



# Illinois Workers' Compensation Commission

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*Pat Quinn, Governor*

*Mitch Weisz, Chairman*

## MEMORANDUM

TO: Arbitrators at the Workers' Compensation Commission

FROM: Chairman Mitch Weisz

RE: Section 8.1b of the Act – Permanent Partial Disability Awards

DATE: November 28, 2011

The Commission has become aware that the new Section 8.1b of the Act, which sets forth the standard for the determination of permanent partial disability, may be subject to a variety of different interpretations. The Commission discussed the new Section 8.1b at its last Commission meeting on November 17, 2011. The Commission was also presented with a memo prepared by Secretary of the Commission, Kimberly Janas, which discussed the possible interpretations of Section 8.1b.

The Commission voted unanimously to provide the following recommendations to the Arbitrators:

1. An impairment report is not required to be submitted by the parties with a settlement contract.
2. If an impairment rating is not entered into evidence, the Arbitrator is not precluded from entering a finding of disability.

The preceding two statements are simply provided as guidance of the Commission's review of the new law and some current relevant arguments and interpretations and are not a rule of general applicability. Each Commissioner and Arbitrator should issue a decision that responds to the factual situation on review before them.

These thirty three cases come before the Commission on appeal from decisions of the Commission's Arbitrators pursuant to Ill. Rev. Stat. Ch. 48, §138.19(e). Oral Arguments in these cases were heard by a majority of the Commission during January, 1981. Ill Rev. Stat. Ch. 48, §138.19(e). Each of these cases involves the question of the nature and extent of the Petitioner's injury. Although these cases involve various types of injuries, they all require a determination of the nature and extent of an injury, determined in light of the particular facts of each case. This opinion discusses the principles of law applicable to deciding the nature and extent of injuries, and reviews each of the cases before us in accordance with those principles.

#### I. The Requirement that the Commission Issue Written Decisions

In the 81st Session, the General Assembly amended Ch. 48, §138.19(e) to state:

Beginning January 1, 1981, all decisions of the Commission shall set forth in writing the reasons for the decision, including findings of fact and conclusions of law, separately stated.

Decisions rendered by the Commission shall be published by the Commission and the conclusions of law set out in such decisions shall be regarded as precedents by arbitrators and committees of arbitration, for the purpose of achieving a more uniform administration of this Act.

To emphasize the purpose of this provision, Senator Bruce, Assistant Majority Leader and one of the co-sponsors of the 1980 amendments to the Workers' Compensation Act stated:

The fact that we're going finally get written decisions, giving facts and the reasons for the decision, are going to establish rules that each of the arbitrators can take a look at; and those will be published and circulated, not only for the arbitrators, but for the employees, the employers and the attorneys. See HB 3250, Conference Committee Report, July 1, 1980, p. 43.

This is the first set of decisions published by the Commission under the law.

#### II. Determination of Nature and Extent of Disability

##### A. The Problem

The Industrial Commission determines all questions arising under the Workers' Compensation Act (Act) not settled by agreement of the parties (Ch. 48 §138.19). Among the questions the Commission is frequently required to determine is the nature and extent of a Petitioner's disability.

The General Assembly has specified precisely the amount of compensation payable for one hundred percent loss of use of a part of a workers body, and of his body as a whole. Ch. 48, §138.8. For example, a worker with the permanent and complete loss of use of his foot is entitled by law to one hundred and fifty-five weeks of compensation at the statutorily established compensation rate. Ch. 48, §138.8(e). The amount payable for 100% loss of use of the body as a whole is five hundred weeks of compensation. Ch. 48, §138.8(d) (2).

When a worker sustains an injury which results in less than 100% loss of use of a part of the body, his compensation must be proportionately less. This is largely a question of fact, to be decided by the Commission on the basis of evidence presented by the worker and his employer. We must determine the amount of permanent partial disability as related to 100% disability and award an amount which is that percentage of the maximum set by the Act for total disability or total loss of use. However, the Act is silent on how such determinations are to be made.

## B. Rules of Statutory Construction

To determine how decisions on nature and extent of injuries are to be made, we must apply well-established rules of statutory construction. The cardinal rule is that a statute is to be construed to give effect to the intent of the General Assembly. Merrill vs. Drazek, 62 Ill. 2d 1, 6 388 N.E. 2d 164 (1975). Legislative intent can be discerned from the words used in the statute, the subject matter of the Act, public documents and records, general facts and circumstances existing at the time of enactment and legislative history on the subject including the action of the General Assembly on amendments offered to the bill during its passage.

The General Assembly will not be presumed to have intended absurd consequences from its enactment. People ex. rel. Carson v. Ring, 4 Ill. 2d 305, 312-13 (1968). Statutory words must be given their ordinary and popularly understood meanings. Material Service Corp. v. McKibbin, 380 Ill. 226 (1942). The General Assembly is presumed to have had full knowledge and information as to the subject matter of the statute and the existing conditions and relevant facts relating thereto, and to have acted with respect to that knowledge. People v. Choate, 71 Ill. App. 3d 267, 389 N.E. 2d 670 (1979). Long-standing contemporaneous construction by the agency charged with the administration of a particular statute, and by the courts, is entitled to great weight in construing the statute. Illinois Bell Tel. Co. v. Illinois Commerce Commission, 414, Ill. 275, 111 N.E. 2d 329 (1953).

## C. Application of Rules of Statutory Construction

The Commission has been making determinations of the nature and extent of partial disability for many years. Those decisions have been extensively reviewed by the Circuit Courts and by the Illinois Supreme Court. More than 2600 decisions of the Commission, deciding appeals from the decisions of arbitrators, have been set forth in detailed summaries beginning with April, 1979. They cover the entire range of the Commission's work. With respect to the most frequent injuries, these summaries display numerous cases. For example, more than 750 injuries to workers' backs, more than 220 injuries to their knees, and more than 130 injuries to their wrists are summarized in these Commission publications.

In the absence of a clear direction from the General Assembly to change its basic approach to deciding cases, the Commission begins with the assumption that no dramatic change was intended. The most frequently proposed change in the Commission's decision making procedures has been the adoption of medical standards. That would be a significant modification of the Commission's historic case-by-case approach to these cases. It is clear that the General Assembly did not instruct the Commission to adopt such standards, and did not intend for it to do so. Such specific rules for decision as those published by the American Medical Association have been specifically and repeatedly rejected by the General Assembly.

The rejection of standards is evident in the House and Senate Debates on SB1739 during the 1979-1980 session of the 81st General Assembly. SB 1739 would have required the Industrial Commission to adopt specific written medical standards in determining disability. On the standards issue Senator Maragos, Chairman of the Senate Labor and Commerce Committee which heard SB1739, stated that:

Senate Amendment number 3 [which eliminated the provision directing the Industrial Commission to adopt medical standards] was adopted by the committee... with the understanding that the standards that were set in the bill as amended be removed, because it was felt by many that it's very difficult to keep standards on certain issues, and especially when people differ in their employment, they differ in thresholds of pain... Senate Debates, SB 1739, June 14, 1980, p. 96-97.

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Such rejection of amendments is relevant in determining legislative intent. In Peoples Gas, Light and Coke Co. v. Ames, 359 Ill. 152, 194 N.E. 260, 263 (1934) the Illinois Supreme Court stated:

It has been frequently decided that the probative value of the rejection of an amendment will be considered by the Courts in construing an Act if the language is at all doubtful.

The Court in Peoples Gas cited McDonald & Johnson v. Southern Express Co. 134 F. 282, 288 (1904) in which the question concerned the construction of a statute:

It was suggested by the Attorney General at the hearing that the Act be so construed as to confine its operation to shad caught within the state. Such interpretation would limit the words of the Act and would be manifestly against the intent of the legislature which enacted it, for it appears from the agreed statement of facts that an amendment was proposed while the Act was on its passage, striking out the words 'any shad fish', in Section 1, and inserting in lieu thereof the words 'any shad fish caught in the waters of the State of South Carolina' but the said amendment was rejected, and the Court cannot do now by construction what the legislature refused to do by enactment.

See also, R.S. Bloome Co. v. Ames, 365 Ill. 456, 6 N. E. 2d 841 (1937).

In the 1979-1980 session of the 81st General Assembly, numerous bills and amendments to bills were introduced requiring the Industrial Commission to adopt standards, including SB 1513, SB 1795 and HB 3400. Standards were rejected in each and every case. This is clear evidence that the General Assembly did not intend that the Industrial Commission adopt standards.

In light of legislative rejection of standards, the Commission must determine whether its well-established decision process is consistent with the Act and legislative intent. It is clearly allowed by the Act. Long-standing contemporaneous construction by the agency charged with the administration of a particular statute is entitled to great weight in construing the statute. Freeman Coal Mining Corp. v. Ruff, 85 Ill. App. 2d 145 (1967). A reasonable construction of an ambiguous statute by the governmental officers charged with its enforcement, if contemporaneous, consistent, long-continued, and in concurrence with legislative acquiescence, creates a presumption of correctness which is only slightly less persuasive than a judicial construction of the same Act. Fried v. Danaher, 46 Ill. 2d 475, appeal dismissed, 402 U.S. 902 (1970). The Industrial Commission is the governmental body charged with administration of the Workers' Compensation Act.

The General Assembly was aware of the long-standing administrative approach used by the Industrial Commission to determine nature and extent of disability. The Commission's monthly summaries show the basic facts in each case, including age, occupation, type of injury and surgical procedure, if any, and the decision of the Commission. The General Assembly knew of these summaries; they were made available to the General Assembly. Senate Debates, SB 1739, May 14, 1980, p. 100.

The General Assembly readily acts when it disapproves of Commission action. This was evident when the Commission proposed, in November, 1979, a method for determining the extent of hearing loss. The Commission held hearings on its proposed hearing loss. Members of the General Assembly were aware of the hearings and some members read the transcripts of the hearings. Conference Committee Report, HB 3250, July 1, 1980, p. 30. In the Senate Debates on June 24, 1980, various hearing loss standards were discussed along with the evidence in support of the standards set forth in the Commission's hearing record and the General Assembly rejected the hearing loss guidelines proposed by the Commission. The General Assembly then enacted hearing loss standards into law. Senate Debates, SB 1739, June 1980, P. 208-218.

#### D. Factors to be Considered

The case-by-case approach requires the Commission to evaluate the effect of a disability on the life of the particular worker before it. Several basic factors are relevant to such decisions. The Illinois Supreme Court has held that the nature and extent of loss of use and percentage of permanent disability is a question of fact for the Commission, and that the Commission's decision will not be disturbed unless against the manifest weight of the evidence. Walker v. Industrial Commission, 72 Ill. 2d 408, 381, N.E. 2d 328 (1978); Chicago Transit Authority v. Industrial Commission, 61 Ill. 2d 78, 84-85, 389 N.E. 2d 198, 202 (1975); Interlake Steel Corp. v. Industrial Commission, 60 Ill. 2d 255, 260, 326 N.E. 2d 744 (1975)

The General Assembly has not disturbed the Commission's long-standing decision making approach, although it has had many opportunities to do so. While other approaches may be allowable under the Act, the Commission's is proper under the established rules of statutory construction.

Illinois Supreme Court decisions have set forth the factors which may be considered by the Commission in determining nature and extent of disability. They include: occupation, age, inability to engage in certain kinds of work or activities, skill, training, pain, stiffness, weakness, spasms, limitation of motion, tenderness, atrophy, lack of coordination, soreness, diminished reflexes, dizziness and other relevant criteria. E.g., Arcole Midwest Corp. v. Industrial Commission, 81 Ill. 2d 11, 405 N.E. 2d 755, (1980) (back injury: age, education, training, inability to do certain work, pain, stiffness); Inland Steel Co. v. Industrial Commission, 81 Ill. 2d 61, 405 N.E. 2d 781 (1980) (back; head and shoulder injury: age, ability to lift, ability to walk, ability to bend, numbness, pain, inability to do certain types of work); Seay v. Industrial Commission, 342 N.E. 2d 15 (1976) (back injury; ability to do certain types of work, including ability to lift and stoop, X-ray findings); Peavey Company Flour Mills v. Industrial Commission, 376 N.E. 2d 36 (1976) (back injury: muscle spasm, pain, stiffness, X-ray findings, chronically weak back, need for back brace, tenderness); Inland Robbins Construction Co v. Industrial Commission, 78 Ill. 2d 271, 399 N.E. 2d 1306 (1979) (back injury; age, skill, training, inability to do certain types of work, ability to lift, ability to bend, ability to walk, back and leg motions, pain); Bell & Gossett v. Industrial Commission, 290 N.E. 2d 535 (1972) (back injury: spasm, nerve irritation, decreased sensation, weakness, pain, stiffness, ability to do certain work); Guardian Electric Mfg. Co. v. Industrial Commission, 240 N.E. 2d 642 (1968) (back injury: atrophy, pain, gait change, ability to lift, inability to do certain types of work, need for back brace, soreness, diminished reflexes, nerve irritation); Westinghouse Electric Co. v. Industrial Commission, 356 N.E. 2d 28 (1976) (back injury: pain, ability to do certain work, motion loss, nerve damage); Scuderi v. Industrial Commission, 73 Ill. 2d 277, 383 N.E. 2d 174 (1978) (back injury: cramps, numbness, pain, diminished reflexes, atrophy, endurance, weakness, impaired mobility need for back brace, ability to do certain types of work); Owens-Illinois Glass Co. v. Industrial Commission, 235 N.E. 2d 611 (1968) (back and neck: spasm, restricted motion, pain, weakness, nerve irritation, ligament and muscle damage); City of Herrin v. Industrial Commission, 240 N.E. 2d 659 (1968) (cervical and head injury: dizziness, restricted motion, numbness); Makris v. Industrial Commission, (Docket # 52779, November, 1980) (leg, shoulder and back injury: vascular insufficiency, ability to do certain work, endurance, tenderness, loss of motion, pain, weakness nerve damage, X-ray findings, foot drop, diminished reflexes); County of Cook v. Industrial Commission, 78 Ill. 2d 320, 400 N.E. 2d 428 (1979) (arm injury: pain, stiffness, loss of motion, tenderness, spasms, weakness, X-ray findings, lifting ability, ability to engage in various activities); Hiram Walker & Sons vs. Industrial Commission, 376 N.E. 2d 104 (1978) (arm injury: weakness, tenderness, pain, limitation of motion); City of

Chicago v. Industrial Commission, 242 N.E. 2d 189 (1960) (arm injury: clumsiness, lack of coordination); Highway & City Transportation, Inc. v. Industrial Commission, 71 Ill. 2d 297, 375 N.E. 2d 83 (shoulder injury: separation of joint, pain, swelling, atrophy, inflammation); E.R. Moore v. Industrial Commission, 376 N.E. 2d 206 (1978) (dermatitis case: age, skill, experience, training, ability to do certain work); Granite City Steel Co. v. Industrial Commission, 233 N.E. 2d 358 (1968) (leg: soreness, flexion, diminished reflexes); Keystone Steel & Wire v. Industrial Commission, 73 Ill. 2d 290, 383 N.E. 2d 218 (1978) (leg injury: cramps, numbness, swelling, scarring, discoloration, skin tightness, clawing, diminished reflexes, atrophy, loss of motion); Morgan v. Industrial Commission, (Docket #52650, November, 1980) (leg injury: inflammation, changes in pigmentation, swelling, varicosities, tenderness, dermatitis, venous insufficiency); Osborne v. Industrial Commission 71 Ill. 2d 546, 377 N.E. 2d 41 (1978) (knee injury: ability to do certain work, bending, lifting, carrying, swelling).

