WCLA NEWSLETTER
March Case Law Update

I. STATUS OF EMPLOYMENT

***Cuello v. Tran*, 18 WC 34394, 21 IWCC 0002 (IWCC January 4, 2021)**

This matter proceeded to hearing before the Commission pursuant to a Section 4(d) claim. Petitioner sustained injuries to his foot on September 11, 2018 after he fell from a ladder while working on a remodeling project under the direction of Respondent, Forest2000. Petitioner testified he worked for Respondent in the Spring of 2018. They agreed he would be paid cash until checks could be arranged, although he only received cash through the duration of his employment, and he was paid hourly and not per project. Petitioner did not complete a W-4 form and the Respondent did not withhold taxes. Petitioner further testified Respondent directed his schedule, breaks, and manner in which he should perform his job duties and provided the necessary tools and work truck. On the date of the accident, Respondent actually set up the ladder from which Petitioner fell.

Respondent testified that he paid petitioner cash since Petitioner did not have legal documentation to work. Although Respondent testified he gave some direction regarding start times for jobs, Petitioner came and went whenever he wanted. Respondent testified the equipment used on the jobs was his equipment, with the exception of possible painting tools. Respondent further testified he was unaware that construction workers, electrical workers and workers in industries using sharp cutting tools were entitled to workers'' compensation insurance and he thought he had all necessary insurance.

An insurance agent further testified at hearing. He acknowledged recommending workers' compensation coverage to Respondent and provided a premium quote, although Respondent ultimately declined coverage.

The Commission found Respondent was engaged in an extra hazardous business and was subject to the Illinois Workers' Compensation Act and required to provide workers' compensation insurance. The Commission further found Petitioner was an employee of Respondent and reasoned that the Respondent controlled Petitioner's schedule, directed the manner in which he performed his job duties and Respondent assisted in the performance of the specific job duty that resulted in Petitioner's injury. Finally, the Commission had to consider whether Respondent knowingly failed to provide workers' compensation insurance that would have otherwise covered Petitioner's claim. The Commission found Respondent knowingly failed to provide insurance. It was not persuaded by Respondent's position that he thought he had insurance that "covered everything" since the insurance agent testified that Respondent needed workers' compensation insurance. The Commission was also not persuaded by an argument that there was a language barrier since the insurance agent was mostly fluent in Respondent's native language and there were no

communication barriers. In light of the above, the Commission found Respondent was no longer afforded the benefits and protections of the Act and could be sued in civil court.

II. ACCIDENT

***Pate v. State of Illinois- Illinois Department of Corrections- Parole*, 15 WC 25533, 20 IWCC 0759 (IWCC Dec. 20, 2020)**

Petitioner worked as a parole agent for Respondent. His job duties involved investigating whether a house was suitable for a parolee's release, checking on a parolee's progress, transporting parolees to the penitentiary, attending court dates and training. Petitioner was assigned a squad car to perform his duties. Petitioner spent most of his workday in the car. The car was equipped with a cage that restricted his movement. He entered and exited his car up to 30 times per day. He logged 1,500 to 2,000 per month miles in the car.

On the date of accident, Petitioner was conducting an investigation regarding the placement of a parolee. He parked on the wrong side of the street so the driver's door was on the curb side. He explained that he did this so other patrol cars would notice he was there. He shimmied out of the car, while wearing a side arm and protective vest. Petitioner place his foot down to exit the car. He was wearing hiking boots and he stepped into a low spot in the grass. He felt his left knee pop and twist. He continued the investigation, but his left knee felt strange. Petitioner emailed his supervisor about the incident and spent the rest of the day completing paperwork.

Petitioner sought medical treatment for his left knee. Petitioner underwent an MRI study, which revealed a lateral meniscal tear. Petitioner was eventually released to return to work without restrictions. At the request of his attorney, Petitioner was examined by Dr. Chudik almost three years later. Dr. Chudik confirmed that the accident caused a meniscal tear. He noted that Petitioner could continue to work without restrictions, but that Petitioner remained symptomatic.

The Arbitrator found that Petitioner sustained accidental injuries that arose out of and in the course of his employment. The Arbitrator found that Petitioner was a traveling employee. Respondent argued that Petitioner's injury was not foreseeable since he did not fall and there was no evidence that the grass was defective. The Commission disagreed and stated that it was unrebutted that Petitioner stepped in a low spot and it was foreseeable that a parole agent, acting in the course of his regular duties, would encounter hazards at various locations. The Commission found that the act was also distinctly associated with Petitioner's employment since he was acting in the ordinary course of his employment. The Commission further noted that the injury was caused by a hazard on the property. Accordingly, the Commission found that Petitioner sustained a compensable accident.

The Arbitrator found that Petitioner's knee condition was causally connected to the work-related accident. Respondent argued that the Commission should find that Petitioner reached maximum medical improvement in 2015 and discount Dr. Chudik's report as not credible. The Commission

agreed with Respondent. The Commission noted that Petitioner was released from medical care in 2015 and reported no symptoms. Further, he did not seek any medical treatment despite stating that he continued to experience symptoms in his left knee. Accordingly, the Commission found that Petitioner reached maximum medical improvement in 2015 and the gap in treatment broke the chain of causation. Further, the Commission found there was no causal connection between the work accident and any symptoms in the right knee.

