Act because Petitioner engaged in injurious practices by taking the Tylenol with codeine and continuing to work. Section 19(d) does not pertain to the issue of accident. Rather, it allows the Commission, in its discretion, to "reduce or suspend" compensation but only if an employee "persist(s) in insanitary or injurious practices which tend to either imperil or retard his recovery (emphasis added)" or "refuse(s) to submit to such . . . treatment as is reasonably essential to promote his recovery." Even if the Arbitrator viewed Section 19(d) as pertinent, she would be unable to conclude that Petitioner "persisted in insanitary or injurious practices" by taking one Tylenol with codeine pill offered to her by a Respondent supervisor and continuing to perform her duties thereafter. The Arbitrator is also unable to conclude that Petitioner refused to submit to treatment at any point.

The Arbitrator finds that Petitioner sustained an accident on March 14, 2012 arising out of and in the course of her employment.

Did Petitioner establish a causal connection between her work accident of March 14, 2012 and her current condition of ill-being?

Petitioner acknowledged having a prior episode of low back pain in December 2011 but testified this pain did not radiate and resolved on its own. Petitioner's testimony on this point is supported by the histories set forth in her treatment records.

Petitioner testified to an abrupt onset of low back pain after lifting a gelato base on the morning of March 14, 2012. Petitioner continued working thereafter, at her manager's direction and with the help of medication, but consistently described the lifting episode to Emergency Room personnel and subsequent treaters. Petitioner reported significant improvement to Dr. Newman on May 3, 2012, at which point the doctor discharged her to full duty, but credibly testified her symptoms came back several days later, after she discontinued her medication. It was after this recurrence that Dr. Newman prescribed an MRI. There is no indication that the recurrence stemmed from any intervening trauma.

14IWCC0994

Respondent's examiner, Dr. Phillips, found causation as to a lumbar sprain or strain. Petitioner's treating physicians attributed much of her persistent pain to her weight but did not rule out the accident as an aggravating factor.

The Arbitrator finds that the work accident of March 14, 2012 brought about a change in Petitioner's ability to perform her job and contributed to Petitioner's current lumbar spine condition of ill-being. That Petitioner's weight may be an additional contributing factor does not defeat recovery under Illinois law. Petitioner need only show that the work accident was a causative factor. She need not eliminate all other possible causes. Sisbro, Inc. v. Industrial Commission, 207 Ill.2d 193 (2003). Petitioner's weight did not prevent her from performing the physical tasks required of a pastry cook before the accident.

#### Is Petitioner entitled to medical expenses?

Petitioner seeks an award of multiple medical and prescription expenses in connection with her injury. These expenses total \$66,590.19. PX 15. Respondent objected to many of these expenses on the basis of reasonableness and necessity.

The Arbitrator, having carefully reviewed the treatment records and corresponding itemized bills, declines to award the bills from Northwestern Memorial Hospital associated with Petitioner's Emergency Room visit of August 13, 2012. Records in PX 2 reflect that Petitioner sought Emergency Room care on August 13, 2012 because she had been experiencing abnormal menstrual bleeding for three weeks. Petitioner attributed this bleeding to an earlier epidural injection but there is no evidence indicating that either the Emergency Room physician or Dr. Alzoobi drew the same causative link. The Emergency Room physician indicated there was "no clear mechanism from epidural." PX 2, p. 31.

The Arbitrator also declines to award the bills from Advocate Lutheran General Hospital (\$1,664.00) and Advocate Medical Group (\$340.00) associated with Petitioner's Emergency Room visit of October 13, 2012. Petitioner mentioned her lower back condition at the Emergency Room but primarily sought care for headaches and lower extremity issues secondary to a fall that had occurred a week or so earlier. The Emergency Room bill includes charges for knee and ankle X-rays. Neither the Emergency Room records nor the subsequent records of Drs. Fisher and Alzoobi establish a clear connection between the work accident and the October 13, 2012 Emergency Room visit. Moreover, the Advocate Medical Group bill (PX 128) reflects a \$0 balance due to a charity payment.

The Arbitrator also declines to award the bill from St. Joseph Hospital relating to the blood work that Petitioner underwent on October 24, 2012. Dr. Alzoobi prescribed this blood work after Petitioner reported excessive menstrual bleeding to him. There is no evidence indicating that the doctor drew a link between that complaint and either the accident or the epidural steroid injections.

14IWCC0994

With respect to the claimed \$29,162.03 bill from United Rehab Providers, which includes charges for the period March 29, 2012 through April 16, 2013, the Arbitrator awards only those charges for therapy and work hardening performed through November 27, 2012, six weeks after Dr. Phillips' last report of October 16, 2012. It was at that point that Dr. Phillips finally had an opportunity to review Petitioner's MRI. He again recommended a six-week course of rehabilitation. The Arbitrator views this as an appropriate period. The Arbitrator also notes that work hardening was put on hold for a period after October 16, 2012 due to exaggeration and/or compliance issues. While Dr. Phillips never reviewed the second MRI, performed on December 19, 2012, that MRI did not prompt Petitioner's treating physicians to embark on a new course of care.

With the exception of the bills addressed above, the Arbitrator awards the medical expenses claimed by Petitioner, subject to the fee schedule.

**Is Petitioner entitled to temporary total disability?**

Petitioner claims three intervals of temporary total disability benefits: March 15, 2012 through March 20, 2012, March 22, 2012 through May 3, 2012 and June 7, 2012 through April 15, 2013.

As indicated in the preceding section, the Arbitrator relies on Dr. Phillips insofar as treatment recommendations are concerned. When Dr. Phillips reviewed the first MRI on October 16, 2012, he again recommended six weeks of rehabilitation. The Arbitrator views this as a reasonable period. The Arbitrator awards temporary total disability benefits during the following intervals: March 15, 2012 through March 20, 2012, March 22, 2012 through May 3, 2012 (the date on which Dr. Newman released Petitioner to full duty) and June 7, 2012 through November 27, 2012, a total of 31 6/7 weeks. The Arbitrator declines to extend temporary total disability after November 27, 2012, as requested by Petitioner, noting that work conditioning was put on hold at one point, apparently due to lack of compliance. The Arbitrator also notes that, although Dr. Fisher found Petitioner to be at maximum medical improvement on January 4, 2013, Petitioner continued attending work hardening for several months thereafter. There is no evidence indicating that the additional work hardening was beneficial.

**Is Petitioner entitled to maintenance?**

Petitioner seeks maintenance benefits from April 15, 2013 through the initial hearing of November 22, 2013. The Arbitrator awards maintenance benefits during the four intervals of job search efforts chronicled in PX 16. Those intervals total 14 5/7 weeks. Petitioner offered no explanation as to why she did not begin looking for work until mid-June 2013. Nor did she explain the various interruptions in her job search.

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

14IWCC0994

Respondent's examiner, Dr. Phillips, characterized Petitioner's injury as a lumbar sprain or strain. He did not note any evidence of nerve root compression on review of Petitioner's initial MRI. He indicated Petitioner would be capable of resuming full duty once she completed six weeks of rehabilitation. He never commented on the functional capacity evaluation, which showed that Petitioner was not capable of resuming her former medium duty occupation as a pastry chef. Petitioner's treating physicians read both MRIs as showing herniations but did not find Petitioner to be a surgical candidate. They relied on the functional capacity evaluation in addressing Petitioner's work capacity.

