STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Walter Matuszczak,

Petitioner,

vs. No: 10 WC 11819

Wal-Mart,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice having been given to all parties, the Commission, after having considered the issue of whether Petitioner is entitled to temporary total disability benefits after his employment was terminated, and having been advised of the facts and law, hereby modifies the Arbitrator's decision as stated below and otherwise affirms and adopts the Arbitrator's decision, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Arbitrator awarded Petitioner 23-2/7 weeks of temporary total disability benefits representing a period from June 13, 2011, the day after Petitioner's employment was terminated, to November 22, 2011, the date of arbitration. The Commission hereby modifies the Arbitrator's decision by vacating the award of temporary total disability benefits.

In awarding temporary total disability benefits, the Arbitrator relied on Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n, 236 Ill.2d 132, 923 N.E.2d 266 (2010). Respondent contends that Petitioner's theft of cigarettes from Respondent on multiple occasions, with knowledge that his theft could lead to termination, is equivalent to his refusing light duty work. Respondent contends that under Interstate Scaffolding, benefits may be

suspended or terminated if the claimant refuses work within his physical restrictions. The Commission agrees with Respondent's position.

The Commission interprets that the Interstate Scaffolding decision does not eliminate all circumstances under which a claimant may lose his temporary total disability benefits. We do not believe that the Interstate Scaffolding decision stands for the proposition that an injured employee, whose employment has been terminated, has an unqualified or absolute right to temporary total disability benefits so long as the employee's condition has not stabilized and the employee is under light duty restrictions.

We believe that the Interstate Scaffolding court's purpose was to convey explicitly that the termination of a claimant's employment does not automatically result in a loss of temporary total disability benefits; there still has to be a determination of whether the claimant's physical condition has stabilized. This is evident with the court's statements with the use of the word, "automatically":

> "The appellate court below believed that a discharged employee should be automatically barred from receiving TTD benefits because 'allowing an employee to collect TTD benefits from his employer after he was removed from the work force as a result of volitional conduct unrelated to his injury would not advance the goal of compensating an employee for a work-related injury.' [citation omitted] This logic, however, is faulty. . . . In our view, the Act's purpose is not furthered by automatically denying TTD benefits to an injured employee simply because he has been discharged by his employer."

Interstate Scaffolding, 236 Ill.2d 132, 148-149, 923 N.E.2d 266, 275 (2010). The Interstate Scaffolding court was rejecting an automatic barring of temporary total disability benefits in cases where a claimant's employment is terminated as a result of volitional conduct unrelated to his injury. The court also stated that "[a]n injured employee's entitlement to TTD benefits is a completely separate issue and may not be conditioned on the propriety of the discharge." Interstate Scaffolding, 236 Ill.2d at149, 923 N.E.2d at 276. Thus, we believe the court made two significant points: (1) that there should not be an automatic, mechanical approach to deny temporary total disability benefits when an injured employee has been discharged, and (2) that the Commission should not be examining the reasons for discharge and assessing whether such discharge was proper.

The Interstate Scaffolding court also referenced circumstances under which temporary total disability benefits could be suspended or terminated: "if the employee refuses to submit to medical, surgical, or hospital treatment essentially to his recovery, or if the employee fails to cooperate in good faith with rehabilitation efforts. [citations omitted] Benefits may also be suspended or terminated if the employee refuses work falling within the physical restrictions prescribed by his doctor." Interstate Scaffolding, 236 Ill.2d at146-147, 923 N.E.2d at 274.

The Commission finds that Petitioner's repeated theft of cigarettes amounts to a refusal to work in the light duty position that Respondent had been providing for over a year. Petitioner

12IWCC1079

testified that he understood that stealing is a crime and that stealing from Respondent could result in his employment termination. Petitioner also testified that but for his employment termination, he believed he would still be working in the light duty position with Respondent. Under the circumstances of this case, we find that Petitioner refused Respondent's ongoing offer of work within his physical restrictions.