The Commission modified the Arbitrator's award of medical expenses based on causation. It awarded payment of medical bills through the date of maximum medical improvement. The Commission corrected the Arbitrator's award of temporary total disability benefits since it reflected the incorrect number of weeks.

The Arbitrator found that Petitioner was permanently and partially disabled to the extent of 12.5% loss of use of the left leg and 2.5% loss of use of the right leg. The Commission modified the decision of the Arbitrator and found that Petitioner was permanently and partially disabled to the extent of 10% loss of use of the leg. The Commission noted there was no impairment report, so it accorded no weight to that factor. The Commission found that Petitioner worked in a dangerous job and now had difficulty performing the job. Petitioner was 48. The Commission found he would be in the work force for a long period of time. Since there was no evidence regarding Petitioner's earning capacity, the Commission accorded it no weight. The Commission noted that although it did not agree with Dr. Chudik's opinion about causation, it did find that Dr. Chudik's report corroborated Petitioner's testimony he was not symptom free following the work-related accident. Accordingly, it accorded some weight to the last factor. Based on the five factors, the Commission found that Petitioner was permanently and partially disabled to the extent of 10% loss of use of the left leg.

***Marrero v. Islamorada Fish Company*, 16 WC 24292, 21 IWCC 0016 (IWCC Jan. 26, 2021)**

Petitioner worked for Respondent as a part-time cook and dish washer. Petitioner worked 6-hour shifts, five days a week. He stood the entire shift and was required to wear non-slip kitchen shoes, chef's pants, a shirt, and a hat. Over Christmas, Petitioner worked 12 hour shifts occasionally. Petitioner testified that his feet began to hurt. He reported the pain to "Mandy." No accident report was completed. Petitioner began medical treatment for his bilateral ankle complaints. He underwent fusion surgery for this left ankle. He later underwent a revision surgery to the left ankle.

The general manager testified on behalf of Respondent. He testified that the area where Petitioner worked was flat and level. He also testified that it was rare for an employee to work a double shift. He testified that employees were supposed to report all injuries to management. The manager testified that Petitioner notified him that he was undergoing surgery for his feet but indicated that it was for a problem he had had since birth. He did not report that it was related to work.

The Section 12 physician testified that Petitioner's condition was not causally related to his employment. He opined that the treatment and restrictions were reasonable, but unrelated to employment.

The Arbitrator found that Petitioner failed to establish that he sustained a compensable accident. The Arbitrator also found that Petitioner did not establish that he provided timely notice of the accident nor that the employment caused Petitioner's current condition of ill-being. Thus, the Arbitrator denied payment of benefits.

The Commission modified the decision of the Arbitrator with regard to accident, notice and medical causation. The Commission noted that the Arbitrator's decision was issued prior to ***McAllister v. Illinois Workers' Compensation Commission***, 20 IL 124828 (2021). The Commission noted that Petitioner alleged that he sustained a repetitive trauma injury. The Commission found that given the totality of the circumstance of Petitioner's work, including his prolonged repetitive standing, and spinning in non-slip shoes, which were required by Respondent, Petitioner's activities were such that might reasonably be expected to be performed. Accordingly, the Commission found that Petitioner sustained an accident arising out of and in the course of his employment. The Commission reversed the decision of the Arbitrator.

The Commission found that Petitioner failed to provide timely notice to Respondent of the accident. The Commission noted that Petitioner informed Respondent of his injury and pre-existing condition but failed to inform Respondent that the employment had some impact on or aggravation of the pre-existing medical condition. The Commission stated there was no clear evidence that Respondent had knowledge of any connection between Petitioner's work activities and the pre-existing ankle injury until after the 45-day notice period had run. Accordingly, the Commission found that Petitioner failed to provide timely notice of his accident to Respondent.

The Commission also found that Petitioner failed to establish medical causation. The Commission found there was no evidence that Petitioner's pre-existing foot condition was aggravated as a result of his work activities. The Commission relied on the opinions of the Section 12 physician, who opined that Petitioner's degenerative foot condition was the sole cause of the injury. He noted that although standing on his feet created an increase in symptoms, it did not change the condition or make it worse.

Commissioner Parker concurred that Petitioner sustained a compensable accident; however, he dissented with the majority and would have found that Petitioner provided timely notice and that the condition was casually connected to the work-related accident. Commissioner Parked noted that Petitioner advised Respondent that the double shifts were causing him pain and that he was having foot surgery. Thus, it was his opinion that Petitioner provided timely notice to Respondent. The Commissioner also noted that the Section 12 physician noted that the work activities placed increased stress on the feet and increased his symptoms. Accordingly, he would have found that Petitioner's work activities caused an aggravation of the pre-existing condition.

***Higueros v. La Villa Banquets*, 17 WC 9838, 20 IWCC 0769 (IWCC December 29, 2020)**

Petitioner worked as a busboy and server. After completing his shift on March 4, 2017, petitioner observed an argument in the parking lot while taking garbage to the dumpster. Petitioner's co-workers were also observing the altercation. Petitioner then witnessed a man striking a woman who was laying on the ground and another woman in a vehicle screaming for help. Petitioner testified that despite the fact the police had been called, he felt the need to intervene as he believed the man would have killed the woman. Petitioner struck up a conversation with the man during which he told him he could not do this on the property, that he had to leave and the police were coming. During this discussion, the woman entered the vehicle and drove away. The man became increasingly aggressive and went to his vehicle to retrieve an item. Petitioner and his co-workers then began walking away from the scene when the man attacked petitioner and struck him in the face with a sharp object.