In Walker v. Industrial Commission, 72 Ill. 2d 408 381 N.E. 2d 238 (1978) the Court explained that the Commission is not bound by any particular standard and may use various criteria so long as the Commission is reasonable and not arbitrary. The Court, citing Hamilton Engineering Co. v. Industrial Commission, 399 Ill. 30, 41, 76 N.E. 2d 506, 511 (1947) stated:

"The legislature has not seen fit to provide or establish any standard or table with which to measure the extent of vision, and their use and reference thereto are to be considered only as elements of the evidence. Too, it may be observed that the percentage tables referred to in the claimant's and respondent's briefs are not themselves in agreement as to what percentage losses are indicated by defined objective measurements. This serves to point out the difficulty, or even futility or attempting to use a single standard or table to govern the measurement of vision losses in every case regardless of its circumstances."

In weighing these factors to determine percent of permanent loss of use or permanent disability, the Industrial Commission relies on its expertise developed in hearing thousands of cases a year. The permanent results from various types of injuries are not the same in each case, nor are they static over time. Not only do permanent results of particular disabilities differ among individuals (some heal better than others, some have sufficient training and ability to return to work where others can not) but the results of injuries also change over time as medical technology and society changed. The availability of work that can be done by people with physical limitations has increased as medical and industrial technology has changed. Availability and expertise of physical and vocational rehabilitation experts is improving, and employers are increasingly willing to provide rehabilitation or different work to employees with limitations due to industrial injuries. All of these factors must be reflected in Commission decisions. As reality further changes, parties must bring in evidence of relevant medical, technological and social conditions to insure that Commission decisions will accurately reflect them. If a type of injury which once was completely debilitating is no longer so because of changes in medical treatment, rehabilitation or available jobs, the Commission must be provided with evidence in specific cases that this is so.

In determining the nature and extent of an injury pursuant to Ch. 48, §138.8, the Commission first determines what the injured worker could do before the accident that he can no longer do, or what he must do after the accident in a limited or different way. Next the Commission determines the importance to the injured worker of the function he has lost - how often did he use his body in the way he no longer can, and, given his skills, training and age, how significant will the loss of use be to the individual's life in the future. Thus physical impairment is the first consideration. However, the determination of nature and extent of the injury depends not only on the physical impairment, but on the injured worker's age, skill, occupation and other activities before and after the injury. The Commission has applied these principles to determine the nature and extent of the petitioner's disability in each of the following cases.

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF Williamson )

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
NATURE AND EXTENT ONLY**

**Jaelene Bryan**  
Employee/Petitioner

Case # **11 WC 47483**

v.

Consolidated cases: \_\_\_\_

**State of Illinois/Pinckneyville Correctional Center**  
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Herrin**, on **2/22/12**. By stipulation, the parties agree:

On the date of accident, **12/1/11**, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned **\$58,063.00**, and the average weekly wage was **\$1,116.60**.

At the time of injury, Petitioner was **35** years of age, *married* with **0** dependent children.

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

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

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

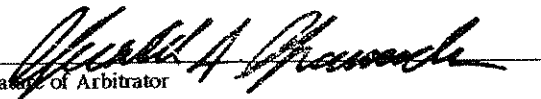
**ORDER**

Respondent shall pay Petitioner permanent partial disability benefits of **\$669.96/week** for **10.75** weeks, because the injuries sustained caused the **5%** loss of the **left leg**, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from **1/6/12** through **present**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

  
Signature of Arbitrator

3.7.12  
Date



**The Arbitrator finds the following facts:**

At the time of injury, Petitioner was a 35-year-old Correctional Officer for Respondent. The parties stipulated that on 12/1/11, Petitioner sustained accidental injuries to her left knee when her foot caught on a phone cord, causing her leg to twist and strike the floor. She was taken to the emergency room with a diagnosis of pain in her left knee, given a left knee immobilizer, crutches, and Vicodin. She followed up with her family physician, Dr. Reyes, on 12/7/11. His exam showed anterior and posterior drawer tests to be equivocally positive along with swelling and bruising. He recommended an MRI.

On 12/9/11, Petitioner saw Dr. Choi who took the history of the injury, noted her left knee symptoms, and diagnosed a left knee contusion with possible lateral meniscus tear. He recommended an MRI. This was done on 12/14/11, and showed a grade II signal abnormality posterior horn incomplete medial meniscus tear. Dr. Choi recommended physical therapy, use of non-steroidal anti-inflammatories, and ice.

Petitioner's condition gradually improved to the point where she was allowed to return to work.

At Arbitration, Petitioner credibly testified that as a result of her injury she still experiences pain in her left knee. She used to run anywhere from 3-7 days a week; however, that has stopped. She only runs a mile and a half about three times a week and has gained 15 pounds. She also experiences increased symptoms while walking and standing on concrete at work throughout the day, and with increased pain takes Tylenol, Ibuprofen, and Naperson. This is taken 3-5 times per week. It has affected her ability to perform her secondary employment as a photographer because she has to do a lot of kneeling and squatting from various viewpoints which has now been made difficult.

**Therefore, the Arbitrator concludes:**

As a result of her left knee injury, Petitioner sustained what is likely a partial tear of the medial meniscus. Although conservative treatment aided her recovery, at Arbitration, Petitioner credibly testified that as a result of her injury she still experiences pain in her left knee. She used to run anywhere from 3-7 days a week; however, that has stopped. She only runs a mile and a half about three times a week and has gained 15 pounds. She also experiences increased symptoms while walking and standing on concrete at work throughout the day, and with increased pain takes Tylenol, Ibuprofen, and Naperson. This is taken 3-5 times per week. It has affected her ability to perform her secondary employment as a photographer because she has to do a lot of kneeling and squatting from various viewpoints which has now been made difficult.

In determining the level of permanent partial disability, the Commission shall base its determination on the following factors: (i) the impairment rating obtained through use of the most current edition of the American Medical Association's "Guides to the Evaluation of Permanent 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.** 820 ILCS 305/8.1b(b). The Arbitrator notes that no impairment rating report is contained in the record. However, this does not preclude the Arbitrator from making a finding of permanent partial disability, since no single factor, or lack thereof, shall be the sole determining factor. *Id.* This interpretation of the Act has been confirmed by the unanimous vote of the Commission during its meeting on November 17, 2011, and the subsequent memorandum of guidance issued thereafter, which confirmed that the absence of an impairment rating does not preclude Arbitrators from entering a finding of disability. Therefore, after considering the aforementioned factor enumerated in §8.1b(b) of the Act, the Arbitrator finds that Petitioner has sustained the 5% loss of the left leg.

Respondent shall pay Petitioner permanent partial disability benefits of \$669.96/week for 10.75 weeks, because the injuries sustained caused the 5% loss of the left leg, as provided in Section 8(e) of the Act. Respondent shall pay Petitioner compensation that has accrued from 1/6/12 through present, and shall pay the remainder of the award, if any, in weekly payments.

Petitioner's care and treatment was conservative and reasonable. Although no tear was diagnosed on the MRI, it did show a grade II signal abnormality which was treated conservatively. When physical therapy, icing, and medication improved Petitioner's condition she was allowed to return to work.

Respondent is ordered to pay the medical bills contained in Petitioner's group exhibit pursuant to Section 8.2, the medical fee schedule contained in the amendment to the Illinois Workers' Compensation Act. Respondent shall receive credit for any and all amounts previously paid. However, if Petitioner's group health carrier requests reimbursement, Respondent shall indemnify and hold Petitioner's harmless.

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**

Terrence Davis  
Employee/Petitioner

Case # 12 WC 9378

v.

Consolidated cases: n/a

City of Springfield  
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 William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on June 11, 2012. 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 the date of accident, February 28, 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 \$69,730.44; the average weekly wage was \$1,340.97.

On the date of accident, Petitioner was 45 years of age, married with 1 dependent child(ren).

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 \$0.00 for TTD; \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$0.00.

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

**AWARD**

Respondent shall pay reasonable and necessary medical expenses of \$1,000.00, as provided in Section 8(a) and 8.2 of the Act subject to the fee schedule.

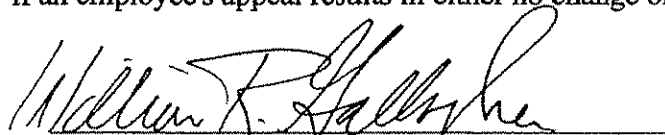
Respondent shall pay Petitioner permanent partial disability benefits of \$804.58 per week for 4.1 weeks because the injuries sustained caused the two percent (2%) loss of use of the left hand, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from February 28, 2012, through June 11, 2012, and shall pay the remainder of the award, if any, in weekly payments.

Petitioner's Petition for Penalties is hereby denied.

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

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

  
William R. Gallagher, Arbitrator

July 9, 2012  
Date

JUL 11 2012

## Findings of Fact

Petitioner filed an Application for Adjustment of Claim in which he alleged that he sustained an accidental injury on February 28, 2012, to his left-hand, ankles, low back, and right arm. Petitioner was a police officer for Respondent and was driving a marked police car when he was involved in a motor vehicle accident. Respondent denied the claim as not being compensable.

Petitioner was scheduled to begin his shift at 10:30 p.m. and, at the time of the accident, was driving the police car that had been assigned him to the police station. Petitioner was southbound on Peoria Road and the vehicle went through a puddle of water and hydroplaned. Petitioner lost control of the vehicle and it went through a fence and struck a pole. The accident occurred at approximately 10:25 p.m., just five minutes before Petitioner was required to report for a meeting in the beginning of his shift. Petitioner had his police radio on and, pursuant to department policy and regulations, would have been required to respond to any calls that were received. Petitioner acknowledged that the speed limit was 35 MPH and, at the time of the accident, he testified that he was in conformity with that speed limit. Petitioner testified that the driving time between the place where the accident occurred and the police station was approximately three to four minutes and that he would have been able to arrive there in a timely manner.

Deputy Andrea Klein of the Sangamon County Sheriff's Department was at the scene of the accident immediately following its occurrence and reported that it happened at 10:26 p.m. In her report, Deputy Klein stated that the posted speed limit was 35 MPH. She also stated that, in addition to the water on the road, the primary contributing cause of the accident was that the Petitioner was driving too fast for conditions. She did not issue a traffic ticket to Petitioner and stated that it was her understanding that Petitioner was on his way to work at the Springfield Police Department.

Deputy Chief Dennis Arnold testified at the trial of this case and stated he been with the Springfield Police Department for 20 years. He also testified that he was familiar with the location where the accident occurred and, the week prior to the accident, he had driven the same route to the police station and it took approximately eight to ten minutes. Deputy Chief Arnold indicated that there was this one route to take from the accident site to the police station which was down Peoria Road and then down Ninth Street. There are approximately eight to ten stoplights along this route that are not sequenced. Deputy Chief Arnold stated that Petitioner would not have had sufficient time to get from the accident site to the police station in time for him to report for his 10:30 p.m. shift/meeting.

Deputy Chief Arnold also testified that the City of Springfield receives a benefit by providing squad cars to its officers to drive when off-duty because it increases their visibility in the community. He also testified that when driving a squad car, the officer is required to be armed and monitoring the radio and, if called, the officer is required to respond whether on or off duty.

Following the accident, Petitioner went to the ER at St. John's Hospital. The hospital records stated that Petitioner reported that he was driving 40 MPH when his vehicle hydroplaned. The Petitioner had some complaints to the left hand over the area of the fifth metacarpal and some right forearm pain. The diagnosis was that of a contusion and Petitioner was discharged. On April 4, 2012, Petitioner was seen by Dr. Michael Brewer who noted that Petitioner had some

tenderness over the MP joint of the fifth finger. Dr. Brewer diagnosed a probable contusion to the MP joint and prescribed some medications.

At trial, Petitioner testified that he still had some pain if he bumps his hand in the same area as the injury. The other injuries that he sustained have totally resolved. Petitioner lost no time from work as a result of this accident. At trial, Petitioner submitted into evidence various medical bills for treatment rendered in connection with this accident that totaled \$1,000.00.

#### Conclusions of Law

In regard to disputed issue (C) the Arbitrator makes the following conclusions of law:

The Arbitrator finds that the Petitioner did sustain an accidental injury arising out of and in the course of his employment for the Respondent.

The Arbitrator finds that the decision in City of Springfield v. Industrial Commission, 614 N.E.2d 478 (Ill. App. 1992) to be applicable. This case also involved injuries sustained by a police officer when he was involved in a motor vehicle accident. In the Springfield case, the Petitioner was a detective sergeant with the Springfield Police Department and had an unmarked squad car which he used 24 hours a day. The officer drove the car home for his lunch and when returning to the police station after lunch, the driver of another vehicle ran a stop sign and struck the car that the officer was driving. This vehicle had a police radio and the officer was required to respond to any calls that he received. The officer was free to do whatever he wanted to do on his lunch break and could eat his lunch at whatever location he chose to. The Appellate Court affirmed the award of compensation benefits noting that by being "on call" with his radio turned on he would have been required to respond to any request received.

The Arbitrator finds the case of Siens v. Industrial Commission, 418 N.E.2d 749 (Ill. 1981) not to be controlling. In the Siens case an off-duty police officer sustained injuries to his right leg when his shotgun accidentally discharged. While the Petitioner was the village marshal (the only police officer in that town) and was "on call" 24 hours a day, he sustained these injuries while he was in the process of getting ready to go hunting.

In this case the Petitioner was on his way to the police station to report for duty. He was not on what anyone could consider a purely personal trip. The one distinction between this case and the Springfield case is that, in the Springfield case, there was no indication that the officer was driving at an excessive rate of speed.

The Arbitrator finds that, given the report of the investigating officer and the testimony of Deputy Chief Arnold, that Petitioner probably was driving at an excessive rate of speed. Even so, driving at an excessive rate of speed does not necessarily remove one from the course and scope of employment. Stembridge Builders, Inc. v. Industrial Commission, 636 N.E.2d 1088 (Ill. App. 1994). Further, for a claimant to remove himself from the protection of the Workers' Compensation Act, it needs to be shown that the actions were committed intentionally with knowledge that they would likely result in serious injury or with a wanton disregard of the probable consequences. McKernin Exhibits, Inc. v. Industrial Commission, 838 N.E.2d 47 (Ill. App. 2005). While the Petitioner in this case may very well have been driving at an excessive rate of speed, there is nothing in the facts of this case indicative that the Petitioner's rate of speed and operation of the vehicle raised to the level specified in these cases.

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator finds that Petitioner's complaints of some ongoing symptoms and problems in his left hand to be causally related to the accident as there is no evidence to the contrary.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The medical services rendered to Petitioner were both reasonable and necessary as there was no evidence to the contrary.

The Arbitrator thereby finds that Respondent is liable for payment of the medical bills submitted into evidence as provided by Sections 8(a) and 8.2 of the Act subject to the fee schedule.

In regard to disputed issue (L) the Arbitrator makes the following conclusions of law:

The Arbitrator initially finds that at the time of the trial counsel for both the Petitioner and Respondent waived their rights to an AMA impairment rating.

The Arbitrator finds at the time of this accident the Petitioner was 45 years of age and employed as a police officer for the Respondent.

The Arbitrator finds that there was no evidence of any effect on the Petitioner's future earning capacity as a result of this accident.