We do not believe the Interstate Scaffolding court was proscribing all use of discretion in cases involving employment termination; rather, as stated previously, we believe the court was rejecting an analysis of the propriety of the discharge and rejecting an automatic suspension or termination of temporary total disability benefits in cases involving employment termination.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision, filed on January 25, 2012, is modified with respect to temporary total disability benefits. The award of temporary total disability benefits is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $14,300.00. The probable cost of the record to be filed as return to Summons is the sum of $35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: OCT - 5 2012
TJT: lc
o 08/06/12
51

Thomas J. Tyrrell

Daniel R. Donohoo

Kevin W. Lamborn

# ILLINOIS WORKERS' COMPENSATION COMMISSION
# NOTICE OF 19(b) DECISION OF ARBITRATOR
8(a)

MATUSZCZAK, WALLY
Employee/Petitioner

Case# **10WC011819**

WAL-MART
Employer/Respondent

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On 1/25/2012, 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 0.07% 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:

2208 CAPRON & AVGERINOS PC
STEPHEN J SMALLING
55 W MONROE ST SUITE 900
CHICAGO, IL 60603

0560 WIEDNER & MCAULIFFE LTD
CATHERINE MAFEE LEVINE
ONE N FRANKLIN SUITE 1900
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF DUPAGE)

12IWCC1079

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

Walter Matuszczak,
Employee/Petitioner

v.

Wal-Mart,
Employer/Respondent

Case # **10** WC **11819**

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 **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **Wheaton**, on **November 22, 2011**. 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. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **travel expenses**

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FINDINGS

On the date of accident, **3/7/10**, 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 $**25,308.25**; the average weekly wage was $**486.70**.

On the date of accident, Petitioner was **42** years of age, ***single*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary 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.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $324.46 per week for 23-2/7 weeks, commencing 6/13/11 through 11/22/11, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 3/8/10 through 11/22/11, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay reasonable and necessary medical services of $14,227.41, as provided in Sections 8(a) and 8.2 of the Act.

Petitioner is entitled to prospective medical treatment in the form of the surgical procedure recommended by Dr. Lorenz, and Respondent shall pay the reasonable and necessary medical expense associated therewith pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

1/25/12
Date

ICArbDec19(b)

JAN 25 2012

STATEMENT OF FACTS:

Petitioner had been employed by the Respondent for three years as a night stocker prior to the subject accident. His job duties involved bending, lifting and stocking shelves with various products, some exceeding 100 pounds. Prior to the accident, he described himself as being in excellent health with never having been treated for any back or cervical condition which impacted on his ability to perform his job duties.

On March 7, 2010, Petitioner was stocking an end cap which contained liquids and bottles weighing 150 to 200 pounds per shelf. He estimated the top shelf was at eye level. While bending down to access a lower shelf, the entire end cap fell on him and as a result he sustained injuries to his neck, back and right arm.

On March 10, 2010, Petitioner was directed to Concentra Medical Center by the Respondent. (PX3). At that time he presented with increased complaints of pain in the neck with radiating pain into both hands and tingling. He was also noted to have lumbar pain bilaterally together with pain and weakness in the left wrist. Physical therapy and medication were prescribed. Petitioner testified he remained under the care of Concentra Medical Center through April 12, 2010. During that time he was provided light duty work in accordance with the restrictions imposed by his treating physician.

At the suggestion of his physical therapist, Petitioner sought an evaluation with Dr. Mark Lorenz at Hinsdale Orthopedics on March 22, 2010. (PX4). The neurological exam performed on his upper extremity was noted to be normal and x-rays revealed degenerative disc disease at the level of C5-6. Dr. Lorenz diagnosed his condition as neck and back strain as well as a contusion of the medial epicondyle. He imposed light duty restrictions and advised Petitioner to continue with physical therapy over the next month. On April 21, 2010 Petitioner was re-examined by Dr. Lorenz who noted that he continued to experience pain in his neck, his elbow together with occasional headaches emanating if his neck acted up. Dr. Lorenz referred Petitioner to Dr. Bardfield for supervision of his rehabilitation. Dr. Lorenz did not feel he was a surgical candidate at that time and wanted his rehabilitation therapy supervised by a physical therapy rehabilitation specialist. He continued his light duty restrictions.