A witness for the Respondent testified there were no formal policies regarding disputes on the premises, although Respondent did not condone getting involved in disputes as the police should handle any issues. The witness further testified that during training, they are told to speak to a manager if there are any problems.

After considering the evidence and testimony, the Commission found petitioner was in the course of his employment when the incident occurred. It reasoned the incident occurred immediately after his shift ended and petitioner was rendering aid when the incident occurred, which does not remove someone from the course of employment.

In addressing the arising out of component, the Commission considered the three categories of risk: employment risks, personal risks and neutral risks. Petitioner argued he worked as a bus boy until late at night and he was exposed to a greater risk of responding to altercations involving intoxicated patrons. The Commission found Petitioner's accident did not arise out of his employment. It found the mere risk of working in a bar was insufficient to prove increased risk and Petitioner did not present evidence as to potential increased crime rates in the area surrounding the bar. The Commission found it significant that there had never been an incident like this on the Respondent's premises. It further reasoned there was no evidence that established Petitioner's actions to assist the woman were necessitated by the conditions of his employment.

***Dunn v. Cook County,* 12 WC 43254, 20 IWCC 0774 (IWCC December 31, 2020)**

Petitioner worked as a public health nurse and her duties required that she visit clinics, see patients, and supervise staff. On January 7, 2011, Petitioner visited a clinic that had recently reopened after a remodel. She testified the clinic had new linoleum flooring that was slippery and had a heavy coat of wax. Petitioner attempted to sit on an exam stool to answer a phone in an area of the clinic not open to the general public. When she sat down, the stool slid out from under her and she fell on the floor. She testified that the stool was round with 4-5 legs on rollers and no arms or back. Petitioner alleged injuries to her hip, leg and back.

The Arbitrator found Petitioner's accident did not arise out of her employment and denied benefits. On appeal, the Commission reversed and found Petitioner's injury was due to an employment related risk. In so finding, the Commission followed the Illinois Supreme Court decision in McAlister v. Ill. Workers' Comp., 2020 IL 124848. It noted that when an employee is injured performing a common bodily movement or routine everyday activity, we must determine whether the employee was injured performing one of three employment related acts: (1) acts the employee was instructed to perform, (2) acts the employee had a common-law or statutory duty to perform, or (3) acts the employee may reasonably be expected to perform incidental to his or her job duties. In this case, the Commission found Petitioner sustained a compensable injury as she was exposed to an employment related risk. IT reasoned the Petitioner was sitting down to answer a phone call and the act of sitting on the stool while performing her job duties was an act she could reasonably be expected to perform in completion of her job duties. The Commission further noted it also found the accident compensable under a neutral risk analysis due to the qualities of the chair provided by the Respondent and as it was not used by the general public. Since Petitioner was required to sit on the chair while performing her job duties, use of the chair qualitatively and quantitatively increased her risk of injury.

***Reischauer v. Governors State University,* 16 WC 13564, 20 IWCC 0762 (IWCC December 23, 2020)**

Petitioner worked as a training specialist for Governors State University, which would contract with the Department of Children and Family Services (DCFS) to provide training for DCFS case workers and private agency case workers. Petitioner would commute from her resident in Bloomington, Illinois to her primary place of employment at the DCFS Office of Training in Springfield, Illinois. In performance of her job duties, DCFS would also send her to different sites through the state for training. On March 22, 2016, Petitioner was attending a mandatory Training of Trainers conference in Joliet, Illinois, which took place quarterly. During the conference, Respondent paid for her lodging and Petitioner received mileage reimbursement for her travel and a per diem for meals. During a lunch break, Petitioner traveled to a restaurant and returned to the conference parking lot. While walking in front of the building along a sidewalk, she caught her toe on an uneven area and fell. She alleged injuries to her right hand, left foot and right knee.

The Arbitrator found Petitioner was a traveling employee and since a defect in a city sidewalk caused her fall, she was subject to the Street Risk Doctrine and sustained an injury that arose out of and in the course of her employment. The Street Risk Doctrine finds that if the evidence establishes the Petitioner's job requires that she be on the street in performance of her job duties, that the risks of the street become risks of the employment. The Arbitrator found Petitioner was exposed to a hazard since the sidewalk was uneven. The Commission affirmed the Arbitrator's Decision that the injury arose out of and in the course of the employment and modified the Decision on other grounds.

***Martin v. State of Illinois/Depart. Of Security*, 12 WC 36359, 21 IWCC 0013 (IWCC January 11, 2021)**

Petitioner worked as an unemployment claims processor for the State of Illinois. He was returning from a break on March 17, 2011 when he and a co-worker were shot at the entrance of the Respondent's building. At the time they were shot, Petitioner testified he heard someone yell "hey, unemployment." Petitioner testified that the employees were required to take their breaks outside, use a particular door for ingress and egress, and the neighborhood in which they worked was very dangerous. Petitioner sustained a superficial wound to the head and alleged psychological trauma.

