WCLA NEWSLETTER
APRIL CASE SUMMARIES

I. ARISING OUT OF EMPLOYMENT

Nicole Weston v. State of Illinois, Department of Children and Family Services, 17 WC 08811, 21 IWCC 0070 (February 18, 2021)

Respondent hired Petitioner on January 30, 2017. She was required to attend an orientation program that ended on March 1, 2017. Petitioner testified that she was directed to park in the lot in front of the building or a second parking lot close to Respondent's building. On the date of the accident, Petitioner was wearing rain boots with decorative shoelaces. At lunchtime, she left the Respondent's building to go to her car to get her lunch. While doing so, her shoelace got caught in the sidewalk causing her to fall and injure her right knee.

The Arbitrator denied the case based on accident. He held that the evidence submitted did not establish that the Respondent owned, maintained, or controlled the sidewalk where Petitioner fell. Further, he explained that even if she could prove "in the course of" of component, Petitioner failed to prove her accident "arose out of" her employment because the risk of getting her shoelace caught in the sidewalk is not a risk incidental to her employment. Because Arbitrator found no accident, he denied all other benefits. The Commission affirmed and adopted the Arbitrator's decision.

II. ACCIDENTAL INJURY

Jocelyn Cahill v. City of Chicago, 15 WC 11742, 21 IWCC 0057 (February 8, 2021)

Petitioner worked for Respondent as a 911 operator and first responder for 15 years. Her duties included receiving emergency calls and documenting information on a computer, which required repetitive typing and the use of a touch screen. Petitioner testified she did not have an ergonomic keyboard and had a faulty mouse at her work station.

Petitioner developed bilateral carpal tunnel syndrome. She began treatment with Dr. Blair Rhode. Dr. Rhode considered her work station, number of calls received, and preexisting risk factors. He opined that Petitioner's diagnosis was causally related to her job duties. Dr. Rhode acknowledged a debate in the medical community with respect to repetitive typing causing carpal tunnel, but explained that Petitioner's work with Respondent was "high exposure" which would create a causal relationship between her job duties and diagnosis.

Respondent arranged an Independent Medical Examination with Dr. John Fernandez. Dr. Fernandez reviewed medical records, a job description, and a "job video" of her work station. Based on this information, he opined that her bilateral carpal tunnel was not causally related to her job duties. He opined that her duties did not include flexion of the hands or physical gripping or grasping necessary to cause carpal tunnel syndrome.

The Arbitrator found Dr. Fernandez to be more credible. The Arbitrator denied the case based on accident. On appeal, the Commission reversed, finding Petitioner sustained a compensable accident. The Commission explained that Dr. Fernandez's opinion did not consider the frequency or force required for Petitioner's job duties, which Dr. Rhode considered in his opinion. Lastly, the Commission explained that the Respondent takes it employees as it finds them and even if Petitioner had some risk factors that contributed to her diagnosis, her job duties were a cause in her diagnosis and condition of ill-being and a finding of accident and causation was proper.

McWilliams v. Rockford Mass Transit District, 12 WC 22502, 21 IWCC 0064 (February 17, 2021)

Petitioner filed a repetitive trauma claim for bilateral carpal tunnel syndrome to his hands and wrists allegedly resulting from his duties as a bus driver. Petitioner testified that he worked as a bus driver for the Respondent for 20 years. In this capacity, he used his hands and wrists extensively by operating the steering wheel, opening and closing the door with handles and levers, and using levers and gauges to adjust ramps and signs. Petitioner also testified there were often vibrations from the roads and potholes. Petitioner produced a video of his job duties, which was admitted into evidence at trial.

Petitioner presented to his treating physician in January of 2012. At that time, there was mention that he had a known history of bilateral carpal tunnel syndrome. However, he had not actively treated for several years. His physician diagnosed probable bilateral progressive carpal tunnel syndrome. Petitioner presented to another specialist, Dr. Brian Bear, who agreed with the diagnosis of work related bilateral carpal tunnel syndrome and performed bilateral carpal tunnel releases.

Respondent arranged an Independent Medical Examination with Dr. Bryan Neal. Dr. Neal attended a demonstration of Petitioner's job duties of a bus driver, reviewed his medical records, and reviewed the video produced by Petitioner. He opined that his bilateral carpal tunnel diagnosis was not causally related to his job duties.