As of June 18, 2010, Petitioner had completed his initial physical therapy but his neck symptoms were not resolving. He was noted to have headaches and pain with extension and his diagnosis was possible cervical facet joint syndrome and cervicogenic headaches. Dr. Bardfield referred him to Dr. Gary Koehn for evaluation of potential cervical facet joint injections. Dr. Lorenz testified that cervical facet joint syndrome is an inflammatory change in the joint in the cervical spine and reflected that Petitioner's symptoms were clarifying themselves and the conservative treatment to date was failing. That was the basis for the referral to a pain specialist for the injection therapy. (PX6, pp.10-11). Dr. Lorenz further testified that the cervicogenic headaches implied that the origin of the headaches was caused by the inflammatory changes in the neck which also necessitated evaluation by a pain specialist. (PX6, p.12).

Petitioner was first examined by Dr. Koehn on July 23, 2010. (PX5). His initial impression of Petitioner's condition was chronic bilateral posterior neck pain, right cervical radiculopathy with intermittent bioccipital frontal and temporal headaches following the work injury that was only partially responsive to conservative treatment to date. After reviewing the Petitioner's MRI, Dr. Koehn recommended performance of two transforaminal epidural steroid injections which were performed on August 24, 2010 and September 28, 2010. In addition, Dr. Koehn imposed light duty restrictions and referred him back to physical therapy. Petitioner testified that the symptoms in his cervical spine did not resolve following the epidural steroid injections. On December 28, 2010, diagnostic medial branch blocks were performed which showed the pain was not changed

suggesting it was not a facet-related phenomenon. Dr. Koehn then referred the Petitioner back to Dr. Lorenz for a surgical consultation and reiterated the light duty restrictions. (PX5).

Petitioner was examined by Dr. Lorenz on March 16, 2011 who noted that the conservative treatment had failed. A discography at the level C5-6 was prescribed by Dr. Lorenz. Dr. Lorenz testified that he did it blindly "wherein he did not advise Dr. Koehn of the level that he suspected was causing the Petitioner's symptoms" so as to add additional objectivity to the results. He further testified that the discography was medically necessitated in order to assess the Petitioner's medical condition. (PX6, pp.17-19). The discography confirmed Dr. Lorenz's impression that the issues were at the C5-6 level with pain and an abnormality, particularly a fissure or tear of the disc and a demonstrated narrowing in the back of the exit hole. All other levels were normal and given the findings, he recommended that Petitioner either live with the condition subject to restrictions or consider a discectomy and fusion at C5-6. Dr. Lorenz testified that the discectomy and fusion would remove the pain causing interval and normalize the abnormality of movement and weight distribution at the C5-6 interval in addition to freeing up the nerves posteriorally. (PX6, pp.21-22). Dr. Lorenz specifically opined that the injury sustained by the Petitioner on March 7, 2010 aggravated a pre-existing degenerative condition at C5-6 necessitating the surgical recommendation. (PX6, p.23).

Petitioner testified that he continues to experience pain in his cervical spine which has intensified since the accident. It is his desire to undergo the surgical procedure in an attempt to return to his previous functional capacity.

On June 8, 2011, Petitioner was examined by Dr. Steven Mather at the request of the Respondent for purposes of a §12 examination. Dr. Mather opined the Petitioner sustained a simple contusion to his neck and possibly upper extremities and did not require further active medical care. He further felt that Petitioner could return to work without restrictions and was at maximum medical improvement. (RX1).

In an addendum report of June 30, 2011, Dr. Mather opined that the pain treatment administered by Dr. Gary Koehn was reasonable and necessary to treat the condition. He further opined that the EMG recommended by Dr. Lorenz was reasonable and necessary to address the injury. (RX2).

On November 18, 2011, Dr. Mather authored an additional addendum to his report. After reviewing the results of the discogram and CT performed by Dr. Koehn, he reiterated his opinion that Petitioner sustained a simple contusion of the neck and possibly upper extremities. He further opined the Petitioner did not require surgery in reference to his March 7, 2010 injury. (RX3).

Petitioner testified that he received the sum of $25.00 for travel expenses to attend the examination with Dr. Mather. Petitioner's Exhibit No. 1 contains receipts for travel expenses incurred by the Petitioner in attending the examination.