The Arbitrator found Petitioner's accident arose out of and in the course of his employment. It reasoned Petitioner was in the course of his employment since employee's were required to take breaks outside, use a particular door for ingress and egress and he was shot near the door the employees were required to use, and as such, the Arbitrator found this area was an extension of Respondent's premises. The Arbitrator further found Petitioner's accident arose out of his employment since the Respondent required the employees to take breaks outside, he worked in a very dangerous neighborhood and was responsible for granting or denying unemployment to residents in the neighborhood, placed Petitioner at a greater risk of injury. The Arbitrator was also persuaded by Petitioner's testimony that he heard someone yell "hey, unemployment" when he was shot as evidence that the shooting was not random. The Commission affirmed the Arbitrator's finding of accident but modified unrelated portions of the Decision.

***Hernandez v. City of Chicago*, 10 WC 02706, 21 IWCC 0029 (IWCC January 22, 2021)**

Petitioner worked as a parking aid enforcement officer. On December 16, 2009, she walked her normal route with her partner when she slipped and fell on an icy and unlevel sidewalk, which was under construction. Petitioner alleged injuries to her back, neck and shoulders.

The Arbitrator found petitioner sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator reasoned that Petitioner was walking her assigned route and had to cross the dangerous area in performance of her job duties that required her to check all vehicles up and down the block. The Arbitrator found the performance of her job duties in such an environment exposed Petitioner to a greater risk of injury.

III. EVIDENCE

***Williams v. Capital Healthcare and Rehab Centre*, 13 WC 39671, 20 WC 0766 (December 29, 2020)**

Petitioner was an Activities Director for Respondent. She was walking to her desk when she slipped and fell on a wet, concrete ramp, injuring her neck and back. She began treatment with her primary care physician, Dr. Lee, who diagnosed her with strains and treated her conservatively.

Eventually, Petitioner saw an orthopedic surgeon, Dr. Pineda, who agreed with conservative care and placed her at maximum medical improvement as of July 21, 2014.
Respondent arranged an Independent Medical Examination with Dr. O'Leary. Dr. O'Leary diagnosed Petitioner with strains and opined that she could work full duty and was at MMI as of April 2014.
Petitioner was then seen by Dr. Rutz, at the request of Petitioner's attorney on November 21, 2017. Dr. Rutz recommended a discogram and possible surgery and referred her to a spine surgeon for consultation.
At trial, Dr. Rutz's deposition was struck from the record on the basis that it was a discovery deposition and not an evidence deposition in contravention of 50 Ill. Admin. Code 9030.60; S. Ct. Rule 2002; and S. Ct. Rule 212. Ultimately, the Arbitrator found Dr. O'Leary more credible and found that Petitioner was at MMI as of April 2014 and awarded Petitioner medical bills through that date.
On appeal, the Commission found that Dr. Rutz's deposition was admissible and should have been included in the record. It found that even though the deposition was not titled "Evidentiary Deposition," the circumstances surrounding it prove it was an evidence deposition. Specifically, they mentioned that because the deposition was done in lieu of Dr. Rutz's testimony at trial, was taken by agreement by the parties, and both parties had counsel present to cross the witness, it was an evidence deposition that should have been admitted. Further, there was no objection made by the Respondent for the admission of the deposition at the hearing.
After considering Dr. Rutz's testimony, the Commission did not find him persuasive. They held that Dr. Pineda was persuasive and modified the Arbitrator's award to an MMI date of August 7, 2014 and awarded Petitioner's medical expenses through that date.

IV. MEDICAL CAUSATION

***Pelivanovic v. Our Lady of Resurrection,* 10 WC 38521, 20 IWCC 0747 (IWCC Dec. 18, 2020)**

Petitioner was employed as a hospital housekeeper. She contracted MRSA from cleaning the hospital rooms of patients with staph bacteria. Petitioner filed several Applications for Adjustment of Claim relating to different dates of exposure. Petitioner testified that while working, she noticed blisters and bleeding on her face and notified her supervisor. Petitioner's condition became worse and she sought medical treatment. The supervisor documented that the accident occurred when Petitioner touched her face when cleaning an isolation room and that Petitioner should be more careful.

Petitioner's treating physicians, including a primary care doctor, dermatologist and infectious disease specialist, testified that Petitioner's MRSA was related to an exposure at work. Respondent's Section 12 physician testified that Petitioner did not have MRSA because she did not have a positive skin culture. Further, if she did have MRSA, it was not related to work because MRSA is present in many different locations and there is nothing unique about hospitals that would increase her risk of contracting MRSA.

The Arbitrator denied all of Petitioner's claims. She found that Petitioner did not prove any accidental injuries or exposure and Petitioner lacked credibility because her histories lacked detailed as to when and where the workplace exposure occurred. The Arbitrator did not find any of Petitioner's physicians to be credible.

The Commission reversed the decision of the Arbitrator. The Commission found that Petitioner established that she was exposed to MRSA while working. The Commission rejected the opinions of Respondent's Section 12 physician. It found he had he had no understanding of Petitioner's exposure at work to MRSA and was not aware that Petitioner had a positive MRSA culture. Further, the doctor did not believe it was relevant to know how many rooms Petitioner cleaned prior to developing MRSA and attributed the MRSA to anything but the hospital. Petitioner's unrebutted testimony established that she cleaned rooms where MRSA patients received medical treatment. The Commission also found it incredible that the doctor did not believe there was anything unique about hospitals that would cause MRSA.

The Commission relied on the opinions of the infectious disease doctor. He noted that the treatment for MRSA succeeded in controlling the infection. The Commission further noted that the opinions of the dermatologist and primary care physician were credible and supported the findings and opinions of the infectious disease doctor.