The Arbitrator found that Petitioner did not sustain his burden of proving that a repetitive trauma accident caused his bilateral carpal tunnel syndrome. The Arbitrator found Dr. Neal's opinion more persuasive concluding that he had a better understanding of Petitioner's work duties.

On review, the Commission reversed. The Commission found Dr. Bear more persuasive because he reviewed Petitioner's job description and his opinion was supported by other physicians. The Commission also relied heavily on Greater Peoria Mass Transit District, which had a similar fact pattern to the instant case and found that carpal tunnel syndrome can be aggravated by the occupational duties of a bus driver. Based on this, the Commission found that Petitioner sustained an accident that arose out of and in the course of his employment and his condition was causally related to the accident. The Commission awarded TTD benefits, medical bills, and permanency.

III. CAUSAL RELATIONSHIP

Regina Damm v. State of Illinois / Chester Mental Health Center, 18 WC 6363, 21 IWCC 0050 (February 3, 2021)

Petitioner worked a security therapy aide for the Respondent. On the date of the accident, Petitioner tried to prevent a patient from leaving his room. The patient attacked Petitioner when she tried to stop him from leaving the room. Petitioner testified that she injured her head, neck, back, and left elbow in the accident.

She began extensive treatment for her back and neck. Petitioner testified that prior to the accident she had been treating for her neck and back, requiring chronic pain medications and multiple cervical MRIs. She testified that after the accident, her symptoms worsened and changed. Her treating physician recommended a cervical disc replacement surgery.

The Respondent arranged an Independent Medical Examination with Dr. Chabot. Dr. Chabot opined that her neck and back conditions were preexisting and not causally related to the work accident.

The Arbitrator found that Petitioner's neck and back injuries were causally related to her work accident and awarded medical bills, TTD, and prospective treatment as recommended by her treating physicians. The Arbitrator found that although she had preexisting conditions, she was working full duty for the Respondent until the date of injury and there had been no prior surgical recommendations.

The Commission affirmed the Arbitrator's finding of causation to her back, but reversed the finding to her neck, holding that she did not prove her neck was causally related to the work accident. The Commission reasoned that her prior treatment was so severe she had a cervical MRI two months before her work accident. Further, they did not find any evidence in the record to support Petitioner's testimony that her symptoms changed following the accident. Since they did not find causation to the neck, they also reversed the reward for prospective medical for her neck and remanded to determine TTD owed and a permanency award.

Cherry Bell v. Automotive Club of Southern CA, 17 WC 2772, 21 IWCC 0059 (February 9, 2021)

Petitioner worked for the Respondent as an insurance agent, selling home and auto policies. She created policies that would then be submitted to a superior for review. Petitioner testified that she began to have difficulty at work, feeling that she did not have adequate training, felt bullied, and the work environment was hostile. She testified that her superior purposefully deleted her work to get her in trouble and sabotage her success. She began treatment for emotional trauma and was diagnosed with anxiety and depression.

At trial, Petitioner testified that she did not have any other stressors at home. However, she did have a pending civil lawsuit against a contractor for unsatisfactory home repairs. Petitioner had also been hospitalized for suspected carbon monoxide poisoning.

Respondent called several witnesses to rebut Petitioner's testimony. Her superior denied Petitioner's allegations of deleting her work and testified it was not possible for her to do so. They also submitted several emails from Petitioner to Respondent.

The Arbitrator found that Petitioner did not prove that she sustained an accident that arose out of and in the course and scope of her employment. He explained that Petitioner failed to prove her mental disorder arose from a situation of a greater dimension than day to day emotional strain and tension that all employees face, as required by *Pathfinder*. He did not find any evidence of deleted emails or bullying by Respondent and no proof of sudden and severe work-related emotional shock traceable to a definite time and place to justify benefits. Based on this, he denied accident. The Commission affirmed the Arbitrator's decision in its entirety.

David Duffin v. City of Chicago, 16 WC 17014 & 17 WC 873, 21 IWCC 0001 (January 4, 2021)

Petitioner worked as a hoisting engineer for Respondent. He sustained two separate work injuries to his neck while working. The first injury was on April 13, 2016 while operating a backhoe. The second injury was on December 15, 2016 while lifting a propane tank.