Petitioner testified that on June 12, 2011, his employment with Respondent was terminated as a result of his stealing cigarettes from work. Petitioner testified that he has not been employed since that date. On cross-examination, Petitioner testified that had tried looking for work within his light duty restrictions, specifically at a grocery store, a dollar store, Menard's and Target.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The evidence shows that prior to the accident in question Petitioner was in good health and had never experienced any problems with his cervical spine necessitating treatment nor the imposition of restrictions on his activities as it relates to his ability to perform his job with Respondent. Since the incident, Petitioner has undergone an extensive course of conservative care.

Drs. Lorenz, Bardfield and Koehn all opined that Petitioner suffered from medical conditions necessitating the imposition of light duty restrictions, pain management treatment, narcotic pain medications and a surgical recommendation. Dr. Lorenz testified that the x-rays together with the discography were objective evidence of the instability of Petitioner's cervical spine resulting from an aggravation of the pre-existing degenerative condition. Dr. Lorenz testified as to the necessity of the injections to initially treat this condition before proceeding with surgery. (PX6, pp.17-19). These injections have failed to relieve Petitioner's symptoms.

Petitioner testified that he has sustained no other injuries to his cervical spine subsequent to the accident of March 7, 2010. He is still subject to light duty restrictions imposed by three separate physicians and taking narcotic pain medication to relieve his symptoms.

Dr. Mather, Respondent's Section 12 examiner, opined that Petitioner sustained a simple contusion to his neck and possibly upper extremities.

Based on the above, and the medical records taken as a whole, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the undisputed accident on March 7, 2010. Along these lines, the Arbitrator finds the opinion of treating orthopedist Dr. Lorenz to be more persuasive than that offered by Respondent's §12 examining physician, Dr. Mather.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner submitted into evidence claimed outstanding medical bills at PX2.

Dr. Lorenz testified that he felt conservative treatment was indicated and that a referral to Dr. Bardfield, a physical medicine and rehabilitation specialist, was therefore necessary. Dr. Bardfield in turn referred the Petitioner to Dr. Koehn for cervical facet injections given his lack of response to the physical therapy and other conservative measures. Dr. Koehn performed transforaminal epidural injections on the Petitioner together with diagnostic medial branch blocks. When the Petitioner failed to realize substantial relief from this treatment, he was referred back to Dr. Lorenz for surgical consultation. Dr. Lorenz thereupon ordered a discogram which ultimately resulted in his recommendation for surgery.

Dr. Steven Mather, the Respondent's examiner, opined that the pain clinic treatment rendered by Dr. Koehn was both reasonable and necessary to treat Petitioner's medical condition. He further felt that the EMG prescribed by Dr. Lorenz was reasonable to treat the effects of the injury. Indeed, with the exception of the discography, Dr. Mather does not opine that any other treatment was unnecessary. His criticism of the discography is premised on his belief that Petitioner was suffering from myofascial pain syndrome. However, in this regard, the Arbitrator finds Dr. Lorenz's testimony, to the effect that the discography was not only necessary but supported his diagnosis and treatment recommendations, to be more persuasive than the opinion offered by Dr. Mather. The record shows that Petitioner had failed all conservative treatment and that discogram test was necessary to determine if Petitioner was a surgical candidate. It is also interesting that it was performed in such a way that

the physician who performed the test was not told as to the level in question, further buttressing Dr. Lorenz's diagnosis and recommendation along these lines.

Therefore, based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner is entitled to reasonable and necessary medical expenses in the amount of $14,227.41 pursuant §8(a) and the fee schedule provisions of §8.2 of the Act and as set forth in the parties' stipulation admitted into evidence as Arb.Ex. 2.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Given the Petitioner's failure to respond to the pain clinic treatment, Petitioner was referred back to Dr. Lorenz for surgical consultation. Before recommending surgery, Petitioner underwent a discography in order to confirm his impression that the pain was emanating at the C5-6 level. (PX6, p.19). The discography confirmed Petitioner had pain at the C5-6 interval together with abnormalities which included a tear of the disc as well as narrowing in the back of the hole at that level. Given these findings, Dr. Lorenz felt Petitioner was suffering from a structural issue as opposed to a neurological issue. Dr. Lorenz was of the opinion that Petitioner had failed conservative treatment and that Petitioner could learn to live with the pain, while maintaining permanent restrictions, or undergo surgery – namely, a discectomy and fusion at C5-6.