With respect to the issue of permanency, the Arbitrator assigns greater weight to the opinions of the functional capacity evaluator and treating physicians than to those of Dr. Phillips. The Arbitrator finds it significant that Dr. Phillips never reviewed the functional capacity evaluation.

The Arbitrator considers the factors set forth in Section 8.1b of the Act, noting that neither party offered an AMA impairment rating into evidence.

Petitioner credibly testified to a significant pain condition that impacts many of her daily activities. Petitioner was only 30 years old as of the accident. She underwent training in a specialized occupation; she can no longer perform per a valid functional capacity evaluation. She derived both income and pleasure from that occupation.

The Arbitrator, having considered the treatment records, Dr. Phillips' opinions, the functional capacity evaluation, Petitioner's chosen occupation and relatively young age and Petitioner's testimony, finds that Petitioner is permanently partially disabled to the extent of 22.5% loss of use of the person as a whole, equivalent to 112.5 weeks of compensation, under Section 8(d)2.

STATE OF ILLINOIS )  
) SS.  
COUNTY OF PEORIA )

<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="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)(1)(B))
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stormy Monday,

Petitioner,

vs.

NO: 12 WC 24136

**14IWCC1002**

Caterpillar, Inc.,

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 accident, temporary total disability, permanent partial disability, medical expenses, 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 January 30, 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.

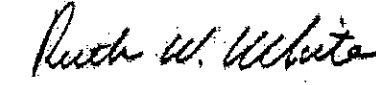
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

# 14IWCC1002

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: NOV 24 2014  
CJD:yl  
o 11/5/14  
49

  
\_\_\_\_\_  
Charles J. DeVriendt

  
\_\_\_\_\_  
Ruth W. White

  
\_\_\_\_\_  
Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

MONDAY, STORMY

Employee/Petitioner

Case# 12WC024136

CATERPILLAR INC

Employer/Respondent

**14IWCC1002**

On 1/30/2014, 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:

0252 HARVEY & STUCKEL  
DAVID STUCKEL  
101 S W ADAMS ST SUITE 600  
PEORIA, IL 61602

0477 CATERPILLAR INC  
HENRY VICARY III  
100 N E ADAMS ST  
PEORIA, IL 61629-4426

STATE OF ILLINOIS )

COUNTY OF PEORIA )

14IWCC1002

<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

STORMY MONDAY  
Employee/Petitioner

Case # 12 WC 24136

v.

Consolidated cases: NONE

CATERPILLAR, INC.  
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 Joann M. Fratianni, Arbitrator of the Commission, in the city of Peoria, on November 26, 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: \_\_\_\_\_



14IWCC1002

FINDINGS


On June 9, 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 \$35,215.34; the average weekly wage was \$677.22.  
On the date of accident, Petitioner was 58 years of age, *single* with one dependent child.  
Petitioner *has* received all reasonable and necessary medical services.  
Respondent *has in part* paid all appropriate charges for all reasonable and necessary medical services.  
Respondent shall be given a credit of \$ 8,642.62 for TTD, \$ 0.00 for TPD, \$ 0.00 for maintenance, and \$ 0.00 for other benefits, for a total credit of \$ 8,642.62.  
Respondent is entitled to a credit of \$ 0.00 under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$451.48/week 44-577 weeks, commencing June 10, 2012 through April 18, 2013, as provided in Section 8(b) of the Act.  
Respondent shall pay Petitioner permanent partial disability benefits of \$406.33/week for 75 weeks, because the injuries sustained caused the 15% loss to his person as a whole, as provided in Section 8(d)2 of the Act.  
Respondent shall pay to Petitioner reasonable and necessary medical services of \$63,791.32, pursuant to Section 8(a) of the Act, subject to the medical fee schedule as created by Section 8.2 of the Act. Respondent shall receive credit for all amounts paid to date.

**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.

  
JOANN M. FRATIANNI  
Signature of Arbitrator

January 22, 2014  
Date

JAN 30 2014

14IWCC1002

*C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?*

Petitioner testified that on Saturday, June 9, 2012, he slipped on oil in the floor near the end of his work shift. Petitioner testified he did not fall to the ground but twisted very hard and suddenly to keep from falling. At that time he experienced a pop in his back, followed by immediate pain in his lower back and his legs.

Petitioner testified he did not report the accident at that time, but did report at the start of his next shift on Monday, June 11, 2012. At that time he filled out an accident report that corroborated his testimony in this matter. (Rx2)

After reporting the accident, Petitioner later that day sought emergency room treatment at OSF St. Francis Medical Center. A history of injury was recorded that corroborated his testimony in this matter. Petitioner during examination was found to have a positive straight leg raising test to the left. Petitioner was prescribed pain medication and advised to see Respondent's first aid department the next day.

Petitioner then visited the first aid department and complained of pain to his right buttock and left leg with numbness down the right leg. Petitioner was prescribed pain medication and instructed to return the next day. Petitioner testified his left leg pain subsided after a few weeks, and he later received treatment only for his right sided symptoms. During his return visit to first aid, Petitioner was found to be favoring his right leg and moving slowly with a limp. There was limited range of motion with tenderness noted at L3-L4. Petitioner reported being unable to lift more than 2 pounds away from his body and was found to not meet the requirements to return to work. Petitioner was advised to follow up with his primary care physician, and that the injury was work related. (Rx2)

Petitioner then saw Dr. Hoffman on June 15, 2012. Dr. Hoffman noted L3-S1 tenderness with limited extension and rotation. Dr. Hoffman diagnosed a lumbosacral strain, prescribed an MRI and pain medication, and no work. Following the MRI, Dr. Hoffman diagnosed a herniated disc and referred Petitioner to see Dr. Mulconrey.

Petitioner first saw Dr. Mulconrey, an orthopedic surgeon, on August 22, 2012. Petitioner arrived in a wheelchair and was noted to not be able to walk normally. Dr. Mulconrey reviewed the MRI and noted significant foraminal stenosis at L4-L5 on the right. Dr. Mulconrey prescribed surgery.

Respondent introduced a video into evidence claiming it showed Petitioner leaving the plant on the date of accident without any apparent difficulty. Petitioner denied during his testimony he was the individual in the video. The video does not show the face of the individual filmed.

Mr. Scott Kelso testified on behalf of Respondent that he manages security in emergency services in the area where Petitioner worked. He testified that someone from safety requested he retrieve the video from the date of accident at the gate where Petitioner would leave the facility. Mr. Kelso testified he retrieved the video that shows a time stamp. Mr. Kelso testified the video time may not be accurate since the recording system was maintained by an outside contractor who would only check the time when someone noticed it was incorrect. Mr. Kelso testified he reviewed the gate video 15 minutes before and after Petitioner checked out, and the person filmed was the only one who left through that gate during that time frame. Mr. Kelso testified he checked the video from around 6:35 pm to 7:05 pm. The video time stamp indicates a recording at 18:40, or 6:40 pm, and shows a person with a baseball cap, long hair, short sleeved shirt, and shorts walking out of the gate. Mr. Kelso again admitted the video time stamp did not show the true time when it was recorded. Mr. Kelso was also unable to explain how he knew the time he was looking for corresponded with Petitioner's departure at the gate. Mr. Kelso testified the video was also accessible by several people before he retrieved it, and the time on the video could be off by 5-30 minutes.