Prior to April 13, 2016, Petitioner had undergone a lumbar fusion, but returned to full duty work for Respondent. Petitioner never received treatment to his neck prior to April 13, 2016. After these accidents, he was diagnosed with several cervical herniations. He received injections. Ultimately, the physician recommended that he under a cervical fusion and an FCE.

Respondent arranged an IME with Dr. Daniel Troy. Dr. Troy did not review any prior records or Petitioner's prior FCE. He agreed that Petitioner did not have any cervical complaints prior to this injury. He also agreed that a fusion was reasonable and necessary treatment. However, he opined that Petitioner's condition was degenerative and not causally related to the work accidents.

The Arbitrator found that Petitioner's condition of ill-being was causally related to the work injuries. He reasoned that the chain of events proved causation since Petitioner was asymptomatic and working full duty prior to these accidents. Further, all doctors agreed he did not treat for his neck prior to these injuries. Based on this, the Arbitrator awarded prospective medical, medical bills, TTD benefits, and penalties. The Commission affirmed.

Paula Apeles v. Graphics Packaging, 14 WC 27826, 21 IWCC 0026 (January 15, 2021**)**

Petitioner worked for Respondent as a machine operator. One day, she tripped and fell over a box injuring her left elbow, shoulder, and hip. She later complained of pain to her neck and back. Respondent disputed causation to her neck and back.

Prior to this injury, Petitioner had a cervical discectomy and fusion. When she first began treatment for this accident, she did not mention neck or back pain complaints. Petitioner testified she did not mention the pain to her neck and back because she thought it would go away.

Petitioner had a post-op appointment with her doctor who performed her fusion and did not mention a work injury.

The Arbitrator found that Petitioner failed to prove that her current condition of ill-being to her neck and back was causally related to her work injury. He found it significant that Petitioner did not mention injuries to her neck and back after the accident or to her prior doctor. Further, the medical records did not prove any aggravation to her prior injuries. The Commission affirmed.

IV. EMPLOYEE IMPROPER CONDUCT

Antonio Reid v. City of Chicago, 14 WC 34954, 21 IWCC 0067 (February 18, 2021)

Petitioner works for Respondent as a construction laborer. He was driving a vehicle issued by the Respondent when he was hit by an 18-wheeler truck. Petitioner injured his right thumb, neck, back, and right shoulder.

Petitioner took a drug test on the date of the accident. He tested positive for marijuana. Petitioner testified that he was "exposed to marijuana" two weeks prior to the accident and was not impaired on the date of the accident. Respondent admitted a single page drug test at trial, but submitted no evidence rebutting Petitioner's testimony regarding impairment.

At trial, the Arbitrator found that the Petitioner sustained an accident that arose out of and in the course and scope of his employment and awarded medical bills and a permanency award. The Arbitrator held that although Section 11 of the Act creates a rebuttable presumption that an employee's injury is not compensable if there is a positive drug test, no presumption arises by mere evidence of consumption of cannabis without evidence of impairment due to consumption of an illicit substance. As Petitioner testified he was not impaired and Respondent did not rebut at trial, the Arbitrator found he was not impaired and the presumption did not apply to the instant case.

The Commission affirmed the finding of accident and causation, but modified the decision regarding the medical bill award. The Commission agreed with the Arbitrator's analysis and further added that the police officer only issued a ticket for the semi-truck driver that struck Petitioner and did not issue Petitioner a citation on the date of the accident, further supporting he was not impaired. As such, there was no proof of impairment to trigger the Section 11 intoxication presumption.

V. CALCULATION OF PREINJURY WAGES

Jeffrey Turner v. State of Illinois / Choate Mental Health Center, 18 WC 24533, 21 IWCC 0079 (February 26, 2021)

Petitioner worked for Respondent as a mental health tech II. Petitioner testified that on the date of the accident, he parked in a lot several feet away from Respondent's building that was maintained by Respondent. After parking his vehicle, Petitioner turned to walk into Respondent's building and slipped and fell on ice injuring his mouth, chin, and teeth.

Regarding his wages, Petitioner testified that he normally worked 37.5 hours per week and also worked overtime every week. He testified that overtime from the Respondent was both voluntary and mandatory. He testified that most of his overtime was mandatory.

Respondent's timekeeper testified at trial. She testified that 90% of Petitioner's overtime was voluntary. She also testified that his overtime was not consistent and was not the exact same overtime every day.

