

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

Frederick Williams,)
 Petitioner,)
)
vs.)
)
Flexible Staffing, Inc.,)
 Respondent,)

No. 11WC 46390
14IWCC0576

ORDER

This matter comes before the Commission on its own Petition to Recall the Commission Decision to Correct Clerical Error pursuant to Section 19(f) of the Act. The Commission having been fully advised in the premises finds the following:

The Commission finds that said Decision should be recalled for the correction of a clerical/computational error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Decision dated July 16, 2014, is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner Charles J. DeVriendt.

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



Charles J. DeVriendt

DATED: JUL 22 2014

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Frederick Williams,

Petitioner,

vs.

NO: 11WC 46390
14IWCC0576

Flexible Staffing, Inc.,

Respondent,

CORRECTED DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Cook County with instructions "to the Commission for clarification of which facts/evidence support its conclusion." The Arbitrator's decision, dated November 20, 2012, awarded Petitioner 75.9 weeks of permanent partial disability for the 30% loss of use of his right arm. On May 29, 2013, the Commission reduced the award to 25% loss of use of the right arm. On remand, the Commission makes the following clarifications to support its conclusion, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator.

We understand Respondent's argument that Dr. Levin's A.M.A. impairment rating of 6% of the upper extremity was not given enough weight by the Arbitrator. However, we do not agree with the great weight that Respondent wants placed on this rating because to do so would be to disregard the other factors and give them no weight at all. Section 8.1b of the Act requires the consideration of five factors in determining permanent partial disability:

- 1) Reported level of impairment;
- 2) Occupation;
- 3) Age at time of injury;
- 4) Future earning capacity;
- 5) Evidence of disability corroborated by treating medical records.

Section 8.1b also states, "No single factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the

level of impairment as reported by the physician must be explained in a written order.” We initially note that the term “impairment” in relation to the A.M.A. rating is not synonymous with the term “disability” as it relates to the ultimate permanent partial disability award.

Regarding the second factor, we find that Petitioner was employed in a physically demanding occupation. His un rebutted testimony was that he was a welder/fabricator and that he considered it a “physically demanding job.” (T.8). We find that Petitioner’s upper extremity impairment is more significant for a person with Petitioner’s heavier job duties than someone with a lighter-duty job and that this supports a finding of increased disability compared to the impairment rating.

Regarding the third factor, we find that Petitioner was only 45 years old and will live longer with his disability than someone who is older. We find that this warrants an increase in the level of disability in this case.

Regarding future earning capacity, Petitioner testified that he was released to full duty by Dr. Aribindi on March 8, 2012, even though he was still feeling pain and was lacking range of motion in his arm. Despite this full duty release, Petitioner’s un rebutted testimony was that, when he took the release form to Respondent the next day, he was told that he no longer had a job there. Petitioner testified that he has been looking for employment as a welder, which is what he has done for the majority of his professional life. Petitioner testified that he tries to do welding work on the side from his garage, but that he still finds it difficult to do. We find that Petitioner’s future earning capacity has been diminished and his upper extremity impairment makes him more prone to future injury with an associated loss of income.

As for the fifth factor, evidence of disability corroborated by treating medical records, Petitioner testified that he is right-hand dominant. Petitioner testified that he still has 4 or 5 out of 10 pain, which is consistent with what is reported in his last physical therapy record on February 29, 2012. On March 7, 2012, when Dr. Aribindi released Petitioner to return to work, the assessment still included “elbow pain.” Petitioner testified that his primary care doctor, Dr. Ahmed, has prescribed Norco, which he takes three times a week. However, the Commission notes that Dr. Ahmed’s records are not in evidence so there is no corroborating medical record for Petitioner’s use of Norco for his arm pain. Petitioner testified that he still does not have full range of motion and he has difficulty welding in certain positions. This is corroborated by the March 7th record of Dr. Aribindi who noted that Petitioner had “almost” full extension of the right elbow but lacked full supination of the right forearm. On May 8, 2012, Dr. Levin reported that Petitioner’s elbow lacked 3 degrees of full extension. He lacked 15 degrees of pronation and 15 degrees of supination. His right wrist had 75 degrees of flexion compared to 80 degrees on the left. His extension was 85 degrees on the right and 90 degrees on the left. His ulnar deviation on the right was 30 degrees while it was 45 degrees on the left. His mid-forearm circumference measured 26 cm on the right compared to 26.5 cm on the left. We find that these medical records support Petitioner’s disability of decreased range of motion. Petitioner testified that he still has numbness in the area of the incision and has tingling sensations in his arm and fingertips. Although Dr. Aribindi reported that Petitioner denied numbness or paresthesias, Dr. Levin noted that Petitioner had decreased pinprick sensation over the ulnar aspect of the right elbow.

Based on the above, the Commission finds that the 6% impairment rating by Dr. Levin does not adequately represent Petitioner’s actual disability in this case. When considering the other four factors, we find that Petitioner’s permanent partial disability is 25% loss of use of the right arm. The Commission modifies the Arbitrator’s Decision, to decrease Petitioner’s partial

disability award from 30% to 25% loss of use of the right arm pursuant to Section 8(e) of the Act.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$435.27 per week for a period of 23.14 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 \$391.75 per week for a period of 63.25 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the petitioner a 25% loss of use of his right arm.

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

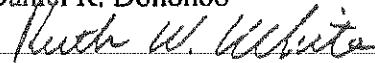
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$24,900.00. 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: JUL 22 2014


Charles J. DeYriendt


Daniel R. Donohoo



Ruth White

SE/

O: 6/24/14

049

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TODD BOOTEN,

Petitioner,

vs.

NO: 12 WC 13829

ILLINOIS DEPARTMENT OF TRANSPORTATION,

14IWCC0837

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, causal connection, medical expenses, temporary total disability benefits and permanently partial disability benefits, 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.

We modify the Arbitrator's awards of temporary total disability benefits and permanent partial disability benefits. The Arbitrator awarded Petitioner temporary total disability benefits from May 23, 2012 through June 4, 2012 for a period of two weeks. The Commission finds the time period between those dates is 23 days. Therefore, we modify the Arbitrator's decision and award Petitioner temporary total disability benefits for 2-1/7 weeks.

Additionally, we modify the Arbitrator's nature and extent finding and award Petitioner permanent partial disability benefits of 12.5% of the leg.

14IWCC0837

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. As such, this factor does not influence the impairment rating.

- 2) The occupation of the injured employee.

Petitioner works as a highway maintainer and continues to work in that capacity for Respondent. As part of his job duties, Petitioner stands or walks for two to four hours a day, lifts weight pads up to 50 pounds, and drives for six to eight hours a day. Petitioner testified he still has some right leg pain but does what he can.

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

Petitioner was 49 years old at the time of his injury and will likely be employed for several years. His position requires him to be on his feet often and use his knee throughout the day.

- 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 impairment rating.

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

All of the medical evidence supports that Petitioner suffered a compensable work injury on March 15, 2012. Petitioner sought medical treatment shortly after his accident and voiced consistent complaints throughout his treatment. An MRI showed several issues in Petitioner's right knee. Petitioner's treating physician Dr. Morgan opined that Petitioner probably aggravated his post meniscectomy arthrosis when Petitioner exited the van on March 15, 2012. Dr. Morgan diagnosed Petitioner with tear of the posterior horn of the lateral meniscus and performed arthroscopic surgery on him. Following surgery, Petitioner underwent a series of injections and reported feeling much better. Dr. Morgan released Petitioner from his care.

Based on the five factors outlined in the Act, we find that Petitioner is entitled to 12.5% loss of the leg. Petitioner suffered a work related injury and underwent arthroscopic surgery to repair his lateral meniscus. Following the surgery and rehabilitation, Petitioner failed to report any major issues. He did not testify that he continuously struggles with his job duties or is otherwise limited as a result of his work injury. He is able to successfully perform the same job

duties he did before the accident.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$896.11 per week for a period of 2-1/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

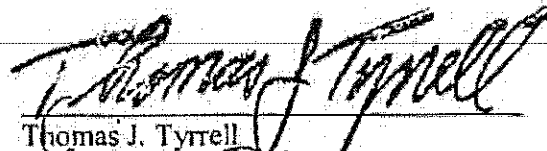
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$695.78 per week for a period of 26.875 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 12.5% loss of the leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner all reasonable and necessary medical expenses per the Fee Schedule under §8(a) 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.

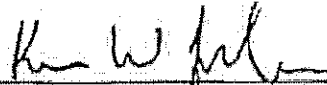
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O: 8/11/14
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Thomas J. Tyrrell



Michael J. Brennan



Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

BOOTEN, TODD

Employee/Petitioner

Case# 12WC013829

ILL DEPT OF TRANSPORTATION

Employer/Respondent

14IWC0837

On 9/3/2013, 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:

2138 REED HELLER MANSFIELD & GROSS

BRIAN K ZIRKELBACH

PO BOX 687

MURPHYSBORO, IL 62966

1430 CMS BUREAU OF RISK MGMT

WORKERS COMPENSATION MANAGER

PO BOX 19208

SPRINGFIELD, IL 62794-9208

0556 ASSISTANT ATTORNEY GENERAL

KYLEE J JORDAN

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

0502 ST EMPLOYMENT RETIREMENT SYSTEMS

2101 S VETERANS PKWY

PO BOX 19255

SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy
pursuant to B&E ILCS 405/11.4

SEP 3 2013



[Signature]
KIMBERLY E. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)

)SS.

COUNTY OF Williamson)

14IWCC0837

- Initial Workers' Benefit Fund (§4(d))
- State Adjustment Fund (§8(g))
- Second Injury Fund (§8(e)18)
- None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Todd Booten

Employee/Petitioner

v.

Illinois Department of Transportation

Employer/Respondent

Case # 12 WC 013829

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Herrin**, on **May 16, 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:

FINDINGS

On 03/15/2012, 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 \$69,897.00; the average weekly wage was \$1,344.17.

On the date of accident, Petitioner was 48 years of age, *married* with 0 dependent children.

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

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

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

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$896.11/week for 2 weeks commencing May 23, 2012 through June 4, 2012 as provided in Section 8(b) of the Act.

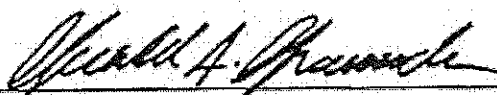
Respondent shall pay any and all related, reasonable and necessary medical expenses, subject to the Fee Schedule, as provided in Section 8(a) of the Act.

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

Respondent shall pay Petitioner permanent partial disability benefits of \$695.78/week for 43 weeks, because the injuries sustained caused the 20% loss of the leg, 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.



Signature of Arbitrator

8/28/13

Date

SEP 3 - 2013

14IWC0837

FINDINGS OF FACT

Petitioner was 48 years of age when he sustained an injury to his right knee on March 15, 2012, when he exited the passenger's side of the van he was sitting in to redirect an incoming semi-truck that was to be weighed on portable scales at the direction of the Illinois State Police. Petitioner has been employed with the Illinois Department of Transportation for 29 years as a highway maintainer. He described his job duties as traveling to various locations to place portable scales weighing approximately 50 pounds apiece to weigh commercial vehicles. He drives a one-ton commercial van to the various locations including the location he was at when the injury occurred which was US highway 60/62 just south of Cairo, Illinois. The driver's and passenger's side of the van have a step down platform for use from the interior floor of the van to the ground. The height of the floorboard of the van is approximately 25 inches off the ground. The actual van operated by the Petitioner that day was at the arbitration hearing location and was examined by the parties and the Arbitrator.

Petitioner testified that on the morning of March 15, 2012, he was working in conjunction with Illinois State Trooper Matthew Johnson. They had located themselves and the portable scales at the old State Police headquarters off of US highway 60/62. Petitioner testified that Trooper Johnson was located on the highway flagging in commercial vehicles that had just crossed the US 60/62 bridge coming into Illinois. Petitioner was located on the east side of a divided parking lot sitting in the passenger side of his van doing paperwork when Trooper Johnson flagged in a semi-truck to be weighed. Petitioner testified that the semi-truck was attempting to enter the west side of the parking lot and he jumped out of the van to redirect the semi-truck into the east side of the parking lot. Petitioner testified that he did not recall whether he used the step down platform or not but felt immediate pain in his right knee once on the ground. Petitioner testified that he had paperwork in his hands that he had been working on at the time the semi-truck entered the parking lot.

Following the accident he was examined by his family physician Dr. Alexander and an MRI of the knee was ordered which revealed a large tear of the lateral meniscus. Petitioner was referred to Dr. Richard Morgan who performed a partial lateral meniscectomy on May 23, 2012. Petitioner returned to work without restriction on June 4, 2012. Petitioner testified that all of his medical expenses submitted at the hearing were paid by his group health insurance carrier and that he did not receive TTD during the two week period he was off work following his surgery.

Respondent called Illinois State Trooper Johnson as a witness. Trooper Johnson gave conflicting testimony regarding his location and the location of Petitioner's van. On cross examination Trooper Johnson admitted that he was on the highway when he flagged in the semi-truck to be weighed and to his memory, Petitioner exited the driver's side of his van not the passenger's side. Trooper Johnson admitted that he did not see whether Petitioner was seated in the driver's seat or the passenger's seat as he drove by the van after following the semi-truck into the parking lot. Trooper Johnson did not recall whether Petitioner had paperwork in his hands when he came around to the back of the van. The height of the van floorboard and step down is the same on the driver's side of the van as it is on the passenger's side of the van so the side of the van that Petitioner exited is not relevant to whether the injury occurred in the scope and course of Petitioner's employment.

CONCLUSIONS OF LAW

1. Petitioner has met his burden of proof regarding the issue of accident. Petitioner testified that he is required to drive a one-ton van provided by the Respondent to various locations to do his job. The van is a commercial van in appearance in that it is a large box van with an elevated ride height. On the date of

the accident Petitioner testified that he jumped out of the van in a hurried manner to redirect an incoming semi-truck to the correct location while he had paperwork in his hands. The general public does not operate this type of commercial van with an elevated ride height. The general public is not required to observe and direct commercial trucks to a specific area for purposes of enforcing weight restrictions. These various factors created an increased of risk of injury to a greater extent than that to which the general public was exposed.