14IWCC1002

Ms. Holly Kampas, Petitioner's supervisor on the date of accident, testified that at least one other person left within 10 minutes of Petitioner that day. She testified she saw him at least three times during the shift on the date of accident. Ms. Kampas was not his regular supervisor and was filling in on that date. Petitioner testified he only saw her once that day, shortly before he finished working and had his injury. Ms. Kampas testified that she recognized Petitioner in the video and that he regularly wore shorts to work. Her last contact with him was after 6:00 pm, when she told him he could leave when he finished his work assignment. He never reported an injury to her on that date. She then left the work area but testified she was at the next line over and could see Petitioner walk out. He appeared normal at that time.

Petitioner testified he did not report the accident to Ms. Kampas when it occurred, because she was normally located so far away from his work area he was not sure he could get there and he was not sure she would be at her desk. Ms. Kampas testified her desk was two football fields away from where Petitioner worked. Ms. Kampas testified she identified Petitioner in the video based on the ponytail shown on the person depicted. Petitioner testified several other workers who may not have been employees were in the area and they had ponytails.

Ms. Kampas testified no other employee saw Petitioner get hurt or voice complaints about his condition. Petitioner testified in rebuttal there were no other employees in the area when he slipped and fell and he did not report the incident to any co-employee.

Mr. Ronald Anderson testified he was Petitioner's regular supervisor. Mr. Anderson testified he was not working on the accident date of June 9, 2012. Mr. Anderson testified there were other individuals working who had hair similar to the individual depicted in the video. Mr. Anderson did work the following Monday and was the person to whom Petitioner reported that he had been injured on Saturday. Mr. Anderson testified he could identify Petitioner in the video by his hair, clothes and walk, but did not see the face of the person depicted in the video. Mr. Anderson testified he sent Petitioner to the company medical department on Monday, and that was the last time he saw him.

Mr. Anderson testified he never saw oil spots on the floor in the area where Petitioner claimed he fell, but admitted it was possible that something was on the floor. Again, Mr. Anderson did not work on the date of the slip and fall. Mr. Anderson testified there are holes in the transmissions where there are connections when installed in a machine and there can be liquid dripping out.

Petitioner testified he never wore shorts to work.

Based upon the above, the Arbitrator finds that on June 9, 2012, Petitioner sustained an accidental injury at work that arose out of and in the course of the employment by Respondent. The Arbitrator finds it unclear that Petitioner is depicted in the video, and the witnesses were unclear at times as to their testimony as to how they managed to identify the individual in the video as being the Petitioner. Petitioner's testimony that he never wore shorts at work is relevant. The pony tail identification in this matter is insufficient. There is also no explanation as to how Mr. Anderson could identify the clothing on the date of accident when he did not work on that day. The Arbitrator declines to base an identification based on a ponytails. In addition, there is no medical testimony that would confirm the individual depicted in the video was injured or not injured, and although the lay testimony on this subject is admissible, the lay witnesses conclusions that the unidentified individual in the video was walking normally do not necessarily prove it was the Petitioner so depicted in that video.

The Arbitrator further bases the finding on accident based on the consistent histories of injury given to the medical providers along with the examinations that corroborated that an injury occurred.

14IWCC1002

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

See findings of this Arbitrator in "C" above.

Petitioner sought treatment with his personal physician, Dr. Hoffman, on June 15, 2012. Dr. Hoffman diagnosed a lumbosacral strain, prescribed pain medication, no work, and an MRI. Dr. Hoffman later interpreted the MRI as revealing a herniated disc and referred Petitioner Dr. Mulconrey, an orthopedic surgeon.

Dr. Mulconrey first saw Petitioner on August 22, 2012, who reviewed the MRI and prescribed surgery. Dr. Mulconrey testified by evidence deposition that he diagnosed spinal stenosis, right lower extremity radiculopathy and degenerative disc disease. Dr. Mulconrey felt the stenosis was caused in part by a bulging disc and enlarged facet at the same level. He noted absent patellar reflex on the right. Based on the x-rays and MRI he reviewed, Dr. Mulconrey noted significant foraminal stenosis at L4-L5. Respondent refused to authorize the surgery.

Dr. Mulconrey felt the slipping incident at work was consistent with the development of immediate pain and the need for surgery.

Petitioner was examined by Dr. Weiss on October 12, 2012. This examination was at the request of Respondent. Dr. Weiss felt the history of accident was consistent, and felt he suffered an aggravation of a degenerative back condition, which he felt resolved after a short period of time. Dr. Weiss did not indicate where he received information that the condition resolved itself and when. Dr. Weiss felt surgery was not warranted and related to this accident, and diagnosed pre-existing degenerative disc disease, symptom magnification, and prior back problems in 2010. Dr. Weiss did admit the 2010 injury resulted in a short period of treatment, and there was no evidence of ongoing symptoms prior to June 9, 2012. Dr. Weiss based his symptom magnification opinion on a negative straight leg raising test.

The Arbitrator notes with interest that Petitioner was hired 6 months before this accident following a pre-employment physical examination that indicated no back symptoms or problems.

Petitioner eventually underwent surgery on January 31, 2013 with Dr. Mulconrey in the form of a right hemilaminectomy, partial facetectomy and foraminotomy at L4-L5 and L5-S1. Post surgery, Petitioner underwent physical therapy and was released to return to work on April 18, 2013.

Dr. Mulconrey testified Petitioner had a good recovery after surgery with significant relief of his back and right leg pain. Petitioner testified he was substantially better after surgery but still experiences low back pain and right leg numbness 20% of the time. Petitioner did not return to work for Respondent as he was terminated while off work.

Dr. Weiss reexamined Petitioner post surgery and felt the surgery was not causally related to this accident.

Based upon the above, the Arbitrator adopts the findings and opinions of Dr. Mulconrey as being more credible of those of Dr. Weiss, and finds the conditions of ill-being as diagnosed by Dr. Mulconrey as being causally related to this accidental injury.

14IWCC1002

*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?*

Petitioner introduced into evidence medical charges for treatment that were incurred after this accidental injury:

OSF St. Francis Medical Center	\$ 3,296.85
Dr. Daniel Hoffman	\$ 750.00
Peoria Imaging Center	\$ 1,525.00
Central Illinois Radiological Associates	\$ 156.00
Midwest Orthopaedic Center	\$11,383.80
Illinois Regional Pain Institute	\$ 1,500.08
Prescription Partners, LLC	\$ 441.65
Methodist Medical Center of Illinois	\$41,134.64
Methodist Anesthesia Services	\$ 3,242.00
Comp. Emergency Solutions	\$ 290.00
Peoria Tazewell Pathology Group	\$ 71.30

These charges total \$63,791.32.