The Commission stated that it would not disregard the positive diagnostic test, opinions of several doctors and the unrebutted evidence about Petitioner's job. The Commission also noted that the doctor's opinion that antibiotics were not warranted was contradicted by the fact that Petitioner improved after starting the antibiotics.

As a result of the work-related MRSA, Petitioner sustained numerous injuries to multiple parts of her body. She was advised not to return to her job at the hospital by her treating physician. However, the Commission found that Petitioner had not established a loss of trade, since she could work in housekeeping at offices or residents. The Commission found that Petitioner was permanently and partially disabled to the extent of 10% loss of use of the person. It also awarded TTD benefits and medical bills.

***Williams v. McGraw Enterprise, Inc. d/b/a McDonald's,* 17 WC 32993, 20 IWCC 0744 (Dec. 17, 2020)**

The issues presented at hearing were causal connection and prospective medical care. The case was tried pursuant to Section 19(b). Petitioner was working as a maintenance person for Respondent. While lifting an empty garbage bin into a dumpster, he heard something tear in his right shoulder. Petitioner reported the accident. Surgery was recommended for the shoulder.

Petitioner testified that he has difficulty performing work and moving his shoulder. Respondent had surveillance of Petitioner. The surveillance depicted Petitioner lifting, carrying, cleaning and lifting his arm above his head.

Respondent's Section 12 physician opined that Petitioner's current condition of ill-being was not causally related to his work-related accident. The doctor found that Petitioner's condition of osteoarthritis was degenerative in nature. He stated that the symptoms may have increased, but the underlying condition did not change.

The Arbitrator found that Petitioner's shoulder condition was causally related to the work-related accident. She awarded payment of medical expenses and the recommended surgery.

The Commission reversed the decision of the Arbitrator and found that Petitioner sustained a temporary aggravation of the per-existing degenerative arthritis and a sprain, which had resolved. The Commission further found that the medical expenses were awarded in error. Accordingly, the Commission vacated the award of payment of the medical bills and prospective medical care.

***Morton v. Chicago Board of Education,* 18 WC 2119, 21 IWCC 0022 (IWCC Jan. 15, 2021)**

Petitioner was employed as a physical education teacher for Respondent. She sustained an injury to her back when a table she sat on collapsed. Prior to the accident, Petitioner underwent two steroid injections and quickly recovered from the prior episodic back pain. Petitioner was performing her full work duties prior to the accident without difficulty. Following the accident, Petitioner retired from her job due to Respondent terminating her TTD benefits. As a result of the injury, Petitioner underwent a two-level fusion and continued to experience back pain. A spinal cord stimulator was recommended.

Petitioner underwent prior treatment for her back condition, including an injection. Petitioner did not have continuous treatment prior to the work accident. Petitioner's treating physician testified in connection with the case. He testified that the trauma increased the back pain and caused her pain to be continuous.

Respondent present the opinion of a Section 12 physician. The doctor opined that Petitioner could return to full duty work. However, he was not aware of Petitioner's job duties. He noted that Petitioner had non-anatomic pain complaints but failed to explain why they were non-anatomic. Further, he noted that Petitioner had previously taken pain medication, but did not provide any dates. The physician did not recommend surgery since the MRI findings did not correlate with the pain complaints; however, he did not specify why they did not correlate. Accordingly, the Arbitrator found the opinions of Petitioner's treating physician more credible than those of the Section 12 physician.

Based on the testimony of the treating physician, the Arbitrator found that the current spinal condition was causally related to the work-related accident. The Arbitrator awarded payment of the medical bills, including the back surgery and awarded payment for the spinal cord stimulator. The Arbitrator also awarded TTD benefits. The Arbitrator noted that Petitioner did not voluntarily retire but was forced to retire since she was not receiving TTD benefits. The Arbitrator did not

award penalties or fees since Respondent reasonably relied on the opinion of the Section 12 physician when it terminated benefits.

The Commission affirmed the decision of the Arbitrator. The Commission noted that the treating physician provided a reasoned opinion regarding medical causation. The Commission found it significant that although Petitioner obtained prior medical treatment, the treatment was continuous and uninterrupted following the work-related accident. Accordingly, the Commission affirmed the decision of the Arbitrator. The Commission also affirmed the decision of the Arbitrator regarding penalties and fees. It noted that although the Arbitrator found the opinion of the treating physician to be more persuasive than that of the Section 12 physician, it was still reasonable to rely on the opinion. Thus, penalties and fees were not warranted.

V. AUTHORIZATION & PAYMENT OF MEDICAL BILLS

***Wagner v. Walgreens Distribution Center,* 18 WC 17063, 20 IWCC 0745 (December 17, 2020)**

Petitioner worked as a shipper / loader for Respondent and suffered an undisputed accident when his foot was caught in a load strap, causing him to fall forward and injure his left knee. Petitioner was working and receiving medical treatment from his primary care physician, Dr. Jeffrey McIntosh. Dr. McIntosh ultimately recommended and performed a total knee replacement.

During his treatment, the Respondent arranged an Independent Medical Examination with Dr. Jason Young. Dr. Young agreed with Dr. McIntosh's diagnosis and treatment recommendations but opined that it was not causally related to the accident but was rather caused by a degenerative issue.