2. Petitioner has met his burden of proof regarding the issue of causation. Petitioner testified that before the injury on March 15, 2012, he was not having any problems with his right knee. Petitioner testified that after the injury he had immediate pain in his right knee. The Respondent's exhibits which include the CMS Notice of Injury, the supervisor's report of injury or illness and worker's compensation witness report all document that Petitioner sustained an injury to his right knee when he exited the Illinois Department of Transportation van on March 15, 2012. Dr. Morgan's office note dated April 5, 2012, documents his opinion that the Petitioner probably aggravated his prior post meniscectomy arthrosis in exiting the van episode.

3. Given the Arbitrator's findings regarding the issues of accident and causation, the Arbitrator finds that the medical services that were provided to the Petitioner were reasonable and necessary and that Respondent shall pay \$17,781.00 in past medical expenses subject to a credit for those bills or portions thereof paid by the group health insurance carrier - subject to the Fee Schedule and in accordance with Sections 8(a) and 8.2 of the Act. Respondent shall hold the Petitioner harmless for any medical expenses paid through group medical insurance.

4. Petitioner is awarded TTD for the two weeks of lost time as a result of his March 15, 2012 accident. Accordingly, Respondent shall pay Petitioner temporary total disability benefits of \$896.11/week for 2 weeks commencing May 23, 2012 through June 4, 2012 as provided in Section 8(b) of the Act.

5. Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records.

Applying this standard to this claim, the Arbitrator notes that: (i) no impairment rating was provided; (ii) Petitioner is highway maintainer and continues to work in that occupation following this injury; (iii) Petitioner was 49 years old at the time of his injury and has potentially many future years to continue in his current occupation; (iv) Petitioner has not demonstrated any loss in future earning capacity; and (v) Petitioner has provided evidence of disability corroborated by the treating medical records showing he sustained a torn and displaced meniscus in Petitioner's right knee, which required surgical repair and subsequent injections with evidence of some lateral compartment narrowing from his last office visit. Based on these five factors, the Arbitrator finds that the Petitioner has sustained 20% loss of use of his right leg.

14IWCC0838

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Henry Taylor,
Petitioner,

vs.
City of Chicago,
Respondent.

NO: 12 WC 006664

DECISION AND OPINION ON REVIEW

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

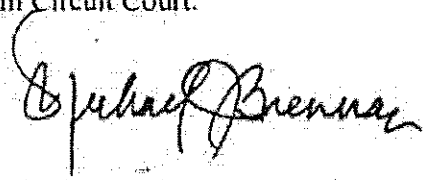
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 4, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §1,(n) of the Act, if any.

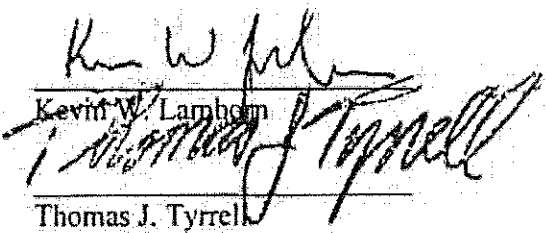
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

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.

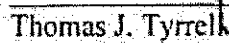
DATED: OCT 06 2014
MJB/bm
o-8/19/14
052



Michael J. Brennan



Kevin W. Lamphorn



Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

TAYLOR, HENRY

Employee/Petitioner

Case# 12WC006664

CITY OF CHICAGO

Employer/Respondent

14IWCC0838

On 12/4/2013, 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 0.10% 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:

2573 MARTAY LAW OFFICE

DAVID W MARTAY

134 N LASALLE ST 9TH FL

CHICAGO, IL 60602

0113 CITY OF CHICAGO LAW DEPT

MICHAEL GENTITHES

30 N LASALLE ST 8TH FL

CHICAGO, IL 60602

14IWCC0838

STATE OF ILLINOIS)
)
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

HENRY TAYLOR
Employee/Petitioner

Case #12 WC 6664

v.

CITY OF CHICAGO
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 Robert Williams, arbitrator of the Workers' Compensation Commission, in the city of Chicago, on November 20, 2013. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

- A. Was the 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 the petitioner's employment by the respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to the respondent?
- F. Is the petitioner's present condition of ill-being causally related to the injury?
- G. What were the petitioner's earnings?
- H. What was the petitioner's age at the time of the accident?
- I. What was the petitioner's marital status at the time of the accident?

- J. Were the medical services that were provided to petitioner reasonable and necessary?
- K. What temporary benefits are due: TPD Maintenance TTD?
- L. What is the nature and extent of injury?
- M. Should penalties or fees be imposed upon the respondent?
- N. Is the respondent due any credit?
- O. Prospective medical care?

FINDINGS

- On November 23, 2011, the respondent was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship existed between the petitioner and respondent.
- On this date, the petitioner sustained injuries that arose out of and in the course of employment.
- Timely notice of this accident was given to the respondent.
- In the year preceding the injury, the petitioner earned \$91,104.00; the average weekly wage was \$1,752.00.
- At the time of injury, the petitioner was 57 years of age, *married* with one child under 18.
- The parties agreed that the respondent paid the appropriate amount for all the related, reasonable and necessary medical services provided to the petitioner.
- The parties agreed that the respondent paid \$43,218.22 in temporary total disability benefits.
- The parties agreed that the petitioner is entitled to temporary total disability benefits for 46-1/7 weeks, from December 14, 2011, through November 1, 2012.

ORDER:

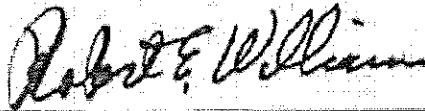
- The respondent shall pay the petitioner the sum of \$695.78/week for a further period of 15.05 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent of an additional 7% loss of use of his left leg.

14IWCC0838

- The respondent shall pay the petitioner compensation that has accrued from November 23, 2011, through November 20, 2013, and shall pay the remainder of the award, if any, in weekly payments.

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

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



Signature of Arbitrator

December 3, 2013

Date

DEC 4 - 2013

FINDINGS OF FACTS:

The petitioner, a foreman of sheet metal workers, twisted and injured his left knee on November 23, 2011. The petitioner started care with Dr. Michael Maday on December 14, 2011, whose assessment was meniscus tear. On February 16, 2012, Dr. Maday performed arthroscopic partial left medial and lateral meniscectomies and a removal of loose bodies. The petitioner was started with physical therapy on March 16, 2012, and followed up with Dr. Maday through June 26, 2012, at which time he was released to work with restrictions. He was given a full duty release for November 1st on October 12, 2012. At his last follow-up on November 20, 2012, the petitioner reported doing well with only occasional pain since returning to work. Dr. Maday noted a nearly full range of motion, no medial or lateral joint line or iliotibial band tenderness and negative Lachman, anterior drawer and posterior drawer testing.

FINDING REGARDING WHETHER THE PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY:

Based upon the testimony and the evidence submitted, the petitioner proved that his current condition of ill-being with his left leg is causally related to the work injury.

FINDING REGARDING THE NATURE AND EXTENT OF INJURY:

There is no evidence of an AMA impairment rating or evidence of the impact of the petitioner's injury regarding his occupation, age or future earning capacity, as delineated in Section 8.1(b)(i) through (iv) of the Act, nor can any effect be inferred from the evidence. Regarding Section 8.1(b)(v), the petitioner complains of left leg pain, a burning sensation and difficulty with stairs. The last medical record of his care with Dr. Maday does not corroborate his testimony. The petitioner returned to the regular work

duties of a foreman. He does only deskwork since there are sufficient employees to do all the physical tasks.

The petitioner was awarded 25% loss of use of his left leg in claim #97 WC 31128. The respondent shall pay the petitioner the sum of \$695.78/week for a further period of 15.05 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent of an additional 7% loss of use of his left leg.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Fabiola Fernandez,

Petitioner.

vs.

NO: 13WC 25502

Dart Container,

Respondent,

14IWCC0843

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner, herein and notice given to all parties, the Commission, after considering the issue of Permanent Partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 11, 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.

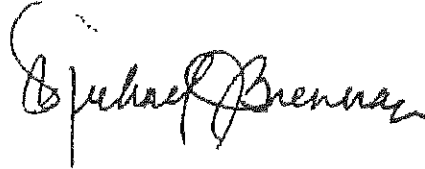
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0843

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$19,700.00. 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
o-9/29/14
052

OCT 06 2014



Michael J. Brennan



Kevin W. Lamborn



Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

FERNANDEZ, FABIOLA

Employee/Petitioner

Case# 13WC025502

DART CONTAINER

Employer/Respondent

14IWCC0843

On 4/11/2014, 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 0.05% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

4128 RUBENS AND KRESS
FRANK D KRESS
134 N LASALLE ST SUITE 444
CHICAGO, IL 60602

1109 GAROFALO SCHREIBER HART ET AL
ANDREW L ROWE
55 W WACKER DR 10TH FL
CHICAGO, IL 60601

STATE OF ILLINOIS)
)
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

14IWCC0843

FABIOLA FERNANDEZ
Employee/Petitioner

Case #13 WC 25502

v.

DART CONTAINER
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 Robert Williams, arbitrator of the Workers' Compensation Commission, in the city of Chicago, on March 28, 2014. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

- A. Was the 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 the petitioner's employment by the respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to the respondent?
- F. Is the petitioner's present condition of ill-being causally related to the injury?
- G. What were the petitioner's earnings?
- H. What was the petitioner's age at the time of the accident?
- I. What was the petitioner's marital status at the time of the accident?

- J. Were the medical services that were provided to petitioner reasonable and necessary?
- K. What temporary benefits are due: TPD Maintenance TTD?
- L. What is the nature and extent of injury?
- M. Should penalties or fees be imposed upon the respondent?
- N. Is the respondent due any credit?
- O. Prospective medical care?

FINDINGS

- On March 15, 2013, the respondent was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship existed between the petitioner and respondent.
- On this date, the petitioner sustained injuries that arose out of and in the course of employment.
- Timely notice of this accident was given to the respondent.
- In the year preceding the injury, the petitioner earned \$29,055.00; the average weekly wage was \$558.75.
- At the time of injury, the petitioner was 63 years of age, married with no children under 18.
- The parties agreed that the respondent paid \$745.00 in temporary total disability benefits and 38 weeks at \$495.01 per week in permanent partial disability benefits.
- The parties agreed that the petitioner is entitled to temporary total disability benefits for two weeks, from March 16, 2013, through March 24, 2013, and from August 9, 2013, through August 13, 2013.

ORDER:

- The petitioner is entitled to the sum of \$495.01/week for 38 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent of 50% loss of use of her right thumb. The petitioner failed to prove that she is entitled to additional permanent partial disability benefits for her right thumb or right hand.

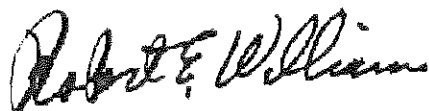
IWC 843

14IWC0843

- The respondent shall pay the petitioner compensation that has accrued from March 15, 2013, through March 28, 2014, and shall pay the remainder of the award, if any, in weekly payments.
- The medical care rendered the petitioner for her right thumb was reasonable and necessary and is awarded. The respondent shall pay the medical bills in accordance with the Act and the medical fee schedule. The respondent shall be given credit for any amount it paid toward the medical bills, including any amount paid within the provisions of Section 8(j) of the Act, and any adjustments, and shall hold the petitioner harmless for all the medical bills paid by its group health insurance carrier.

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

April 11, 2014

Date

APR 11 2014

FINDINGS OF FACTS:

The petitioner, a right-handed machine operator, lost the top of her right thumb in a machine accident on March 15, 2013. She was transported by emergency medical service to Advocate Christ Medical Center, where x-rays revealed an amputation at the distal phalanx of her first finger, normal joint alignment and no foreign bodies. Dr. Samir Shah noted that x-rays showed a complete amputation at the mid portion of the distal phalanx and a well-preserved joint. He performed a reconstruction of the amputated right thumb tip with bipedicle neurovascular advancement flap. She reported sensitivity at the tip of her thumb on April 2nd and May 3rd, locking of her ring finger on June 6th, and occasional cramping after a long day's work that improved on July 12th. On August 9th, Dr. Shah excised a remnant nail and residual matrix. At her last follow-up with Dr. Shah on October 8th, the petitioner reported some continued sensitivity at the tip, overall improvement and minimal difficulty with activities of daily living.

FINDING REGARDING WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER ARE REASONABLE AND NECESSARY:

The medical care rendered the petitioner for her right thumb was reasonable and necessary and is awarded.

FINDING REGARDING WHETHER THE PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY:

Based upon the testimony and the evidence submitted, the petitioner proved that her current condition of ill-being with her right thumb is causally related to the work injury.

14IWCC0843
14I..CC0-43

FINDING REGARDING THE NATURE AND EXTENT OF INJURY:

JCC0343

There is no AMA impairment rating or evidence concerning the impact of the petitioner's injury in regard to her occupation, age or future earning capacity, as delineated in Section 8.1(b)(i) through (iv) of the Act, nor can any effect be inferred from the evidence. Regarding Section 8.1(b)(v), the petitioner complains of hands cramps with overuse, nightly cramps, cramping up into her arms and pain in her wrist and her middle three fingers. The treating medical records do not corroborate her testimony of hand or wrist pain, pain in her middle three fingers, or hand or arm cramps. The petitioner also complains of sensitivity to touch and blows to her thumb and some difficulty holding a wrench, picking up objects and holding knives steady. Those symptoms are probable effects of the injury.

The petitioner is entitled to the sum of \$495.01/week for 38 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent of 50% loss of use of her right thumb. The petitioner failed to prove that she is entitled to additional permanent partial disability benefits for her right thumb or right hand.

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

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<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

Steven Hand,
Petitioner,

vs.

No. 10 WC 021955
No. 12 WC 005291

Illinois Cement Co.,
Respondent.