See findings of this Arbitrator in "C" and "F" above.

The parties are unclear as to which of the above medical charges may have been paid by Respondent or Respondent's group health insurance carrier. The evidence before this Arbitrator on this issue is also unclear. Respondent shall be entitled to receive a credit as against this award and it will be the responsibility of the parties to assure the awarded medical charges are either paid or will be paid.

Based upon the above, the Arbitrator finds the above charges to represent reasonable and necessary medical care and treatment that was causally related to this accidental injury, and finds Respondent to be liable for same, subject to the medical fee schedule as created by the Act.

Based further upon said findings, Respondent is to hold Petitioner safe and harmless from all attempts at collection or reimbursements of amounts that may have been paid by Respondent's group health insurance carrier, in accordance with Section 8(j) of the Act.

*K. What temporary benefits are in dispute?*

See findings of this Arbitrator in "C" and "F" above.

Petitioner was taken off work commencing June 10, 2012 until release by Dr. Mulconrey on April 18, 2013 to return to work.

Based upon the above, the Arbitrator finds that Petitioner is entitled to receive from Respondent temporary total disability benefits commencing June 10, 2012 through April 18, 2013.

14IWCC1002

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

See findings of this Arbitrator in "C" and "F" above.

In order to assess permanent partial disability for accidents subsequent to September 1, 2011, the Arbitrator has considered the criteria in accordance with Section 8.1(b) of the Act.

1. **The level of impairment pursuant to the AMA Guidelines.** Dr. Stephen Weiss examined Petitioner on behalf of Respondent on October 18, 2012 and July 1, 2013. On July 1, 2013, Dr. Weiss issued an impairment rating of 6% of the whole person. Dr. Weiss testified he rated Petitioner on spinal stenosis with a resolved radiculopathy that he did not think was work related. The Arbitrator found Dr. Weiss' opinions to be suspect as noted in "F" above.
2. **Petitioner's occupation.** Petitioner was employed by Respondent as a painter. His job entailed painting transmissions and drive train.
3. **Petitioner's Age.** Petitioner was 58 years of age at the time of the injury.
4. **The Employee's Future Earning Capacity.** Petitioner testified he had significant relief of his pain symptoms subsequent to his back surgery, however he still experiences pain in his lower back. Petitioner testified he is 80% better than before surgery. Petitioner was deemed a supplemental employee at the time of the injury by Respondent and was terminated while awaiting medical treatment.
5. **Evidence of Disability.** Petitioner's treating orthopedic surgeon, Dr. Mulconrey, testified he performed a foraminotomy, partial fasciectomy, and a hemilaminotomy at L4-L5 and L5-S1. Dr. Mulconrey testified Petitioner's incident at work was consistent with the symptoms he experienced in his lower back and right lower extremity. Dr. Mulconrey released Petitioner to perform full duty work on April 17, 2013.

The Arbitrator has taken all of the factors listed above in consideration and finds Petitioner is entitled to receive an award from Respondent of 15% disability to his man or person as a whole under Section 8(d)2 of the Act.

Based further upon the above, the Arbitrator finds the above conditions of ill-being to now be permanent in nature.

*N. Is Respondent due any credit?*

See findings of this Arbitrator in "C," "J," and "F" above.

The parties are unclear as to which of the above medical charges may have been paid by Respondent or Respondent's group health insurance carrier. The evidence before this Arbitrator on this issue is also unclear. Respondent shall be entitled to receive a credit as against this award and it will be the responsibility of the parties to assure the awarded medical charges are either paid or will be paid.

Based upon the above, the Arbitrator finds the above charges to represent reasonable and necessary medical care and treatment that was causally related to this accidental injury, and finds Respondent to be liable for same, subject to the medical fee schedule as created by the Act.

Arbitration Decision  
12 WC 24136  
Page Eight

14IWCC1002

Based further upon said findings, Respondent is to hold Petitioner safe and harmless from all attempts at collection or reimbursements of amounts that may have been paid by Respondent's group health insurance carrier, in accordance with Section 8(j) of the Act.

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF SANGAMON )

<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)(8))
<input checked="" type="checkbox"/> Modify Down	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

**BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION**

DAVID SHARPE,

Petitioner,

**14IWCC1006**

vs.

NO: 12 WC 42493

LAKE LAND COLLEGE,

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 the nature and extent of Petitioner's permanent partial disability, and the "interpretation of section 8.1b," 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 worked for Respondent teaching construction/carpentry skills to inmates at Taylorville Correctional Center. On October 12, 2011, he sustained an injury to his left elbow in the course of, and arising out of, those work activities. On November 22, 2011, Dr. Maender performed left distal biceps repair for biceps rupture. On February 8, 2012, Dr. Maender noted Petitioner was doing "wonderful." He released Petitioner to full duty and would see him in three months to ensure complete healing. On May 9, 2012, Dr. Maender noted Petitioner was doing "excellent," declared him at maximum medical improvement, continued full work status, and released him from care. Finally, Dr. Maender indicated both he and Petitioner were "very happy with the results."

Petitioner testified that currently, his left arm is definitely weaker than it was prior to the surgery. He has to lift things primarily with his right arm (Petitioner is right-hand dominant). If he lifts a gallon of milk with the left arm he feels tension on the tendon right on the inner elbow. Even though Dr. Maender indicated he could lift plywood, "there's no way in the world" he was "going to lift that." He was currently semi-retired. He left Respondent's employment on August 30, 2013 to tend to his ailing mother.



14IWCC1006

On cross examination, Petitioner testified he was "delighted" with the overall outcome of the surgery. He did not have any treatment for his elbow since May 9, 2012, when he was discharged by Dr. Maender. He worked his normal job for about 15 months, except he did not lift anything heavy. He taught inmates to use all sorts of tools including saws, hammers, drills, and sanders. There were over 800 tools, and he used all of them. He worked in a union shop and he believed he got a raise on July 1, pursuant to the union contract.

On redirect examination, Petitioner testified he was no longer in a union. He estimated that 85-90% of a construction job involves heavy lifting. After his injury, he had the inmates lift things that needed to be lifted. Prospective employers in construction would probably hesitate to hire him because he cannot lift anything heavy.

On re-cross examination, Petitioner testified he did not really have the intention of looking for employment other than his self-employment; he and his wife were considering buying and flipping property.

Dr. Petkovich performed a medical examination pursuant to section 12 of the Act and reviewed his medical records. He also prepared an impairment rating determining Petitioner's residual impairment from his injury using the AMA guides. He noted that the treatment Petitioner had received was appropriate and he recovered quite well. Dr. Petkovich concluded Petitioner had a residual impairment of 5% of his left arm.

The Arbitrator awarded Petitioner 22% loss of the use of the left arm. In determining Petitioner's permanent partial disability, the Arbitrator noted that the AMA rating of 5% impairment was valid, Petitioner's vocation of carpenter requires the active use of both arms, he was 51 years old and would have to live with the disability for the rest of his life, there was no evidence of any loss of earning potential, the injury required surgery including the use of a surgical screw, and both Dr. Maender and Petkovich found reduced range of motion and Dr. Petkovich found a loss of muscle mass.