The Arbitrator finds that the treating physician diagnosed Petitioner with a contusion of the MP joint of the left fifth finger and that Petitioner still has some ongoing symptoms and complaints.

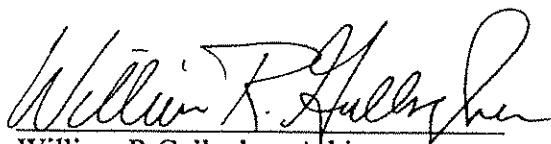
The Arbitrator is not able to use an AMA impairment rating in determining the extent of permanent partial disability because both Petitioner and Respondent's counsel waived their rights to same. The Arbitrator further finds that the Petitioner's age, employment, and future earning capacity not to be relevant to any determination of permanent partial disability.

The Arbitrator thereby concludes that given the findings of Petitioner's treating physician that he has sustained permanent partial disability to the extent of two percent (2%) loss of use of the left hand.

In regard to disputed issue (M) the Arbitrator makes the following conclusion of law:

While the Arbitrator has determined that Petitioner did sustain a compensable accident and that the Springfield case was controlling, the Arbitrator finds that given the circumstances of this accident that the Respondent's denial of compensability was neither in bad faith or vexations.

The Arbitrator thereby denies Petitioner's Petition for Penalties.

  
William R. Gallagher, Arbitrator

STATE OF ILLINOIS )  
)SS.  
COUNTY OF Williamson )

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

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

**Terry Wadkins**

Employee/Petitioner

Case # 12 WC 002866

Consolidated cases: N/A

v.

**Pinckneyville Correctional Center**

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Herrin**, on **June 12, 2012**. 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?
- Was there an employee-employer relationship?
- 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 **12/17/2011**, 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 of his right shoulder *is* causally related to the accident. Petitioner's current condition of ill-being of his cervical spine *is also* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$66,782.50**; the average weekly wage was **\$1,284.28**.

On the date of accident, Petitioner was **54** years of age, *married* with **0** dependent children.

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

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

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

Respondent is entitled to a credit of all benefits paid under Section 8(j) of the Act.

**ORDER**

Respondent shall pay Petitioner permanent partial disability benefits of **\$695.78/week** for **7.59** weeks, because injuries sustained caused the **2%** loss of the person as a whole, as provided in Section 8(d) (2) of the Act.

Petitioner's cervical spine aggravation is causally related to his accident.

Respondent shall pay reasonable and necessary medical services as outlined in Petitioner's Exhibit #1, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for all 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.

**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

**6/26/2012**  
\_\_\_\_\_  
Date

Wadkins v. State Of Illinois/Pinckneyville C.C.

Section 8.1 (b) of the Act states that five factors must be considered in determining the extent of permanent partial disability, for accidents occurring on or after September 1, 2011.

The factors include a permanent partial disability report prepared by a physician using the AMA guides rating the level of impairment, the occupation of the injured employee, his or her age on the date of accident, the employee's future earning capacity and evidence of disability corroborated by the medical records of the treating physicians. No single factor shall be the sole determinant of disability and the Arbitrator's decision should explain each factor and its weight.

Here there was no physicians report using the AMA guides offered into evidence. There were, however, treatment records from Dr Azam, showing treatment from December 16, 2011 through January 18, 2012 and Dr. Choi, with treatment January 17, 2012 through March 16, 2012. Relevant findings are contained in the March 16, 2012 examination notes of Dr. Choi, who had done his initial examination on January 17, 2012, included a normal range of motion of the right shoulder with no rotator cuff weakness, the latter being in improvement over the previous exam. He found tenderness over the right trapezius muscles and a moderately positive impingement sign with respect to the right shoulder. An MRI performed March 9, 2012, was interpreted by the radiologist as showing supraspinatus and infraspinatus tendinopathy and mild to moderate osteoarthritis of the right AC joint. With those findings and the Petitioner's subjective complaints of shoulder pain, Dr. Choi diagnosed rotator cuff tendinosis with underlying moderate AC joint osteoarthritis.

The Petitioner also sustained an injury to his cervical spine in the accident. Dr. Choi, in his initial office visit, said that the fall which the Petitioner experienced could have resulted in a cervical spine injury. He ordered an MRI to rule out any herniated discs as contributing to his complaints of numbness, which was certainly a reasonable treatment request. The MRI did not show any pathology which would correspond to the Petitioner's complaints, however, and the Petitioner's attorney stipulated at Arbitration that he was claiming disability only for the shoulder injuries sustained by the Petitioner.

On the date of accident, Petitioner was a 54-year-old correctional officer with a rank of Lieutenant. He testified that he had recently retired from his position. He was released to full duty by Dr. Choi as of March 16, 2012. He further testified that he had the various right shoulder symptoms including pain with a variety of home activities and that he took Tylenol for the pain along with performing exercises prescribed by his physician. He further testified that an injection performed by Dr.

Choi on March 16 provided only temporary relief of his right shoulder symptoms. He had not returned for any medical treatment to any doctor since that date.

In looking at the factors set forth in the Act, the Arbitrator believes the positive findings reported by Dr. Choi, including the MRI findings, provide a basis for an award. The Petitioner's age and the fact that he is retired, along with the fact that there are no work restrictions mitigate his degree of disability. With all of that said the Arbitrator awards permanent partial disability to the extent of 2% person as a whole. In awarding Section 8(d) (2) benefits for a shoulder injury, the Arbitrator adopts the reasoning of the Appellate Court in its recent decision in Will County Forest Preserve v. IWCC, 2012 IL App (3d) 110077WC.

Dated and Entered June 26, 2012



D. Douglas McCarthy, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

EDWARDS, CHERYL

Employee/Petitioner

Case# 12WC007449

ST OF IL MURRAY CENTER

Employer/Respondent

On 8/9/2012, 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 0.13% 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:

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

1745 DEPT OF HUMAN SERVICES  
BUREAU OF RISK MANAGEMENT  
201 E MADISON ST STE 3C  
SPRINGFIELD, IL 62794-9208

1770 ASSISTANT ATTORNEY GENERAL  
WILLIAM PHILLIPS  
201 WEST POINTE DR STE 7  
SWANSEA, IL 62226

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

0502 ST EMPLOYMENT RETIREMENT SYSTEMS  
2101 S. VETERANS PARKWAY  
P O BOX 19255  
SPRINGFIELD, IL 62794-9255

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

AUG 9 2012



*[Signature]*  
KIMBEHLY B. JANAS Secretary  
Illinois Workers' Compensation Commission

STATE OF ILLINOIS )  
)SS.  
COUNTY OF Jefferson )

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
NATURE AND EXTENT ONLY**

**Cheryl Edwards**  
Employee/Petitioner

Case # **12 WC 07449**

v.

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

**Murray Center**  
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **7/6/12**. By stipulation, the parties agree:

On the date of accident, **1/17/12**, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned **\$41,725.84**, and the average weekly wage was **\$802.42**.

At the time of injury, Petitioner was **53** years of age, *single* with **0** dependent children.

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

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

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

### Findings of Fact

Petitioner sustained accidental injuries on January 17, 2012, when she was attacked by a "recipient" (patient) while in the course and scope of her employment. Petitioner reported to St. Mary's Work Safety Institute two days after her injury and was diagnosed with Cervicalgia. She was prescribed to Naproxen and Flexeril, and was released to light duty. X-rays of Petitioner's cervical spine taken on January 19, 2012 were unremarkable. Petitioner subsequently underwent a course of Physical therapy, Chiropractic treatment and chiropractic care. Petitioner returned to full duty after approximately two months of light duty to work. Petitioner's final treatment for her complaints took place on April 25, 2012, at which time she described experiencing no pain during her visit, but did indicate that she suffered intermittent pain with static activity such as sitting at a desk or dining.

Petitioner testified that her symptoms wax and wane, but are exacerbated by strenuous activity. At the time of her hearing, Petitioner testified that she takes no prescription medication as a result of her injuries, but does take Tylenol approximately three times a month. Petitioner testified that she currently manages to perform all of her assigned job duties, but sometimes requires assistance when moving heavier residents in and out of shower chairs. She continues to work without restrictions.

### Based on the foregoing, the Arbitrator makes the following conclusions:

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 first notes that: Petitioner is a Mental Health Tech II; is 53 years old; has no alleged lost future earning capacity; and has complaints of neck and back pain corroborated by the medical records that show a diagnosis of Cervicalgia. The Arbitrator further notes that there was no reported level of impairment pursuant to the AMA Guides to the Evaluation of Permanent Impairment. Based on these factors, the Arbitrator concludes that the Petitioner has sustained injuries resulting in 1% loss of use of the person as a whole.

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

**ORDER**

Respondent shall pay Petitioner the sum of \$481.45/week for a further period of 5 weeks, because the injuries sustained caused disability to the extent of 1% MAW , as provided in Section 8(d)2 of the Act.

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

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

  
Signature of Arbitrator

8/3/12  
Date

AUG 09 2012

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF Williamson )

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
NATURE AND EXTENT ONLY**

**Ricky Lee Belton Jr.**  
Employee/Petitioner

Case # **11 WC 041595**

v.

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

**Chester Mental Health Center**  
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Herrin**, on **7-10-12**. By stipulation, the parties agree:

On the date of accident, **9-27-11**, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned **\$47,720.49**, and the average weekly wage was **\$917.70**.

At the time of injury, Petitioner was **30** years of age, *single* with **0** dependent children.

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

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



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

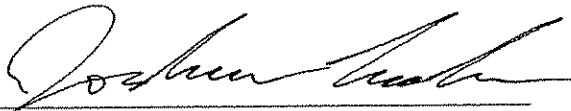
**ORDER**

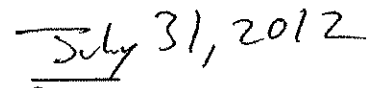
Respondent shall pay Petitioner the sum of **\$550.62/week** for a further period of **7.175 weeks**, as provided in Section **8(e)** of the Act, because the injuries sustained caused **3.5% loss of use of the left hand**.

Respondent shall pay Petitioner compensation that has accrued from **6-7-12** through **7-10-12**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

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

  
\_\_\_\_\_  
Date

**AUG - 1 2012**

**BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION**

RICKY LEE BELTON, JR., )  
 )  
                   Petitioner, )  
 )  
                   vs. )           No.   11 WC 41595  
 )  
 STATE OF ILLINOIS/CHESTER )  
 MENTAL HEALTH CENTER, )  
 )  
                   Respondent. )

**ADDENDUM TO ARBITRATION DECISION**

**STATEMENT OF FACTS**

The petitioner, a right-hand-dominant security therapy aide, injured his left hand on September 27, 2011 while separating two recipients who were fighting. He first sought treatment at Chester Memorial Hospital Emergency Room on October 4, 2011, describing tingling in his left hand (PX3). Records note no swelling or deformity, and he was placed on light duty. He then saw his family physician, Dr Preuss, on October 7 and was diagnosed with a "traction type injury." He was given a Medrol Dosepak and maintained on light duty. On October 20, he was noted to have a normal wrist but was given an EMG for the symptoms of hand numbness. See PX4. The EMG was conducted on November 15, 2011, and found no abnormalities. PX5. He was then referred to a hand specialist. PX3.

On April 16, 2012, Dr. Young saw the petitioner. He noted numbness and weakness in his left hand, but examination was negative for carpal tunnel findings. He prescribed anti-inflammatory medication and a forearm brace. The petitioner was working full duty at that point, and Dr. Young maintained work without restrictions. On June 7, 2012, the petitioner noted his wrist was much better and symptoms had improved. Dr. Young released him at MMI without restrictions.

The petitioner testified his left hand is numb when he wakes up in the morning which lasts approximately fifteen minutes and intermittently throughout the day. The petitioner has been working without restrictions since November 2011.

**OPINION AND ORDER**

As stipulated by the parties, the respondent shall pay the medical bills identified in PX1 pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for

any and all amounts previously paid but shall hold the petitioner harmless, pursuant to 8(j) of the Act, for any group health carrier reimbursement requests for such payments.

### **Nature and Extent of the Injury**

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 first notes that no level of impairment was determined by any physician. The Arbitrator therefore relies on the other four factors to make a determination. The petitioner was 30 years old at the time of the injury and was employed as a Security Therapy Aide. He has continued to work in that capacity at the time of trial and it appears he will be able to continue doing so without difficulty or medical impairment. The petitioner's complaints are corroborated by the medical records, but are consistent with a sprain/strain injury to his non-dominant hand. Following a conservative care, the petitioner returned to his regular job duties. The respondent shall pay the petitioner the sum of \$550.62/week for a further period of 7.175 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused 3.5% loss of use of the left hand.

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF Williamson )

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

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

**Derek Richardson**

Employee/Petitioner

v.

**State of IL/Tamms Correctional Center**

Employer/Respondent

Case # 12 WC 08263

Consolidated cases: none

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 **Joshua Luskin**, Arbitrator of the Commission, in the city of **Herrin**, on **July 12, 2012**. 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 **2-11-12**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$45,516.00**; the average weekly wage was **\$875.31**.

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.

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

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

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

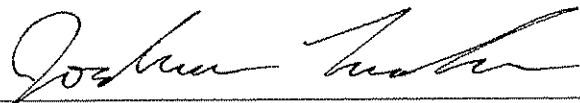
**ORDER**

Respondent shall pay Petitioner the sum of **\$525.19/week** for a further period of **37.625** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **permenant partial disability to Petitioner's left leg in the amount of 17.5%**.

Respondent shall pay Petitioner compensation that has accrued from **June 6, 2012 (MMI)** through the **present**, 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

July 30, 2012  
Date

**BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION**

DEREK RICHARDSON, )  
 )  
                   **Petitioner,** )  
 )  
                   **vs.** )           **No.   12 WC 08263**  
 )  
 STATE OF ILLINOIS/TAMMS C.C., )  
 )  
                   **Respondent.** )

**ADDENDUM TO ARBITRATION DECISION**

**STATEMENT OF FACTS**

The petitioner, a Correctional Officer for Tamms Correctional Center, responded to a medical emergency on February 11, 2012, and while moving to secure the inmate, he twisted as he kneeled and felt a pop in his left knee. He presented to Massac Memorial Hospital on February 12, 2012, and was given crutches and a brace. He then saw his primary care physician, who recommended an MRI. The MRI revealed a torn meniscus.

The petitioner thereafter sought orthopedic care with Dr. George Paletta. Following review of treatment options, Dr. Paletta performed arthroscopic left knee meniscal repair on April 12, 2012. The petitioner underwent physical therapy after surgery and returned to work full duty on May 1, 2012. On June 6, 2012, the petitioner noted minimal soreness and stated his knee was doing very well. Dr. Paletta noted an excellent overall result and placed him at maximum medical improvement.

The petitioner testified to persistent soreness, with stair climbing presenting difficulty, and occasionally uses over the counter medication for symptom control. He has continued to work in his pre-injury capacity.

**OPINION AND ORDER**

The petitioner credibly described an incident consistent with the diagnosis from the treating providers. The medical treatment appears appropriate and properly tailored to the identified pathology. The Arbitrator finds a causal relationship between the accident at issue and the April 2012 meniscal surgery. The respondent is directed to pay the medical bills identified in PX1 pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for any and all amounts previously paid but shall hold the petitioner harmless, pursuant to 8(j) of the Act, for any group health carrier reimbursement requests for such payments.

**Nature and Extent of the Injury**

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 first notes that no AMA guideline impairment rating was determined by any physician. The Arbitrator must therefore rely exclusively on the other four factors in making a determination.