14IWCC0857

DECISION AND OPINION ON REMAND

This case appears on Remand from the Circuit Court of LaSalle County in case number 13 MR 374. On April 1, 2013, Arbitrator Andros issued a decision on consolidated claims, 10 WC 021955 and 12 WC 005291, finding that Petitioner proved that he sustained accidental injuries arising out of and in the course of his employment on both May 5, 2009 (10 WC 021955) and October 28, 2009 (12 WC 005291). However, the Arbitrator denied benefits in both claims as Petitioner's current condition of ill-being was found not causally related to either accident, but rather to a pre-existing condition. Arbitrator Andros further found that Petitioner suffered no permanent partial disability as a result of either accident. All benefits were denied. The Commission affirmed and adopted the Arbitrator's Decision, and Petitioner appealed the Commission Decision to the Circuit Court of LaSalle County.

Judge Eugene Daugherity reviewed the parties' briefs, heard oral arguments, and issued his decision on June 25, 2014. The Order stated as follows:

This matter coming before the Court on Petitioner, Steven Hand's, administrative review of the decision of the Illinois Workers' Compensation Commission, hereby finds that the Commission's decision on causation is against the manifest weight of the evidence, and the matter is remanded back to the Commission for further findings of fact, including Permanent Partial Disability.

14IWC0857**Findings of Fact**

Petitioner, a long-time employee of Respondent, was working as a welder repairman on May 5, 2009, when he struck his right knee on the corner of a channel iron. Petitioner had suffered a torn meniscus from an injury at home in 2004, had undergone surgery with Dr. Perona to repair the damage, and had returned to work for Respondent full duty that same year. Petitioner testified that he had no right knee pain or injuries after his return until he struck his knee at work on May 5, 2009. Petitioner reported his injury to his immediate supervisor that same day and sought treatment from Dr. Perona on the following day. Upon the advice of Respondent's human resources director, Petitioner transferred his care to Dr. Ortinau, the "company doctor" at Rezin Clinic. Dr. Ortinau recommended, and Petitioner began, a course of physical therapy.

While still treating with Dr. Ortinau for the May 5, 2009 injury, Petitioner re-injured his right knee. On October 28, 2009, a co-worker and friend suffered a heart attack at work and fell 30 feet onto a roof. Petitioner heard of the accident on his work radio and ran to see if he could be of assistance, as he had received first aid training. While hurrying to the accident site, Petitioner slipped and twisted his right knee. He testified that he did not notice any knee pain until after he had returned home following his shift and believed that the pain was part of his May 5, 2009 injury. Therefore, he did not immediately report the October accident. He did report the second accident on October 30, 2009 and continued treating with Dr. Ortinau for both injuries, eventually undergoing arthroscopic surgery to repair a right knee medial meniscus tear and lateral meniscus tear and post-operative rehabilitation. Petitioner returned to work for Respondent full duty on February 9, 2010. He testified that he has missed no work and has sought no treatment for his knee since Dr. Ortinau released him, but he does have trouble climbing, kneeling, and walking for long distances, and his knee continues to pop.

Causal Connection

Petitioner's treating physician, Dr. Ortinau, opined that his right knee conditions (other than the severe osteoarthritis) were related to both of his work accidents, and the surgery was necessitated by those conditions. Respondent offered the Section 12 report of Dr. Cohen who believed that Petitioner's complaints were primarily related to his osteoarthritis. On cross-examination during his deposition, Dr. Cohen admitted that he could not tell with any reasonable degree of certainty whether Petitioner's patellofemoral dysplasia and meniscal tears resulted from his pre-existing osteoarthritis or from one or both of his work accidents. Arbitrator Andros concluded as follows:

Based on the opinions of Dr. Cohen as well as the evidence of pre-existing conditions noted on the petitioner's objective evaluations as opined by Dr. Ortinau, the Arbitrator finds as a matter of law the petitioner's current condition of ill-being is not causally related to either accident of May 5, 2009 or the alleged occurrence of October 28, 2009. It is apparent based upon the petitioner's objective studies as well as the testimony of the petitioner that he had pre-existing problem [sic] associated with his knee joint.

14IWCC0857

Arbitrator Dec., p. 1. The Arbitrator found that Petitioner did sustain accidental injuries arising out of and in the course of his employment on both May 5, 2009 and October 28, 2009, but related his current complaints and his need for the December 15, 2009 surgery to his pre-existing arthritic condition. Although Dr. Cohen did state that he believed Petitioner's meniscal tears were related to his ongoing arthritic condition, he could not state that it was more likely that this was the cause rather than the alleged work accident. He testified that the cause of the tears was 50/50, accident vs. arthritis. Dr. Ortinau recognized that Petitioner suffered from pre-existing severe arthritis, but opined that his patellofemoral dysplasia resulted from his May 5, 2009 direct impact work accident and his meniscal tears resulted from his October 28, 2009 twisting accident. Dr. Ortinau further opined that Petitioner's symptoms were primarily attributable to his work injuries. He noted that, following surgery and rehabilitation, Petitioner was able to return to work full duty.

Although Petitioner admittedly suffered from knee problems before these accidents, and although his arthritis was degenerative and progressive, there was no evidence of any complaints of knee pain prior to the May 5, 2009 accident. Even if Petitioner's dysplasia and meniscal tears were pre-existing, they were apparently asymptomatic. Dr. Cohen opined it was speculative to try to determine the cause of the tears, but even if we cannot determine the cause, we can determine when the complaints began—after the work accidents. If the accidents did not cause the tears and dysplasia, they caused the conditions to become symptomatic. That is sufficient proof of causal connection under the Act, and pursuant to the Circuit Court's order, the Commission finds that Petitioner proved that his current condition is causally related to his May 5, 2009 and November 28, 2009 work accidents.

Medical Expenses

Petitioner stipulated prior to hearing that all of his related medical bills were paid. PX1A provides a summary of providers and payments, documented by attachments. Medical expenses totaling \$1,071.88 were paid by Respondent's group health provider, ESIS. Respondent is entitled to credit under Section 8(j) for those payments, provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order. According to that exhibit, Petitioner paid \$524.60 out of pocket toward his medical expenses. Therefore, the Commission orders Respondent to pay Petitioner \$524.60, pursuant to its Section 8(a) obligations.

Temporary Total Disability

Petitioner testified at hearing that he received temporary total disability for all of his lost time resulting from these injuries. The parties stipulated prior to arbitration to 6-6/7 weeks of temporary total inability to work and to Respondent's payment of \$5,428.68 toward that period of temporary total disability benefits. Therefore, the Commission finds that Petitioner is entitled to payment of temporary total disability for 6-6/7 weeks, and Respondent is entitled to credit for \$5,428.68 for payments made toward that benefit, pursuant to Section 8(b) of the Act.

Permanent Partial Disability

The sole remaining issue before the Commission is the nature and extent of Petitioner's permanent partial disability. Petitioner testified that he returned to work full duty following his post-operative rehabilitation program and that he has not sought additional treatment for his right knee or missed any work since his return to work on February 9, 2010. At hearing, he complained of some popping and difficulty climbing and kneeling. In reaching a determination of Petitioner's permanent partial disability, the Commission considered the following, pursuant to Section 8.1b(b):

- AMA ratings. Neither party submitted AMA ratings in this matter.
- Occupation. Petitioner has been employed by Respondent for 33 years in various positions. He is currently employed as a haul trucker and is working full duty. No evidence was presented as to his work duties or the level of work ability required, so the Commission cannot consider this factor in determining nature and extent.
- Age. Petitioner was 56 at the time of his first accident and 57 at the time of the second. Dr. Ortinau testified at deposition the patellofemoral dysplasia and tricompartmental arthritis were degenerative conditions unrelated to his accidents. The doctor opined, however, that Petitioner's accidents may have worsened his degenerative symptoms. His age would indicate that at least part of his knee condition is degenerative. Petitioner is unlikely to work for many more years, so any permanency would be moderately lower, as it would be less likely to affect his work ability over a long period.
- Future earning capacity. Petitioner was released to return to work full duty. At the time of hearing, he had been performing his usual job full duty for over two years and had not sought treatment for his knee during that time, although he continued to have some symptoms with kneeling, climbing and prolonged walking. Dr. Ortinau found that neither accident permanently aggravated Petitioner's patellofemoral symptoms. Therefore, the Commission finds that Petitioner's future earning capacity will most likely not be affected by these injuries.

After considering the above factors and the record as a whole, the Commission finds that Petitioner suffered a 20% loss of use of the right leg as a result of the work injuries on May 5, 2009 and October 28, 2009.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator entered on April 1, 2013 is reversed, pursuant to the order of the Circuit Court.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of \$791.69 per week for a period of 6-6/7 weeks, that being the period of temporary total incapacity for work under Section 8(b). Respondent is given a credit for \$5,428.68 for payments made to Petitioner toward temporary total disability benefits.

14IWCC0857

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to credit for the \$1,071.88 paid to medical providers made by group health, pursuant to Section 8(j), provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner \$524.60, that being the amount Petitioner paid toward his related medical expenses, as documented by PX1 and pursuant to Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of \$664.72 per week for a period of 43 weeks, as provided in Section 8(e)12 of the Act, for the reason that Petitioner has sustained a 20% loss of use of the right leg.

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

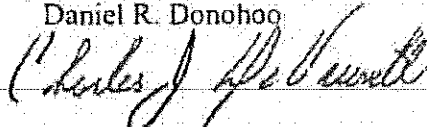
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

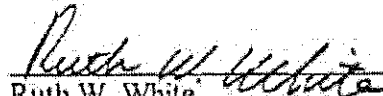
Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$30,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: OCT 06 2014

o-09/24/14
drd/dk
68


Daniel R. Donohoo


Charles J. DeVriendt


Ruth W. White

STATE OF ILLINOIS)

COUNTY OF MADISON)

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(c)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

Edna B. Murphy,
Petitioner,

vs.

Wal-Mart,
Respondent.

14IWCC0874

NO: 13 WC 16193

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 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 21, 2014 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$18,600.00. 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: OCT 8 - 2014
KWL/vf
O-9/29/14
42


Kevin W. Lamborn


Thomas J. Tyrrell


Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0874
Case# 13WC016193

MURPHY, EDNA B

Employee/Petitioner

WAL-MART

Employer/Respondent

On 3/21/2014, 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:

JOSEPH E HOEFERT ATTORNEY AT LAW PC
1600 WASHINGTON AVE
ALTON, IL 62002

WIEDNER & McAULIFFE LTD
CHRISTOPHER S DUNARD
8000 S MARYLAND AVE SUITE 550
ST LOUIS, MO 63105

STATE OF ILLINOIS)
)SS.
COUNTY OF Madison)

- | | |
|-------------------------------------|---------------------------------------|
| <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

14IWC0874

Case # 13 WC 16193

EDNA B. MURPHY

Employee/Petitioner

v.

Consolidated cases: N/A

WAL-MART

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Collinsville**, on **January 22, 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 _____

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FINDINGS

On 3/29/13, 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 \$16,896.36; the average weekly wage was \$324.93.

On the date of accident, Petitioner was 49 years of age, *single* with 0 dependent children.

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

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

Respondent shall be given a credit of \$0 for TTD, \$0 for TPD, \$0 for maintenance, \$0 for non-occupational indemnity disability benefits, and an amount to be determined for other benefits for which credit may be allowed under Section 8(j) of the Act.

Respondent is entitled to a general credit for any medical bills paid through its group medical plan for which credit may be allowed under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of \$1,522.73 to Dr. Rogalsky, \$4,911.76 and \$393.00 to BJC Healthcare, \$187.73 to Neurology Associates of Alton, and \$296.40 to Anesthesia Associates of Illinois, as provided in Sections 8(a) and 8.2 of the Act.

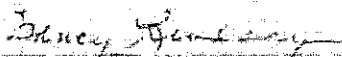
Respondent shall pay Petitioner temporary total disability benefits of \$220/week for 12 6/7 weeks, commencing 5/21/13 through 7/8/13 and 7/30/13 through 9/10/13, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$220/week for 38 weeks, because the injuries sustained caused the 10 % loss of use of the left hand and 10% loss of use of the right hand, as provided in Section 8(c) of the Act.

Respondent shall pay Petitioner compensation that has accrued from March 29, 2013 through January 22, 2014 and shall pay the remainder of the award, if any, in installments.

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

March 18, 2014
Date

MAR 21 2014

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the time of arbitration the issues in dispute were accident, causal connection, medical expenses, temporary total disability, and nature and extent. Petitioner was the sole witness testifying at the hearing. Respondent's representative, Sarah Schneider, was present throughout the hearing.

The Arbitrator finds:

Petitioner, who is right hand dominant, began working for Respondent in May of 2011 as a cashier/scanner.