The Commission notes that Dr. Maender released Petitioner to full duty construction-type work within about 2½ months of surgery and Petitioner was able to return to his previous job activities for 15 months. He did not show any loss of earning potential, eventually left employment voluntarily, and is not seeking future employment. Everybody, including Petitioner, all agreed that he had an excellent outcome from his surgery. In assessing the record as a whole, the Commission finds that an award of 17.5% loss of the use of the left arm is appropriate in this case and modifies the award of the Arbitrator accordingly. Finally, the Commission notes that Respondent has already paid all reasonable and necessary medical expenses and temporary total disability benefits.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$482.99 per week for a period of 44,275 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of 17.5% of the use of the left arm.

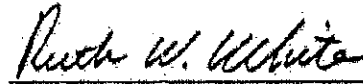
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.


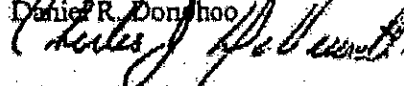
14IWCC1006

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 \$22,000.00. The party commencing the proceeding for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

DATED: NOV 24 2014

  
Ruth W. White

  
Daniel R. Donohoo  
  
Charles J. DeVriendt

RWW/dw  
O-11/5/14  
46

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

SHARPE, DAVID

Employee/Petitioner

Case# 12WC042493

LAKE LAND COLLEGE

Employer/Respondent

14IWCC1006

On 3/11/2014, 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 0.08% 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:

2934 BOSARDY LAW OFFICE PC  
JOHN V BOSARDY  
1610 S 6TH ST  
SPRINGFIELD, IL 62703

RUSIN MACIOROWSKI & FRIEDMAN LTD  
MARK COSIMINI  
2505 GALEN DR SUITE 108  
CHAMPAIGN, IL 61821

14-001006

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF SANGAMON )

<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

David Sharpe  
Employee/Petitioner

Case # 12 WC 42493

v.

Consolidated cases: n/a

Lake Land College  
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 William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on February 11, 2014. By stipulation, the parties agree:

On the date of accident, October 12, 2011, 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 \$41,859.48; the average weekly wage was \$804.99.

At the time of injury, Petitioner was 51 years of age, married, with 0 dependent child(ren).

Necessary medical services and temporary compensation benefits have been provided by Respondent.

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. The parties stipulated at trial that all TTD benefits and medical had been paid in full.

14IWCC1006

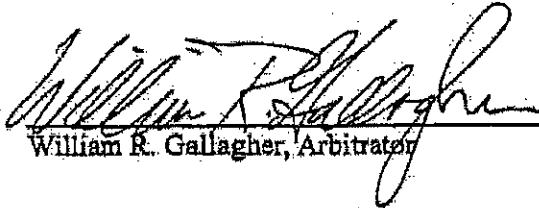
After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of \$482.99 per week for a period of 56.925 weeks, because the injuries sustained caused a 22 1/2 % loss of use of the left arm as provided in Section 8(e) 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.

  
\_\_\_\_\_  
William R. Gallagher, Arbitrator

March 3, 2014  
Date

MAR 11 2014

## Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on October 12, 2011. According to the Application, Petitioner sustained an injury to the left upper extremity when he lifted a sheet of plywood. There was no dispute in regard to accident and the parties stipulated that all temporary total disability benefits and medical had been paid. Accordingly, the only disputed issue at trial was the nature and extent of disability.

Petitioner testified that he worked most of his life as a carpenter; however, at the time he sustained the accident he was employed by Respondent as an instructor and his job duties required him to teach inmates at the Taylorville Correctional Center how to do carpentry work. On October 12, 2011, Petitioner went to Menards to get some building materials which included plywood. As Petitioner was in the process of lifting a sheet of plywood, he felt what he described as two "snaps" in his left arm and elbow which caused him to experience extreme pain. Petitioner described the sound of this as similar to a pencil being broken.

Petitioner initially sought medical treatment from Dr. Diana Widicus, his family physician, who saw him on October 13, 2011. Dr. Widicus ordered x-rays of the left arm which were negative for fractures. Because of his continued symptoms, Dr. Widicus ordered an MRI of the left elbow which was performed on October 3, 2011. The MRI revealed a disrupted biceps tendon with a full thickness tear and retraction (Petitioner's Exhibits 3, 4 and 5).

Petitioner was subsequently seen by Dr. George Maender, an orthopedic surgeon, on October 9, 2011. Dr. Maender examined Petitioner, reviewed the MRI scan and confirmed the diagnosis of a distal biceps rupture. Dr. Maender performed surgery on November 22, 2011, the procedure consisted of repair of the biceps tendon that required the use of a surgical screw (Petitioner's Exhibit 6).

Following the surgery, Petitioner remained under Dr. Maender's care and he ordered physical therapy. When Petitioner was seen on February 8, 2012, Petitioner had a full range of motion with the exception of pronation. Dr. Maender released Petitioner to return to work without restrictions at that time. When Dr. Maender saw Petitioner on May 9, 2012, Petitioner informed him that he had returned to work; however, Petitioner also informed him that he was not lifting plywood. On clinical examination, Dr. Maender observed that Petitioner had full range of motion with the exception of pronation and supination. Dr. Maender opined that Petitioner could continue to work as tolerated without restrictions and that he was at MMI (Petitioner's Exhibit 6).

At the direction of the Respondent, Petitioner was examined by Dr. Frank Petkovich, an orthopedic surgeon, on October 11, 2012. In connection with his evaluation of Petitioner, Dr. Petkovich reviewed medical records provided to him by the Respondent. On clinical examination, Dr. Petkovich noted that the range of motion of flexion and supination were both mildly limited and Petitioner complained of some discomfort when his range of motion was tested. Dr. Petkovich also noted that the forearm circumference was 29 cm on the left as compared to 30 cm on the right. Dr. Petkovich opined that Petitioner sustained a ruptured biceps tendon for which he received appropriate treatment, he was at MMI and could continue to work

without restrictions. Dr. Petkovich also opined that Petitioner had an AMA impairment rating of five percent (5%) of the left upper extremity (Respondent's Exhibit 4; Deposition Exhibit 2).

Dr. Petkovich was deposed on November 18, 2013, and his deposition testimony was received into evidence at trial. Dr. Petkovich's testimony was consistent with his medical report and he reaffirmed his opinion that Petitioner had an impairment rating of five percent (5%) of the left upper extremity. Dr. Petkovich stated that there was a slight decreased range of motion in regard to flexion and supination. In respect to the difference observed in the circumferences of Petitioner's forearms, Dr. Petkovich testified that the right arm measured 35 cm (not 30 cm as stated in his report) and that the left measured 29 cm. He explained that Petitioner had not regained all of the muscular mass in his left forearm (Respondent's Exhibit 4).

On cross-examination, Dr. Petkovich agreed that the concepts of impairment and disability are not synonymous. Dr. Petkovich was questioned at considerable length about the fact that he did not have Petitioner complete a Quick DASH functional assessment outcome questionnaire which is a statement of the examinee's levels of subjective complaints, required by the AMA assessment guidelines. However, Dr. Petkovich testified that, based on the information he obtained from the Petitioner during the course of his evaluation, that the absence of this form did not impact or affect his opinion as to the level of impairment (Respondent's Exhibit 4).

