STATE OF ILLINOIS )
) SS.
COUNTY OF MADISON )

| | |
|---|---|
| ☐ Affirm and adopt | ☐ 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 | ☒ None of the above |

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CONNIE LOVE,

Petitioner,

16IWCC0251

vs.

NO: 15 WC 013194

RGIS INVENTORY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of medical, TTD, and evidentiary rulings and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The 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 Commission modifies the Decision of the Arbitrator by striking the medical records of Dr. Conkling dated June 23, 2015, June 29, 2015, and July 2, 2015, and Dr. Gornet's medical records from the record. The reason for this action is because all of those records were erroneously admitted into evidence, over Respondent's timely objection, as they were not disclosed to Respondent more than 48 hours prior to the commencement of the arbitration hearing on June 24, 2015.

In support of its position, Respondent cited *Ghere v. Industrial Commission*, 278 Ill. App. 3d 840, 663 N.E.2d 1046, 215 Ill. Dec. 532 (4th Dist 1996), and *Mulligan v. Illinois Workers' Compensation Commission*, 408 Ill. App. 3d 205, 946 N.E.2d 421, 349 Ill. Dec. 227 (1st Dist. 2011). Arbitrator Lee found both cases "predominantly pertain to the *testimony* of physician . . . ." (Emphasis in the original.) The Commission recognizes this to be true, but it also recognizes it

is nevertheless the report that the physician is to testify about that must be disclosed no later than 48 hours prior to the arbitration hearing. *Ghere*, 278 Ill. App. 3d at 845. In the instant matter before the Commission, the objected-to records were not proffered upon the commencement of the arbitration hearing on June 24, 2015, but at a subsequent hearing held on July 8, 2015, for the purpose of closing proofs.

Arbitrator Lee also concluded that Respondent was made "fully aware" of the identity of Petitioner's medical providers, including Dr. Gornet, and the recommended course of treatment as a result of the May 20, 2015, referral Petitioner received from Dr. Conkling to see Dr. Gornet. The Commission, however, notes that Petitioner's evidence indicates she was to be seen by Dr. Gornet on July 6, 2015, but was actually seen by Dr. Gornet on June 17, 2015. The Commission is unable to find Respondent at fault for not being aware that Petitioner was seen on a date earlier than what had been communicated to them. For this reason, and consistent with *Ghere*, the Commission finds Dr. Gornet's medical records inadmissible under Section 12 of the Act.

The Commission, in finding the above-referenced records inadmissible, vacates the prospective medical treatment awarded to Petitioner by Arbitrator Lee.

With respect to the contested medical records of Dr. Conking, the Commission notes Petitioner was seen on the eve of the commencement of the arbitration hearing and then several time thereafter. The Commission finds Respondent would have had to have tendered an open-ended subpoena to Dr. Conkling to allow it to come into possession of medical records created the day before the arbitration hearing began and subsequent to it as well. Even then, these records would not have been tendered in time to comply with Section 12 of the Act. The Commission finds these records to also be inadmissible.

The Commission finds, even without these records, no reason to overturn Arbitrator Lee's findings with respect to causal connection between Petitioner's work accident and its relationship between Petitioner's period of being temporarily totally disabled or of the medical treatment received by Petitioner. In so doing, the Commission finds the opinions of Dr. Hurford unpersuasive.

Dr. Hurford, Respondent's Section 12 examining physician, concluded Petitioner suffered a lumbar sacral strain that had resolved and attributed Petitioner's lingering complaints to degenerative changes unrelated to any work injury. The Commission puts greater credence on Petitioner's credible testimony and the content of Dr. Conkling's medical records through June 1, 2015.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $240.00 per week for a period of 7-6/7 weeks, commencing March 18, 2015, through May 11, 2015, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

16IWCC0251

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, as outlined in Petitioner's Group Exhibit #1, as provided in §8(a) and §8.2 of the Act, except for medical services incurred treating with Dr. Conkling after June 1, 2015, and with Dr. Gornet.

IT IS FURTHER ORDERED BY THE COMMISSION that the order that Respondent authorize and pay for the treatment recommended by Dr. Conkling and Dr. Gornet be vacated as recommendations were made in medical records deemed inadmissible.

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 $2,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 8 - 2016
KWL/mav
O: 02/08/16
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

STATE OF ILLINOIS )
)SS.
COUNTY OF Jefferson )

- ☐ 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)

16IWCC0251

Connie Love
Employee/Petitioner

Case # 15 WC 13194

v.