The petitioner is a correctional officer, 32 years old at the time of the incident and having just turned 33 years old at the time of the trial. He has continued to work in his pre-injury capacity and no evidence of any earning impairment is apparent from the documentation or testimony. Lastly, the petitioner testified as to some residual complaints in his knee which are consistent with the knee surgery delineated in the medical records. Given the above, and considering the totality of the evidence adduced, the respondent shall pay the petitioner the sum of \$525.19/week for a further period of 37.625 weeks, as provided in Section 8(e) of the Act, as the injuries sustained caused permanent loss of use to the petitioner's left leg to the extent of 17.5% thereof.

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF PEORIA )

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
NATURE AND EXTENT ONLY**

**SCOTT DAY,**  
Employee/Petitioner

Case # **11 WC 47768**

v.

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

**CITY OF BLOOMINGTON,**  
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen H. Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **7/17/12**. By stipulation, the parties agree:

On the date of accident, **11/22/11**, Respondent was operating under and subject to the provisions of the Act

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned **\$72,800.00**, and the average weekly wage was **\$1,369.50**

At the time of injury, Petitioner was **33** years of age, *married* with **no** dependent children.

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

Respondent shall be given a credit of **\$00.00** for TTD, **\$00.00** for TPD, **\$00.00** for maintenance, and **\$00.00** for other benefits, for a total credit of **\$00.00**.



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

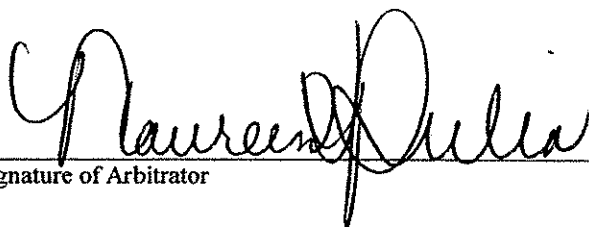
**ORDER**

Respondent shall pay Petitioner the sum of **\$695.78/week** for a further period of **10.75 weeks**, as provided Section **8(e)** of the Act, because the injuries sustained caused **petitioner a 5% loss of use of his right**

Respondent shall pay Petitioner compensation that has accrued from **11/22/11** through **7/17/12**, and shall pay the remainder of the award, if any, in weekly payments.

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

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *No 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

7/30/12  
Date

AUG - 3 2012

**THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:**

Petitioner, a 33 year old police officer sustained an accidental injury that arose out of and in the course of his employment by respondent on 11/22/11. On that date petitioner responded to an alarm call at a residence during the evening hours after dark. In the process of checking the perimeter of the property petitioner went behind a partition in the backyard of the residence. As petitioner came around the partition he took a step with his right foot and stepped on a big wheel and went down into the splits. Petitioner turned and twisted and his right knee hit the ground. Petitioner had immediate pain in his right leg. He had trouble walking. Petitioner completed his shift, but took it easy the remainder of the shift.

The next day petitioner noticed increased pain. He reported the accident that day. Thereafter, petitioner had a couple of prescheduled days off.

On 12/1/11 petitioner presented to Dr. Kolb. Petitioner gave a consistent history of the accident. Petitioner reported that his right knee has hurt since the accident and worsened. Dr. Kolb examined petitioner and assessed a possible lateral meniscus tear of the right knee. An MRI of the right knee was ordered.

Petitioner underwent the MRI of the right knee that same day. It revealed intermediate grade sprain and a 9 mm interstitial tear of the midbody PCL, small gastrocnemius-semimembranosus bursal cyst, stress reaction of the distal femur, and patellar tendinosis without macrotear. There was no evidence of a meniscal injury or tear visible on MRI. No other pathology was noted.

On 12/2/11 petitioner returned to Dr. Kolb. Dr. Kolb was of the opinion that with activity modification and formal physical therapy petitioner's symptoms should improve.

Petitioner followed-up with Dr. Kolb on 12/16/11, 1/6/12, 1/18/12, 1/27/12 and 2/22/12. He also underwent a course of physical therapy. On 12/16/11 petitioner reported that he was doing well overall, but still had discomfort which was localized to the lateral aspect of the knee. He attributed most of his discomfort to job activities. Dr. Kolb assessed a PCL sprain of the right knee. Dr. Kolb continued petitioner in physical therapy. On 1/6/12 petitioner reported that he was doing better overall, but felt the same. His work activities continued to aggravate his knee. He reported that his pain is reproduced with kneeling and sitting on the knee. Dr. Kolb was of the opinion that petitioner was not improving because he was working full duty. On 1/18/12 petitioner reported that he had not really improved. He felt that the knee was stronger, but he still had pain along the lateral aspect of the knee, which was exacerbated with bending and squatting.

A repeat MRI of the right knee was done that revealed moderate patellar peritendinitis and no meniscal tear. On 1/27/12 Dr. Kolb noted fluid accumulation around the lateral collateral ligament complex. Petitioner's condition was unchanged. Dr. Kolb was concerned of pathology of the hip that was causing referred pain to the knee.

lateral aspect of the knee. He was of the opinion that petitioner's symptoms were just related to bony bruising which should get better and were most likely delayed because of his activity level.

On 2/22/12 Dr. Kolb noted that petitioner was really doing quite well and attributed this to cutting out batting practice, which he had been doing up to three times a week prior to his last visit. Petitioner denied that he had practiced batting since the accident. Dr. Kolb assessed resolved right knee pain secondary to PCL sprain. He was of the opinion that petitioner was progressing well. He released petitioner to work without restrictions and told him he could slowly get back into his activities. With regards to hitting, he wanted petitioner to slow progress into it and encouraged cross training. He told petitioner to use Tylenol for pain management. He released petitioner on an as needed basis.

On 5/8/12 petitioner returned to Dr. Kolb. He reported that he was doing well until 2-3 weeks ago when he started noticing some discomfort reoccurring along the lateral aspect of his right knee. He denied any injury. He stated that since then his pain had been on and off and reproduced with the knee in a flexed position. He denied any instability or mechanical symptoms with the exception of only one occasion while driving in a car. An examination revealed tenderness with palpation along the region along the lateral joint line. Dr. Kolb assessed an aggravation of right knee pain, secondary to PCL sprain. Dr. Kolb was of the opinion that petitioner's symptoms would improve in time as they did with his last knee injury since the presentation was similar. The biggest improvement was attributed to activity modification. Dr. Kolb saw nothing structurally wrong with petitioner's knee.

Petitioner denied any problems with his right knee before the accident on 11/22/11. Prior to that date petitioner was very active with weight lifting and working out, as well as playing competitive softball in the National Softball Association. With regards to his softball playing petitioner had attempted to play softball in March of 2012 but pulled himself out, and resumed play in April of 2012. Petitioner was the first baseman prior to his injury, but has been unable to play that position since the accident. Petitioner is now the designated hitter for the team. Petitioner plays softball on Saturdays. Petitioner is still doing upper body weightlifting. He is not doing weight lifting with his legs.

Prior to the injury petitioner was part of the PPCT (Pressure Points and Control Tactics). Since the injury petitioner has not been able to be recertified due to his right knee condition. Petitioner has been unable to pass the test. Petitioner was part of Mobile Training Unit 8 as a lead instructor.

Petitioner testified that squatting is still very painful. Petitioner continues to work his regular police officer position without restrictions.

Based on the above, as well as the credible record, the arbitrator finds the petitioner sustained a 5% loss of use of his right leg as a result of the accident on 11/22/11. Pursuant to Section 8.1b of the Act the arbitrator in determining the level of permanent partial disability, bases her decision 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.

In the case at bar the parties stipulated that neither one was going to offer into evidence the reported level of impairment pursuant to subsection (a). The petitioner was employed as a police officer at the time of the injury for respondent, and was only 33 years of age. Petitioner has returned to his regular duty job as a police officer, but has not been able to recertify for the PPCT team due to his inability to pass the physical agility part of the test. Petitioner's inability to qualify for this tactical unit could negatively impact his overall earning capacity in the future. Based on the treating medical records petitioner sustained a PCL sprain with a 9 mm interstitial tear of the midbody PCL, a small gastrocnemius-semimembranosus bursal cyst, stress reaction distal femur, and patellar tendinosis without macrotear. Petitioner has improved since the accident and is working regular police officer job without restrictions. Petitioner continues to have complaints of right knee pain especially with kneeling or squatting, which are activities required for his position as a police officer for respondent.

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION**

**WILLIAMS, FREDERICK**

Employee/Petitioner

Case# **11WC046390**

**FLEXIBLE STAFFING INC**

Employer/Respondent

On 7/24/2012, 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 0.14% 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:

4442 TIMOTHY TAKASK  
20 N CLARK ST  
SUITE 1700  
CHICAGO, IL 60602

1596 MEACHUM STARCK AND BOYLE  
JASMER JANNISCH  
225 W WASHINGTON ST SUITE 1400  
CHICAGO, IL 60606

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF COOK )

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
NATURE AND EXTENT ONLY**

**FREDERICK WILLIAMS**  
Employee/Petitioner

Case # 11 WC 46390

v.

Consolidated cases: *N/A*

**FLEXIBLE STAFFING, Inc.**  
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Lynette Thompson-Edwards**, Arbitrator of the Commission, in the city of **Chicago**, on **June 5, 2012**. By stipulation, the parties agree:

On the date of accident, **October 7, 2011**, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned **\$33,951.32**, and the average weekly wage was **\$652.91**.

At the time of injury, Petitioner was **45** years of age, married with **no** dependent children.

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

Respondent shall be given a credit of **\$10,073.36** for TTD, **\$0** for TPD, \$ for maintenance, and **\$0** for other benefits, for a total credit of **\$10,073.36**.

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

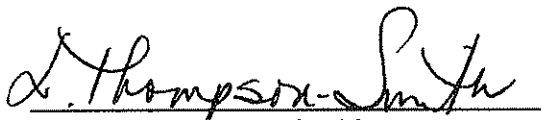
Respondent shall pay Petitioner temporary total disability from October 7, 2011 through March 7, 2012, for 23 & 1/7th weeks, in the amount of \$435.27 per week pursuant to Sections 8(b) of the Act.

Respondent shall pay Petitioner the sum of \$391.75/week for a further period of 75.9 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused the Petitioner a 30% loss of use of his right arm.

Respondent shall pay Petitioner compensation that has accrued from October 7, 2011 through June 5, 2012, and shall pay the remainder of the award, if any, in weekly payments.

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

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

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

July 24, 2012

JUL 24 2012

**FREDERICK WILLIAMS**  
**11WC 46390**

## **FINDINGS OF FACT**

The petitioner was 45 years old at the time of the work accident on October 7, 2011. He was married, and he had no dependent children. The petitioner testified that he is right-hand dominant. He testified that, before the subject work accident on October 7, 2011 he had never had any medical problems or symptoms involving his right arm. He testified that, before the work accident, he had never received any medical treatment for right arm problems. The petitioner testified that he never re-injured his right arm after October 7, 2011.

The petitioner testified that he was a member of the United States Marine Corp from 1984 through 1988, and that he received an honorable discharge from the service. The petitioner testified that, after he left the service, he spent most or all of his professional life as a welder. He testified that welding has always been his passion and that he has his own welding equipment in the garage of his home. He testified that he began working for the respondent on June 19, 2011 and that the respondent was in the business of manufacturing boilers, shredders and conveyors at the time of the work accident. The petitioner always worked as a welder/fabricator and testified that his job duties were physically demanding in nature, requiring cutting, welding and carrying both tools and metal equipment and interpreting blueprints. The petitioner testified that he worked without any physical restrictions for the respondent at all times.

The petitioner testified that he worked 40 hours per week for the Respondent. He testified that he worked from 6:00 a.m. to 2:30 p.m. The petitioner testified that the work accident on October 7, 2011 occurred at approximately 9:00 a.m. He testified that he was working on a section of a rail, similar to a rail road track. The petitioner testified that the section of rail was approximately nine feet long, two inches wide, and weighed in excess of 400 pounds. The petitioner testified that the rail was positioned on a horse while he welded it. He testified that one end of the rail slipped off of the horse. The petitioner testified that his first reaction was to reach out and grab the rail, to keep it from falling on him. He testified that when the rail hit his hand, he felt a sharp pain in his right arm and he heard something snap. He testified that he immediately noticed that his arm was disfigured. The petitioner



**FREDERICK WILLIAMS**  
**11WC 46390**

testified that he reported the incident to his supervisor, Mr. Greg Herndon. The petitioner testified that his supervisor asked him if he needed an ambulance. The Petitioner testified that he declined the ambulance, and instead drove himself to Ingalls Occupational Health Clinic ("Ingalls") using only his left arm. The petitioner testified that his right arm was x-rayed at Ingalls, that he was given a sling, and that he was diagnosed with a distal biceps tendon rupture. The specialist at Ingalls immediately sent Petitioner home. Petitioner testified that he was off of work for one (1) week, in severe pain and was never contacted by Respondent's insurance carrier. Petitioner further testified that his right arm was wrapped in an Ace bandage for approximately one month until Respondent finally approved surgery.

Medical records from Southland Orthopaedic Associates, Ltd. ("Southland") show that petitioner's first visit with Dr. Arabindi took place on October 12, 2011. The petitioner complained of right arm and right elbow pain and the doctor immediately diagnosed a probable right distal biceps tendon rupture. Dr. Arabindi discussed a surgery to repair the tendon rupture at the completion of that first visit. The Southland records confirm that Dr. Arabindi kept the petitioner off work from that first visit through March 8, 2012. The doctor wrote that he was awaiting approval of the surgery during both office visits in October of 2011. Dr. Arabindi eventually performed the surgery at the Ingalls Same Day Surgery on November 7, 2011. The doctor performed a repair of the petitioner's right elbow distal biceps tendon rupture. Under a general anesthesia, the surgeon drilled two holes into the petitioner's right radius and used K-wire and metal anchors to pull and secure the tendon into place. The petitioner began attending physical therapy ("PT") at Southland on November 28, 2011. He continued to attend PT, at Dr. Arabindi's direction, through February 8, 2012. At the time of the last office visit on March 7, 2012, the doctor declared the petitioner to be at maximum medical improvement ("MMI") but noted that he still lacked approximately five to ten (5-10) degrees of full supination in his right forearm. *See*, PX1.

On May 8, 2012, petitioner was examined by Dr. Mark Levin of Barrington Orthopedic Specialists, at Respondent's request. During that examination, the petitioner complained of right arm pain which he had been suffering since the work accident. The petitioner

**FREDERICK WILLIAMS**  
**11WC 46390**

indicated that he also experienced pain when he tried to fully pronate and supinate the right forearm. The petitioner told Dr. Levin that he did not believe that he had full extension of his right elbow and that he experienced constant numbness over the ulnar aspect of that elbow. The petitioner stated that he was experiencing pain two or three times per week and that he was still taking narcotic pain medication, i.e. Norco, approximately two or three times a week because of pain in his elbow. Following his examination, Dr. Levin also noted that the petitioner lacked full extension with both pronation and supination of his right arm and then listed an AMA disability rating of 4% of a whole person or 5% loss of the right arm. *See, RX1.*

The Petitioner testified that, at the time that he was released to return to work by Dr. Arabindi, he was capable of lifting only 25 pounds. He testified that he told Dr. Arabindi, at the time of the last office visit on March 7, 2012, that his strength was diminished and that he had ongoing pain and numbness. The petitioner testified that, despite those complaints, Dr. Arabindi released him to return to work, without restrictions, as of March 8, 2012. The petitioner testified that, once he was released to return to work, he was told by the respondent that he does not have a job anymore.