At trial Petitioner testified that he returned to work to the same position that he had at the time of the accident and that he continued to work in that job for approximately nine months. The only task Petitioner avoided performing during that period of time was lifting plywood. Petitioner stopped working for Respondent in August, 2013, to care for his mother who was in poor health. At the time of trial, Petitioner was not working and he stated that he and his wife were planning to purchase homes, renovate them and then resell them. Part of the underlying reason that he decided to engage in this type of work is that he could better control the use of his left arm.

Petitioner testified that he was very happy with the results of his surgery; however, he still had complaints in regard to his left arm. Petitioner stated that his left arm feels weaker than his right and, because of this, he has made adjustments and makes greater use of his right arm. Petitioner stated that when he lifts anything heavy, he feels tension in his left elbow and that twisting his wrist from side to side causes an abnormal sensation in his elbow.

#### Conclusions of Law

The Arbitrator concludes that Petitioner has sustained permanent partial disability to the extent of 22 1/2% loss of use of the left arm.

In support of this conclusion the Arbitrator notes the following:

Dr. Petkovich examined Petitioner at the direction of Respondent and opined that there was an AMA impairment rating of five percent (5%) of the left upper extremity.

While Petitioner did not complete a Quick DASH functional assessment activity questionnaire at the time he was evaluated by Dr. Petkovich, Dr. Petkovich testified that, based on the

14IWCC1006

information he obtained from Petitioner during his evaluation, that the lack of completion of this form did not have any impact or effect on his opinion of the degree of impairment.

Petitioner did not submit an AMA impairment rating so the only AMA impairment rating is that of Dr. Petkovich.

The Arbitrator finds that the AMA impairment rating of Dr. Petkovich is valid; however, the Arbitrator does note that impairment is not the equivalent of disability.

Petitioner was employed as a carpenter instructor at the time of the accident; however, Petitioner's primary occupation for most of his working life was that of a carpenter. Working as a carpenter does require the active use of both upper extremities. Due, at least in part, to Petitioner's being able to control the use of his left arm, he decided to remodel and sell houses.

At the time of the accident Petitioner was 51 years of age meaning he will have to live with the effects of this injury for the remainder of his working and natural life.

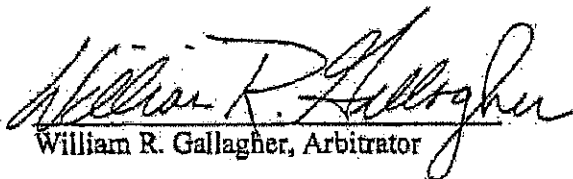
There was no evidence that this injury will have any effect on Petitioner's future earning capacity.

The medical treatment records clearly show that Petitioner sustained a ruptured biceps tendon which required surgery that included the use of a surgical screw. Both Petitioner's primary treating physician, Dr. Maender, and Respondent's examining physician, Dr. Petkovich, described some diminished range of motion. Further, Dr. Petkovich observed a loss of muscular mass of the left forearm as compared to the right (one cm difference in the report, but six cm difference when he was deposed).

The Arbitrator finds Petitioner's complaints to be credible and consistent with the nature of injury that he sustained.

The Arbitrator gives greater weight to factors two, three and five than factor number one. The fact that Petitioner has a feeling of weakness in his left arm is consistent with the diminished muscular mass as noted by Dr. Petkovich. Petitioner's customary occupation as a carpenter requires the active use of both upper extremities and Petitioner has credible complaints regarding the use of his left arm.

The Arbitrator gives no weight to factor number four because Petitioner was able to return to work and presented no evidence that the effects of this injury will cause any effect on his future earning capacity.

  
William R. Gallagher, Arbitrator



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

<input 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))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)(8))
<input checked="" type="checkbox"/> Modify <input type="checkbox"/> up	<input type="checkbox"/> PTD/Fatal-denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JUAN CARLOS ALVIA,

Petitioner,

**14IWC1028**

vs.

NO: 12 WC 040945

COUNTRY CLUB HILLS POLICE DEPARTMENT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issue of permanent 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, a police officer, injured his right ankle on March 31, 2012, after jumping to avoid an on-coming vehicle. There was no dispute that this incident is compensable under the Act, and there is no dispute that Respondent properly compensated Petitioner during his period of temporary total disability and paid all related medical bills. The only contested issue was as to the nature and extent of Petitioner's permanent total disability, and the arbitration hearing on this issue was heard on January 7, 2014, by Arbitrator David Kane.

Arbitrator Kane, after taking into consideration the enumerated factors as listed in Section 8.1(b) of the Act, found Petitioner sustained a 7.5% loss of use of the right foot as a result of the March 31, 2012, accident. Petitioner appealed Arbitrator Kane's arbitration decision, arguing his injury merited a larger permanency award. The Commission agrees.

After reviewing the arbitration decision against the evidence, the Commission finds Arbitrator Kane erred when he found Petitioner had no complaints after returning to work concerning his right foot. Petitioner credibly testified he now wears boots to maintain stability in

# 14IWCC1028

his right ankle as well as experiencing swelling in his ankle on more strenuous days, stiffness in his ankle when it is kept in the same position for a prolonged period of time, such as when he drive a patrol car. Also credibly testified to was Petitioner's need to medicate with Ibuprofen several times a week as well as his having to change certain aspects as to how he performs his duties as a police officer due to the residual effects of the March 31, 2012, accident. In recognition of Petitioner's lingering pain and functional deficits, the Commission finds Petitioner has experienced a 12½% loss of the use of his right foot.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$695.78 per week for a period of 15.865 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 12½% loss of the use of the right foot; Respondent is credited for the permanent partial disability benefits of 3% loss of use of the right foot was awarded pursuant to the February 4, 2014, arbitration decision (11 WC 29092).

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.

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: NOV 25 2014

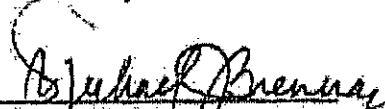
KWL/mav

O: 09/30/14

42

  
Kevin W. Lamborn

  
Thomas J. Tyrrell

  
Michael J. Brennan

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF COOK )

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§6(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

**14IWCC1028**  
Case # 12 WC 40945

JUAN CARLOS AVILA  
Employee/Petitioner

Consolidated cases: 11 WC 29092

v.  
COUNTRY CLUB HILLS POLICE DEPARTMENT  
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 David Kane, Arbitrator of the Commission, in the city of Chicago, on January 7, 2014. By stipulation, the parties agree:

On the date of accident, March 31, 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 \$82,990.00, and the average weekly wage was \$1,596.00.

At the time of injury, Petitioner was 33 years of age, *married* with 2 dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

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.

The parties stipulated that Respondent paid Petitioner his full salary during the period of temporary total disability.

# 14IWCC1028

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.

## ORDER

Respondent shall pay Petitioner the sum of \$695.78/week for a further period of 12.525 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused the permanent partial loss of use of the right foot of Petitioner to the extent of 7.5%.