Consolidated cases: _____

RGIS Inventory
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 **Edward Lee**, Arbitrator of the Commission, in the city of **Collinsville**, on **June 24, 2015**. 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 **Admission of Records**

16IWCC0251

FINDINGS

On the date of accident, **December 23, 2014**, 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 **$18,720.00**; the average weekly wage was **$360.00**.

On the date of accident, Petitioner was **63** years of age, ***married*** 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 **$2,886.12** for TTD, $- for TPD, $- for maintenance, and $- for other benefits, for a total credit of **$2,886.12.**

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

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, outlined in Petitioner's group Exhibit 1, as provided in § 8(a) and § 8.2 of the Act.

Respondent shall authorize and pay for the treatment recommended by Dr. Conkling and Dr. Gornet, including but not limited to injections, as provided in § 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **$240.00**/week for a *further* period of **7 6/7** weeks, commencing March 18, 2015, through May 11, 2015, as provided in § 8(b) of the Act.

Respondent shall be given a credit of $2,886.12, for temporary total disability benefits that have been paid.

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.

E Lee
Signature of Arbitrator

7/31/15
Date

ICArbDec19(b)

AUG 18 2015

Connie Love v. RGIS Inventory

16IWCC0251

15 WC 13194

## FINDINGS OF FACT

Petitioner is a sixty-three (63) year old team leader who has been employed with Respondent for fifteen (15) years. (T.15). At trial, Petitioner testified that her job as a team leader requires her to travel to different businesses to inventory supplies, namely pharmacies. (T.15). She testified that on occasion, employees would meet in a designated area and drive to the inventory site together. (T.16). Petitioner confirmed that she was paid for her travel time as well as reimbursed for gas if the inventory site was over 30 miles away, and that she was also paid for her time on the premises performing inventories. (T.16). She also testified that she is required to carry a full-size printer, as well as a laptop computer to each jobsite for each individual performing inventories. (T.27). Petitioner testified that this equipment was supplied to her by Respondent. (T.17).

On December 23, 2014, Petitioner had performed an inventory at a business in Highland, Illinois, and was paid for her travel time as the business was over thirty (30) miles away. (T.18). As she was attempting to leave the building's premises and carrying her printer and laptop down a flight of stairs, her laptop carrying case began to slide off her arm. (T.19). As Petitioner attempted to set the laptop carrier case down, her printer began to fall. (T.19). In an attempt to catch her printer from falling down the stairs, Petitioner twisted her back and felt immediate pain in her low back. (T.19-20). She believed her shoes were damp from taking equipment out to her vehicle in the parking lot. (T.19). Petitioner confirmed that the route she was taking to exit the building was the only means of ingress and egress to the office where her equipment was set up. (T.21).

Following the accident, Petitioner testified that she continued loading her vehicle with equipment, and proceeded to her second inventory at a different business. (T.20). She testified that her low back continued to hurt throughout the day. (T.20). Immediately following the completion of her second inventory, she notified her supervisor Connie Sandifer that she had been injured. (T.20).

The next day, Petitioner presented to Dr. Rick Conkling, a chiropractic physician, for care and treatment. (T.22). Petitioner testified that Dr. Conkling had treated her following an auto accident in August of 2013 for injuries sustained to her cervical spine, but that he had never provided any treatment to her low back prior to December 24, 2014. (T.22). When asked if she had sustained any prior injuries to her low back before December 23, 2013, Petitioner candidly testified: "I've had problems. I've fallen off a ladder at work and I've twisted my back other times taking equipment in and out of my trunk, but nothing that required doctor care." (T.23).

Petitioner presented to Dr. Conkling on December 24, 2014. The following history was taken:

> Ms. Connie Love, a 63-year-old female, reports in our clinic today explaining that she was injured at work yesterday while coming down a flight of steps, after completing work at a particular job while working for RGIS. She explained that as she was coming down a flight of steps with a laptop in one hand and a printer strap

> in the other hand, she slipped on steps that were set. She further indicates that her left foot and leg slipped and her body twisted, where she experience[d] lower thoracic spine pain and lower lumbar pain. She indicates that she has had no work currently scheduled with her company, and that any type of lifting is very painful today as she attempts to get moving this morning after getting out of bed. (PX5, Conkling Chiropractic, 12/24/14).