Petitioner testified that he continues to experience pain in his right arm on a daily basis, and that he still lacks range of motion. The petitioner further testified that he still lacks strength in his right arm and that he still has tingling sensations in his right arm and his fingertips. And he testified that he still experiences numbness and a measurable amount of pain in his right arm. He continues to take Norco approximately three times per week. He testified that he continues to look for employment as a welder and that he has attempted to use his own welding equipment after he was released by Dr. Arabindi.

The petitioner testified that he finds welding difficult and that he experiences difficulty while playing with his three young grandchildren due to his ongoing symptoms in his right arm. He testified that he cannot perform garden work, mow his lawn, or play golf. The Petitioner testified that he experiences the numbness and tingling in his right arm and hand a few times a week and that he experiences some level of pain in his right arm on a daily basis.

**CONCLUSIONS OF LAW**

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

On October 7, 2011 the Petitioner suffered painful injuries to his right arm. All of the medical evidence conclusively established that the Petitioner suffered a right distal biceps tendon rupture while in the course of his employment for the Respondent on that date. I base my findings on the petitioner's credible testimony that his right arm was symptom-free all times prior to the work accident on October 7, 2011. All of the medical evidence supports Petitioner's testimony that he was working without any physical restrictions and that he was not under a doctor's care for any problems involving his right arm, at the time of the subject work accident.

The injuries to Petitioner's right arm and elbow lingered for more than seven months after the subject work accident. The Petitioner voiced the same complaints of pain, numbness and tingling to both his treating orthopedic surgeon and his physical therapist. The Petitioner described those same symptoms when he was examined by Dr. Mark Levin of Barrington Orthopedic Specialists on May 8, 2012. During that examination, the petitioner complained of right arm pain since the work accident. He indicated objectively, that he experienced pain when he tried to fully pronate and supinate the forearm. Petitioner told Dr. Levin that he did not believe that he had full extension of his right elbow and that he experienced constant numbness over the ulnar aspect of that elbow. The petitioner testified that he was suffering from lingering effects of the right arm injuries at the time of the hearing on June 5, 2012. The petitioner testified that he was experiencing pain two to three times a week and is taking pain medication in an attempt to ease his pain.

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

- (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall include an evaluation of medically defined and professionally appropriate measurements of impairment

that include, but are not limited to: loss of range of motion, loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment.

- (b) Also, the Commission shall base its determination on the following factors:
- (i) the reported level of impairment;
  - (ii) the occupation of the injured employee;
  - (iii) the age of the employee at the time of injury;
  - (iv) the employee's future earning capacity; and
  - (v) evidence of disability corroborated by medical records.

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

the level of impairment reported by Dr. Levin pursuant to the most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment is 6% upper extremity impairment and "disability" rating of 4% of a whole person. The Arbitrator notes that impairment does not equate to permanent partial disability under the Workers' Compensation Act. Dr. Levin's reference to "an AMA disability rating" is misplaced; Dr. Levin is rating impairment only, not permanent partial disability. Dr. Levin does not specifically include loss of range of motion or any other measurements that establishes the nature and extent of the impairment pursuant to Section 8.1b. Dr. Levin used a physical examination grade modifier of 2 indicating a moderate problem. Dr. Levin did not consider a grade modifier for clinical studies in his impairment report, even though the surgical report could have been used in this way. Dr. Levin scored the QDASH report for functional history grade modifier as 23, however, does not include a copy of the QDASH in his impairment report so that the Arbitrator may review his findings.

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

the petitioner's occupation is welder/fabricator, which the Arbitrator takes judicial notice to be medium to heavy work and concludes that Petitioner's permanent partial disability will be larger than an individual who performs lighter work.

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

the age of the petitioner at the time of the injury was 44 years old. The Arbitrator considers the petitioner to be a somewhat younger individual and concludes that Petitioner's permanent partial disability will be more extensive than that of an older individual because he will have to live with the permanent partial disability longer.

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

the petitioner's future earning capacity, at the present time, appears to be undiminished as a result of his injuries, because he has medically been returned to his full-time duties. However, when he attempted to return to work, he was told that he no longer had a job. The Arbitrator concludes that this may negatively affect Petitioner's future earning capacity.

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

the petitioner has demonstrated evidence of disability corroborated by his treating medical records. The petitioner has credibly testified that he currently experiences pain, numbness, tingling and loss of range of motion. The petitioner's complaints regarding his right arm are corroborated in the treating medical records of Dr. Arabindi, including but not limited to the diagnosis of distal biceps tendon rupture and the necessity of the subsequent surgery and course of treatment. The doctor also noted that the petitioner has disability of a permanent nature as, on Petitioner's last visit, he noted that Petitioner's condition was as good as it was going to get and that he still lacked approximately five to ten (5-10) degrees of full supination in his right forearm. The petitioner's complaints, supported by medical records, evidences a disability as indicated by Commission decisions regarded as precedents pursuant to Section 19(e).

The determination of permanent partial disability ("PPD") is not simply a calculation, but an evaluation of all five factors as stated in the Act. In making this evaluation of PPD, consideration is not given to any single enumerated factor as the sole determinant. Therefore, applying Section 8.1b of the Act, 820 ILCS 305/8.1b, the petitioner has sustained accidental injuries that caused 30% loss of use of the right arm. The Arbitrator further

**FREDERICK WILLIAMS**  
**11WC 46390**

finds that the respondent shall pay the petitioner the sum of \$391.75/week for a further period of 75.9 weeks, as provided in Section 8(e) of the Act



**Barrington Orthopedic Specialists**

*Mark N. Levin, MD.*

May 8, 2012

RE: Frederick Williams  
DOB: 06/20/196  
Patient ID: WC0145990

I had the pleasure of seeing Mr. Frederick Williams in my Elk Grove Village office on May 08, 2012, for the purpose of Independent Medical Exam. Mr. Williams did fill out a Quick DASH questionnaire and did confirm that he filled it out.

Mr. Williams is a 45-year-old, right-hand dominant African-American male who reports that he worked through the flexible staffing temporary agency since June 2011 at the Maren Engineering Company as a welder/fabricator. This company makes balers, shredders and other machinery. He relates that, initially, he went to Maren Engineering to apply for his full-time duties back in June 2011 and they had him work through this flexible staff agency. He was working full duty, when on October 07, 2011, there was a nine foot railroad track that was up on a horse. He states it weighed between 300-400 pounds. It slipped off the end of the horse and, as he was welding, he tried to catch it with his right hand. As he tried to catch the end of the track, he felt a snap in his upper arm area and let go and the track fell to the ground. He had immediate severe pain over his biceps area and reported the episode. He went to Ingalls Occupational Health who did x-rays, gave him a sling and diagnosed him with a distal biceps rupture. He was taken off of work. He

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*Respondant's Exhibit # 1*

RE: Frederick Williams  
May 08, 2012  
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had several followups and no MRI was done because he has a pacemaker in place. He eventually was referred to an orthopedic surgeon, Dr. Ram Aribinidi, and underwent surgery on November 17, 2011, at Ingalls Surgery Center for a distal biceps tendon repair. Postoperatively, he was placed in a posterior mold and a sling and then began physical therapy through Dr. Aribinidi's office, two times a week for two months. He states that he never totally got full extension of his elbow and has had problems with what he calls wrist mobility, but upon questioning him, it is actually pronation and supination of the forearm. He subsequently was last seen by Dr. Aribinidi on March 08, 2012, where he was released and told he was at the best he was going to be and to go back to work full duty. He relates that when he tried to go back to full duty, he was fired. At this point in time, he would like to return back to a welding job and feels he can do it. He, though, does have some discomfort since the injury. Specifically, he gets pain when he tries to fully pronate and supinate the forearm and feels he does not have full extension of the elbow. He has had some numbness over the ulnar aspect of the right elbow, which is constant. He does note he is able to lift to at least 35 pounds in therapy. His pain that he gets around the elbow varies in intensity and occurs about 2-3 times a week and could be as much as a 5/10. Most of the time, there is no pain. He is having no pain directly over his hand, wrist or shoulder. The only problem that he has is when he describes pronation and supination.

He denies any previous right elbow injury or upper extremity injuries. He denies seeing doctors for right elbow or upper extremity problems in the past.

His current medications are occasional Norco on a p.r.n. basis approximately 2-3 times a week if he has elbow pain. He is also on Glyburide, metformin and Enalapril. Allergies are none. Social history reveals he is married and has one child. Review of systems is positive for hypertension and a history of diabetes. There is no lung, liver, kidney or stomach disease. Past hospitalization was for a pacemaker in February 2005. He is a nonsmoker. He quit drinking 12 years ago. Family history reveals mother is alive and well. Father is deceased and had squamous cell carcinoma. He denies any previous work injuries.

Orthopedic physical exam demonstrates a cooperative, African-American male who weighs 258 pounds and is 5'9-1/4" tall. His cervical spine exam showed there is no cervical spasm or tenderness. He has full range of motion of his cervical spine with the ability to touch his chin to his chest and extend back fully. He has normal right and left lateral deviation with no pain. He is noted to have tattoos over his cervicothoracic area as well as over the scapula. He has tattoos over the bilateral forearms and arms bilaterally. He has no pain over the trapezius or medial borders of the scapula.

His shoulder exam shows no pain over the AC or SC joints. He has full range of motion of his shoulders with forward flexion to 170 degrees bilaterally. Abduction is to 170 degrees bilaterally. Internal rotation is to T12 bilaterally. External rotation is 90 degrees bilaterally.



RE: Frederick Williams  
May 08, 2012  
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Rotator cuff strength is 5/5 bilaterally. His elbow exam shows he does have a scar over the antebrachial cutaneous fossa on the right elbow measuring 3 cm. He also has a proximal radius scar of the forearm measuring 3 cm. His elbow range of motion shows, on the right side, he lacks 3 degrees of full extension. He can flex to 125 degrees. His pronation lacks 15 degrees of full pronation on the right and 15 degrees of full supination on the right. The left elbow has full extension and he flexes to 125 degrees. The left elbow has full pronation and full supination. His wrist exams show that he has flexion of the wrist that is 75 degrees on the right compared to 80 degrees on the left. Extension is 85 degrees on the right and 90 degrees on the left. He has radial deviation of 40 degrees bilaterally and ulnar deviation on the right is 30 degrees and the left is 45 degrees. He has normal motion of all the digits of his hands bilaterally. His mid-arm circumference measures 34.5 cm bilaterally. His mid-forearm circumference measures 26 cm on the right compared to 26.5 on the left. Wrist circumference is symmetrical at 17 cm. His motor strength shows he has 5/5 motor strength to all groups of the upper extremities to individualized testing, including the biceps with normal biceps reflex bilaterally.

Pinprick sensation, he reports, is decreased over the ulnar aspect of the right elbow, but otherwise normal on the right upper extremity.

X-rays of the right elbow, AP, lateral and oblique views, show the postoperative changes consistent with a fixation of the distal biceps tendon into the proximal radius. The elbow joint is otherwise normal.

I have subsequently reviewed medical records that have been supplied to us, which include records from Occupational Health Program at Ingalls with a visit from October 07, 2011. The diagnosis was a right elbow strain.

There is a followup on October 11, 2011. Again, diagnosis was a right elbow strain.

There is a consultation on October 12, 2011, by Dr. Aribinidi, where the patient was diagnosed with a right elbow distal biceps tendon rupture.

There is a record from Dr. Aribinidi on October 26, 2011.

There is an operative report on November 17, 2011, where he underwent a right elbow distal biceps tendon repair by Dr. Aribinidi.

There are then Southland Orthopedic therapy records from January and February 2012. There is a followup by Dr. Aribinidi on February 08, 2012, with additional therapy records after that followup.

Re: Frederick Williams  
May 08, 2012  
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There is then a followup by Dr. Aribinidi on March 08, 2012. He was returned to full duty work as of March 08, 2012. No additional medical records are available for our review.

Based upon this patient's history, physical exam, radiographic studies and medical records, Mr. Williams did sustain a right distal biceps tendon rupture from his work injury in October 07, 2011. He has had appropriate surgical and postoperative treatment. At this point in time, he has obtained maximum medical improvement. Functionally, from his clinical exam and from the records, he would appear to be capable of returning back to work as a welder, full duty.

At this point, I have reviewed your fax correspondence dated May 03, 2012. To specifically answer the questions:

This patient's diagnosis was status post right distal biceps tendon rupture and had appropriate surgical intervention. The patient has reached maximum medical improvement and, per your request, an AMA rating will be given below. The patient has no history of any comorbid condition.

As per request for an AMA rating, using the AMA Guides to Evaluation of Permanent Impairment, 6th edition, this gentleman's class of impairment, based on diagnosis (CDX), would be that of a distal biceps tendon rupture, which according to table 15-4, would place this patient at a CDX class 1. Using the adjustment grid, the grade modification for functional history (GMFH), based on the Quick DASH, would give him a Quick DASH score of 23, where based on table 15-7, would give a grade modifier of 1 (GMFH=1). The grade modifier for physical exam (GMPE), based on table 15-8, would be a grade modifier 2, based on range of motion of his pronation/supination of the forearm. In regards to the grade modification for clinical studies (GMCS), this is not applicable since the patient's diagnosis was biceps tendon rupture.

Therefore, the calculation for net adjustment, based on grade modification, would show that the patient's CDX=1, GMFH=1, GMPE=2. The (GMFH-CDX) would equal  $1-1=0$ . (GMPE-CDX) would equal  $2-1=1$ . The (GMCS-CDX) is not applicable. Therefore, adding up the three net adjustments would be  $0+1+$  not applicable would give a net adjustment of 1. Therefore, this patient's final AMA rating, based on table 15-4, would place him in a class 1 grade D, which would be equal to a 6% upper extremity impairment.

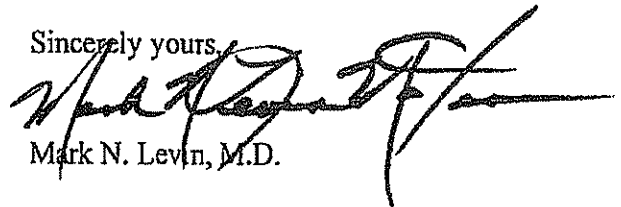
Therefore, using table 15-11, a 6% upper extremity impairment would place this gentleman in an AMA disability rating of 4% of a whole person.

Re: Frederick Williams  
May 08, 2012  
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This completes the report on Mr. Frederick Williams and I am a Certified Evaluator for Disability and Impairment Rating (CEDIR).

If you have any questions regarding Mr. Williams, please feel free to contact my office.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mark N. Levin, M.D.", written in a cursive style.

Mark N. Levin, M.D.