Respondent shall pay Petitioner compensation that has accrued from 07/30/12 through 01/7/14, and shall pay the remainder of the award, if any, in weekly payments.

**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.

David T. Kline  
Signature of Arbitrator

February 4, 2014  
Date

FEB 4 - 2014

**14IWCC1028**

**STATEMENT OF FACTS**

**JUAN CARLOS AVILA V. COUNTRY CLUB HILLS POLICE DEPARTMENT**

**12WC 40945**

This case comes before the Arbitrator on undisputed facts with regard to the incident in question. Petitioner testified to his employment with Respondent, the City of Country Club Hills Police Department, as a patrol officer on and around the date of loss of March 31, 2012. Petitioner was 33 year old on the date of loss.

Petitioner testified that on March 31, 2012 he injured his right ankle when he jumped out of the way of a vehicle to avoid getting hit. Petitioner testified he was taken to emergency room at St. James Hospital.

Petitioner followed up at St. James Occupational Health Center where x-rays of Petitioner's right ankle were taken on April 2, 2012. (Res. Ex. 11). The x-rays were compared to x-rays of Petitioner's right ankle taken on April 22, 2011. The findings were no fracture, the ankle mortise and talar dome are intact, the osseous structures appear intact and unremarkable. There was no bony destruction to suggest osteomyelitis. The impression was negative right ankle radiographs. Petitioner testified he was advised to continue wearing his brace and to elevate his leg when sitting.

Petitioner testified he started physical therapy on April 11, 2012. Petitioner testified Dr. Clifton Ward prescribed an MRI of the right ankle. On April 25, 2012, Dr. Clifton Ward discharged Petitioner to see Dr. David Mehl. (Res. Ex. 12). Dr. Clifton Ward's work status report dated April 30 noted Petitioner indicated he was walking a little better but it still hurt around his heel and when he turned it inwards. (Res. Ex. 13).

**14IWCC1028**

On July 27, 2012 Petitioner had an FCE performed at METT Physical Therapy. (Res. Ex. 15). It demonstrated that Petitioner could perform 97.5% of the physical demands of his job as a Police Officer. The FCE report stated that Petitioner's deficiencies occurred during squat and power lifts with goal weights of 100 lbs. each. Further, that Petitioner stated it would be an infrequent occurrence that he would actually be expected to lift loads of that weight at his job. The report stated Petitioner had made excellent progress and that although he experience very mild ankle pain, 1 on a scale of 10, and very mild swelling he feels he is ready to resume his usual job duties as a police officer and discharge from the program was recommended.

On July 30, 2012, Dr. David Mehl found Petitioner to be at maximum medical improvement and capable of full duty. Dr. David Mehl released Petitioner to work full duty on July 30, 2012.

Petitioner testified he was off work on duty disability from April 11, 2012 until August 2, 2012.

Petitioner saw Simon Lee, M.D. on September 19, 2013 for an independent medical examination, (Res. Ex. 16) and for an impairment rating. (Res. Ex. 17). In his independent medical examination report Dr. Lee notes Petitioner denied any instability episodes or repeat injuries since it originally occurred. Dr. Lee noted that on examination Petitioner had some mild increased laxity of his right ankle and no mechanical symptoms. Dr. Lee diagnosed status post right ankle chronic sprain with mild laxity. Dr. Lee noted Petitioner only requires over the counter ibuprofen. Dr. Lee noted he believed there to be a mild amount of symptom magnification. Dr. Lee opined no work restrictions are necessary. Dr. Lin opined no further treatment is necessary other than what Petitioner is currently using, i.e.

# 14IWCC1028

occasional bracing or use of high-top shoes or boots as required. Dr. Lee opined Petitioner reached MMI in 2012 and should be able to continue full work duty and employment.

Dr. Lee gave his opinions on impairment in his report dated September 19, 2013. (Res. Ex. 17) Dr. Lee opined that Petitioner has a 5% lower extremity impairment under the AMA guides.

Petitioner testified he still works as a patrol officer. Petitioner testified he still chases suspects when necessary and his ankle does not prevent him from chasing suspects. Petitioner testified since he returned to full duty work after the March 31, 2012 injury he has not reported to any of his supervisors that he has problems with his ankle to the extent he cannot perform his duties. Petitioner testified he can physically perform his job as a police officer.

Respondent's witness Lieutenant William Garrison testified he is patrol lieutenant with the Country Club Hills Police Department. He is responsible for supervision of the operations of the Patrol Division, scheduling and training. Lt. Garrison testified that Petitioner came back to full duty work after each of his ankle injuries. Lt. Garrison testified that since Petitioner came back to full duty work he has not complained that the condition of his ankle prevented him from doing his job as a patrol officer. Lt. Garrison testified he is not aware of any incident where Petitioner could not perform some duties of his as patrol officer because of his ankle when he was working full duty.

## CONCLUSIONS OF LAW

### Nature & Extent of the Injury

# 14IWCC1028

The Arbitrator finds that Petitioner sustained a 7.5% loss of use of the right foot as the result of the accident of March 31, 2012. The Arbitrator notes that Respondent shall receive credit for the award of the right foot awarded for the April 21, 2011 date of loss (11WC 29092).

1. The reported level of impairment pursuant to the Section 8.1(b),
2. The occupation of the employee,
3. The age of the employee at the time of injury,
4. The employee's future earning capacity,
5. Evidence of disability corroborated by the treating medical records.

Of note, no single enumerating factor shall be the sole determining factor for disability.

Per Section 8.1(b) of the Act, the Arbitrator has considered the following:

- (i) the reported level of impairment per the AMA Guide is 5% of the right foot;
- (ii) The occupation of Petitioner is police officer. Petitioner continues to work full duty as a Patrol Officer and makes no complaints;
- (iii) Petitioner was 33 years old at the time of the accident. Petitioner continues to work full duty as a Patrol Officer and makes no complaints;
- (iv) Dr. Mehl released Petitioner to full duty work and Dr. Lee stated that Petitioner should be able to continue full work duty and employment;



# 14IWCC1028

- (v) The medical records are consistent with the past subjective complaints of Petitioner. The Arbitrator notes Petitioner testified he can do his job as a Police Officer and has made no complaints since returning to full duty work.

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF )  
MADISON

<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 checked="" type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)(18))
<input type="checkbox"/> Modify <input type="text"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KEVIN KLEIN,

Petitioner,

vs.

NO: 12 WC 21780

DYNEGY MIDWEST GENERATION,

**14IWCC1030**

Respondent.

DECISION AND OPINION ON REVIEW

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

On May 29, 2012, the Petitioner testified that he was working while on scaffolding. He stated: "It was a perforated scaffold surface, and I had to check the bolting on four control valves, and in order to do that, I had to get on my knees because the control valves come up and over". He had to be on his knees because there is no room to stand under the valves. He testified further: "I had to squat down and actually crawl behind the control valves to check the bolting to see if they were bolted up, if the bolts were tight." At that point he felt pain and said he knew he had injured his right knee.