On physical exam, Dr. Conkling noted tenderness to palpation of the third, fourth, and fifth spinous processes in the lumbar spine, as well as complaints of considerable right-sided lumbosacral pain on bilateral Kemp's testing, and positive straight leg raising. *Id.* Muscle spasm in the lumbosacral region bilaterally was also noted. *Id.* Petitioner's pain was listed as a 7/10. *Id.*

Dr. Conkling diagnosed Petitioner with a lumbar sprain/strain, low back pain, sacroiliac joint sprain and myofascitis, and recommended a ten (10) pound lifting restriction for the next thirty (30) days, as well as continued follow up four (4) times per week for the next two weeks. *Id.* Dr. Conkling indicated that if Petitioner failed to improve with treatment in a reasonable amount of time, an MRI would be recommended. *Id.* He also kept Petitioner off work. *Id.*

Petitioner continued to follow up with Dr. Conkling. (PX3). On January 5, 2015, it was noted that Petitioner had made a 30% improvement since beginning treatment. (PX3, Conkling Chiropractic, 1/5/15).

Respondent also referred Petitioner to Dr. Patricia Hurford, an orthopedic physical medicine and rehabilitation specialist, for treatment. Dr. Hurford took a consistent history of the injury sustained while trying to stop a printer from falling down the stairs, which resulted in immediate onset of severe back pain. (PX4, 2/17/15). Dr. Hurford noted that Petitioner's pain level was 70 on a scale of 100. *Id.* Petitioner's pain was aggravated with sitting more than any other positions and negatively impacted her normal daily activities and sleep. *Id.* She noted the following significant limitations:

> Aggravating factors that make pain worse are exercise, sitting, standing, walking, twisting, bending forward or backward, coughing, sneezing and work activities. Relieving factors are lying down, heat/massage and ice. With some turning or twisting movements she will have symptoms going down the left or right leg but otherwise no radiating pain symptoms. . . *Id.*

Physical examination demonstrated tenderness to deep palpation in the right lower lumbar region over the lateral masses at L5-S1 and in the right PSIS and positive SI compression on the right. *Id.* Dr. Hurford noted, "She has significant limitations in lumbar range of motion with extension significantly effected [sic] with positive facet loading on the right and flexion is also impaired with limitations to 40 degrees before onset of pain." *Id.* Internal rotation of the right hip also increased lower lumbar pain. *Id.*

Dr. Hurford diagnosed Petitioner with lumbar sacral syndrome and recommended a trial of a steroid dose pack, a muscle relaxer to help reinstitute normal sleep patterns, an MRI of the lumbar sacral spine, and a trial of aquatic therapy. *Id.* With regard to causal connection, Dr. Hurford stated: "The twisting event of 12/23/14 is the prevailing factor in the treatment outlined above with comorbid degenerative conditions and history of prior injury affecting prognosis." *Id.* Dr. Hurford also recommended restrictions of no lifting more than 5 to 10 pounds, no pushing or pulling more than 20 pounds, and no repetitive bending, twisting or squatting activities given Petitioner's pain level. *Id.*

Petitioner's February 23, 2015 MRI revealed mild bilateral foraminal stenosis at L5-S1 and fluid in the bilateral facet joints at L2-3. (PX6). Petitioner returned to Dr. Hurford on March 3, 2015, with persistent axial back pain despite oral steroids, therapy, and restricted activity. (PX4, 3/3/15). Petitioner continued to have difficulty sitting in hard chairs and with movements outside of the pool environment. *Id.* Petitioner remained under restrictions which precluded her from performing essential job duties such as lifting her printer and laptop. *Id.* After reviewing Petitioner's MRI, Dr. Hurford diagnosed Petitioner with a lumbar sacral strain injury and recommended an advanced work conditioning program. *Id.* She thereafter stated: "If significant tenderness persists consider trigger point injections to help with patient progress." *Id.*

2-23-15?

Immediately following this recommendation for additional care, Respondent requested that Dr. Hurford perform an independent medical evaluation of Petitioner under § 12, despite the fact that Dr. Hurford had been providing treatment to Petitioner, and Respondent had made this referral. (T.28; PX8, RX1) Petitioner also received a check for mileage to attend the visit on April 8, 2015. *Id.* Dr. Hurford noted that Petitioner aggravated her back while grocery shopping, but the increase in pain was gradually decreasing. (RX1). She also noted that Petitioner's pain persisted in a band-like distribution bilaterally across the lower back. *Id.* It was also noted that no other work conditioning was completed beyond the initial visit due to significant guarding and pain, which resulted in a transfer of Petitioner's care and treatment back to Dr. Conkling. *Id.* Dr. Hurford also noted that Petitioner was only able to lift 3 pounds from waist to shoulder and was unable to lift from floor to waist or waist to 12 inches. *Id.* Physical examination continued to demonstrate pain with palpation at the lumbar sacral junction at the level of the cephalic portion of the SI joints bilaterally, pain with extension, and pain on external rotation of both hips. *Id.* However, rather than performing injections as previously recommended prior to Respondent's retention under § 12, Dr. Hurford placed Petitioner at maximum medical improvement with respect to her work injury and opined that Petitioner needed no further treatment with respect to her work injury. *Id.*