Petitioner testified that he continues to experience significant pain in his cervical spine the majority of his day. He noted that it is aggravated by certain movements and that he continues to be prescribed narcotic pain medication to alleviate his symptoms. Drs. Lorenz, Koehn and Bardfield have all imposed permanent restrictions on Petitioner given his condition. In this regard, the Arbitrator once again finds the opinion of Dr. Mather – to the effect that Petitioner sustained a simple contusion to his neck, requires no further active medical care and can return to work without restrictions – to be unpersuasive.

Based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner is entitled to prospective medical care and treatment in the form of the surgery prescribed by Dr. Lorenz, and Respondent is liable for the reasonable and necessary costs associated therewith pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner's employment with the Respondent was terminated on June 12, 2011 when he was caught stealing cigarettes from the Respondent. At the time of his termination, Petitioner was subject to light duty restrictions which were being accommodated by the Respondent. He has not returned to work following the termination. On cross examination, Petitioner testified that had tried looking for work within his light duty restrictions, specifically at a grocery store, a dollar store, Menard's and Target.

In *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission*, 236 Ill2d 132, 923 N.E. 2d 266 (2010), the court found that the employer was obligated to pay TTD benefits even when the employee has been discharged, whether or not the discharge was for cause, and that when an injured employee has been discharged by his employer the inquiry for deciding his entitlement to TTD benefits remains, as always, whether the claimant's condition has stabilized. More to the point, the court noted that if the injured employee is able to show that he continues to be temporarily totally disabled as a result of his work related injury, the employee is entitled to these benefits.

In the present case, the evidence shows that Petitioner has remained under the same light duty restrictions imposed at the time of his termination. It also appears that Petitioner's condition has yet to stabilize and/or reach maximum medical improvement.

Therefore, based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from June 13, 2011, the day after his termination, through the date of arbitration on November 22, 2011, for a period of 23-2/7 weeks.

WITH RESPECT TO ISSUE (O), WHETHER PETITIONER IS ENTITLED TO TRAVEL EXPENSES, THE ARBITRATOR FINDS AS FOLLOWS:

On May 26, 2011, Petitioner attended a §12 examination at his employer's request. Petitioner testified that he lives in Glendale Heights, Illinois and the appointment with Dr. Mather was in Lemont, Illinois. According to MapQuest, the mileage distance from petitioner's home in Glendale Heights, Illinois to Dr. Mather's office in Lemont, Illinois, is 21.63 miles one way. Petitioner testified that prior to examination, he received a check for $25.00, which he understood was to be applied towards travel expenses to the examination with Dr. Mather on May 26, 2011. Petitioner testified that he does not have a driver's license and admitted that he did not contact his attorney or his employer prior to the examination, to discuss travel assistance to and from the examination with Dr. Mather. Petitioner admitted that he went to the examination and then sent his employer and his attorney, 3 receipts for taxi cab fare after the fact.

§ 12 of the Illinois Workers Compensation Act states in relevant part that "[a]n employer requesting such an examination of an employee residing within the State of Illinois, shall pay in advance of the time fixed for the examination, sufficient money to defray the necessary expense of travel by the most convenient means to and from the place of the examination, ..." 820 ILCS 305/212.

In the present case, Respondent sent Petitioner a check in the amount of $25.00 prior to the IME with Dr. Mather on May 26, 2011. On cross examination, Petitioner acknowledged his receipt of the $25.00 check before the IME. Petitioner also admitted that he never called his attorney or his employer to discuss additional travel expenses to the examination. There was no evidence that mass transit or any other means of transportation were available. Furthermore, it stands to reason that if Respondent had known of Petitioner's inability to drive himself, and if a request had been made, Respondent may have been able to arrange alternative transportation, presumably at a cheaper rate, or else even scheduled an examination at a location closer to Petitioner's residence or assess to mass transit. Instead, Petitioner chose his own method of transportation (taxi cab) and later submitted 3 receipts to his attorney for reimbursement.

Furthermore, all 3 receipts reflect varying costs without any mileage amount indicated. The Arbitrator notes that one receipt is even dated May 25, 2011, or the day before the §12 exam with Dr. Mather.

Therefore, based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner failed to prove his entitlement to travel expenses in excess of the statutorily mandated $25.00, said amount having been timely tendered. Accordingly, Petitioner's request for additional travel expenses is hereby denied.