MNL:ji

**TABLE 15-4 Elbow Regional Grid: Upper Extremity Impairments**

IMPAIRMENT CLASS	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
IMPAIRMENT RANGES (upper extremity %)	0	1%–13% UE	14%–25% UE	26%–49% UE	50%–100% UE
GRADE		A B C D E	A B C D E	A B C D E	A B C D E
<b>MUSCLE/TENDON*</b>					
Epicondylitis: Lateral or medial*	0 No significant objective abnormal findings at MMI	0 1 1 2 2 History of painful injury, residual symptoms without consistent objective findings (this impairment can only be given once in an individual's lifetime) 3 4 5 6 7 s/p surgical release of flexor or extensor origins with residual symptoms			
Distal biceps tendon rupture*	0 No residual findings: +/- surgical treatment	3 4 5 6 7 Residual loss of strength, functional with normal motion			
<b>LIGAMENT/BONE/JOINT*</b>					
Collateral ligament injury: medial, ulnar or lateral*	0 No residual findings: +/- surgical treatment	3 4 5 6 7 Recurrent instability: occasional 8 9 10 11 12 Recurrent instability: frequent; resulting in functional limitation			
Persistent elbow subluxation or dislocation*	0 No residual findings: +/- surgical treatment	8 9 10 11 12 Mild: can be completely reduced manually	16 18 20 22 24 Moderate: cannot be completely reduced manually	34 37 40 43 46 Severe: cannot be reduced	
Fracture*	0 No residual findings: +/- surgical treatment	1 2 3 4 5 Residual symptoms, consistent objective findings and/or functional loss, with normal motion			
Loose bodies or osteochondral lesions*	0 No residual findings: +/- surgical treatment	3 4 5 6 7 Residual loss, functional with normal motion			

(continued)

**TABLE 15-6**

## Adjustment Grid: Summary

	Specific Adjustment Grid	Grade Modifier 0	Grade Modifier 1	Grade Modifier 2	Grade Modifier 3	Grade Modifier 4
Functional History	Table 15-7	No problem	Mild problem	Moderate problem	Severe problem	Very severe problem
Physical Examination	Table 15-8	No problem	Mild problem	Moderate problem	Severe problem	Very severe problem
Clinical Studies	Table 15-9	No problem	Mild problem	Moderate problem	Severe problem	Very severe problem

(eg, soft-tissue findings, stability, and alignment) that are attributable to the condition being rated and use the highest class modifier as the value for that adjustment in the Net Adjustment Calculation. For example, on physical examination, soft-tissue findings may be characterized as grade modifier 0 and stability findings may be grade modifier 2. The class modifier for physical examination would then be grade modifier 2, because it is the higher of the 2 grades. If any of these factors are determined by the examiner to be unreliable or inconsistent, they should be disregarded in the grading adjustment. The examiner should explain the basis for grade assignment or discounting of a specific adjustment for lack of reliability in the evaluation report.

### 15.3a Adjustment Grid: Functional History

Grade assignment for functional symptoms is based on subjective reports that are attributable to the impairment. Grading is based on the extent to which functional symptoms interfere with different level of activities, as summarized in Table 15-7, Functional History Adjustment. As explained in Section 1.8e, History of Clinical Presentation, in general, individuals with no symptoms will be assigned grade

modifier 0, and those with constant symptoms that persist despite treatment and are unable to perform self-care activities, will be assigned grade modifier 4.

**Functional history grade modifier should be applied only to the single, highest diagnosis-based impairment (DBI). Specific jurisdictions may modify this process such that functional history adjustment is considered for each DBI or not considered at all as a grade modifier.**

The evaluating physician may use the *QuickDASH* functional assessment outcome questionnaire as part of the process of evaluating functional symptoms; the *QuickDASH* and functional assessment measures are provided in Appendix 15-A to this chapter. The inventory is used only to assist the examiner in defining the grade modifier for functional history and does not serve as a basis for defining further impairment, nor does the score reflect an impairment percentage.

The examiner must assess the reliability of the functional reports, recognizing the potential influence of behavioral and psychosocial factors. If the grade for functional history differs by 2 or more grades from that described by physical examination or clinical studies, the functional history should be assumed to be unreliable. *If the functional history is determined*

**TABLE 15-7**

## Functional History Adjustment: Upper Extremities

	Grade Modifier 0	Grade Modifier 1	Grade Modifier 2	Grade Modifier 3	Grade Modifier 4
Class Definitions	No problem	Mild problem	Moderate problem	Severe problem	Very severe problem
	Asymptomatic	Pain/symptoms with strenuous/vigorous activity; +/- medication to control symptoms	Pain/ symptoms with normal activity; +/- medications to control symptoms	Pain/symptoms with less than normal activity (minimal); +/- medications to control symptoms	Pain/symptoms at rest; +/- medications to control symptoms
		AND able to perform self-care activities independently	AND able to perform self-care activities with modification but unassisted	AND requires assistance to perform self-care activities	AND unable to perform self-care activities
<i>QuickDASH</i> Score	0-20	21-40	41-60	61-80	81-100

**TABLE 15-8**

## Physical Examination Adjustment: Upper Extremities

	Grade Modifier 0	Grade Modifier 1	Grade Modifier 2	Grade Modifier 3	Grade Modifier 4
<b>Class Definitions</b>	No problem	Mild problem	Moderate problem	Severe problem	Very severe problem
<b>Observed and Palpatory Findings</b> (tenderness, swelling, mass, or crepitanace)	No consistent findings	Minimal palpatory findings, consistently documented, without observed abnormalities	Moderate palpatory findings, consistently documented, and supported by observed abnormalities	Severe palpatory findings, consistently documented, and supported by observed moderate or greater abnormalities	Very severe palpatory findings, consistently documented, and supported by observed severe abnormalities
<b>Stability</b>	Stable	Grade 1 (slight) instability	Grade 2 (moderate) instability	Grade 3 (serious) instability	Gross instability
Hand/finger/thumb		Pain with stressing of ligament, but no opening of joint with stress	Pain and slight opening	Pain and >5 mm of joint opening with stress	Severe instability
Wrist		Clicking or clunking by history, but not reproducible	Clicking or clunking by history, and reproducible on physical examination		
Wrist excessive passive/active mediolateral joint deviation degrees compared to normal		<10° passive <20° active	10°–20° passive 20°–30° active	>20° passive >30° active	
Shoulder		Grade 1 (slight) instability; subluxable	Grade 2 (moderate) instability; easily subluxable	Grade 3 (serious) instability; dislocatable with anesthesia or sedation	
<b>Alignment/Deformity</b>	Normal for individual with symmetry to opposite side	Mild	Moderate	Severe	Very severe
<b>Range of Motion</b> (reference Section 15.7)	None	Mild decrease from normal or uninjured opposite side For digit impairments only, this reflects a total digit impairment <20% digit impairment. For wrist, elbow, and shoulder this reflects a total joint impairment of <12% upper extremity impairment.	Moderate decrease from normal or uninjured opposite side For digit impairments only, this reflects a total digit impairment of 20% to 39% digit impairment. For wrist, elbow, and shoulder this reflects a total joint impairment of 12% to 23% upper extremity impairment.	Severe decrease from normal or uninjured opposite side For digit impairments only, this reflects a total digit impairment of 40% to 70% digit impairment. For wrist, elbow, and shoulder this reflects a total joint impairment of 24% to 42% upper extremity impairment.	Very severe decrease from normal or uninjured opposite side For digit impairments only, this reflects a total digit impairment >70% digit impairment. For wrist, elbow, and shoulder this reflects a total joint impairment >42% upper extremity impairment.
<b>Muscle Atrophy</b> (asymmetry compared to opposite normal)	<1 cm	1.0–1.9 cm	2.0–2.9 cm	3.0 cm–3.9 cm	4.0 cm +

Note: ROM indicates range of motion; GH indicates Glenohumeral.

**TABLE 15-9****Clinical Studies Adjustment: Upper Extremities**

	Grade Modifier 0	Grade Modifier 1	Grade Modifier 2	Grade Modifier 3	Grade Modifier 4
<b>Class Definitions</b>	No problem	Mild problem	Moderate problem	Severe problem	Very severe problem
<b>Imaging Studies</b>	No available clinical studies or relevant findings	Clinical studies confirm diagnosis, mild pathology	Clinical studies confirm diagnosis, moderate pathology	Clinical studies confirm diagnosis, severe pathology	Clinical studies confirm diagnosis, very severe pathology
<b>Shoulder</b>			Clinical studies confirm one of the following symptomatic diagnoses: rotator cuff tear, SLAP or other labral lesion, biceps tendon pathology		Clinical studies confirm more than one of the following symptomatic diagnoses: rotator cuff tear, SLAP or other labral lesion, biceps tendon pathology. The most significant diagnosis is the only one rated.
<b>X rays</b>					
<b>Arthritis</b>		Cartilage interval normal or mild joint space narrowing and/or osteophytes	Cartilage interval: moderate joint space narrowing with cystic changes on 1 or both sides of joint and/or osteophytes; radiographic evidence of mild posttraumatic arthrosis; avascular necrosis without collapse	Cartilage interval severe joint space narrowing with cystic changes on both sides of joint and/or osteophytes; or avascular necrosis with bony collapse/fragmentation	No cartilage interval; radiographic evidence of severe posttraumatic arthrosis
<b>Stability</b>					
<b>Joint laxity (based on stress testing)</b>		<10° Instability	10°–20° Instability	20°–30° Instability	>30° Instability
<b>Wrist (see text for explanation)</b>		Radiolunate angle 11°–20° Scapholunate angle 61°–70° Scapholunate gap 3–5 mm Triquetrolunate stepoff >1 mm Ulnar translation mild	Radiolunate angle 21°–30° Scapholunate angle 71°–80° Scapholunate gap 6–8 mm Triquetrolunate stepoff >2 mm Ulnar translation moderate	Radiolunate angle >30° Scapholunate angle >80° Scapholunate gap >8 mm Triquetrolunate stepoff >3 mm Ulnar translation severe	
<b>Nerve Conduction Testing</b>	Normal	Conduction delay (sensory and/or motor)	Motor conduction block	Partial axonal loss	Total axonal loss/denervation

**TABLE 15-9 (CONTINUED)**

Clinical Studies Adjustment: Upper Extremities

<p><b>Electrodiagnostic Testing</b></p> <p>Note: If the EMG test results meet some of, but not all of, the criteria for a specific class, the next lower class is the class to be used in rating the impairment</p>	<p>Normal</p>	<p>Needle EMG done at least 3 wk but less than 9 mo after injury shows at least 1+ fibrillation potentials and positive waves in at least 2 muscles innervated by the injured nerve. If the EMG study is first done more than 9 mo post injury, the exam shows high-amplitude polyphasic muscle potentials in at least 1 muscle and recruitment in that muscle is at least mildly reduced.</p>	<p>Needle EMG done at least 3 wk but less than 9 mo after injury shows at least 2+ fibrillation potentials and positive waves in at least 2 muscles innervated by the injured nerve. If the EMG study is first done more than 9 mo post injury, the exam shows high-amplitude polyphasic muscle potentials in at least 2 muscles and recruitment in those muscles is at least moderately decreased.</p>	<p>Needle EMG done at least 3 wk but less than 9 mo after injury shows at least 3+ fibrillation potentials and positive waves in at least 3 muscles innervated by the injured nerve. If the EMG study is first done more than 9 mo post injury, the exam shows high-amplitude polyphasic muscle potentials in at least 3 muscles and recruitment in those muscles is severely decreased.</p>	<p>Needle EMG done at least 3 wk but less than 9 mo after injury shows at least 4+ fibrillation potentials and positive waves in at least 3 muscles innervated by the injured nerve. If the EMG study is first done more than 9 mo post injury, the exam shows no motor units (fibrofatty replacement of muscle) in at least 2 muscles.</p>
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Note: SLAP indicates superior labrum from anterior to posterior; EMG, electromyogram.

**Net Adjustment Formula:  
Mathematical Explanation**

Net adjustment may be obtained by a mathematical formula and then use of the resultant value to define the grade. The following abbreviations are used:

- CDX = Class of Diagnosis (Regional Grid)
- GMFH = Grade Modifier for Functional History
- GMPE = Grade Modifier for Physical Examination
- GMCS = Grade Modifier for Clinical Studies

$$\text{Net Adjustment} = (\text{GMFH} - \text{CDX}) + (\text{GMPE} - \text{CDX}) + (\text{GMCS} - \text{CDX})$$

Grade Assignments

Net Adjustment (from default C)	Grade
-2	A
-1	B
0	C
1	D
2	E

For example, if the diagnosis is in impairment class 2, then CDX = 2. If net adjustment value is -2, then the Grade is A.

**Method**

1. Determine the class first, using the relevant regional grid, by choosing the appropriate diagnosis for the condition, in the leftmost column. Select the appropriate class for that diagnosis, based on the criteria specified in the columns for classes 0 to 4.
2. Using the adjustment grids for functional history, physical examination, and clinical tests, identify the appropriate grade using grade modifiers:
  - a. If there are multiple components to a grade modifier, such as physical examination (which may include palpatory findings, alignment, and instability), choose the highest grade modifier that is objective and associated with the diagnosis being rated. *If a grade modifier is found to be unreliable or inconsistent, it should be disregarded and eliminated from the calculation.*
  - b. If a particular criterion, such as range of motion, was used to determine impairment class, it may not be used again to determine the grade and is disregarded in the impairment calculation.
  - c. The functional history grade modifier should be applied only to the highest DBI. Specific jurisdictions may modify this process so that functional history adjustment is considered for each DBI or not considered at all as a grade modifier.



15-9

**CLASS 1**  
1% to 13% Impairment of the Upper Extremity

**EXAMPLE 15-9: DISTAL BICEPS TENDON RUPTURE**

**Subject:** 55-year-old man.

**History:** While lifting a tire onto a truck, the patient experienced a popping sensation and acute onset of pain in the antecubital region. Initial exam was consistent with ruptured distal biceps tendon. Surgical treatment was recommended, but the patient refused. At MMI, the patient had some complaints of decreased strength of the arm and pain with normal activity.

**Functional Assessment:** Patient was administered a *QuickDASH* questionnaire. The *QuickDASH* score was 30.

**Physical Exam:** Tenderness was noted in the antecubital fossa. Strength in flexion and supination was diminished to 4/5. 1 cm atrophy of upper arm compared to opposite. Range of motion of the elbow was normal.

**Clinical Studies:** An MRI of the elbow confirmed a tear of the distal biceps tendon.

**Impairment Rating:** Regional Impairment: Diagnosis of distal biceps tendon rupture and per criteria of residual loss of strength and normal range of motion, assigned to class 1 UEI with midrange default value of 5% UEI. Adjustment Grids: Functional History: Grade modifier 2 (pain with normal activity); Physical Examination: Grade modifier 1 due to muscle atrophy of 1 cm. Clinical Studies: n/a since defines the diagnosis criteria (biceps tendon rupture) Numerical adjustment is +1. Moved 1 position to the right of default value C to grade D. 6% UEI. Converts to 4% WPI.

Class 1 Example Calculation: Default for Diagnosis = 5% UEI <sup>a</sup>			
CDX	GMFH	GMPE	GMCS
1	2	1	n/a
$(GMFH - CDX) (2 - 1) = 1$ $+ (GMPE - CDX) + (1 - 1) = 0$ $+ (GMCS - CDX) n/a$ <hr/> Net adjustment = 1			
Adjustment of +1 equals 1 position to the right of default grade C and results in			
Class 1, Grade D=6% UEI			

<sup>a</sup> CDX indicates Class of diagnosis; GMFH, grade modifier for functional history; GMPE, grade modifier for physical examination; GMCS, grade modifier for clinical studies; and UEI, upper extremity impairment.

**Comment:** For the functional history grade the *QuickDASH* score of 30 fits criteria for modifier 1. Pain with normal activity reflects modifier 2, and highest value is used, so in this instance functional history grade modifier 1 is used.