Petitioner completed a medical history form for Alton Multi Specialists on February 12, 2013. She indicated that she weighed 135 pounds, occasionally drank five alcoholic beverages at one time, and had smoked at least half a pack of cigarettes per day since she was 12 years old. She listed a history of having bilateral elbow problems along with surgery in 1982. She also reported problems with vertigo and her orthopedic history included back pain, neck pain and numbness/tingling. With regard to her 1982 elbow injury she indicated that both of her elbows had been broken. She currently had problems with dizziness, fainting spells, and hearing loss. (RX 6)

On February 20, 2013, Petitioner presented to Dr. Eric Stabell for an annual physical exam and to establish care. She complained of carpal tunnel symptoms which had begun six months earlier. Dr. Stabell noted Petitioner's symptoms were worse in the morning and she worked as a "checker." Petitioner also reported a tendency to drop things with her right hand. Dr. Stabell indicated that Petitioner's exam was positive for carpal tunnel syndrome and he referred her to an orthopedic specialist for intervention. He also noted that Petitioner had chronic problems with obesity, hypertension, and tobacco abuse. Petitioner also had more recent complaints of dizziness and nausea. With respect to her complaints of vertigo, Dr. Stabell noted it was moderate in severity and occurred intermittently and while turning her neck. Petitioner also had back complaints which felt worse after standing all day at work. (RX 6)

On February 28, 2013, Petitioner presented to Dr. Randall Rogalsky for evaluation. Petitioner reported pain, night waking, dropping objects and difficulty with day to day activities as a cashier for Respondent. Dr. Rogalsky diagnosed Petitioner with clinical bilateral right greater than left carpal tunnel syndrome. Petitioner had slight atrophy on the right side which

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the doctor felt might necessitate earlier surgical intervention. He recommended nerve conduction studies and provided Petitioner with a cock-up wrist support. In addition he recommended over the counter anti-inflammatory medication. (PX 1, Dep. Ex. 2)

On March 19, 2013, Petitioner underwent the recommended ENG/NCV. The study reportedly showed evidence consistent with mild bilateral carpal tunnel syndrome. (PX 1, Dep. Ex. 2)

On March 29, 2013, Petitioner returned to Dr. Rogalsky reporting continued symptoms. He indicated that Petitioner had been unresponsive to conservative measures and as a result recommended bilateral carpal tunnel release surgeries. (PX 1, Dep. Ex. 2)

Petitioner signed her Application for Adjustment of Claim on May 9, 2013. (AX 2)

Petitioner underwent a right carpal tunnel release on May 21, 2013. (PX 1, Dep. Ex. 2)

Petitioner presented to Debbie Seymour, a certified nurse practitioner, on May 31, 2013 for a post-surgical follow-up. Petitioner was doing fairly well with expected stiffness and some ongoing numbness. Petitioner could not make a full fist. Petitioner was instructed to engage in range of motion and strengthening exercises and to continue the use of anti-inflammatories. Petitioner stated that she did not believe she needed physical therapy at that point. (PX 1, Dep. Ex. 2)

Petitioner was re-evaluated by Ms. Seymour on June 26, 2013 and reported that she had not had physical therapy for a few weeks. Ms. Seymour called physical therapy and was told that Petitioner had discontinued treatment and decided to wait until she returned for a follow up visit. She also indicated that she would not keep Petitioner off work indefinitely until the surgery was scheduled. She re-ordered physical therapy and asked that Petitioner's work activities in physical therapy be increased. (PX 1, Dep. Ex. 2)

On July 8, 2013, Petitioner returned to Ms. Seymour and reported that she had been discharged from therapy as all of her goals with respect to the right hand had been met. Petitioner was able to do her normal day-to-day activities and felt that she was able to return to work. A left carpal tunnel release was scheduled for July 30, 2013. (PX 1, Dep. Ex. 2)

On July 22, 2013 Dr. Rogalsky authored a letter to Petitioner's attorney expressing his opinion that Petitioner's job as a cashier for Respondent was the "significant, aggravating/accelerating factor" in the development of Petitioner's bilateral carpal tunnel syndrome. A copy of the

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letter was sent to Chad Perry, Respondent's adjuster. (PX 1, Dep. Ex. 2, pp. 28-29)

Petitioner underwent the recommended left carpal tunnel release on July 30, 2013. (PX 1, Dep. Ex. 2)

Petitioner returned to Ms. Seymour on August 9, 2013 for a post-surgical follow-up. Petitioner remained off work and physical therapy was ordered. (PX 1, Dep. Ex. 2)

On August 30, 2013, Petitioner presented to Dr. Rogalsky for post-op follow-up. He noted that both her right hand was doing extremely well and her left hand release had shown excellent results. Examination revealed no abnormalities. He discharged Petitioner from care and released her to return to work on September 10, 2013 without restrictions. This is the last medical record on file. (PX 1, Dep. Ex. 2)

Dr. Beyer conducted an independent medical examination on October 29, 2013. Dr. Beyer reviewed Petitioner's job description (PX 2), took a detailed history, reviewed medical records, and conducted a physical examination. Ultimately, he diagnosed Petitioner with bilateral carpal tunnel syndrome. However, he did not believe the condition was due to Petitioner's duties as a cashier. (RX 2)

In support of his opinion he cited several articles which indicate there is no scientific evidence that occupational environmental exposure contributes to or aggravates carpal tunnel syndrome. Instead, carpal tunnel syndrome has specifically been found to be a result of biological, developmental, and genetic factors. (RX 2)

Dr. Beyer believed that the primary factors for the development of carpal tunnel syndrome in Petitioner were her gender, age, smoking half a pack cigarettes since age 12, and a genetic predisposition. He also found it significant that Petitioner experienced significant weight gain over a 2 year period, going from 98 pounds to 136 pounds, which correlated with her development of carpal tunnel syndrome. He further noted that hypertension and peripheral vascular disease might also play a role. As far as Petitioner's treatment, he believed it had been reasonable to date, but did not believe any further medical care was necessary. He placed Petitioner at MMI, noted there was no need for work restrictions, and opined that Petitioner did not have any permanent impairment. (RX 2)

Dr. Rogalsky's deposition was taken on December 12, 2013. Dr. Rogalsky is a board certified orthopedic surgeon. (PX 1, p. 5) Dr. Rogalsky testified consistent with his office notes and records. Additionally, he testified that Petitioner's scanning and typing duties as a cashier during the two years she was

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employed with Respondent were a "significant aggravating" factor in the development of her bilateral carpal tunnel syndrome. (PX 1, pp. 11-13) He also noted that there was no specific traumatic episode on a specific date which would suggest an acute injury and thus he believed her carpal tunnel syndrome was due to chronic repetitive aggravating activities. (PX 1, p. 13)

Dr. Rogalsky Dr. Beyer's opinion that there was no scientific evidence supporting the conclusion that carpal tunnel syndrome was generally due to occupational risks. (PX 1, p. 17) In Dr. Rogalsky's opinion the medical literature supported the conclusion that occupational hazards could, at least, be an aggravating factor in the development of carpal tunnel syndrome and to completely reject the workplace as any type of contributing factor would be an overstatement. (PX 1, p. 17) However, he did not cite specifically to any articles supporting his position, and also did not address the reliability of that literature. (PX 1, p. 18)

On cross-examination, Dr. Rogalsky indicated that he did not take a detailed written history of Petitioner's job duties during his initial visit. In addition, his only knowledge of a cashier's duties were his general layperson's familiarity with what a cashier does together with his professional experience of 27 years with people in similar positions. (PX 1, p. 19) More specifically, Dr. Rogalsky testified that although he knew Petitioner worked 30 to 34 hours per week over the previous two years, he did not know how long Petitioner's shifts were. He also did not know how long Petitioner had to go without taking breaks during her shift. Further, he admitted that he did not know how often Petitioner was required to scan or type on the cash register, or how often Petitioner had to move heavy objects along the conveyor belt, as opposed to lighter objects. He also did not know how often Petitioner used her left hand as opposed to her right hand in the performance of her duties. (PX 1, pp. 30-31)

Dr. Rogalsky also acknowledged that Petitioner had numerous co-morbidities that would predispose an individual to the development of carpal tunnel syndrome. These included her gender, her age of 49, and the fact that she had smoked since the age of 12. (PX 1, p. 25)

Dr. Rogalsky testified that his final visit with Petitioner was on August 30, 2013. At that time, he believed Petitioner had excellent results with respect to both of her hands and his examination was benign. Dr. Rogalsky testified that Petitioner had no complaints with respect to either hand, and if she had voiced any, he would have recorded them. (PX 1, pp. 23-24)

On further re-cross-examination Dr. Rogalsky was asked if all activities of daily living could have aggravated Petitioner's

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carpal tunnel syndrome to which he responded "Yes." (PX 1, p. 32) He further explained that even so, there is a difference between aggravating activities and causative activities. In his opinion Petitioner had significant carpal tunnel syndrome when he initially saw her and, therefore, any activity, such as sleeping, would have aggravated it. However, sleeping didn't cause Petitioner's problem to develop; rather, her work duties contributed to the development. (PX 1, pp. 32-33)

Dr. Craig Beyer's deposition was taken on December 30, 2013. (RX3). Dr. Beyer testified he is an orthopedic surgeon and has been practicing over 20 years. (RX 3, p. 6) A copy of his CV was included as an Exhibit to the deposition and indicates Dr. Beyer was trained at the University of Chicago Medical School, followed by a five year orthopedic surgery residency at the Mayo Clinic. Additionally, Dr. Beyer is board certified in orthopedic surgery and actually acts as an examiner for board certification. (R Dep. Ex. 1). Dr. Beyer has also performed over 1,000 carpal tunnel releases in his career. (RX3, p. 18)

Dr. Beyer testified that he performed an independent medical examination of Petitioner on October 29, 2013. (RX3, p. 6) Prior to the examination he reviewed medical records from Dr. Rogalsky, along with Petitioner's March 19, 2013 EMG. (RX3, p. 8) He also had a clear understanding of Petitioner's job duties, as he reviewed a job description from the insured, and took a history from Petitioner. (RX3, p. 10) Based on the medical records, his understanding of Petitioner's job description, and his physical examination, Dr. Beyer did not believe Petitioner's job activities with Respondent caused, aggravated, or exacerbated the diagnosis of bilateral carpal tunnel syndrome. (RX3, p. 10)

In support of his position, Dr. Beyer pointed out that Petitioner's job description as a cashier did not reach what he would consider repetitive tasking. (RX3, p. 11) He stated that Petitioner had several known predisposing risk factors for carpal tunnel syndrome, including her age, gender, significant weight gain, 37 year half pack per day smoking history, and genetic predisposition. (RX3, p.15) He believed that those factors were responsible for the development of Petitioner's carpal tunnel. (RX3, p. 15)

Additionally, Dr. Beyer went into great detail about the medical journal articles he had provided in support of his causation opinions and they were attached to the deposition transcript. (RX3, p. 11)

The first article Dr. Beyer went into detail about was from the Journal of Neurology published by the Mayo Clinic. (RX3, p. 11) According to the article, the rate of carpal tunnel syndrome in the general population is the same, whether or not people perform repetitive tasks. (RX3, p. 11)

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The most relevant study in Dr. Bayer's opinion was an article published by the Journal of Hand Surgery, which took a look at 166 articles that had been published on carpal tunnel syndrome, and following a comprehensive review of the state of the current literature, concluded that there was no scientific evidence of relationship between work and the development of carpal tunnel syndrome. (RX 3, p. 11) There were some studies that found a relationship between repetitive trauma and carpal tunnel syndrome, but these studies were rejected as being unreliable. In contrast, the studies identified as being of the highest quality suggest it would be scientifically irresponsible to implicate occupational factors in the development of carpal tunnel syndrome. (RX3, p. 12) Ultimately, the article concluded that carpal tunnel is largely a biological issue rather than an environmental or occupational issue. (RX3, p. 12)

On cross-examination, Dr. Bayer was asked whether he had ever found a carpal tunnel case to be work-related when he was the treating physician. Although Dr. Bayer could not recall specifically, he reiterated that there was no scientific evidence that carpal tunnel syndrome was due to occupational hazards generally. (RX3, p. 20) Additionally, he did believe that there were some cases where repetitive trauma would be work-related. However, those cases were rare and involved individuals who were required to keep their wrist in an extreme flexed position for an extended period of time, such as a colorectal surgeon. (RX3, p. 24) He noted that Petitioner's duties as a cashier did not require her to keep her hands continuously flexed, but instead she alternated between flexion and extension. (RX3, p. 26)

Dr. Bayer acknowledged that there were other studies and other orthopedic surgeons who believed occupational factors played a role in carpal tunnel syndrome. However, there were no credible studies that he was aware of in the medical literature supporting that position. (RX3, pp. 27-29, 38-39)

Dr. Bayer also acknowledged performing approximately 1,000 prior carpal tunnel releases on patients of his. Dr. Bayer was asked if in any of the prior 1,000 carpal tunnel releases he had performed did he opine or causally relate it to that person's employment and he answered "very few, if any". Dr. Bayer then stated that he may indeed have performed carpal tunnel releases and opined that that person's job duties were causative for their carpal tunnel condition. Dr. Bayer then stated that he couldn't recall ever opining such, but that it might be possible but unlikely. (RX. 3, pp.18-20) When asked if he has ever billed work comp for any of his prior 1,000 carpal tunnel releases, Dr. Bayer responded, "I don't know you would have to ask my billing department". (RX. 3, p.21) When asked what occupation the workers were engaged in when he may have opined that repetitive trauma caused their carpal tunnel, Dr. Bayer completely evaded the answer

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to that question. (RX. 3, p. 21)

Dr. Beyer did acknowledge that persistent flexion of the wrist is one of the positions that may contribute to carpal tunnel. (RX. 3, p.26) It is Dr. Beyer's opinion that pushing one's self in a wheelchair, playing classical guitar and performing colorectal surgery could cause one to develop carpal tunnel given the persistent flexion of the wrist. (RX. 3, pp.24,26,35) Dr. Beyer acknowledged that a cashier/scanner is required to flax the wrist if they are sweeping the items through a scanner. (RX. 3, p.27)

With respect to Petitioner's medical care, Dr. Beyer indicated that Petitioner's treatment had been reasonable, but emphasized that it had no relation to her occupation. He did not believe Petitioner would require any further medical care. He further indicated that there was no need for work restrictions and Petitioner was at maximum medical improvement. He did not believe Petitioner would suffer from any permanent disability as a result of her condition. He testified that his opinions were all given to a reasonable degree of medical and surgical certainty. (RX3, pp. 15-17)

At arbitration Petitioner testified that as a cashier/scanner she uses both of her hands. Petitioner testified that she waves her hand in front of a belt light to start the conveyor belt so that the items to be purchased can come down the belt for scanning and bagging. Petitioner uses her left hand to turn on the register and then she picks up an item, scans, it, and bags it in the bags located on the carousel to her left. Petitioner testified that she picks up an item one time and they can weigh up to 25 or 50 lbs (such as with dog food, cat litter, and "35" packs of water). Once the bags are filled, Petitioner is required to pick them up and place them in the customer's cart. Petitioner testified that she does the same activities with both hands and her wrist is in a flexed position as though she was playing or strumming a guitar. Petitioner explained that she will generally pick up an item with her right hand and scan it and then place it in her left hand for bagging. When asked if she considered herself engaged in continuous flexion of her wrist, she stated, "Absolutely." She also testified that her job requires her to perform firm grasping as when she has to grab/hold a large bag of dog food to place on the carousel and/or grocery cart.

Petitioner testified that there is a goal (or policy) at Respondent as far as how many scans are expected of their cashiers and this is referred to as a "SPH" (Scans Per Hour). Petitioner testified that she is expected to scan and bag at least 850 items per hour and that since she has worked for Respondent she has been able to scan at this pace. Accordingly, in a one hour period at least 850 items are scanned which equates to lifting an item approximately 15 times per minute. Petitioner testified that since

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going to work for Respondent, her job duties have not varied and she "pretty much" scans all the time.