At trial, the Respondent disputed causation, medical bills, temporary total disability benefits, and the nature and extent of the injury. The Arbitrator found the Petitioner and Dr. McIntosh more credible and awarded the Petitioner causation, a period of TTD, medical bills, and an award of 35% loss of use of the leg.

Specifically, when awarding medical bills, the Arbitrator noted that the Respondent was to pay for all reasonable and necessary medical services and further ordered "Respondent shall hold Petitioner harmless for any and all health insurance subrogation claims by United Healthcare Insurance Company for reasonable and necessary medical services."

Petitioner appealed, arguing that the Commission should award the amount of the health care claims to Petitioner directly. Respondent also appealed arguing the claims paid by United should be paid directly to the medial providers.

The Commission first struck the "hold harmless" language in the Arbitrator's decision because there was no evidence in the record proving the Respondent contributed in whole or in part to Petitioner's United group policy. Further, the parties stipulated to Respondent's credits in the

Request for Hearing Form and did not include a credit for payments made by United. The Commission held the parties are bound by the stipulations made on the Request for Hearing Form.

With respect to how the bills should be paid, the Commission held that the Respondent has to pay the Petitioner the amount United paid directly to the Petitioner. They explained that had the bills been accepted, they could have been held to be paid to the providers, but because they were in dispute they were to be paid to the Petitioner directly.

VI. PENALTIES

***Verduzco v. Wal-Mart Stores, Inc., d/b/a as Sam's Club*, 21 IWCC 0037, 17 WC 08585 (January 16, 2021).**

The matter proceeded to hearing on a 19b basis involving the issues of causal connection, medical expenses, prospective medical care and penalties and fees. The Arbitrator found in favor of the petitioner including awarding penalties and fees of $10,000 pursuant to §19(1).

On October 22, 2016, petitioner worked as a lead supervisor for the respondent. On that date while pushing a row of shopping carts outside of the store he injured his low back. On February 24, 2017, Dr. Bagan performed a L5-S1 microdiscectomy on the 29-year-old injured worker. Petitioner had previous to the accident been diagnosed with multiple herniated lumbar discs but he had not required any treatment for years. At the time of his injury petitioner had been working without restrictions.

Subsequent to the surgery, petitioner continued to have pain and radiating symptoms. His treating surgeon recommended continued medication. Petitioner sought treatment with a pain management physician who recommended epidural steroid injections and lumbar medial branch blocks. Petitioner received the epidural injections but respondent authorized no further treatment including the medical branch block.

Respondent referred petitioner for a Section 12 examination with Dr. Babak Lami twice. The first evaluation occurred on October 27, 2017 and the second on September 24, 2018. Dr. Lami opined that petitioner's medical treatment through the time of the first examination had been reasonable, necessary and causally related. However, Dr. Lami opined in the second examination that petitioner had reached MMI as of April 2, 2018 when petitioner completed physical therapy after 18 visits.

The Arbitrator found that Dr. Lami's opinion was not "factually supported by the evidence contained in the record including the diagnostic studies, treatment medical records and petitioner's credible testimony." The Arbitrator also awarded penalties pursuant to §19 (1) for the respondent's failure to pay the medical expenses incurred by petitioner prior to Dr. Lami's initial examination of October 27, 2017. The Arbitrator found that the failure of respondent to pay for medical expenses incurred prior to Dr. Lami's first Section 12 examination remained unpaid despite Dr.

Lami's report that found petitioner's treatment was reasonable and necessary up to that time and Dr. Lami's opinion during the October 27, 2017 evaluation that petitioner had not reached MMI.

Respondent argued no penalties are due since petitioner failed to produce evidence regarding when the medical bills unpaid and supporting records were presented to the respondent prior to trial and thus, should defeat petitioner's claim for penalties. The Arbitrator noted that "(w)hile it is true the petitioner did not produce any letters demanding specific payment from Respondent of any medical bills, the submitted bills do contain references to Respondent's insurance carrier." Based upon this record, the Arbitrator ordered respondent to pay $10,0000 (maximum) for the respondent's failure to pay medical expenses of petitioner incurred prior to October 27, 2017.

On review the Commission reversed the Arbitrator's decision on penalties. The Commission cited §19 (1) emphasizing the following language in the statute: "If the employee has made ***written demand*** for payment of benefits under Section 8(a) . . . the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. . . . . In the case of demand for payment of medical benefits under Section 8(a), the time for the employer to respond shall not commence until the expiration of the allotted 30 days specified under Section 8.2(d)."

The Commission opined that because the record did not contain a written demand for payment of medical bills, the petitioner failed to prove entitlement to §19 (1) penalties. The Commission vacated the award of penalties by the Arbitrator.

O'Farrell v. Chicago, City of, 29 ILWCLB 32 (Ill. W.C. Comm. 2021).