**Shoulder Examples**

**CLASS 1**  
1% to 13% Impairment of the Upper Extremity

**EXAMPLE 15-10: NONSPECIFIC SHOULDER PAIN**

**Subject:** 26-year-old man.

**History:** The patient was trimming trees and fell from a ladder, landing on his shoulder. He is able to perform overhead work and requires an NSAID on an occasional basis to manage pain. Diffuse shoulder pain with moderate activity.

**Functional Assessment:** A *QuickDASH* Score of 50.

**Physical Examination:** Mild tenderness diffusely with palpation of shoulder girdle muscles, no loss of motion.

**Diagnosis:** Shoulder contusion.

**Clinical Tests:** No abnormalities noted on X ray.

**Impairment Rating:** Regional Impairment: Diagnosis: "Shoulder contusion or crush injury with healed minor soft tissue or skin injury" and per criteria for "Residual symptoms and consistent objective findings at MMI," assigned to class 1 with midrange default of 2% UEI. Adjustment Grids: Functional History: Grade modifier 2 for *QuickDASH* score of 50; Physical Examination: Grade modifier 0 (although there are palpatory findings these are diffuse, non-anatomic and not consistently documented); Clinical Studies: Grade modifier 0. Net adjustment compared with diagnostic class is -1. Moved 1 position to the left of default value C to grade B. 2% UEI. Converts to 1% WPI.

# The **DASH** OUTCOME MEASURE

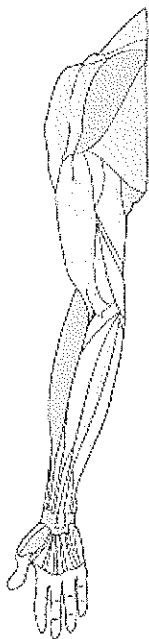
## Disabilities of the Arm, Shoulder and Hand

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### Development Information

The DASH Outcome Measure and the *QuickDASH* are the property of the **Institute for Work & Health** (IWH). These instruments were jointly developed by the Institute for Work & Health and the American Academy of Orthopaedic Surgeons (AAOS). The project was supported by the American Association for Hand Surgery, the American Orthopaedic Society for Sports Medicine, the American Shoulder & Elbow Surgeons, the American Society for Surgery of the Hand, the Arthroscopy Association of North America and the American Society of Plastic and Reconstructive Surgeons.

The DASH is currently administered by the Institute for Work & Health.

**If you have read and understand these conditions, please click on the links below to download the documents**

**DASH Outcome Measure** (PDF - 127k)

**QuickDASH** (PDF - 118k)

## The Disabilities of the Arm, Shoulder and Hand Score(QuickDash)

Clinician's name (or ref) \_\_\_\_\_

Patient's name (or ref) \_\_\_\_\_

**INSTRUCTIONS:** This questionnaire asks about your symptoms as well as your ability to perform certain activities. Please answer *every question*, based on your condition in the **last week**. If you did not have the opportunity to perform an activity in the past week, please make your *best estimate* on which response would be the most accurate. It doesn't matter which hand or arm you use to perform the activity; please answer based on your ability regardless of how you perform the task.

Please rate your ability to do the following activities in the last week.

1. Open a tight or new jar	<input type="radio"/> No difficulty	<input type="radio"/> Mild difficulty	<input type="radio"/> Moderate difficulty	<input type="radio"/> Severe difficulty	<input type="radio"/> Unable
2. Do heavy household chores (eg wash walls, wash floors)	<input type="radio"/> No difficulty	<input type="radio"/> Mild difficulty	<input type="radio"/> Moderate difficulty	<input type="radio"/> Severe difficulty	<input type="radio"/> Unable
3. Carry a shopping bag or briefcase	<input type="radio"/> No difficulty	<input type="radio"/> Mild difficulty	<input type="radio"/> Moderate difficulty	<input type="radio"/> Severe difficulty	<input type="radio"/> Unable
4. Wash your back	<input type="radio"/> No difficulty	<input type="radio"/> Mild difficulty	<input type="radio"/> Moderate difficulty	<input type="radio"/> Severe difficulty	<input type="radio"/> Unable
5. Use a knife to cut food	<input type="radio"/> No difficulty	<input type="radio"/> Mild difficulty	<input type="radio"/> Moderate difficulty	<input type="radio"/> Severe difficulty	<input type="radio"/> Unable
6. Recreational activities in which you take some force or impact through your arm, shoulder or hand (eg golf, hammering, tennis, etc)	<input type="radio"/> No difficulty	<input type="radio"/> Mild difficulty	<input type="radio"/> Moderate difficulty	<input type="radio"/> Severe difficulty	<input type="radio"/> Unable

7. During the past week, to what extent has your arm, shoulder or hand problem interfered with your normal social activities with family, friends, neighbours or groups?

Not at all     Slightly     Moderately     Quite a bit     Extremely

8. During the past week, were you limited in your work or other regular daily activities as a result of your arm, shoulder or hand problem?

Not limited at all     Slightly limited     Moderately limited     Very limited     Unable

Please rate the severity of the following symptoms in the last week

9. Arm, shoulder or hand pain	<input type="radio"/> None	<input type="radio"/> Mild	<input type="radio"/> Moderate	<input type="radio"/> Severe	<input type="radio"/> Extreme
10. Tingling (pins and needles) in your arm, shoulder or hand	<input type="radio"/> None	<input type="radio"/> Mild	<input type="radio"/> Moderate	<input type="radio"/> Severe	<input type="radio"/> Extreme

11. During the past week, how much difficulty have you had sleeping because of the pain in your arm, shoulder or hand?

No difficulty     Mild difficulty     Moderate difficulty     Severe difficulty     So much difficulty I can't sleep

Thank you very much for completing all the questions in this questionnaire.

**The Disabilities of the Arm, Shoulder and Hand (quickdash) Score 0**

To save this data please print or   
Nb: This page cannot be saved due to patient data protection so please print the filled in form before closing the window.

( NB. A DASH score may not be calculated if there are greater than 1 missing items.)

There are two further small sections to this score. They are both optional. Just click below to select

**WORK MODULE**

**SPORTS/PERFORMING ARTS MODULE**

**Reference for Score:** Hudak PL, Amadio PC, Bombardier C. Development of an upper extremity outcome measure: the DASH (disabilities of the arm, shoulder and hand) [corrected]. The Upper Extremity

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

JOHNSON, ZACHARY

Employee/Petitioner

Case# 11WC041328

RECEIVED JUL 30 2012

CENTRAL TRANSPORT

Employer/Respondent

On 7/24/2012, 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 0.14% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0154 KROL BONGIORNO & GIVEN LTD  
CHARLIE GIVEN  
100 W MONROE ST SUITE 1410  
CHICAGO, IL 60603

1622 HINSHAW & CULBERTSON LLP  
ROBERT J FINLEY  
222 N LASALLE ST SUITE 300  
CHICAGO, IL 60601

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF COOK )

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION**

**Zachary Johnson**

Case # **11 WC 041328**

Employee/Petitioner

Consolidated cases: **n/a**

v.

**Central Transport**

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 **Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **June 5, 2012**. 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 **October 17, 2011**, 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 \$6,507.33; the average weekly wage was \$948.42.  
On the date of accident, Petitioner was 28 years of age, *single* with 1 dependent child.  
Petitioner *has* received all reasonable and necessary medical services.  
Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.  
Respondent shall be given a credit of \$6,763.70 for TTD, \$0 for TPD, \$0 for maintenance, and \$1,163.66 for over payment of TTD benefits, for a total credit of \$7,927.36.  
Respondent is entitled to a credit of \$0 under Section 8(j) of the Act.

**ORDER**

***Temporary Total Disability***

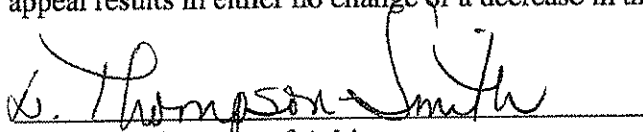
Respondent shall pay Petitioner temporary total disability benefits of \$632.28/week for 8 6/7 weeks, commencing October 18, 2011 through December 18, 2011, as provided in Section 8(b) of the Act.  
Respondent shall pay Petitioner the temporary total disability benefits that have accrued from October 18, 2011 through December 18, 2011, and shall pay the remainder of the award, if any, in weekly payments.  
Respondent shall be given credits of \$6,763.70 for temporary total disability ("TTD") benefits that have been paid and a TTD overpayment of \$1,163.66.

***Permanent Partial Disability: Schedule injury***

Respondent shall pay Petitioner permanent partial disability benefits of \$569.05/week for 20.50 weeks, because the injuries sustained caused the 10% loss of the right hand, 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

July 24, 2012

## **FINDINGS OF FACT**

The disputed issues are 1) casual connection; and 2) nature and extent of the injury. See, AX1.

### *Petitioner's Testimony at Hearing*

Petitioner, Zachary Johnson, is claiming an accidental right hand injury on October 17, 2011. Temporary total disability and medical bills are not in dispute. The parties have stipulated that Respondent is entitled to a temporary total disability overpayment credit of \$1,163.60. Petitioner sustained accidental injuries on October 17, 2011 while employed by Central Transport as a local truck driver and loader. At the time of the accident, Petitioner was 28-year old and a journeyman truck driver employed by Central Transport, since August 10, 2011. Petitioner's employment duties included loading the truck trailer and driving city trucking routes. On the day of injury, he had completed loading the trailer and was conducting a pre-trip inspection when he encountered a problem with the trailer door. The trailer door operates on a bearing system by which the door rolls up/down. Petitioner testified that the bearings malfunctioned preventing the trailer door from completely closing. Petitioner attempted to close the trailer door with the assistance of a forklift but was unsuccessful. He then tried to close the trailer door manually by placing his left hand on the trailer door handle and his right hand on an attached rope. Petitioner pushed and pulled the door which eventually gave way, falling onto Petitioner's right hand. Timely notice was given to Central Transport and he proceeded to complete his shift.

Petitioner continued working regular duties as truck driver with Central Transport. These were the same duties as before the accident. In February 2012, Petitioner ceased working for Central Transport and went to a new trucking company, i.e., JF Freight; for an increase in salary. Petitioner testified that his decision to quit Central Transport had nothing to do with his with his right hand injury. Petitioner remains employed as an over-the-road driver with JF Freight. Petitioner's trucking routes while at Central Transport, consisted of short, urban routes. Petitioner did not travel long distances while employed with Central Transport. Petitioner testified his current routes with JF Freight have him driving from Chicago to Texas and Florida several times per week and he is driving much longer distances compared to Central Transport. Petitioner testified that he is right hand dominant and that currently, his right hand stiffens in the cold and he experiences periodic pain throughout the day, especially while driving over bumpy roads and when his hand strikes the stick-shift.

**CONCLUSIONS OF LAW**

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

Petitioner's current right hand condition is a healed metacarpal fracture with angulations. This diagnosis is confirmed by his treating physicians, diagnostic studies, and examining physician Dr. Vender.

**L. What is the nature and extent to Petitioner's injury?**

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

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

(b) Also, the Commission shall base its determination on the following factors:

- (i) the reported level of impairment;
- (ii) the occupation of the injured employee;
- (iii) the age of the employee at the time of injury;
- (iv) the employee's future earning capacity; and
- (v) evidence of disability corroborated by medical records.

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

- (i) Dr. Vender's AMA report was admitted into evidence. Dr. Vender concludes that Petitioner's hand impairment is 1%. Petitioner provided no evidence or argument rebutting Dr. Vender's 1% impairment rating.



*Medical Records*

On October 18, 2011, the day after the accident, Petitioner sought treatment at Concentra Medical Center. X-rays of the right hand revealed a closed right small finger metacarpal fracture. Petitioner was discharged the same day with a right hand ulnar gutter splint. He was then referred to Advanced Medical Specialists and presented for examination on October 21, 2011; and was placed on restricted left-hand work. Petitioner returned to Advanced Medical Specialist for follow-up examinations on November 8<sup>th</sup> and 29<sup>th</sup> of 2011. X-rays taken on or about November 29, 2011, found Petitioner's small finger metacarpal fracture was healing.

On December 13, 2011, approximately eight (8) weeks after the date of injury, Petitioner was released to full duty work, without restrictions, starting on December 19, 2011. On January 12, 2012, Petitioner was examined by Dr. Cohen, the Director of the Hand and Elbow section at Midwest Orthopaedics at Rush, by request of Respondent. Dr. Cohen noted that Petitioner's right small finger metacarpal fracture had been treated conservatively. Dr. Cohen commented that Petitioner's susceptibility to cold weather should resolve over time and was not permanent. Petitioner's records also show that he underwent right hand surgery at the age of 5 due to a hereditary hand deformity and the arbitrator observed the disfigurement and surgical scarring at trial. Petitioner has not seen a treating physician, had any treatment, or been prescribed medication since his release in December 2011.

*AMA Impairment Examination*

On April 6, 2011, Dr. Michael Vender performed an AMA Impairment Examination and his report was admitted into evidence. Dr. Vender's examination found 1% impairment in Petitioner's right hand. Petitioner provided Dr. Vender with a history and filled out an evaluation which was utilized in determining an impairment rating. Dr. Vender noted that Petitioner sustained a work injury on October 17, 2011 when the rear door of his trailer fell onto his right hand causing a fracture which was treated conservatively. Upon examination, Petitioner complained of sporadic numbness in his right palm and sporadic soreness in the ulnar aspect of his right hand. Congenital deformities related to both ring fingers were noted with surgical scars on the volar aspect of the ring finger. Petitioner demonstrated normal range of motion of the right small finger. Petitioner was diagnosed with a healed right small finger metacarpal fracture with angulations. See, RX1. Petitioner did not offer an AMA impairment rating or write proposed findings that considered the AMA guides.

**ZACHARY JOHNSON**

**11 WC 41328**

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

- (ii) Petitioner continues to be employed as a truck driver and now drives over-the-road rather than locally.

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

- (iii) Petitioner was 28-years old on the date of accident. The Arbitrator considers the petitioner to be a younger individual and concludes that Petitioner's permanent partial disability may not be more extensive than that of an older individual.

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

- (iv) There is no evidence that Petitioner's future earning capacity has diminished as a result of this right hand injury. Petitioner is currently 29 years old and continues driving a truck. He is now driving longer distances with a different employer for more pay. Petitioner's age increases the likelihood of a long career as a truck driver.

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

- (v) Evidence of disability in Petitioner's treating medical records finds that Petitioner's metacarpal fracture with angulations was treated conservatively and has now healed. Dr. Cohen reported that Petitioner's susceptibility to cold would resolve over time, his grip strength was relatively symmetrical and functional difficulties associate with this type of mal-union of the small finger metacarpal are minimal. Dr. Vender noted complaints of sporadic numbness in Petitioner's right palm and sporadic soreness in the ulnar aspect of his right hand. Petitioner demonstrated normal range of motion of the right small finger. Petitioner returned to work full duty about eight (8) weeks after the accident.

The Arbitrator also finds persuasive Commission decisions which clearly differentiate the extent of Petitioner's disability and lend support to the conclusion that a minimal PPD award is appropriate. In *Waggaman v. Freight Car Services*, that petitioner, a freight production line supervisor, fractured the midshaft of the second metacarpal (07 I.W.C.C. 41359). Petitioner treated conservatively with therapy and returned to work three months after the accident with 50% strength loss in his hand. Petitioner was awarded 7.5% loss of use of the left hand. In the subject case, the petitioner has suffered

**ZACHARY JOHNSON**

**11 WC 41328**

no loss of strength and is driving longer, more demanding routes than before the accident.