Petitioner testified that Dr. Conkling's treatment was more effective than the therapy recommended by Dr. Hurford. (T.25). Dr. Conkling continued to treat Petitioner for myofascitis, muscle spasm in the region of the iliolumbar ligament, and increased pain with activity. (PX3, 1/6/15 through 3/30/15). On March 30, 2015, Dr. Conkling made arrangements to discuss a release for Petitioner to light duty beginning April 3, 2015. (PX3, 3/30/15). However, Petitioner continued to experience significant pain with prolonged walking or activity. (PX3, 4/3/15). Additionally, no one from Respondent's office responded to Dr. Conkling's message or contacted the office regarding Petitioner's return to light duty work. (PX3, 4/6/15). Evaluation on

April 30, 2015, reflected improvement with orthopedic testing and improvement with straight leg raising, but Dr. Conkling noted that "pain remains the main problem." (PX3, 4/30/15).

Respondent returned Petitioner to work full duty on May 12, 2015. (PX3, 5/4/15, 5/11/15, 5/13/15). Petitioner reported that she was "extremely sore" after returning to work. (PX3, 5/13/15). Dr. Conkling noted slow, cautious movements from Petitioner during the visit secondary to pain. *Id.* Petitioner's pain increased and her improvement plateaued and regressed following her return to work. (PX3, 5/18/15, 5/20/15). Dr. Conkling ultimately recommended a referral to Dr. Matthew Gornet, an orthopedic spine surgeon. (T.25; PX3, 5/20/15).

Petitioner came under the care of Dr. Gornet on June 17, 2015. (PX7, 6/17/15). Dr. Gornet took the history of the accident and noted that Petitioner was working, but in a different job capacity. *Id.* Physical examination demonstrated an antalgic gait, bilateral low back pain, decreased EHL function on the right at L4-5, and positive straight leg raise for low back pain bilaterally at 45 degrees. *Id.* Dr. Gornet noted that Petitioner's symptoms were constant, worse with bending, lifting, prolonged sitting and/or prolonged standing. *Id.* After reviewing Petitioner's MRI, Dr. Gornet believed that Petitioner suffered from symptomatic foraminal stenosis on the right at L5-S1 as well as aggravation of some preexisting facet arthropathy. *Id.* He recommended a single epidural steroid injection on the right at L5-S1 with some consideration given to facet rhizotomies at L5-S1. *Id.* He also recommended a new MRI of more appropriate quality. *Id.* Based on the history of the injury and his review of Dr. Conkling's notes, Dr. Gornet stated: "I do believe her current symptoms and their level of magnitude and severity are causally connected to her work related injury as described." *Id.*

Petitioner saw Dr. Conkling again on July 2, 2015, at which time Dr. Conkling summarized Petitioner's treatment outcomes to date, and outlined her prospective care and her prognosis. (PX3, 7/2/15). He noted that Petitioner was making steady progress up until the time she began work hardening prescribed by Dr. Hurford, which "negated" the improvement which took place in late December and the month of January. *Id.* He stated, "The patient was in no condition to be performing multiple exercises for three to four hours a day during that period of time." *Id.* Based on the examination he performed on that date, Dr. Conkling believed that Petitioner required further manipulative treatment of a corrective nature due to the chronicity of her sacroiliac problem with gradual institution of strengthening exercises. *Id.*

## CONCLUSIONS OF LAW

**Issue (O): Admission of Records.**

During the conclusion/evidentiary hearing on July 8, 2015, Respondent objected to the admission of several treatment notes from June 23, 2015, June 29, 2015 and July 2, 2015, as well as a letter addressed to Petitioner's attorney dated July 2, 2015 (which the Arbitrator notes is *not* a report prepared for use in litigation, but a detailed treatment/progress report on Petitioner's injury, her treatment, her current condition and response to treatment, her prognosis and an outline for future care), on the basis that they were not provided 48 hours prior to the start of the initial hearing pursuant to *Ghere v. Indus. Comm'n*, 278 Ill. App. 3d 840, 663 N.E.2d 1046 (4th Dist. 1996), and *Mulligan v. Illinois Workers' Comp. Comm'n*, 408 Ill.App.3d 205946 N.E.2d