The Arbitrator found accident and awarded medical bills, TTD benefits, and a permanency award. In calculating wages, the Arbitrator held that Petitioner established that he consistently worked a number of overtime hours each week and because he worked overtime every week in the 52 weeks prior to his injury, the Arbitrator included his overtime wages in his AWW calculations.

The Commission affirmed the Arbitrator's holding but reversed the inclusion of overtime wages in the AWW calculation. It explained that it relied on the Appellate Court's holding in *Airborne Express,* which required a set number of overtime hours per week in order to be included. Since overtime was not set and Petitioner sporadically volunteered for overtime, it was not consistent and mandatory and is therefore excluded in AWW calculations.

VI. TEMPORARY TOTAL DISABILITY BENEFITS

Patrick Sanko v. Aldridge Electric, Inc., 17 WC 004978, 21 IWCC 0010 (January 8, 2021)[1]

Petitioner injured his right foot on November 9, 2016 while working for the Respondent. While treating for his injury, he was placed on light duty work. Petitioner testified that while on light duty, he would work one to two days per week, but would still be paid for a full 40 hour work week. He worked light duty through April of 2017. He then remained off through the date of trial in 2019.

There was conflicting testimony in the record regarding Petitioner's return to work. Petitioner testified that his supervisor told him to stop working and to "go get workers' compensation" in April of 2017. His supervisor testified that he offered Petitioner light duty work, but Petitioner refused. The supervisor testified Petitioner was then terminated.

The Arbitrator found Petitioner's testimony more credible than the supervisor's testimony and awarded TTD benefits through the date of trial. The Arbitrator held that since Petitioner's condition had not yet stabilized because he was still treating and the Respondent never contacted him to return to work, he was still entitled to TTD benefits. The Commission affirmed and adopted the Arbitrator's decision.

Daniel McAleer v. Exxon Mobil, 11 WC 1305, 21 IWCC 0009 (January 8, 2021)

[1] Editor's Note – this case is currently on appeal to the Circuit Court of Cook County 2021L050062.

The case proceeded to trial on two separate occasions. In the first trial, the Arbitrator found Petitioner's right shoulder, arm, and hand injuries were causally connected to the work related accident, but did not find that the neck, back, left arm, and wrist conditions were causally related. The instant trial was to determine ongoing causation to Petitioner's right shoulder, TTD benefits, and nature and extent.

Following the first trial, Petitioner continued to treat for his right arm and unrelated neck injuries. He underwent two shoulder surgeries and pain management for his neck. Petitioner completed a FCE after his first shoulder surgery, which placed him at the medium-heavy category of no lifting over 20 pounds. He never completed another FCE after his second shoulder surgery. Petitioner testified he had not returned to work in his pre-injury capacity.

The Arbitrator found causation and awarded TTD benefits through May 1, 2017, the date of trial. On review, the Commission modified the TTD benefit award. They found the MMI date to be October 20, 2016, the last date of treatment with his pain management doctor. The Commission reasoned that the FCE was no longer valid and the last visit from the pain management doctor was the MMI date even if most of the treatment was for the non-related neck treatment. The rest of the decision was affirmed.

VII. COMPUTATION OF AWARDS

Claudio Marchese v. City of Chicago, 11 WC 020577, 21 IWCC 0049 (February 2, 2021)

Petitioner is a 56 year old foreman lineman for Respondent. On June 18, 2010, he injured his neck and shoulders after prying off a lid to a 200 pound manhole cover. He treated conservatively and was released to full duty on August 4, 2010. He worked full duty with the Respondent until his retirement on January 31, 2011. Subsequently, he experienced more pain and underwent surgeries to his shoulder and neck. Petitioner currently works for a union hall and has been released from treatment.

The Arbitrator found that Petitioner's current condition of ill-being regarding his shoulder and neck was causally connected to the work related accident. However, the Arbitrator denied TTD benefits reasoning that Petitioner voluntarily removed himself from the workforce and was not entitled to receive TTD benefits.

On appeal, the Commission held that Petitioner was entitled to receive TTD benefits. It reasoned that this case was similar to the facts in *Land & Lakes* where the Court held that Petitioner did not retire by choice, but was forced to retire prematurely because he was no longer able to physically perform his job for Respondent. Similarly here, there is no evidence in the record that Petitioner chose not to work even though he could have returned to work. The Commission held that Petitioner's choice to retire was not voluntary. Accordingly, Petitioner was entitled to receive TTD benefits through his full duty release after his shoulder and neck surgeries, which occurred after he retired.