The petitioner worked as a laborer who sustained two right knee injuries in 2018 and 2019 while working for the City of Chicago's Water Department. The petitioner's cases were consolidated and ultimately proceeded to a 19b hearing. At that time, the arbitrator noted that the petitioner had indicated that Section 19(k), 19(l), and 16 penalties were being sought. Further, the Request for Hearing form also listed that the petitioner claimed entitlement to penalties and fee under Sections 19(k), 19(l) and 16, but the petitioner did not indicate whether he filed penalty petition on the Request for Hearing form. The arbitrator denied penalties and fees based on the record's failure to show that Petitioner had properly filed a penalty petition.
On review, the Commission affirmed penalties and fees under Sections 19(k), 19(l) and 16 were not warranted but modified the reasoning for the denial of penalties and fees. The Commission found that the 19(l) penalties were not warranted because the record failed to show if or when the petitioner made a written demand for payment of benefits as explicitly required by the Act. Additionally, the Commission did not award Section 19(k) or Section 16 penalties and fee because the respondent could reasonably base its denial of TTD benefits on their Section 12 opinion and the inconsistencies in the treatment records regarding the onset of the petitioner's knee problems. Here, the Commission noted that the respondent did not accommodate the petitioner's light duty restrictions nor pay TTD benefits, but the Section 12 opinion provided respondent with an opinion that the petitioner's injuries were not causally related to the alleged work accidents and the

petitioner's restrictions were unrelated to his work activities. Therefore, the Commission denied penalties and fees under Sections 19(l), 19(k) and 16 of the Act.

VII. PERMANENCY

***Stone v. Central Illinois Truss*, 08 WC 51795, 21 IWCC 0028 (IWCC Jan. 22, 20121)**

This matter came before the Commission pursuant to a remand order issued by the Tazewell County Circuit court in case number 19-MR-140. The Arbitrator originally issued a decision in the case and found that Petitioner sustained a compensable accident, which resulted in an above the knee amputation. The Arbitrator awarded payment of medical bills and found that Petitioner was permanently and partially disabled to the extent of 25% loss of use of the person as a whole in addition to the statutory amputation benefit paid by Respondent prior to the hearing.

Petitioner filed a Review to the Commission. He argued that he was entitled to penalties, even though the issued had not been raised previously. Petitioner also requested a lump sum payment for the cost of future medical expenses. The Commission affirmed the decision of the Arbitrator. It stated that it had no authority to commute the cost of future medical benefits to a lump sum payment.

Petitioner appealed to the circuit court. The court remanded the case to the Commission to reconsider the finding that Petitioner was not permanently and totally disabled. In its decision, the Commission made reference to seven houses that Petitioner purchased in central Illinois and noted that Petitioner had resumed employment as a landlord/manager/property investor. The circuit court stated there was not enough evidence in the record to establish that Petitioner was engaged in any activity other than collecting rent checks. The court found that the property management business was not a sufficient factor to consider in determining whether Petitioner was permanently and totally disabled. The court vacated the Commission's finding on that issue and remanded the case back to the Commission.

On remand, the Commission found that Petitioner had not sustained his burden of establishing that he was permanently and totally disabled. The Commission noted that Petitioner was 19 at the time of the accident. The record did not contain any opinion from a medical professional that Petitioner was permanently and totally disabled. Respondent did not provide Petitioner with vocational rehabilitation. Petitioner conducted a self-directed job search. Although the time frame was not specified, Petitioner testified that he applied for employment at more than 25 establishments. At the time of the hearing, which was 9 years after the accident, Petitioner was not working. He was attending school to obtain a business degree. Maintenance benefits were not sought for the period after Petitioner was found to be at maximum medical improvement.

The only medical evidence offered regarding Petitioner's restrictions was from the Section 12 physician. The doctor stated that Petitioner could lift up to 75 pounds and should avoid working at heights. He opined that Petitioner could return to full duty work.

The Commission found that Petitioner did not conduct a diligent and unsuccessful job search. Petitioner's testimony that he applied to 25 establishments and only two jobs in the two years prior to the hearing did not constitute a diligent job search. Further, no evidence of his job search was admitted at hearing. The Commission noted that Petitioner was young and had a high school diploma. Further, Petitioner demonstrated an ability to work with his hands. Thus, the Commission found that Petitioner's age, education, training and work experience did not establish that he was permanently and totally disabled.

The Commission also found that Respondent established there was a stable labor market available for Petitioner. Respondent hired a vocational expert to prepare a vocational assessment and labor market survey. She testified that Petitioner would be able to return to work. She also testified that Petitioner would be able to return to his pre-injury employment. The Commission also noted that Petitioner was able to obtain full time employment at a fast-food restaurant but left due to safety concerns. Petitioner did not present evidence that he was not able to return to work.

The Commission found that Petitioner was young, had a high school degree and interest in working with furniture or in customer services. Although he had limited work experience, Petitioner had a good prognosis for returning to work. Thus, the Commission found he was not permanently and totally disabled. Petitioner did not present any evidence that he was entitled to a wage differential. Therefore, the Commission concluded that Petitioner was entitled to an award pursuant to Section 8(d)2 to compensate him for low back pain and changing his job. The award was in addition to the statutory amputation benefits.

Szymczak v. Edmar Heating & Cooling Co., 29 ILWCLB 19 (Ill. W.C. Comm. 2020).

Petitioner was injured on the job with respondent when catching a falling air conditioning unit. He ultimately underwent a lumbar discography and fusion surgery and was diagnosed with post laminectomy syndrome, lumbar spinal stenosis and left sided sciatica. At trial, the petitioner testified his back pain limited his ability to sit, stand, walk and sleep. Additionally, he testified to using a spinal cord stimulator, and taking pain medication. Two of his treating doctors indicated the petitioner was not released to work due to his ongoing pain issues. Additionally, two vocational counselors testified there was no stable labor market for the petitioner. The arbitrator awarded permanency of 45% loss of person as a whole.