Petitioner testified that she began treating with Dr. Rogalsky for bilateral hand symptoms in February of 2013 after noticing symptoms for the preceding four to six months. Petitioner testified that she was working approximately 30 to 34 hours per week, 6 to 6 1/2 hours per day. If Petitioner worked over six hours in a shift she would be given two 15 minute breaks and a one hour lunch. If she didn't work six hours, she would receive two 15 minute breaks.

Petitioner testified that when her symptoms first began she would notice numbness and tingling in her hands which would worsen as she scanned items all day long. Petitioner testified she would shake her hands to get the feeling back into them. According to Petitioner by the end of the day her hands were painful. Petitioner also testified that by the time she went to Dr. Rogalsky in February of 2013 she was dropping items on the floor.

While working for Respondent, Petitioner denied having any outside hobbies or activities requiring repetitive use of her upper extremities.

Petitioner also testified she underwent a right carpal tunnel release on May 21, 2013 and was taken off work at that time. She then returned to work on July 9, 2013 but then underwent a left carpal tunnel release on July 30, 2013 for which she was again taken off work. Petitioner resumed working for Respondent as a cashier on September 10, 2013.

Petitioner further testified that she continues to have some numbness in the area of the incisions at the bottom of her palms. She also notices a weakness in her grip. Petitioner denied being diabetic or having thyroid disease.

On cross-examination Petitioner acknowledged a history of smoking, having begun at age 12. Petitioner estimated she smokes about a half a pack per day. Petitioner has also been diagnosed as being pre-hypertensive; however, she felt it was an isolated diagnosis having been associated with some stress. In any event, she would not disagree with such a diagnosis if it was recorded as such by Dr. Stabell. She also acknowledged telling Dr. Stabell she had experienced a significant weight gain in the two years prior to her initial visit with him. During that same time Petitioner also experienced vertigo which occasionally required her to leave work.

On further cross-examination Petitioner acknowledged having sustained bilateral elbow fractures in 1982 for which she underwent surgery. Petitioner testified that the fractures did not affect her wrists. Petitioner acknowledged that Dr. Beyer told her

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that pre-hypertension and smoking are factors that can predispose one to carpal tunnel syndrome.

Regarding her job duties, Petitioner agreed that sometimes you don't have to lift the item but can slide it across the scanner; however, she added that the bottom scanner doesn't work half the time which requires the cashier to lift the item and scan it. She also acknowledged that sometimes customers leave the heavy items in their cart (such as dog food) thus doing away with the need to lift the bag. She then uses a hand scanner to scan the item's price. Petitioner also agreed that most of the items she lifts are on the lighter side and only about 30% of the items are heavier. Petitioner estimated her hands were in a flexed position about 80% of the time. Petitioner acknowledged there could be slow times which would make it hard to meet the goal of 850 items per hour; however, most of the time she thought she met her goal. Petitioner primarily used her right hand to scan and her left hand to pick the item off the conveyor belt. Sometimes she needs to use both hands to lift a heavier item. She uses her left hand to place the items into the bag(s). She uses both hands to place the bags in the carts. Petitioner estimated she loads items in the customers' carts, fifty percent of the time.

Petitioner further explained that she is required to bag everything and that her work days per week varied but the hours were generally 30 to 34 and in 6 to 6 1/2 hour shifts.

Prior to working for Respondent Petitioner worked for six to seven years as a cashier and never experienced any symptoms.

Petitioner also testified that after her right carpal tunnel release, she was instructed to undergo physical therapy which she did. However, she stopped after four visits because she was feeling pretty good. She later resumed her therapy after seeing her doctor and noticing she wasn't up to par.

Petitioner agreed that when she was fully released by Dr. Rogalsky she was not given any restrictions and when re-examined on August 30, 2013 she was doing extremely well and denied any difficulty with activities of daily living and lacked any significant pain in either hand. Petitioner has not returned to Dr. Rogalsky and takes no medication.

Petitioner's Exhibit #2 is a job description for a cashier/scanner. This job description indicates that cashiers/scanners are required to place all items in a customer's cart upon packaging and that cashiers/scanners are required to move, lift, carry and place merchandise and supplies weighing up to 25 pounds without assistance. (PX 2)

The Arbitrator concludes:

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C&F. Regarding whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, and whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator concludes:

While accident is in dispute, the focus of the dispute appears to be the "arising out of" requirement and not the date of manifestation. "When a worker's physical structure gives way under repetitive job-related stresses on the body, the injury is considered to arise out of and in the course of employment." Interlake Steel, Inc. v. Industrial Comm'n, 130 Ill.App. 3d 269, 273 (1985).

The Arbitrator concludes that Petitioner did sustain an accident on March 29, 2013 that arose out of and in the course of Petitioner's employment with Respondent, and that Petitioner's current condition of ill-being in her hands is causally related to said accident. In so concluding the Arbitrator relies upon the medical opinions of Dr. Rogalsky which are deemed more persuasive than those of Dr. Beyer.

In this case, two experts offered divergent opinions on a medical causation opinion. Dr. Rogalsky, Petitioner's treating surgeon, opined that Petitioner's work duties were the "significant, aggravating/accelerating factor" in the development of her bilateral carpal tunnel. (PX.1, Depo. Ex.2, p.28) Additionally, Petitioner testified and two sets of medical records confirmed, that when Petitioner's symptoms became significant, said symptoms were most noticeable while performing her cashier/scanning duties for Respondent. (PX.1, p.6; RX.6)

Conversely, Dr. Beyer, Respondent's Section 12 examiner, was of the opinion that Petitioner's work duties did not play a role in her carpal tunnel syndrome; rather, her condition was caused by her several associated risk factors. What's more, Dr. Beyer opined that "environmental or occupational factors have not been found to play a role in the development of carpal tunnel," i.e., a person's job duties can never cause that person's carpal tunnel, unless they use a wheelchair, play a guitar or are colorectal surgeons. Dr. Beyer also acknowledged that Petitioner's job would involve a flexed wrist while scanning items. After reviewing Dr. Beyer's cross-examination the Arbitrator notes he made enough concessions regarding the flexion activity associated with Petitioner's job to undermine his opinion. Dr. Rogalsky also credibly countered some of Dr. Beyer's opinions (as to the caused of Petitioner's carpal tunnel syndrome such as her weight -- PX 1, p. 27). Finally, the Arbitrator notes that Petitioner's testimony regarding her job duties was credible and un rebutted.

J. Regarding whether or not Respondent has paid all appropriate charges for all reasonable and necessary medical services,

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the Arbitrator concludes:

Respondent disputed liability for the medical bills and not their reasonableness. Consistent with the Arbitrator's determination of accident and causal connection, Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of \$1,522.73 to Dr. Rogalsky (PX 1, Dep. Ex.1, p.24), \$4,911.76 and \$393.00 to BJC Healthcare (PX 1, Dep. Ex.3), \$187.73 to Neurology Associates of Alton (PX 1, Dep. Ex.4) and \$296.40 to Anesthesia Associates of Illinois (PX 1, Dep. Ex.5), as provided in Sections 8(a) and 8.2 of the Act. Per the stipulation of the parties, Respondent shall be allowed a general credit under Section 8(j) of the Act for any medical bills paid pursuant to it. (AX 1)

K. Regarding what temporary benefits are in dispute, the Arbitrator concludes:

Respondent did not dispute the period of temporary total disability but liability for same. (AX 1) Consistent with the Arbitrator's determination on accident and causal connection, Respondent shall pay Petitioner temporary total disability benefits of \$220/week for 12 6/7 weeks, commencing May 21, 2013 through July 8, 2013 and July 30, 2013 through September 10, 2013, as provided in Section 8(b) of the Act.

L. Regarding the nature and extent of Petitioner's injury, the Arbitrator concludes:

This accident occurred on March 29, 2013, and is subject to Section Sec.8.1b. of the Illinois Workers' Compensation Act, which provides that for accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:

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

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors: (1) the reported level of impairment pursuant

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to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order. (Source: P.X.97-18,eff.6-28-11)

In accord with Section 8.1b of the Act, the Arbitrator has considered the following factors when reaching her decision regarding the issue of permanency:

(i) The reported level of impairment pursuant to subsection (a): Neither party submitted an impairment rating; therefore, this factor shall not be considered by the Arbitrator.

(ii) The occupation of the injured employee: Petitioner worked for Respondent as a cashier/scanner at the time of her accident and she returned to work at her pre-injury occupation as a cashier/scanner. She has been working without restriction since her release by Dr. Rogalsky on September 10, 2013, over four months prior to the date of arbitration. She did not testify to any problems or complaints associated with performing her job duties.

(iii) The age of the employee at the time of the injury: Petitioner was 49 years of age at the time of injury. No evidence was presented as to how Petitioner's age might affect her disability.

(iv) The employee's future earning capacity: Petitioner returned to her pre-injury occupation and no evidence was presented to show her injury might affect her future earning capacity.

(v) Evidence of disability corroborated by the treating records: Petitioner underwent bilateral carpal tunnel releases for which she currently complains of numbness at the incisional sites and diminished strength in her hands. However, as of her final visit with Dr. Rogalsky on August 30, 2013, it was noted Petitioner had received excellent results from her surgeries and was doing extremely well. Thus, there is some discrepancy between Petitioner's testimony and what the treating records reveal; however, the Arbitrator notes that when evaluated by Dr. Beyer on October 29, 2013 Petitioner reported mild incisional irritability. Petitioner has no difficulties with activities of daily living, no significant pain in either hand, takes no medication, and has no further medical care scheduled.

The Act provides that no single enumerated factor shall be the

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sole determinant of disability. Petitioner underwent surgical releases to her hands/wrists and was released to her pre-injury job with no restrictions. She continues working in that position and her treating doctor described her results as "excellent." There was no impairment rating. How Petitioner's age might affect her disability and how her injury might affect her future earning capacity are unknown. She no longer treats for her condition. She takes no medication. All in all, her complaints are minor. Weighing these factors, the Arbitrator finds that as a result of the accident Petitioner has sustained permanent partial disability to the extent of 10% loss of use of the left hand and 10% loss of use of the right hand ((190 weeks X 10% = 19 weeks) + (190 weeks X 10% = 19 weeks) = 38 weeks).

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(c)18)
<input checked="" type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANTHONY JONES,

Petitioner,

14IWCC0880

vs.

NO: 12 WC 37009

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by both parties 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 only to the extent of reducing the benefits awarded under Section 8(e) of the Act for injuries Petitioner sustained to his left leg. The Decision of the Arbitrator is attached hereto and made a part hereof.

The Decision of the Arbitrator was filed with the Illinois Workers' Compensation Commission on March 14, 2014, and, in said decision, Arbitrator Mason concluded Petitioner lost 25% use of his left leg due to injuries sustained to his left knee on August 22, 2012. In arriving at her decision, Arbitrator Mason applied the criteria for determining permanent partial disability as is set forth in Section 8.1b of the Act. The Commission takes no issue with the conclusions arrived at by Arbitrator Mason in her application of Section 8.1b with the exception to the evidence of disability corroborated by the treating medical records.

In support of her findings, Arbitrator Mason noted Petitioner's testimony as to the lingering effects of his injury with respect to his work activities as well as to non-work activities. Petitioner testified he now works more slowly and deliberately and has continues to have difficulty with stairs and ladders. Outside of the work environment, Petitioner testified that he no longer rides a bicycle and avoids picking up his granddaughter. The Commission, in reviewing Petitioner's medical records and testimony and comparing the two, finds Petitioner engaged in

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embellishment.

The Commission notes Petitioner's complaints were more pronounced when he was examined by Dr. Michael Gross, his choice for an AMA examination, and by Dr. Shane Nho, Respondent's AMA examiner, than they were when he was examined by his own treating physician, Dr. Michael Maday, and his physical therapists at ATI. Before Drs. Gross and Nho, on October 30, 2013, and December 17, 2013, respectfully, Petitioner demonstrated diminished range of motion in his left knee. Dr. Maday, however, found the range of motion of Petitioner's left knee to be full as early as February 20, 2013, and either full or essentially full on subsequent examinations. Petitioner's physical therapists, the individuals most familiar with the condition of Petitioner's knee, apparently found Petitioner's range of motion of his left knee to be so unremarkable that they did not even address it in their reports. Similarly, Petitioner made complaints of tingling above and behind his left knee, of numbness and stiffness in the morning, of his knee popping when stretching and of his knee swelling when negotiating stairs to Dr. Gross. Dr. Nho wasn't provided with a history of tingling, numbness, stiffness or knee popping. Dr. Nho only recorded Petitioner as complaining of his knee swelling but that swelling was not attributed to any particular activity. Neither Dr. Maday nor the physical therapists took a history from Petitioner of his experiencing tingling, numbness or popping. In one instance, a physical therapist did note Petitioner complaining of a little stiffness in his knee. The only constant findings among the treating and examining medical professionals were complaints of pain, particularly with negotiating stairs, and mild atrophy of the left leg.

The Commission also notes the two complaints Petitioner testified to having outside of work, not being able to ride a bicycle and having to avoid picking up his granddaughter, are not found in his medical records.

The records the Commission chooses to rely on to ascertain the condition of Petitioner's left knee is the July 11, 2013, discharge report from ATI and the September 25, 2013, progress note taken at Midland Orthopedic. The discharge report indicated that Petitioner was discharged to return to full duty work with a pain intensity of 3/10. The same report also indicated Petitioner was told that he will continue to have "a little pain" in his knee. The records from Midland Orthopedic, created approximately two months after Petitioner's discharge from ATI, documented only Petitioner having "some pain" and "some difficulty" with the stairs. The apparently relatively low level of pain Petitioner is experiencing is corroborated by Petitioner indicating on Dr. Nho's intake form that he treats his condition with Advil and Tylenol and in his testimony that he doesn't take prescription medication.

The Commission takes the position that Petitioner was more forthcoming concerning the true condition of his left knee with Dr. Maday and physical therapists than he was with Dr. Gross, Dr. Nho or Arbitrator Mason and, in doing so, finds his left knee not be as permanently disabled as did Arbitrator Mason. Accordingly, the Commission reduces the permanent partial disability award by 2½%, finding Petitioner sustained a 22½% loss of use of his left leg.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$712.55 per week for a period of 48.375 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 22½% loss of use of the left leg.