VIII. PERMANENT DISABILITY BENEFITS

Katherine Domashevsky v. City of Chicago, 12 WC 41287, 21 IWCC 0054 (February 4, 2021)

Petitioner was a 67 year old library clerk who has worked for Respondent for 26 years. On the date of the accident, her foot got caught between two boxes causing her to fall and injure her right hand, wrist, and, shoulder. Petitioner underwent surgery and extensive treatment. One of Respondent's IME physician's, Dr. Samuel Chmell, opined that she would not be able to return to her previous occupation as a library clerk. Petitioner retired after she concluded treatment in September 2012.

The Arbitrator found causation to her work injury and her injuries to her right thumb, hand, wrist, and shoulder and awarded permanent partial disability to the extent of 20% loss of use of the right hand.

On appeal, Petitioner argued that she was an "odd-lot" and should be awarded permanent total disability. The Commission affirmed the Arbitrator's nature and extent. The Commission explained that there was no evidence in the record regarding the labor market or Petitioner's efforts to seek employment. Accordingly, the Arbitrator was correct in awarding PPD benefits rather than PTD benefits.

Alfonso Stabolito v. City of Chicago, 16 WC 25455, 21 IWCC 0019 (January 13, 2021)

Petitioner sustained an undisputed work accident as a concrete laborer mixer for Respondent. As a result of his accident, he required permanent work restrictions, which Respondent could not accommodate. The only issue at trial was whether he was entitled to maintenance benefits for the period of January 5, 2019 through February 27, 2019.

Following Petitioner's release from treatment, he began vocational retraining with Vocamotive. Petitioner missed several appointments due to personal conflicts and adverse reactions to his medicine. Due to his alleged non-compliance, Respondent suspended benefits.

Petitioner's vocational rehabilitation specialist testified at trial. She testified that Petitioner put forth an acceptable effort during vocational rehabilitation services and she did not find him to be non-complaint. She testified he could earn between $10.00 - $13.00 per hour. There was no evidence admitted to rebut her testimony.

The Arbitrator found Petitioner to be in compliance with his vocational retraining and was entitled to maintenance benefits. The Arbitrator held that based on his demeanor and intelligence, he would likely earn $13.00 per hour and used that to calculate his wage differential benefits. The Commission affirmed the Arbitrator's decision.

Jose Martinez v. Jim Giese Commercial Roofing, 15 WC 42090, 20 IWCC 0556 (September 21, 2020)

Petitioner worked for Respondent as a roofer. On the date of accident, he was rushing to get a container of diesel and tripped and fell onto his left side injuring his left shoulder. He was diagnosed with a rotator cuff tear and underwent surgery. He received a full duty release following his treatment.

To determine the nature and extent of his injury, the Arbitrator analyzed the five factors under Section 8.1b(b). Among the factors, the Arbitrator gave some weight to the fact that Petitioner continues to experience popping in his left shoulder when he lifts his arm. Petitioner's testimony was corroborated by his medical records. He also gave some weight to his age of 62 years old reasoning that he may feel the effects of his injury more than a younger person. Based on these factors, the Arbitrator awarded 15% loss of use of the person as a whole. The Commission affirmed the Arbitrator's decision.

IX. MEDICAL & REHABILITATION BENEFITS

Maureen Kosla v. Cook County, 13 WC 33127, 21 IWCC 0062 (February 10, 2021)

Petitioner worked as a registered nurse for the Respondent. She sustained an injury to her right arm after a slip and fall at work. She developed chronic regional pain syndrome in the right arm. Subsequently, she sustained an injury to her left hand and wrist due to overuse. Petitioner was given permanent restrictions of no use of her right arm. Respondent accepted the right arm condition, but disputed the left hand and wrist conditions.

Petitioner and her family members testified regarding her ability to take care of herself. They all testified that her life had significantly changed and daily tasks were difficult for her and required assistance from her family.

The Arbitrator awarded a home health companion for four hours per day, seven days per week and prospective medical treatment of a full time home health companion if she participated in an opioid weaning program. The Arbitrator also awarded a revised life care plan.