Petitioner had pain and swelling, reported it and initially tried to work through it. Petitioner was able to work that week and went on vacation the following week. Petitioner had increased pain, informed Respondent and sought medical attention with Dr. Mark Eavenson, who was concerned about a meniscus tear and prescribed an MRI.

14IWCC1030

Petitioner was referred to and saw Dr. George Paletta on June 25, 2012. Dr. Paletta stated in his medical records that the "[Petitioner] had climbed up to a fair height at that point to inspect some scaffolding, where there were some valves. He was trying to figure out what tools he might need to deal with that particular project. As he got up to this scaffolding, it was the type where there were some perforations with some prominent pieces of metal or nipples. As he went to kneel down to inspect this area of work, he went to kneel on the right knee and felt pain." An MRI showed a meniscus tear and he was referred for further orthopedic evaluation. Following exam and review of films, Dr. Paletta diagnosed a medial meniscus tear and mild MCL strain, and prescribed surgery. He noted that the MRI was "suggestive of a more acute tear. There does not appear to be a lot of intrameniscal signal abnormality suggestive of a degenerative component." He also noted a question of a small osteochondral defect at the posterior tibial plateau. Dr. Paletta performed arthroscopic right knee surgery on July 31, 2012 involving a partial medial meniscectomy. Dr. Paletta opined the tear was causally related to the described May 29, 2012 accident.

The Arbitrator found that the accident was not a compensable accident because the Petitioner failed to prove that Petitioner was at a greater risk than the general public and therefore the injury did not "arise out of employment". In the recent case *Don Young v. Industrial Comm'n*, IL App 4<sup>th</sup> 130392WC (2014), issued by the Illinois Appellate Court, three categories of risk to which an employee may be exposed were described (neutral, personal and employment-associated). The court stated that a neutral risk does not generally arise out of employment unless the employee is exposed to said risk to a greater degree than the general public.

While we agree with the Arbitrator that kneeling down would generally be considered a neutral risk, we find that the activity in which Petitioner was involved in on May 29, 2012 was an employment-associated risk. Petitioner was checking the bolts on four control valves on a metal scaffolding with a perforated metal surface. Petitioner had to kneel down and crawl under the valves in order to perform this duty. The confined space, corrugated floor, and unique activity that Petitioner was performing resulted in a level of risk to his knee greater than that to which the general public is typically exposed to. Therefore, the injury that occurred on May 29, 2012 did arise out of Petitioner's employment with Respondent. We also find the testimony of Dr. Paletta to be persuasive with regard to the acute nature of the tear in the right knee, and thus rely on his opinion that the Petitioner's right knee condition is related to the May 29, 2012 accident.

Finding both accident and causation for the May 29, 2012 accident, medical expenses should be awarded in this case. Petitioner is entitled to the medical expenses submitted into evidence within Petitioner's Exhibit 11 which are related to the right knee injury sustained on May 29, 2012. It should be noted that the hearing before the Arbitrator included an additional and separate accident date and injury, and any medical expenses within Petitioner's Exhibit 11 related to the consolidated claim are not awarded and are addressed in the decision issued in that case, 12 WC 19385.

14IWCC1030

With regard to total temporary disability (TTD), Respondent indicated on the record that it was not disputing the period of TTD claimed by Petitioner, just its liability for same. Therefore, TTD should be awarded for the stipulated period following the May 29, 2012 injury, June 11, 2012 through September 4, 2012, a total of 14-6/7 weeks.

According to Section 8.1(b) of the Act, for injuries that occur after September 1, 2011, in determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

- 1) The reported level of impairment pursuant to the AMA Guidelines;
- 2) The occupation of the injured employee;
- 3) The age of the employee at the time of the injury;
- 4) The employee's future earning capacity; and
- 5) Evidence of disability corroborated by the treating medical records.

- 1) The reported level of impairment pursuant to the AMA Guidelines.

The parties did not provide an impairment rating for the right knee. As such, this factor does not influence the permanent partial disability determination.

- 2) The occupation of the injured employee.

Petitioner worked as a welder/mechanic for Respondent. As part of his job duties, Petitioner must kneel down and squeeze into confined spaces in order to perform his responsibilities as a welder/mechanic. His position requires him to be on his feet often and use his knee throughout the day. Therefore, this injury has impacted his job in a more significant way than it would have impacted, for example, a worker who performed a seated job.

- 3) The age of the employee at the time of the injury.

Petitioner was 53 years old at the time of his injury and will likely be employed for quite a few more years with a surgically repaired right knee.

- 4) The employee's future earning capacity.

Petitioner did not submit evidence to demonstrate that his future earning capacity was affected in any way by the injury and so this factor also does not influence the disability determination.

- 5) Evidence of disability corroborated by the treating medical records.

All of the medical evidence supports that Petitioner suffered a compensable work injury on May 29, 2012. Petitioner sought medical treatment shortly after his accident. Petitioner was seen by Dr. Paletta on June 25, 2012 and was diagnosed with a posterior horn tear of the medial meniscus, which was repaired. Petitioner testified he was improved following surgery, but still had some weakness and pain depending on the weather. Dr. Paletta noted the part of the knee that was not operated looked good without significant degenerative changes. Petitioner returned

to his regular work duties without restrictions. Post-operative examination after 8 weeks post-surgery was essentially normal.

Based on the five factors outlined in the Act, we find that Petitioner is entitled to 17.5% loss of the right leg. He sustained an acute partial medial meniscus tear, which was repaired, and following rehabilitation, Petitioner failed to report any major issues. While he still experiences weakness in his right knee, has trouble lifting himself up, and pain with certain weather, his final examination was normal and he has continued to work in the same job as he had before the accident with no evidence of a diminution of wages.

While the Petitioner's Petition for Review indicates "credit" as an issue on appeal, a review of the transcript (Tr. 4-5) and Request for Hearing (Arbitrator's Exhibit 1) indicates that the parties stipulated to Respondent's entitlement to credit under Section 8(j), as well as for prior TTD/TPD and salary continuation benefits. As such, we affirm the Arbitrator's findings regarding credit to Respondent. However, it should be noted that Respondent is only entitled to credit within case 12 WC 21780 for payments made prior to hearing that are related to case 12 WC 21780. Respondent is not entitled to credit within case 12 WC 21780 for benefit payments made prior to hearing with regard to the consolidated case of 12 WC 19385.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is reversed as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,009.12 per week for a period of 14-6/7 weeks, 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 the sum of \$695.78 per week for a period of 37.625 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 17.5% loss of the right leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner all reasonable and necessary medical expenses submitted as part of Petitioner's Exhibit 11 that are causally related to the May 29, 2012 right knee injury, per the Fee Schedule under §§8(s) and 8.2 of the Act.

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

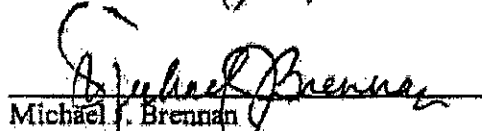
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.


**14IWCC1030**

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$60,300.00. 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: NOV 26 2014  
TJT: pvc  
O: 09/29/14  
51

  
Thomas J. Tyrrell

  
Michael J. Brennan

  
Kevin W. Lamborn