14IWCC0880

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$34,600.00. 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: OCT 06 2014

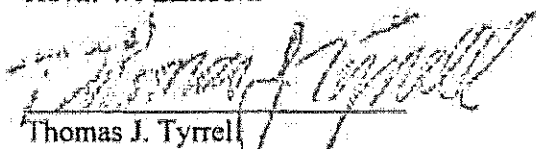
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O: 09/29/14

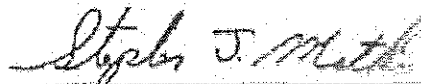
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K

Kevin W. Lamborn



Thomas J. Tyrrell



Stephen J. Mathis

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 checked="" type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input 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

Terina Green,
Petitioner,

vs.

NO: 12 WC 35460

PPG Industries,
Respondent.

14IWCC0912

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 benefit rates, temporary disability and permanent disability, and being advised of the facts and law, corrects the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission corrects the permanent partial disability benefit rate to \$695.78 per week, the maximum rate for the date of the accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$791.32 per week for a period of 22 2/7ths 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 87.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the permanent disability to 17.5% of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$50.00 for medical expenses under §8(a) and 8.2 of the Act.

14IWCC0912

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

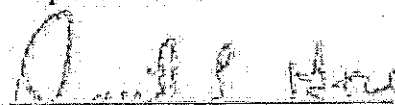
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$72,000.00. 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.

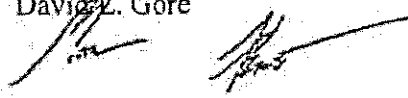
DATED:
SJM/msb OCT 24 2014
o: 9-25-14
44



Stephen Mathis



David L. Gore



Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GREEN, TERINA

Employee/Petitioner

Case# 12WC035460

PPG INDUSTRIES INC

Employer/Respondent

14IWCC0912

On 1/21/2014, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0333 SHAY & ASSOC LAW FIRM LLC
TIMOTHY M SHAY
260 E WOOD ST
DECATUR, IL 62523

0481 MACIOROWSKI SACKMANN & ULRICH LLP
ROBERT B ULRICH
10 S RIVERSIDE PLZ SUITE 2290
CHICAGO, IL 60606

14IWCC0912

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

Terina Green
Employee/Petitioner

Case # 12 WC 35460

v.

Consolidated cases: N/A

PPG Industries, 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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Urbana**, on **November 22, 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 _____

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FINDINGS

On February 6, 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 \$61,722.96; the average weekly wage was \$1,186.98.

On the date of accident, Petitioner was 39 years of age, *married* with 2 dependent children.

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

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

Respondent shall be given a credit of \$15,826.40 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$15,826.40.

Respondent is entitled to a credit of \$0 for any medical bills paid by its group medical plan for which credit may be allowed under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$791.32 per week for 22 2/7 weeks, commencing September 26, 2012 through February 28, 2013, as provided in Section 8(b) of the Act. Respondent shall be given a credit of \$15,826.40 for temporary total disability benefits previously paid.

Respondent shall pay Petitioner \$712.19 per week for a period of 87.5 weeks representing 17.5 % loss of the person as a whole, pursuant to Section 8(d) 2 of the Act.

Respondent shall pay the outstanding medical bill to Dr. Jones in the amount of \$50.00, as set forth in Petitioner's Exhibit 7, directly to the medical provider pursuant to the Medical Fee Schedule as set forth in Section 8(a) 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.



Signature of Arbitrator

January 15, 2014

Date

JAN 21 2014

Terina Green v. PPG Industries, Inc., 12 WC 035460

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Arbitrator finds:

Petitioner testified she worked for Respondent from June 2, 2010 through May 30, 2012. Petitioner worked as a lead person and her job duties included cross-training herself to be able to do any of Respondent's jobs involving glass or containers and supervising inventory. Petitioner testified that when she injured her left shoulder on February 6, 2012, she was performing a job other than one normally assigned to her. Petitioner testified that on February 6, 2012, she was assisting with emptying dross boxes for the glass bath rack. Petitioner testified she was required to use a ten to fifteen pound iron hook and pull tin and other materials from the liquid molten glass bath. Petitioner testified that the liquid glass was really thick, and required significant manual labor to physically remove items. Petitioner testified that this required above shoulder level activity for approximately six hours.

Petitioner testified that after the job was performed, she noticed that her left shoulder was sore, painful, and uncomfortable. Petitioner is left hand dominant and had never hurt her left shoulder prior to this accident.

Petitioner reported the accident to Respondent's first aid department on February 22, 2012. (RX 1) She was then seen by Dr. Murtuza Bahrainwala, Respondent's physician, who put her on Naproxen for two days.

Petitioner underwent a left shoulder x-ray on February 23, 2012 at Decatur Memorial Hospital, as ordered by Dr. Bahrainwala of DMH Corporate Health Services. It was unremarkable. (PX 1, 2)

When the Naproxen proved unhelpful, Dr. Bahrainwala ordered an MRI. That was done on March 5, 2012. The MRI revealed degenerative changes of Petitioner's acromioclavicular joint without significant impingement and an abnormal signal within the rotator cuff tendon consistent with tendonopathy and a partial tear. In addition, fluid was seen within the subacromial/subdeltoid bursa with suspected full-thickness, and a partial width tear without evidence of retraction. An apparent split thickness tear of the biceps tendon within the groove was also noted. (PX 1, 2, 5) Upon review of the MRI, Dr. Bahrainwala referred Petitioner to Dr. Tyler Jones, an orthopedic surgeon. (PX 5)

On March 13, 2012, Petitioner presented to Dr. Tyler Jones, a board certified orthopedic surgeon, with complaints of left anterior shoulder and upper arm pain after pulling and lifting with machinery for about six hours on February 6, 2012, a work activity she had never performed before. (PX 5) Petitioner described her pain as dull, throbbing, and worsening. (PX 5)

Upon physical examination, Dr. Jones noted Petitioner was weak with pain in the supraspinatus area. Dr. Jones further noted upon review of the MRI and physical examination that Petitioner had a possible partial thickness tear and long head biceps tear. Dr. Jones diagnosed Petitioner with left shoulder pain and traumatic shoulder arthritis. Petitioner underwent a steroid injection as recommended by Dr. Jones. He also ordered physical therapy to treat Petitioner's partial thickness tear and left shoulder pain. (PX 5) Dr. Jones placed Petitioner on light work duty of no lifting, pulling, or pushing of ten pounds or more with her left arm, and no overhead work. (PX 5)

Petitioner testified that the injection provided no relief. She was able to work within the restrictions.

Petitioner then underwent eight physical therapy sessions from March 20, 2012 through April 9, 2012 at Decatur Memorial Hospital. At her last session Petitioner reported increased pain and the therapist recommended continued therapy to address unmet goals. (PX 3)

Petitioner was re-examined by Dr. Jones on April 10, 2012 reporting ongoing pain primarily between her left elbow and shoulder. Petitioner stated that the physical therapy made her symptoms worse. Upon physical examination, Dr. Jones noted that the pain was likely from the bicep tendon, and discussed a possible diagnostic scope with Petitioner. Dr. Jones diagnosed Petitioner with a left bicep tendon rupture, and left shoulder pain. Petitioner's work restrictions were removed and she was assigned to regular duty. (PX 5)

Petitioner testified that sometime in late March/early April or late April/early May she received a pay demotion from \$19.50/hour to \$11.50/hour. Petitioner testified that she continued performing the same job just at a lower rate of pay and without the title of "team leader." Petitioner further testified that while the demotion was to be plant-wide, it wasn't.

Thereafter Petitioner wished to obtain a second opinion and asked Dr. Jones to provide her with a copy of her records. The doctor did so and Petitioner scheduled an appointment with Dr. Jeffery Smith. (PX 5, 6)

Petitioner presented to Dr. Smith of the Central Illinois Hand Center on May 10, 2012. Petitioner provided a history of her undisputed accident as well as a summary of her treatment with Dr. Jones. On examination, Dr. Smith noted limited forward elevation and lateral abduction of Petitioner's left shoulder. Petitioner had positive impingement signs and pain with resisted elbow flexion and tenderness directly over her biceps tendon. Dr. Smith's diagnosis was left shoulder partial rotator cuff tear and proximal biceps tear. Petitioner reported she had been in therapy which she felt might have aggravated her shoulder. Dr. Smith recommended a trial of a second steroid injection and a home exercise program; however, if that did not help he also believed surgery might be necessary. (PX 5)

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Petitioner testified that neither the second cortisone injection nor her home exercise program had provided any relief.

Petitioner voluntarily terminated her employment with Respondent on May 30, 2012 as she had a better employment opportunity with G & D Integrated and chose to take it. Petitioner began working as a production supervisor with G & D earning an annual salary of \$41, 500.00.

On May 31, 2012, Petitioner returned to Dr. Smith for a follow-up evaluation of her left shoulder. Petitioner was doing pretty well and her pain and function had improved. Biceps strength was strong. Dr. Smith noted that Petitioner had some discomfort with overhead elevation but could easily forward elevate and abduct her shoulder to 120-130°. According to Dr. Smith's office note, "We discussed this, the issue of w/c and job changes. I told her to seek legal counsel for policies regarding her ability to obtain w/c for treatment if she changes jobs or declines to pursue surgery at this time. We will wait to hear from her in the future." (PX 6)

On July 9, 2012, Petitioner was examined by Dr. Atluri at Respondent's request for purposes of issuing an impairment rating. Thereafter, Dr. Atluri issued a report. (RX 5, dep. ex. 2) In his report Dr. Atluri reviewed Petitioner's history of the accident, current symptoms, work history, physical examination and records (including an MRI of Petitioner's left shoulder). His impression was that Petitioner had a left rotator cuff tear and adhesive capsulitis which had plateaued in terms of conservative treatment. He noted surgery might improve her symptoms but Petitioner had refused it, to date. Dr. Atluri based his impairment rating on a diagnosis of a full thickness rotator cuff tear with residual symptoms unsupported by consistent objective findings (the doctor noting inconsistent range of motion and strength testing during the exam). The doctor ultimately provided an impairment rating of 5% of the upper extremity and 3% of the whole person. (RX 5, dep. ex. 2)

On September 20, 2012, Petitioner returned to Dr. Smith for a follow-up evaluation of her left shoulder. (PX 6) Dr. Smith reported that Petitioner was "really unable to continue doing her work. She has quite a bit of trouble with the left shoulder." (PX 6) Dr. Smith reported that Petitioner's biceps area was most painful. Specifically, compression over the biceps tendon in the bicipital groove caused Petitioner significant pain and discomfort. Dr. Smith diagnosed Petitioner with left shoulder pain and recommended that Petitioner proceed with an arthroscopic evaluation of the left shoulder including a possible subacromial decompression, partial distal clavicle excision, repair of the rotator cuff if necessary, and subpectoral proximal biceps tenodesis. (PX 6)

On September 26, 2012, Dr. Jeffrey Smith performed a left shoulder arthroscopy with subacromial decompression, a rotator cuff repair, intra-articular evaluation, debridement, and removal of loose bodies, and a proximal biceps tenodesis. (PX 4; 6) Intra-operatively, Dr. Smith noted that Petitioner "had no full thickness rotator cuff tear, but there was an impingement area where it was hitting the anterolateral corner of the acromion and it was being gouged." He added that "there was an 80% tear." Petitioner was also noted to have a slight SLAP lesion tear. (PX 4)

14IWCC0912

On October 11, 2012, Petitioner presented to Dr. Smith for a follow-up examination of her left shoulder. (PX 6) Petitioner complained of significant pain and stiffness. Dr. Smith noted therapy should begin and Petitioner remained unable to return to work. (PX 6)

On October 15, 2012, Petitioner underwent a shoulder evaluation at the Central Illinois Hand Center. (PX 6) Petitioner described her left shoulder as "cannot lift, feels like a t-rex arm". (PX 6) Petitioner was prescribed physical therapy and a CPM machine to improve her left shoulder range of motion. (PX 6)

Petitioner underwent physical therapy at the Central Illinois Hand Center, as ordered by Dr. Smith, from October 11, 2012 through February 4, 2013. (PX 6)

On October 23, 2012, Petitioner presented to Dr. Smith for a follow-up of her left shoulder. (PX 6) On exam, Petitioner was doing "really well." She had good passive range of motion; however, she did not yet have "great motion." Dr. Smith instructed Petitioner to continue with therapy and remain off work. (PX 6) It was also noted that Petitioner had very slow progress with her left upper extremity in physical therapy. (PX 6) Therapy records confirm this. (PX 6)

On November 20, 2012, Petitioner again presented to Dr. Smith for follow-up. Dr. Smith noted that Petitioner still had difficulty with active full range of motion, particularly overhead. Dr. Smith recommended Petitioner continue therapy, placed Petitioner on a five pound weight limit, continued her restriction from work, and noted concerns regarding the development of some adhesions and scar tissue. (PX 6)

Petitioner testified that she could have returned to work for G & D after her surgery but she didn't because the company went out of business having lost a contract with ADM. Therefore, she had no job to return to.

On December 13, 2012, Petitioner returned to Dr. Smith for another visit reporting left shoulder stiffness and persistent pain. Dr. Smith noted it should improve with range of motion. Dr. Smith recommended Petitioner continue therapy and a home exercise program, and continued her restriction from work as she should not be lifting with her arm. (PX 6)

As of January 10, 2013 Dr. Smith noted Petitioner still had some tightness in her left shoulder and the possible presence of scar tissue. Dr. Smith reported concern regarding Petitioner's biceps tenodesis incision, as it had a "ropey red hypertrophic scar." Dr. Smith recommended Petitioner use a hydrocortisone cream, and he continued her work restriction of no lifting. (PX 6)

Dr. Atluri re-examined Petitioner on January 21, 2013.