421 (1st Dist. 2011). (T.6-7 [7/8/15 Transcript]). Petitioner responded that these exhibits should be admitted, as they are records from the treating physician, which, as discussed recently by the Appellate Court in the matter of *City of Chicago – Dept. of Aviation v. Illinois Workers' Compensation* (R23), are not subject to the 48 hour rule regarding § 12 examination reports, and further, that the records are admissible on their face pursuant to § 16 of the Act. (T.7 [7/8/15 Transcript]).

As a preliminary matter, the Arbitrator notes that *Ghere* and *Mulligan* predominantly pertain to the *testimony* of physicians, a distinction which is crucial to proper application of the law in this evidentiary ruling. The purpose of the Court's findings in aforementioned cases, which require treating physicians and § 12 examiners alike to provide reports 48 hours prior to hearing or evidence deposition is to prevent surprise *testimony* as to causation, which would prejudice one of the parties. In this case, however, no deposition testimony has been tendered by either party, and no physician testified at the hearing. Rather, the only evidence at issue is written treatment records. Treatment records, specifically *treatment records* generated by a *treating physician*, fall squarely under § 16 of the Act. Specifically, Section 16 states that the records, reports and bills kept by a treating provider, once certified "shall be admissible without any further proof as evidence of the medical and surgical matters stated therein." 820 ILCS 305/16. Further, the Arbitrator notes that even assuming *arguendo* expert testimony was involved in this matter, the opinions of treating physicians are not subject to *Ghere* when records in the employer's possession are sufficient to put the employer on notice that the treating physician will have an opinion as to causation. *City of Chicago v. Workers' Comp. Comm'n*, 387 Ill. App. 3d 276, 280, 899 N.E.2d 1247, 1250 (1st Dist. 2008); *Ghere v. Indus. Comm'n*, 278 Ill. App. 3d 840, 842, 663 N.E.2d 1046, 1048 (4th Dist. 1996).

Additionally, it is well settled that there is no provision for discovery in the Workers' Compensation Act, and neither party is under an obligation to provide medical records to the other. 50 Ill. Adm. Code § 7020.10 *et seq.*; *Boyd Electric v. Illinois Workers' Comp. Comm'n*, 403 Ill.App.3d 256, 932 N.E.2d 638, 641 (1st Dist. 2010). Even under *Ghere*, cited as the authority by Respondent, the Court noted that as discussed in *Nollau*, the burden is on Respondent to make an attempt to procure medical records before any objection can be sustained to the admission of evidence. *Ghere*, 633 N.E.2d at 1050; *Nollau Nurseries, Inc. v. Indus. Comm'n*, 32 Ill. 2d 190, 193, 204 N.E.2d 745, 747 (Ill.1965). The Commission Rules confirm same. Under 50 Ill. Adm. Code § 7110.70(c), Respondent must initially seek the desired records from the medical providers. The evidence submitted at the time of trial reveals that Respondent was fully aware of the identity of Petitioner's medical providers and her course of treatment, including Dr. Gornet, to whom a clear, open and obvious referral was made in his May 20, 2015 treatment record, which was in Respondent's possession well in advance of the hearing on June 24, 2015. (PX3, 5/20/15). Yet, Respondent produced no evidence that it sought to procure the records to which it objected.

Based upon the aforementioned, the Arbitrator admits the disputed treatment records over Respondent's objection.

Issue (C): **Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?**

"The word 'accident' is not a technical legal term, and has been held to mean anything that happens without design, or an event which is unforeseen by the person to whom it happens...Compensation may be allowed where a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labor." *Laclede Steel Co. v. Indus. Comm'n.*, 6 Ill.2d 296 at 300, 128 N.E.2d 718, 720 (1955) citing *Baggot Co. v. Industrial Comm.*, 290 Ill. 530, 125 N.E. 254 (1919); *General Electric Co. v. Indus. Comm'n*, 433 N.E.2d 671, 672 (Ill. 1982).