The Commission affirmed the past and prospective medical award except for the home health companion and life care plan awards. It reasoned that Petitioner's testimony was contradictory as to what she could and could not do around the house and did not warrant home health help. It further found the life care planner's opinions were not persuasive and were done in anticipation of litigation and should therefore not have been relied on for purposes of future medical treatment. Based on this and the fact that no medical professional recommended home health assistance, it was therefore not necessary and should not have been awarded to Petitioner.

Mirjana Grujicic v. City of Chicago, Dept. of Streets & Sanitation, 02 WC 07703 & 08 WC 13557 & 11 WC 02050, 21 IWCC 0042 (January 29, 2021)

Petitioner worked for Respondent as a truck driver. She was involved in a motor vehicle accident, which resulted in several neck surgeries. She received permanent light duty work restrictions. The accident is not disputed.

Following treatment, Petitioner began vocational rehabilitation services. There is a dispute in the record whether Petitioner was compliant in her vocational rehabilitation. Petitioner testified that she was motivated to return to work, but could not find employment. She completed online courses, went to in person seminars and attended several interviews. She did not receive any offers.

Respondent's vocational counselor also testified. He testified Petitioner had attendance issues and was non-complaint in the program. Respondent suspended maintenance benefits.

The Arbitrator found the Petitioner to be credible and awarded reinstatement of vocational rehabilitation at a new company and maintenance benefits for a period of nine months. She found it persuasive that Petitioner was seeking to reinstate vocational retraining instead of settling her case. The Commission affirmed the Arbitrator's ruling.

X. BENEFIT PAYMENT PROCEUDRES

Craig Eldridge v. Kehe Distributors LLC, 14 WC 2899, 21 IWCC 0043 (February 1, 2021)

The instant case was tried twice. The first trial proceeded under Section 19(b) on May 1, 2014. The Arbitrator rendered a decision was rendered on June 2, 2014. Neither party filed a Petition for Review and the decision became final. A second trial took place on December 4, 2014. The Arbitrator's decision was affirmed and adopted by the Commission on February 1, 2016, leaving issues of medical bills, TTD, nature and extent, and penalties.

Petitioner testified that after his initial 19(b) hearing, he returned to work full duty. Petitioner continued to receive medical treatment for knee pain. In July 2016, he underwent a Functional Capacity Examination that found he required permanent restrictions of no kneeling, climbing, or squatting. In 2017, Respondent could no longer accommodate his restrictions and Petitioner demanded vocational retraining.

Petitioner testified that he complied with vocational retraining and looked for work approximately two hours per day. Petitioner testified he had not received any offers of employment. However, Respondent's vocational expert testified that Petitioner would not accept jobs earning less than $90,000.00 annually. One potential employer testified that she offered Petitioner a position earning $45,000.00 annually and Petitioner declined the offer.

Respondent's adjuster testified at the second trial. She testified that all medical bills had been paid. She also testified that TTD was paid until Petitioner failed to comply with vocational retraining.

The Arbitrator awarded wage differential benefits based on the offer of employment of $45,000.00 annually, medical bills, and a period of TTD. The Arbitrator found that Respondent acted in good faith in terminating maintenance benefits and had paid all medical bills. Accordingly, the Arbitrator did not award penalties or fees.

The Commission affirmed all issues expect the issue of penalties and fees. The Commission held that Petitioner satisfied his burden of 19(l) by making a written demand for payment of medical bills. Respondent's adjuster testified she had paid the bills, but at the second trial the bills were still outstanding a year later. Based on this, the Commission awarded 19(l) penalties in the amount of $10,000.00. The Commission denied penalties until section 16 because it found Respondent acted reasonably in disputing maintenance after Petitioner rejected job offers.

XI. HEARING LEVEL PROCEDURES

Ashley Landrus v. State of Illinois / DJJIYC St. Charles, 16 WC 2840, 21 IWCC 0075 (February 22, 2021)

The parties tried this claim on July 12, 2019. Petitioner submitted medical bills into evidence and Respondent objected on the basis that they were not certified. Petitioner mistakenly told the Arbitrator that the bills were duplicates and contained in earlier exhibits. The Arbitrator rejected them as duplicative. Petitioner filed a motion to reopen proofs and to submit the medical bills 11 days later on the basis that the bills were certified pursuant to Section 16 of the Act.