14IWCC0912

At her February 7, 2013 visit with Dr. Smith Petitioner still had some pain in her arm; however, she reported she was doing better and continuing to improve. He recommended Petitioner continue to work on strengthening her arm. No other treatment or therapy was recommended. Dr. Smith noted Petitioner could return to work, at regular duty, on March 1, 2013 and that he anticipated Petitioner would reach maximum medical improvement on March 15, 2013. He discharged Petitioner from his care. (PX 6)

In his report dated February 12, 2013, Dr. Atluri noted Petitioner's symptoms (as of their January 21st visit) had progressively worsened since July 9, 2012 (their earlier visit) and Petitioner had ultimately undergone surgery which helped, although post-operatively Petitioner developed a constant pain extending from her lateral arm to her elbow. Petitioner was still off work. Dr. Atluri reviewed additional records, examined Petitioner, and concluded that she had some ongoing stiffness and weakness in her shoulder post-surgery. He did not believe she was yet at maximum medical improvement (MMI) and, therefore, an impairment rating was premature. When Petitioner did reach MMI, he expected some persistent stiffness and weakness to result but nothing that should interfere with Petitioner's work duties as she described them. Dr. Atluri was also of the opinion that Petitioner was currently capable of working at her usual job without any restrictions as Petitioner reported to him that her job was that of a supervisor and didn't involve any significant lifting or reaching on a routine basis. (RX 5, dep. ex. 3)

The parties agree that Petitioner's temporary total disability benefits were terminated on February 12, 2013. (AX 1; Petitioner's un rebutted testimony)

Dr. Atluri re-examined Petitioner on March 18, 2013 (thereafter issuing his report on April 3, 2013) for the purpose of determining an impairment rating in light of Petitioner having reached MMI. (RX 5, dep. ex. 4)¹

Petitioner testified that she returned to Dr. Smith on June 4, 2013 for a laser procedure to try to disintegrate a keloid scar located on her left anterior shoulder. Petitioner testified that the injection broke down the scar "a little."

The evidence deposition of Dr. Prasant Atluri was taken on August 28, 2013. Dr. Atluri is board certified in orthopedic surgery with a certificate of added qualification in surgery of the hand. (RX 5, p. 6) Dr. Atluri performed an Independent Medical Examination of Petitioner on July 9, 2012. Dr. Atluri testified that at the time of his examination, Petitioner complained of weakness, numbness, and tingling of her left shoulder that occasionally extended into her left hand. (RX 5, pp. 9-10) Petitioner also complained of limited range of motion in her left shoulder. (RX 5, p. 10) Petitioner described her pain as severe and continuous, and added that her symptoms interfered with her sleep. (RX 5, p. 10) Petitioner complained that she had difficulty washing her hair and reaching for her bra. (RX 5, Ex 2)

¹ The results will be discussed in his deposition summary which follows.

Dr. Atluri testified that based upon her history and his physical examination, he diagnosed Petitioner with a left shoulder rotator cuff tear, and left shoulder adhesive capsulitis. (RX 5, p. 10) Dr. Atluri testified that he thought surgical intervention would be beneficial. (RX 5, pp. 10-11) Dr. Atluri testified that based upon Petitioner's lack of interest in surgery, he felt she had reached maximum medical improvement at that time. (RX 5, p. 11) Dr. Atluri also performed an AMA evaluation, which revealed a five percent upper extremity impairment, and a three percent whole person impairment. (RX 5, p. 11) X-rays of the left shoulder performed that day revealed some thickening of the anterior capsule, as well as signal changes in the superior labrum. (RX 5, Ex 2)

Dr. Atluri testified that Petitioner returned for a re-examination on January 21, 2013. (RX 5, p. 11) Petitioner complained that her symptoms had progressively worsened. (RX 5, Ex 3) Petitioner's Quick-Dash Disability score was 61.36. (RX 5, Ex 3) X-rays of the left shoulder revealed a slightly type two acromion. (RX 5, Ex 3) Dr. Atluri testified he diagnosed Petitioner with a left shoulder rotator cuff tear, status post open rotator cuff repair, status post left shoulder arthroscopy with open biceps long head tenodesis, and left shoulder adhesive capsulitis. (RX 5, pp. 12-13) Dr. Atluri testified that Petitioner had not reached maximum medical improvement at that point. (RX 5, p. 13)

According to Dr. Atluri, Petitioner returned to see him on March 18, 2013 for another evaluation. (RX 5, p. 13) Petitioner complained of pain in her left shoulder and arm. (RX 5, Ex 4) She stated that her left shoulder motion was worse than her pre-operative motion. (RX 5, Ex 4) Petitioner further added that she had pain when lifting a gallon of milk as well as when she tried to move her shoulder. (RX 5, Ex 4) Petitioner stated that she had constant pain radiating into her left elbow and occasionally into her hand. (RX 5, Ex 4) Petitioner reported occasional tingling involving the left small and ring fingers as well as persistent weakness. (RX 5, Ex 4) Petitioner stated that she altered how she dressed herself, as well as her daily activities such as cleaning and showering. (RX 5, Ex 4) Petitioner stated she could not sleep on her side due to pain. (RX 5, Ex 4)

Dr. Atluri testified that he authored an April 3, 2013 report following this examination. (RX 5, p. 14) Dr. Atluri assessed a Quick-Dash Disability score of 56.8. (RX 5, p. 15) Dr. Atluri testified that this score was at the higher end of moderate in terms of severity of residual symptoms. (RX 5, p. 16) Dr. Atluri testified that it was significant that on March 18, 2013, Petitioner still had a bit of residual tenderness in her left shoulder, her left shoulder motion was not normal, she had some stiffness, and loss of rotation as well as loss of elevation. (RX 5, p. 17)

Dr. Atluri testified that while a normal rotation is between sixty-five to ninety degrees, her external and internal rotation was about forty degrees. (RX 5, p. 17) Dr. Atluri added that an elevation or flexion of the arm is typically 165 degrees, but her score was 125 degrees. (RX 5, pp. 17-18) Dr. Atluri testified that she had loss of motion in those three ranges. (RX 5, p. 18) Dr. Atluri testified Petitioner also had some weakness secondary to some pain or discomfort, as well as some pain with a cross arm maneuver. (RX 5, p. 18)

Dr. Atluri diagnosed a left shoulder rotator cuff tear, status post open rotator cuff repair, status post left shoulder arthroscopy, with open biceps long head tenodesis, and left shoulder adhesive capsulitis. (RX 5, Ex 4) Dr. Atluri testified that he opined Petitioner had reached maximum medical improvement at this time. (RX 5, p. 19) Dr. Atluri testified that he assessed Petitioner's final impairment rating to be 9% upper extremity impairment and a whole person impairment value of 5%. (RX 5, p. 27)

Dr. Atluri testified that Petitioner may have some minor improvements in her motion, but that he did not expect significant improvement in the future. (RX 5, p. 35) Dr. Atluri added that Petitioner has deficits in all ranges of motion and will continue to have deficits on a permanent or indefinite basis. (RX 5, pp. 35, 36)

Dr. Atluri testified that the pain Petitioner experienced was consistent with the type of injuries she sustained as well as the type of surgical procedure she underwent. (RX 5, pp. 35-36)

Dr. Atluri testified that the surgical procedure Dr. Smith performed was reasonable and necessary. (RX 5, p. 39) Dr. Atluri testified that the history Petitioner gave him was suggestive of a temporal relationship to her workplace injury. (PX 6, pp. 41-43) Dr. Atluri testified that if Petitioner was performing overhead work on the date of her workplace accident that would be the type of activity that could cause the symptoms of which she complained. (RX 5, p. 45) Dr. Atluri testified that "the symptoms that she described and attributed to her work activities are those which led to the need for surgery." (RX 5, p. 52) Dr. Atluri testified that he was not provided with any records showing Petitioner had any prior problems with her left shoulder. (RX 5, p. 45)

Dr. Atluri testified that ten percent of his time is spent doing medical/ legal work. (RX 5, p. 46) He testified that he has cases with Respondent's attorney six times a year for the past five years. (RX 5, p. 46) Dr. Atluri testified that he performs about seventy percent work for respondents and thirty percent for plaintiffs. (RX 5, p. 47) Dr. Atluri estimated he earns about \$100,000.00 a year doing medical/ legal work. (RX 5, pp. 47-48) Dr. Atluri testified he charges \$1,000.00 an hour, with a two hour minimum, for a deposition and \$1,200.00 for an IME as well as an impairment rating. (RX 5, p. 49)

At the November 22, 2013 Petitioner testified that her last day of work with G & D Integrated was September 25, 2012. Petitioner could not recall if she underwent a post-offer physical examination with G & D. She did acknowledge that the job with G & D was supervisory in nature and required no lifting.

Petitioner further testified that she continues to do what she is able to do with her left arm as recommended by Dr. Smith. She testified that she tries to do something new each day and uses Thera-bands and weights.

Petitioner testified that the scar is very easily irritated and constantly itches. Petitioner added that the scar is tender to the touch, specifically with clothing and shower water. Petitioner testified that whenever she tries to reach across or move in a similar motion, she "feels the bend in it." Petitioner added that she feels discomfort from the scar when she raises her left shoulder and that it "reminds" her all the time that it is there.

During the hearing the Arbitrator was afforded the opportunity to examine Petitioner's scar. She noted that while sitting about four feet away from Petitioner the scar was clearly apparent and was probably four inches in length right above Petitioner's armpit, and about half to three-quarters of an inch wide. Petitioner's scar was noted to have a deep pink to red border on the bottom, and then a fainter pink for the majority of the scar. Petitioner was also noted to be fair skinned, and one could readily see about half of it extending beyond the edge of her top.

Petitioner testified that she also has a scar on the upper portion of her left shoulder. The Arbitrator noted that this scar was far fainter in appearance and about two and a half inches in length. It did not have the redness that made the other scar as apparent, and it blended in a little more, but there was a scar there. The Arbitrator further recalls that when Petitioner turned in the witness chair the light hit the scar in a different way and there was a more visible scar about three inches long. With a sleeveless top, it was visible.

Petitioner testified that she still experiences pain in her left shoulder, mostly on the outside, and radiating down her left arm to her elbow and occasionally to her hand. Petitioner added that in relation to pain radiating down her arm, "I can just be sitting there, and all of a sudden it will come on." Petitioner described the pain as a "kind of tingling when it gets to my hand, and I clench my hand open and close, and it eventually goes away". Petitioner described her left shoulder pain as intermittent and a 6-7/10 on the pain scale. Petitioner testified that she notices her left shoulder pain when she uses the lawn mower, adding that after it is very sore and tingles. Petitioner testified that she experiences left shoulder pain when cleaning her house, driving, and sitting. Petitioner testified that her shoulder will pop when she tries to use her arm.

Petitioner testified that she has issues with range of motion. While she can straighten her arm to about a forty-five degree angle, it then becomes more difficult to move. Furthermore, when she reaches for something, she has to lean over or assist herself with her other arm.

The Arbitrator had the opportunity to observe Petitioner's arm movement, noting she could raise her left arm to her side and reach a horizontal plane and then go about another forty-five degrees. Petitioner could not extend her left arm straight (parallel) with her head.

The Arbitrator further noticed that when Petitioner put her left arm behind her back she could get it to the waist level, as if a gentleman was putting a wallet in his back pocket, but then she was unable to raise it any higher. It further appeared that Petitioner was unable to raise her arm above her waist and would not be able to fasten her bra from the back.

Petitioner testified that since she is left hand dominant, she cannot perform cleaning, washing dishes, cleaning the bathroom, or carrying a bucket of water very well. Petitioner added that she either has to get assistance from her family, use both hands, or attempt to use her right hand if no one is available.

Petitioner's medical bills are found in PX 7. The only unpaid medical bill is for services rendered by Dr. Jones on June 4, 2013 in the amount of \$50.00.

CONCLUSIONS OF LAW

Issue (F): Is Petitioner's current condition of ill-being causally connected to a work-related accident?

Relying on a chain of events, the records, reports, examinations, and diagnoses of all the doctors who examined or treated Petitioner, including Dr. Jones, Dr. Smith, and Dr. Atluri, the Arbitrator concludes that Petitioner's condition of ill-being in her left shoulder is causally connected to her February 6, 2012 accident. (PX 4; RX 5) The Arbitrator finds Dr. Atluri's August 28, 2013 testimony credible, particularly his opinion that "the symptoms that she described and attributed to her work activities are those which led to the need for surgery." (RX 5, p. 52) Dr. Atluri also testified that the history Petitioner gave him was suggestive of a temporal relationship to her workplace injury. (PX 6, pp. 41-43) Dr. Atluri testified that if Petitioner was performing overhead work on the date of her workplace accident that would be the type of activity that could cause the symptoms of which she complained. (RX 5, p. 45)

Issue (J): Has Respondent paid all appropriate charges for reasonable and necessary medical treatment?

Dr. Atluri testified that the surgical procedure Dr. Smith performed was reasonable and necessary. (RX 5, p. 39) Dr. Atluri testified that he thought surgical intervention would be beneficial. (RX 5, pp. 10-11) Furthermore, the records of Dr. Jones and Dr. Smith indicate Petitioner's treatment subsequent to February 6, 2012 was related to her left shoulder workplace injury. Petitioner also testified and the records reflect that treatment for her left shoulder injury moderately alleviated her symptoms. Therefore, the Arbitrator concludes that all of Petitioner's treatment has been reasonable and necessary. The parties agreed that the only outstanding charge was for Dr. Jones' June 4, 2013 office visit.

Respondent shall pay the outstanding medical bill of \$50.00, as set forth in Petitioner's Exhibit 7, directly to the medical provider pursuant to the Medical Fee Schedule as set forth in Section 8(a) of the Act.

Issue (K): Is Petitioner entitled to temporary total disability benefits?

Petitioner and Respondent agree on the period of temporary total disability from September 26, 2012 through February 12, 2013. (AX 1) Petitioner testified that her TTD benefits were terminated on February 12, 2013 based upon Dr. Atluri's report of the same date. Petitioner contends she is entitled to TTD benefits for an additional 17 days (through February 28, 2013) as Dr. Smith did not release her to return to work until March 1, 2013.

Dr. Atluri's return to work opinion as set forth in his February 12, 2013 report was based upon his examination of January 21, 2013. During that examination he mistakenly believed Petitioner could raise her arm all the way.² Additionally, while Petitioner's job required no lifting Dr. Smith's concerns during this time centered around Petitioner's poor endurance and strength and he continued her with physical therapy in January and February to address those concerns. Dr. Atluri did not ask Petitioner about how her ability to perform her job might be affected by persistent stiffness and weakness, limitations he noted in his exam and report. Dr. Smith's decision to keep Petitioner off work through February 28, 2013 is given more deference. Petitioner's condition had not stabilized nor had she reached maximum medical improvement.