The determination of permanent partial disability ("PPD") is not simply a calculation, but an evaluation of all five factors as stated in the Act. In making this evaluation of PPD, consideration is not given to any single enumerated factor as the sole determinant. Therefore, applying Section 8.1b of the Act, 820 ILCS 305/8.1b and considering the relevance and weight of all these factors, including Dr. Vender's AMA impairment rating, the Arbitrator concludes that Petitioner has sustained a 10% permanent loss of his right hand or 20.50 weeks of loss of use of the right hand.

**HS** Hand Surgery Associates, SC.  
**SA** Hand • Shoulder • Elbow • Wrist

MICHAEL I. VENDER, M.D.  
 COTT D. SAGERMAN, M.D.  
 RASANT ATLURI, M.D.  
 AM J. BIAFORA, M.D.  
 MICHAEL V. BIRMAN, M.D.

April 9, 2012

ONNA J. KERSTING, MBA  
 EXECUTIVE DIRECTOR

MR ROBERT J FINLEY  
 HINSHAW & CULBERTSON LLP  
 ATTORNEYS AT LAW  
 222 N LASALLE ST, SUITE 300  
 CHICAGO IL 60601-1081

RE: ZACHARY JOHNSON  
 V CENTRAL TRANSPORT  
 DOI: 10/2011  
 DOE: 4/6/2012  
 IWCC #: 11 WC 041328

Dear Mr. Finley:

On April 6, 2012 I evaluated Mr. Zachary Johnson for an Independent Medical Evaluation. Mr. Johnson is a 28-year-old male who reports an injury to his right hand in October, 2011. He describes the rear door of a trailer falling onto his right hand. Mr. Johnson was subsequently evaluated and found to have a fracture of the hand. He was treated conservatively with a splint. He continues to note some degree of residual symptoms.

Mr. Johnson states at times there is numbness in his right palm. At times, there is soreness in the dorsal ulnar aspect of his hand.

**PHYSICAL EXAMINATION:** There are congenital deformities related to both ring fingers, more prominent on the right than the left. There are surgical scars on the volar aspect of the right ring finger. Range of motion of the right small finger is normal. MP range of motion is approximately 0/90, PIP is 0/110 and DIP is 0/60. There is a decreased prominence of the small finger metacarpal head dorsally. There is no significant A1 pulley tenderness. Light touch of the fingers is normal.

**X-RAY EXAMINATION:** X-rays of the right hand are obtained. These demonstrate a healed right small finger metacarpal neck fracture. There is apex dorsal angulation of approximately 35 degrees.

**DIAGNOSIS AND IMPRESSION:** Status post right small finger metacarpal neck fracture with angulation.

ILINGTON HEIGHTS  
 5 W. ALGONQUIN RD.  
 ILINGTON HEIGHTS, IL 60005  
 L: 847-856-0088  
 X: 847-856-0433

SIP  
 10 W. 128TH STREET  
 SIP, IL 60803

LINGBROOK  
 5 S. BOLINGBROOK DR.  
 LINGBROOK, IL 60440

CAGO  
 W. ADAMS ST.  
 CAGO, IL 60661

JNTRYSIDE  
 5 S WILLOW SPRINGS RD.  
 JNTRYSIDE, IL 60525

IHURST  
 W. BUTTERFIELD RD., STE. 150  
 IHURST, IL 60129

INVIEW  
 J PFINGSTEN RD., STE. 2200  
 INVIEW, IL 60028

LAWN  
 1 W. 96TH STREET  
 LAWN, IL 60459

NON HILLS  
 CORPORATE WOODS PKWY  
 NON HILLS, IL 60061

hsasc.com




April 9, 2012  
Re: Zachary Johnson  
Page 2

COMMENTS AND RECOMMENDATIONS: Mr. Johnson presents with residual complaints and findings after his reported injury. In addition to his history provided today, he also filled out a Quick Dash evaluation. This was information utilized in determining his Impairment rating. Mr. Johnson was rated utilizing sixth edition AMA guidelines. Enclosed please see documentation of his rating.

If you have any further questions regarding Mr. Zachary Johnson, please feel free to contact me.

Sincerely,

  
Michael I. Vender, M.D.

MIV/all

cc: Patrick Keene - Cherokee Insurance

**Impairment Rating:**

Patient: Zachary Johnson

Date of Evaluation : 4/6/2012

**Diagnosis:** Healed Right Small Finger Metacarpal Fracture

**Diagnosis Class** = Class 1: Metacarpal fracture with consistent objective findings. Digit Regional Grid (Table 15-2 P.391 "Guides to the Evaluation of Permanent Impairment" 6<sup>th</sup> ed.)

**Grade Modifier Functional History (GMFH):**

QuickDASH score = 50

Grade Modifier = 2 (Table 15-7 P.406 )

**Grade Modifier Physical Examination (GMPE):**

Moderate alignment deformity present - 35 degree apex dorsal angulation.

Grade modifier = 2 (Table 15-9 p.408)

**Clinical Studies Adjustment (CDX):**

No evidence of arthritis present on x-ray

Grade modifier = 0 (P 40 table 15-9 )

**Summary**

Class of Diagnosis = CDX = 1

Grade Modifier of functional history = GMFH = 2

Grade Modifier of Physical Exam = GMPE = 2

Grade Modifier Clinical Studies = GMCS = 0

Net adjustment Formula= (GMFE – CDX) + (GMPE – CDX) + (GMCS –CDX)

Net adjustment = (2-1) + (2-1) + (0-1) = 1

**Impairment Rating Grade Assignment = D = 7% of Index Finger = 1% of hand = 1% Upper Extremity = 0% whole person (Table 15-12 page 421)**

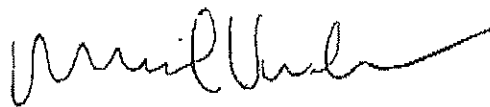


TABLE 15-2 Digit Regional Grid: Digit Impairments

IMPAIRMENT CLASS	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
IMPAIRMENT RANGES (digit)	0	1%–13% Digit	14%–25% Digit	26%–49% Digit	50%–100% Digit
GRADE		A B C D E	A B C D E	A B C D E	A B C D E
<i>Joint dislocation or sprain*</i>					
Thumb CMC*	0 No residual findings		14 14 15 16 17 <10° Instability 21 23 25 25 25 10°–20° Instability	29 32 35 38 41 >20° Instability	
Finger DIP*	0 No residual findings	3 4 5 6 7 <10° Instability 8 9 10 11 12 10°–20° Instability	14 14 15 16 17 >20° Instability		
Finger PIP*	0 No residual findings	8 9 10 11 12 <10° Instability	14 14 15 16 17 10°–20° Instability 21 23 25 25 25 >20° Instability		
Finger MCP*	0 No residual findings		14 14 15 16 17 <10° Instability 16 18 20 22 24 10°–20° Instability 21 23 25 25 25 >20° Instability		
<i>Fractures*</i>					
Thumb metacarpal, intra-articular*	0 No residual findings	8 9 10 11 12 Residual symptoms, consistent objective findings and/or functional loss, with normal motion			
Distal phalanx*	0 No residual findings	2 3 4 5 6 Residual symptoms, consistent objective findings and/or functional loss, with normal motion			
Proximal phalanx, middle phalanx, metacarpal*	0 No residual findings	4 5 6 7 8 Residual symptoms, consistent objective findings and/or functional loss, with normal motion			
Metacarpal head*	0 No residual findings	6 7 8 9 10 Residual symptoms, consistent objective findings and/or functional loss, with normal motion			

(continued)

**TABLE 15-8**

## Physical Examination Adjustment: Upper Extremities

	Grade Modifier 0	Grade Modifier 1	Grade Modifier 2	Grade Modifier 3	Grade Modifier 4
<b>Class Definitions</b>	No problem	Mild problem	Moderate problem	Severe problem	Very severe problem
<b>Observed and Palpatory Findings</b> (tenderness, swelling, mass, or crepitanace)	No consistent findings	Minimal palpatory findings, consistently documented, without observed abnormalities	Moderate palpatory findings, consistently documented, and supported by observed abnormalities	Severe palpatory findings, consistently documented, and supported by observed moderate or greater abnormalities	Very severe palpatory findings, consistently documented, and supported by observed severe abnormalities
<b>Stability</b>	Stable	Grade 1 (slight) instability	Grade 2 (moderate) instability	Grade 3 (serious) instability	Gross instability
<b>Hand/finger/thumb</b>		Pain with stressing of ligament, but no opening of joint with stress	Pain and slight opening	Pain and >5 mm of joint opening with stress	Severe instability
<b>Wrist</b>		Clicking or clunking by history, but not reproducible	Clicking or clunking by history, and reproducible on physical examination		
<b>Wrist excessive passive/active mediolateral joint deviation degrees compared to normal</b>		<10° passive <20° active	10°–20° passive 20°–30° active	>20° passive >30° active	
<b>Shoulder</b>		Grade 1 (slight) instability; subluxable	Grade 2 (moderate) instability; easily subluxable	Grade 3 (serious) instability; dislocatable with anesthesia or sedation	
<b>Alignment/Deformity</b>	Normal for individual with symmetry to opposite side	Mild	Moderate	Severe	Very severe
<b>Range of Motion</b> (reference Section 15.7)	None	Mild decrease from normal or uninjured opposite side For digit impairments only, this reflects a total digit impairment <20% digit impairment. For wrist, elbow, and shoulder this reflects a total joint impairment of <12% upper extremity impairment.	Moderate decrease from normal or uninjured opposite side For digit impairments only, this reflects a total digit impairment of 20% to 39% digit impairment. For wrist, elbow, and shoulder this reflects a total joint impairment of 12% to 23% upper extremity impairment.	Severe decrease from normal or uninjured opposite side For digit impairments only, this reflects a total digit impairment of 40% to 70% digit impairment. For wrist, elbow, and shoulder this reflects a total joint impairment of 24% to 42% upper extremity impairment.	Very severe decrease from normal or uninjured opposite side For digit impairments only, this reflects a total digit impairment >70% digit impairment. For wrist, elbow, and shoulder this reflects a total joint impairment >42% upper extremity impairment.
<b>Muscle Atrophy</b> (asymmetry compared to opposite normal)	<1 cm	1.0–1.9 cm	2.0–2.9 cm	3.0 cm–3.9 cm	4.0 cm +

Note: ROM indicates range of motion; GH indicates Glenohumeral.



**TABLE 15-9**

## Clinical Studies Adjustment: Upper Extremities

	Grade Modifier 0	Grade Modifier 1	Grade Modifier 2	Grade Modifier 3	Grade Modifier 4
<b>Class Definitions</b>	No problem	Mild problem	Moderate problem	Severe problem	Very severe problem
<b>Imaging Studies</b>	No available clinical studies or relevant findings	Clinical studies confirm diagnosis, mild pathology	Clinical studies confirm diagnosis, moderate pathology	Clinical studies confirm diagnosis, severe pathology	Clinical studies confirm diagnosis, very severe pathology
<b>Shoulder</b>			Clinical studies confirm one of the following symptomatic diagnoses: rotator cuff tear, SLAP or other labral lesion, biceps tendon pathology		Clinical studies confirm more than one of the following symptomatic diagnoses: rotator cuff tear, SLAP or other labral lesion, biceps tendon pathology. The most significant diagnosis is the only one rated.
<b>X rays</b>					
<b>Arthritis</b>		Cartilage interval normal or mild joint space narrowing and/or osteophytes	Cartilage interval: moderate joint space narrowing with cystic changes on 1 or both sides of joint and/or osteophytes; radiographic evidence of mild posttraumatic arthrosis; avascular necrosis without collapse	Cartilage interval severe joint space narrowing with cystic changes on both sides of joint and/or osteophytes; or avascular necrosis with bony collapse/fragmentation	No cartilage interval; radiographic evidence of severe posttraumatic arthrosis
<b>Stability</b>					
<b>Joint laxity (based on stress testing)</b>		<10° Instability	10°–20° Instability	20°–30° Instability	>30° Instability
<b>Wrist (see text for explanation)</b>		Radiolunate angle 11°–20° Scapholunate angle 61°–70° Scapholunate gap 3–5 mm Triquetrolunate stepoff >1 mm Ulnar translation mild	Radiolunate angle 21°–30° Scapholunate angle 71°–80° Scapholunate gap 6–8 mm Triquetrolunate stepoff >2 mm Ulnar translation moderate	Radiolunate angle >30° Scapholunate angle >80° Scapholunate gap >8 mm Triquetrolunate stepoff >3 mm Ulnar translation severe	
<b>Nerve Conduction Testing</b>	Normal	Conduction delay (sensory and/or motor)	Motor conduction block	Partial axonal loss	Total axonal loss/denervation

**TABLE 15-12****Impairment Values Calculated From Digit Impairment**

Note: To convert digit impairment to other units, identify the digit impairment value in the left-hand column, identify the digit (thumb, index, middle, ring, or little) in the top columns and the converted impairment values are shown based on unit (hand, upper extremity [UE], or whole person [WP]). Follow directions for combining, as directed in the text.

The conversion factor for upper extremity to whole person is 60%, for hand to upper extremity is 90%, thumb to hand is 40%, index and middle finger to hand is 20%, and ring and little finger to hand is 10%.

Digit Impairment Value	Thumb			Index or Middle Finger			Ring or Little Finger		
	Hand	UE	WP	Hand	UE	WP	Hand	UE	WP
	40%	36%	22%	20%	18%	11%	10%	9%	5%
1	0	0	0	0	0	0	0	0	0
2	1	1	0	0	0	0	0	0	0
3	1	1	1	1	1	0	0	0	0
4	2	1	1	1	1	0	0	0	0
5	2	2	1	1	1	1	1	0	0
6	2	2	1	1	1	1	1	1	0
7	3	3	2	1	1	1	1	1	0
8	3	3	2	2	1	1	1	1	0
9	4	3	2	2	2	1	1	1	0
10	4	4	2	2	2	1	1	1	1
11	4	4	2	2	2	1	1	1	1
12	5	4	3	2	2	1	1	1	1
13	5	5	3	3	2	1	1	1	1
14	6	5	3	3	3	2	1	1	1
15	6	5	3	3	3	2	2	1	1
16	6	6	3	3	3	2	2	1	1
17	7	6	4	3	3	2	2	2	1
18	7	6	4	4	3	2	2	2	1
19	8	7	4	4	3	2	2	2	1
20	8	7	4	4	4	2	2	2	1
21	8	8	5	4	4	2	2	2	1
22	9	8	5	4	4	2	2	2	1
23	9	8	5	5	4	2	2	2	1
24	10	9	5	5	4	3	2	2	1
25	10	9	5	5	5	3	3	2	1
26	10	9	6	5	5	3	3	2	1
27	11	10	6	5	5	3	3	2	1
28	11	10	6	6	5	3	3	3	2
29	12	10	6	6	5	3	3	3	2
30	12	11	6	6	5	3	3	3	2
31	12	11	7	6	6	3	3	3	2
32	8	8	5	4	4	2	2	2	1
33	13	12	7	7	6	4	3	3	2
34	14	12	7	7	6	4	3	3	2
35	14	13	8	7	6	4	4	3	2
36	14	13	8	7	6	4	4	3	2
37	15	13	8	7	7	4	4	3	2
38	15	14	8	8	7	4	4	3	2
39	16	14	8	8	7	4	4	4	2