The petitioner appealed the decision to the Commission. The Commission determined that the evidence supported the petitioner was permanently and totally disabled under the odd-lot theory. The Commission took into account the petitioner's age, training, education, work experience and his medical conditions. The Commission reasoned that due to the petitioner's lack of education and transferable skills the petitioner was permanently and totally disabled under the odd-lot theory.

Rainey v. Chicago, City of, 29 ILWCLB 20 (Ill. W.C. Comm. 2020).

The petitioner was a 60-year-old sanitation worker when he was injured while working for respondent. He injured his right knee and buttocks when he fell off the back of a garbage truck. From the fall, his doctor opined that he had a diagnosis of right medial meniscus tear, aggravation of preexisting chondromalacia, as well as bruising to his coccyx. He treated from August 2016 to December 2016 conservatively with physical therapy and a cortisone injection. He was released to full duty work in December 2016. He voluntarily retired 11 months later. At trial, he testified to some discomfit with prolonged sitting or standing. The arbitrator awarded permanency of 7.5% loss of use of person as a whole and 12.5% loss of use of the right leg.

The Commission reviewed the decision and took into account the petitioner's age at the time of the accident and his recovery speed. The Commission determined his ongoing complaints were minimal and intermittent. The Commission found the petitioner sustained 4% loss of use of person as a whole and 10% loss of use of the right leg.

Ivanov v. Tech Auto Service Inc., 29 ILWCLB 29 (Ill. W.C. Comm. 2021).

The petitioner worked as a mechanic for Tech Auto Services and sustained an injury to his left hand when a piece of a muffler fell on it. The petitioner's injury consisted of a deep laceration to his left hand, an open metacarpal fracture, and transections of a nerve and tendon, which required debridement surgery and surgical repair of the nerve and tendon.

At trial, the arbitrator awarded petitioner 30.75 weeks of PPD benefits which represented 15% loss of use of the left hand. On review, the Commission found an award of 41 weeks representing 20% loss of use of the left hand was appropriate. The Commission noted that the arbitrator gave no weight to the petitioner's occupation or reduction of future earning potential since he returned to work as a mechanic, and the arbitrator also gave greater weight to the fact that petitioner finished his treatment while expressing no complaints at that time. However, the Commission reasoned that the petitioner was entitled to a greater PPD award because he still had some residual pain, numbness and stiffness in his left hand. Additionally, the petitioner's work was very hand intensive, which became more difficult and uncomfortable because of the injury.

VIII. BENEFIT PAYMENT PROCEDURES

Valadez v. Harvey, City of, 29 ILWCLB 18 (Ill. W.C. Comm. 2020).

The petitioner was hired by the city of Harvey, IL as a firefighter in 1997. In 2014, while fleeing from a burning structure, he fell on his back and onto his oxygen tank. He was ultimately diagnosed with a herniated nucleus pulposus. Conservative treatment failed and in December of 2014 he underwent a L3-4 and L4-5 decompression, instrumentation, and fusion. He was later released from his doctor to return to work July of 2015. While the petitioner was off work, the respondent paid benefits pursuant the Public Employees Disability Act.

At trial, arbitrator awarded permanency of 25% person as a whole and temporary total disability for his time off work. The arbitrator denied the respondent's request for credit for payments the petitioner received under the Public Employees Disability Act.
Respondent appealed the arbitrator's decision. The Commission reversed the arbitrator's decision with regard to the Public Employees Disability Act benefits. The Commission held that the respondent was entitled to a credit, but only up to the amount of the temporary total disability award. The Commission reasoned that Section 1(d) of Public Employees Disability Act provides for a credit equal to the temporary total disability benefit the employer would have paid, rather than the salary actually paid through Public Employees Disability Act. Section 1(d) of Public Employees Disability Act states: "Any salary compensation due the injured person from workers' compensation or any salary due him from any type of insurance which may be carried by the employing public entity shall revert to that entity during the time for which continuing compensation is paid to him under this Act."
The petitioner was paid $119,268.59 in Public Employees Disability Act benefits during the time he was temporary and tolly disabled from his work injury. Based on the Public Employees Disability Act those benefits were to be credited back to respondent.

IX. OTHER ISSUES

***Gilliam v. Ford Motor Co*., 29 ILWCLB 30 (Ill. W.C. Comm. 2021).**

The petitioner filed an Application for Adjustment of Claim for injuries to her hand with an accident date of October 28, 2014. Over the course of its pendency this matter was set for multiple trial dates but never proceeded. In March 2018, trial did not proceed because the petitioner was not prepared to testify. Then, the arbitrator gave this matter a final trial date for June 2018, which the petitioner also failed to appear for due to an alleged need to attend a medical appointment for an unrelated knee condition. This matter was dismissed for want of prosecution, and the petitioner filed a timely Petition to Reinstate. The arbitrator requested that the petitioner present the medical documentation to verify her medical appointment that was scheduled for the June 2018 trial date, and the petitioner presented a record showing a treatment date that was two days after the scheduled trial date. As such, the arbitrator denied the petitioner's Petition to Reinstate.

Here, the Commission affirmed the denial of the petitioner's Petition to Reinstate due to her repeated lack of diligence in the prosecution of her claim. The Commission reasoned that the petitioner was given plenty of opportunity to prosecute her claim and failed to. Further, the petitioner failed to appear for the final trial date because she claimed to seek medical treatment for an unrelated condition which she did not actually seek until two days after the scheduled trial date