Therefore, the Arbitrator concludes that Petitioner was temporarily and totally disabled from September 26, 2012 to February 28, 2013. Respondent is therefore ordered to pay Petitioner \$791.32 per week for 22 2/7 weeks in temporary total disability benefits. Respondent shall be given a credit of \$15,826.40 for temporary total disability paid.

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

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

- 1) **The reported level of impairment** - A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to; loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment.
- 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**

² A mistake Petitioner corrected when she was next examined by the doctor in March of 2013.

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

No single enumerated factor shall be the sole determinant of disability.

1. The level of impairment: Dr. Atluri furnished multiple impairment evaluation reports. Most important is his last one which was based upon Petitioner having finally reached maximum medical improvement. Dr. Atluri found Petitioner's complaints to be credible at that time and he concluded her impairment was nine percent of the upper extremity or five percent of a whole person. Petitioner's Quick Dash score was 56.8 which he testified was at the higher end of moderate in terms of severity. (RX 5, p. 27) Dr. Atluri testified that while a normal rotation is between sixty-five to ninety degrees, Petitioner's external and internal rotation was about forty degrees. (RX 5, p. 17) Dr. Atluri added that an elevation or flexion of the arm is typically 165 degrees, but Petitioner's score was 125 degrees. (RX 5, pp. 17-18) Dr. Atluri also testified that Petitioner had loss of motion in those three ranges (RX 5, p. 18) and that Petitioner also had some weakness secondary to some pain or discomfort, as well as some pain with a cross arm maneuver. (RX 5, p. 18) Dr. Atluri testified that it was significant that on March 18, 2013, Petitioner still had a bit of residual tenderness in her left shoulder, her left shoulder motion was not normal, she had some stiffness, and loss of rotation as well as loss of elevation. Dr. Atluri testified that Petitioner may have some minor improvements in her motion, but that he did not expect significant improvement in the future. (RX 5, p. 35) Finally, Dr. Atluri added that Petitioner has deficits in all ranges of motion and will continue to have deficits on a permanent or indefinite basis. (RX 5, pp. 35, 36) The Arbitrator gives considerable weight to this factor.

2. Petitioner's Occupation: Petitioner's occupation at the time of the accident was that of a factory worker. She had performed those duties for approximately six years prior to her accident. At the time of arbitration Petitioner was unemployed as her last employer, G & D Integrated, had shut down. Petitioner voluntarily left her employment with Respondent to work for G & D. The job for G & D was supervisory in nature and, by Petitioner's description, less physical than her job for Respondent. Petitioner is left hand dominant. No direct evidence was presented to show that Petitioner's current unemployment status is attributable to her work injury. However, based upon Petitioner's credible explanation of her former job duties for Respondent, the Arbitrator reasonably infers that it would be challenging for Petitioner to engage in that type of factory work in light of her injury.

3. Petitioner's Age: Petitioner was thirty-nine years old at the time of her accident. No direct evidence was presented by either party as to how Petitioner's age impacts any disability. However, the Arbitrator notes that Petitioner may reasonably be expected to live and work with the effects of her injury for a longer time than an older individual and, therefore, her permanent partial disability may be greater than that of an older individual.

4. Future Earning Capacity: No evidence was presented as to how Petitioner's future earning capacity was affected by her injury. While Petitioner testified to a reduction in pay after her accident, she did not prove by a preponderance of the evidence that the reduction was related to her injury.

5. Evidence of Disability Corroborated in the Treating Records: Petitioner's records from her treating physicians have demonstrated evidence of disability. Petitioner underwent surgery to her left shoulder which included a subacromial decompression, rotator cuff repair (for an 80% tear), a proximal biceps tenodesis, and intra-articular evaluation, debridement, and removal of loose bodies. While surgery improved Petitioner's condition and she was released with no restrictions, she has continued to notice limitations in her left arm and shoulder. Post-operatively the records of Dr. Smith and the physical therapist show ongoing pain and stiffness in Petitioner's left arm and shoulder. Additionally, while there is no treating record to corroborate Petitioner's testimony regarding her visit and procedure with Dr. Smith on June 4, 2013, the Arbitrator notes Dr. Smith's multiple notations and comments concerning scar tissue and adhesions in earlier visits.

Petitioner's testimony concerning her injury and her ongoing symptoms and complaints was credible. Even Respondent's impairment rating physician, Dr. Atluri, found her complaints and responses during their last examination credible.

In light of Section 8(b)1 of the Act and after considering the foregoing factors, the Arbitrator concludes that Petitioner has suffered a loss of 17.5% of a person as a whole as a result of her work accident. As Petitioner's injury is primarily to her left shoulder, an award under 8(d)1 is appropriate pursuant to Will County.



2 of 2 DOCUMENTS

JOSHUA GOCHANOUR, PETITIONER, v. EICHENAUER SERVICES, INS., RESPONDENT.

No. 11WC 49129

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF MCLEAN

14 IWCC 929; 2014 Ill. Wrk. Comp. LEXIS 909

October 29, 2014

JUDGES: Thomas J. Tyrrell; Michael J. Brennaan; Kenvin W. Lamborn

OPINION: [*1]

DECISION AND OPINION ON REVIEW

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

The injury in this case occurred on September 27, 2011, As such, Section 8.1(b) of the Act is applicable to a determination of permanency, i.e. the nature and extent of the injury. This involves an analysis using the five statutory factors contained in this section of the Act. The Arbitrator awarded the Petitioner 17.5% of the left thumb. The Commission modifies this award and finds that Petitioner sustained the loss of use of 25% of the left thumb, for the reasons noted below.

First, the Respondent submitted an AMA impairment rating of 10% of the thumb, which was determined by Dr. Brower (Respondent's Exhibit 2). The Petitioner did not submit an AMA impairment rating into evidence. In making his determination, Dr. Brower noted complaints of decreased sensation [*2] along the left radial thumb, no atrophy, normal range of motion other than inability to extend the IP joint past zero degrees, and normal strength. Sensory testing verified partial loss of sensation at the radial aspect of the thumb.

Petitioner's occupation was a server/waiter. While he complained subjectively of problems doing his job subsequent to the accident, his medical records, other than Dr. Nord's, appear to indicate he was having no significant problems doing his job. Dr. Nord noted (see Petitioner's Exhibit 1) that Petitioner continued to have left thumb pain after returning to work, and after a few months left to take a different job. We note that the ER report from Advocate Bromenn and the report of Dr. Brower indicated the Petitioner is right handed, so this injury was to his non-dominant hand. At the same time, being that the injury was to the thumb, any impairment was to a digit that is important to gripping.

The Petitioner returned to employment at approximately 33 years of age. Dr. Tattini noted in his last report of September 15, 2012 that he hopes Petitioner's ongoing sensation problems will continue to improve over time. Petitioner testified that it hadn't improved [*3] at the time of the hearing date. Dr. Nord reported (see Petitioner's Exhibit 13) that he believed Petitioner may sustain increasing discomfort in the area of the laceration as he gets older.

No evidence was presented by either party that indicates real or possible impact from the injury on the Petitioner's future earning capacity.

With regard to the factor involving evidence of disability corroborated by the medical records, the Petitioner's continued complaints of a lack of sensation in the radial nerve of the thumb are supported by his treating records, as well as the report of Dr. Brower. While he testified to a lack of strength, this does not seem to be corroborated by the medical, as the physical therapy records and last notes of Dr. Tattini indicate essentially normal strength. Dr. Brower, Respondent's examining physician, did note a small loss of range of motion with regard to IP joint extension. Dr. Nord's June 25, 2013 report supports some ongoing weakness of the left thumb.

The Commission believes that, based on a review of the surgical report, this case involves a relatively significant thumb injury with nerve repair. There was no evidence of significant tendon or bone [*4] injury. There was evidence of ongoing problems with radial sensation. The Commission takes into account the AMA rating and the lack of evidence presented with regard to earning capacity. However, in this particular case, we give more weight to the fact that Petitioner has corroborated complaints regarding an ongoing lack of sensation and some lack of strength, that he will have to live with this injury and its sequelae for a significantly longer time than an older worker, and that he testified to difficulty in returning to his normal job due to the injury. Based on this and a review of prior precedent regarding similar injuries, the Commission declines the Petitioner's request to increase the award to 35% of the left thumb, but does increase it from the Arbitrator's award of 17.5% of the left thumb to 25% of the left thumb.

Neither party has submitted the applicable fee schedule amounts with regard to the awarded medical bills, which are not at issue on review. Given this, the Commission notes that the bond indicated below is based on the total of the billed amounts of the awarded bills and the permanency award. The bills that have been awarded by the Arbitrator, and affirmed on review, [*5] are still to be paid by Respondent pursuant to the fee schedule, with credit to Respondent for any that have been previously paid.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$ 139.12 per week for a period of 19 weeks, as provided in § 8(e) of the Act, for the reason that the injuries sustained caused the loss of use of 25% of the left thumb.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the medical expenses submitted into evidence from Ireland Grove Center for Surgery and Ambulatory Anesthesiology, limited to the amounts indicated via the medical fee schedule, pursuant to §§ 8(a) and 8.2 of the Act.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$ 9,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File [*6] for Review in Circuit Court.

DATED: OCT 29 2014

ATTACHMENT:

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen Mathis**, Arbitrator of the Commission, in the city of **Bloomington**, on **11/12/13**. 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

- J. Were the medical services that were provided to Petitioner reasonable and necessary? Was Respondent paid all appropriate charges for all reasonable and necessary medical services?
L. What is the nature and extent of the injury?

FINDINGS

On 9/27/11, 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 [*7] current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned \$ 7,234.24; the average weekly wage was \$ 139.12.

On the date of accident, Petitioner was 32 years of age, *single* with 0 dependent children.

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

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

Respondent shall be given a credit of \$ 1,172.81 for TTD. \$ 00.0 for TPD. \$ 0.00 for maintenance, and \$ 0.00 for other benefits, for a total credit of \$ 1,172.81.

Respondent is entitled to a credit of \$ 0.00 under Section 8(j) of the Act.

ORDER

Medical benefits

Respondent shall pay the medical bills submitted into evidence of Ireland Grove Center for Surgery and Ambulatory Anesthesiology pursuant to the medical fee schedule. Respondent shall receive credit for any amounts it may have paid.

Permanent Partial Disability: Schedule injury

Respondent shall pay Petitioner permanent partial disability benefits of \$ 139.12 week for 13.3 weeks, because the injuries ~~— [*8]—~~ sustained caused the ~~17.5"~~, a loss of the left thumb, 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 date 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

April 9, 2014

Date

This case was heard by Arbitrator Mathis, but no Decision was issued before Arbitrator's Mathis' appointment to the Commission. The case was then reassigned to Arbitrator David A. Kane to review the transcript and evidence and issue a Decision.

Petitioner cut the base of his left thumb while polishing a wine glass at work on September 27, 2011. Petitioner went to the emergency room on the date of accident. At the ER, petitioner had five sutures to close the 1.6 [*9] cm wound. On October 14, 2011, claimant had wound exploration of his left thumb with "microscopic repair of left thumb digital nerve (radial)" followed by occupational therapy. At the final visit on September 5, 2012, the treating surgeon, Dr. Tattini,

noted decreased sensation on the radial aspect of his thumb and baseline sensation on the dominant side of the thumb. Petitioner had baseline active and passive range of motion of all his joints, according to Dr. Tattini.

Petitioner returned to work in his prior profession as a bartender. According to the occupational therapy note dated January 23, 2012 (Petitioners Exh. 11), petitioner stated he worked more "this past weekend" than in previous weeks without any complications to his hand.

Petitioner was evaluated by Dr. Paul Nord at the request of petitioner's attorney. Dr. Nord noted decreased sensation in the left lateral thumb area with slight hypersensitivity over the lateral thumb laceration area, and slight weakness of the left thumb.

Petitioner was also evaluated by Dr. Brower of Midwest Occupational Health Associates in Springfield, Illinois, on May 9, 2013, at the request of Respondent. Dr. Brower calculated 10% of the thumb [*10] per The Guides to the Evaluation of Permanent Impairment, Sixth Edition, Second Printing. This took into account loss of radial digital nerve and associated sensory loss.

(820 ILCS 305/8, 1b)

Sec. 8.1b. Determination of permanent partial disability.

For accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:

(a)...

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

Addressing each of the factors of section 8.1(b) separately, [*11] consideration is provided for (i) 10% of the thumb AMA impairment rating, (ii) Petitioner is able to return to work as a bartender without complications according to statements by Petitioner noted in the physical therapy records. This carries more weight than the evaluation by Dr. Nord because Dr. Nord's opinion was generated in anticipation of litigation, (iii) Claimant's age does not hinder his ability to heal from this injury. He is young enough and healthy enough to recover well from this laceration (iv) There is no evidence in the record that petitioner has had a loss of earning capacity as a result of this laceration. (v) According to Section 8.1(b)(v), evidence of disability referenced in the treatment records is considered in the evaluation of permanent partial disability. The final visit of Dr. Tattini notes petitioner is "fine operating on his daily tasks as it stands now." This is the only reference in the treatment records to disability.

Based on the above, and after considering the entire record, the Arbitrator finds that Petitioner permanently lost 17.5% of the use of his left thumb under section 8(e) of the Act,

With regard to the issue of reasonable and necessary medical [*12] expenses, Respondent did not dispute the bills from Ireland Grove Center for Surgery or Ambulatory Anesthesiology. Respondent did dispute the bills of OSF Medical Group and Bloomington Radiology. The Arbitrator finds with respect to the disputed bills that Petitioner failed to prove that he is entitled to those medical expenses, due to a lack of evidence,

Legal Topics:

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

Workers' Compensation & SSDI Benefit Determinations
 Medical Benefits
 General Overview
 Workers' Compensation & SSDI
 Compensability
 Course of Employment
 General Overview
 Workers' Compensation & SSDI
 Compensability
 Injuries
 General Overview