The Arbitrator granted Petitioner's motion and stated that had he truly understood the issue at trial, he would have allowed the parties an opportunity to keep proofs open until Petitioner could certify the bills. The Arbitrator re-opened proofs to avoid prejudice and the only bill that was not previously included was a $0.00 balance.

The Commission affirmed the Arbitrator's decision to re-open proofs because it was within his discretion and would not be disturbed absent an abuse of discretion. The Commission held that the records were clearly certified prior to trial and created no prejudice to the Respondent.

Paola Martinez v. American Gasket & Rubbert Co. and Peapod, LLC, 16 WC 21925 & 16 WC 35674 & 17 WC 04557, 21 IWCC 0006 (January 5, 2021)

Petitioner filed four separate claims with four separate dates of accident, all of which were consolidated. Respondent filed a motion to dismiss following several attempts at settlement. Petitioner's counsel failed to appear to request a continuance when the case was above the red line. The Arbitrator dismissed the case. Petitioner timely filed a petition to reinstate.

At the hearing to reinstate, Petitioner argued her client instructed her not to settle and because the four claims overlapped, it required extra trial preparation. Petitioner's attorney argued Petitioner was still treating and that the treating physician had recommended surgery. Respondent's counsel argued the delay in trial and/or settlement prejudiced Respondent because evidence and witnesses became scarce.

The Arbitrator denied Petitioner's petitoin to reinstate. Petitioner filed a timely review. Respondent filed a motion to dismiss Petitioner's review arguing it had not been properly served with notice of the review. Petitioner's office filed an affidavit attesting to the fact it mailed notice to Respondent. The Commission held that Petitioner's review was properly served on Respondent and denied Respondent's motion to dismiss. The Commission reversed the denial

and reinstated the case. It held that none of the cases had been dismissed for want of prosecution before and the Petitioner was still treating. Therefore, the case should not have been dismissed.

XII. EVIDENCE

Kelly Stork v. Adventist Bolingbrook Hospital, 19 WC 27240, 21 IWCC 0032 (January 25, 2021)

Petitioner worked for Respondent as an Obstetrics Technician, assisting doctors during child birth. On the date of the accident, Petitioner was holding a woman's leg during a particularly difficult childbirth and sustained injuries to her back and hip.

During the course of treatment, Respondent arranged two IMEs with two different doctors. Petitioner offered them into evidence at trial and Respondent objected based on hearsay. Petitioner argued the reports should be admitted based on Rule 801(d) and/or Rule 803(4).

The Arbitrator sustained the objection and did not admit the reports into evidence, but noted that she could infer that the reports were in Petitioner's favor. The Arbitrator held that the hearsay objections argued by Petitioner did not apply because IME doctors are not agents of the Respondent and their opinions are therefore not admissions against the interest of the Respondent. Further, 803(4) excludes statements made in furtherance of litigation, which is what the IME reports were intended to do. On review, the Commission affirmed the decision, but struck the inference about the reports being in the Petitioner's favor. The Commission modified the TTD dates.

XIII. INJURED WORKERS' BENEFIT FUND

Elbin Sosa v. In & Out Moving and Storage, Novestaff, and Injured Workers' Benefit Fund, 10 WC 33065, 21 IWCC 0036 (January 6, 2021)

Petitioner worked for Respondent as a mover and foreman. He testified he received his paystubs from a staffing company, Novestaff. On the date of the accident, Petitioner was moving a dresser when it fell on top of him injuring his right knee.

The President of In & Out Moving testified at trial. He testified that he temporarily hired Novestaff to do payroll and obtain workers' compensation coverage. Petitioner testified he received TTD checks from Ullico Casualty Company for the time he was off work.

Petitioner presented a certificate that stated there was no insurance coverage for In & Out Moving and Storage or Novestaff for Petitioner's date of accident.

The Arbitrator found the Injured Workers' Benefit Fund was properly added as a Respondent. Petitioner would be able to seek payment from the IWBF if the employer did not pay. The IWBF appealed arguing it should not be included as a Respondent because it believed the Respondent had insurance. It argued that the insurance company had paid benefits. On review, the Commission agreed with the Arbitrator that the IWBF was properly named as a Respondent.

The Commission heavily relied on the certificate of no insurance in tis finding. Accordingly, Petitioner could seek payment from the IWBF if Respondent failed to pay the final award.

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