An employee's injury is compensable under the Act only if it arises out of and in the course of the employment. 820 ILCS 305/2 (2011). An injury "arises out of" one's employment if "its origin is in some risk connected with or incident to the employment, so that there is a causal connection between the employment and the accidental injury." *Saunders v. Industrial Comm'n*, 189 Ill.2d 623, 627, 244 Ill.Dec. 948, 727 N.E.2d 247 (2000); see also *Parro v. Industrial Comm'n*, 167 Ill.2d 385, 393, 212 Ill.Dec. 537, 657 N.E.2d 882 (1995). A risk is "incidental to the employment" when it "belongs to or is connected with what [the] employee has to do in fulfilling his duties." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill.2d 52, 58, 133 Ill.Dec. 454, 541 N.E.2d 665 (1989); *Stembridge Builders, Inc. v. Industrial Comm'n*, 263 Ill.App.3d 878, 880, 201 Ill.Dec. 656, 636 N.E.2d 1088 (1994).

"In the course of the employment" refers to the time, place, and circumstances under which the claimant is injured. *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill.2d 361, 366, 5 Ill.Dec. 854, 362 N.E.2d 325 (1977). Injuries sustained at a place where the claimant might reasonably have been while performing her duties, and while a claimant is at work, or within a reasonable time before and after work, are generally deemed to have been received in the course of the employment. *Caterpillar Tractor Co.*, 129 Ill.2d at 57, 133 Ill.Dec. 454, 541 N.E.2d 665.

The Arbitrator notes that Petitioner is a traveling employee, or, one whose work requires travel away from the employer's office. *Kertis v. Illinois Workers' Comp. Comm'n*, 2013 IL App (2d) 120252WC, ¶ 16, 991 N.E.2d 868, 873, reh'g denied (July 19, 2013). It is not necessary for an individual to be a traveling salesman or a company representative covering a large geographic area in order to be considered a traveling employee; rather, a traveling employee is any employee for whom travel is an essential element of employment. *Id.* A traveling employee is deemed to be in the course of employment from the time that she leaves home until she returns. *Id.*

Petitioner testified that her job as a team leader requires her to travel to different businesses to inventory supplies, namely pharmacies. (T.15). She testified that on occasion, employees would meet in a designated area and drive to the inventory site together. (T.16). Petitioner confirmed that she was paid for her travel time as well as reimbursed for gas if the inventory site was over 30 miles away, and that she was also paid for her time on a business's premises performing inventories. (T.16).

The law holds that the determination of whether an injury occurs in an area where the general public is allowed is irrelevant and likewise, the "increased risk" analysis is also improper where the injury occurs to a traveling employee. Rather, "the proper analysis for a traveling employee is 'the reasonableness of the conduct in which [the employee] was engaged and

whether it might normally be anticipated or foreseen by the employer." *Kertis v. Illinois Workers' Comp. Comm'n*, 2013 IL App (2d) 120252WC, ¶ 18, 991 N.E.2d 868, 873.

On December 23, 2014, Petitioner testified that she had performed an inventory at a business in Highland, Illinois, and was paid for her travel time as the business was over thirty (30) miles away from her location. (T.18). She indicated that as she was attempting to leave the building's premises and carrying her printer and laptop down a flight of stairs, her laptop carrying case began to slide off her arm. (T.19). As Petitioner attempted to set the laptop carrier case down, her printer began to fall. (T.19). In an attempt to catch her printer from falling down the stairs, she twisted her back and felt immediate pain in her low back. (T.19-20). Petitioner was clearly in the course of her employment at the time of the accident and the conduct she was engaged in was clearly reasonable and foreseeable. Consequently, the Arbitrator finds that the uncontroverted evidence irrefutably demonstrates that Petitioner met her burden of proof on the issue of accident.

Issue (F): **Is Petitioner's current condition of ill-being causally related to the injury?**

Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 797 N.E.2d 665, 672-73 (Ill. 2003) (emphasis added). As in establishing accident, to show causal connection Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury. *Fierke v. Indus. Comm'n*, 723 N.E.2d 846 (3d Dist. 2000). If a preexisting condition is present and is aggravated, accelerated or exacerbated by the work accident, it is compensable. *St. Elizabeth's Hospital v. Workers' Comp. Comm'n*, 864 N.E.2d 266, 272-273 (5th Dist. 2007).

Additionally, the law holds that the mere act of experiencing symptoms following a work-related injury while performing other activities does not rise to the standard of an intervening cause. *Lasley Const. Co., Inc. v. Indus. Comm'n*, 274 Ill.App.3d 890, 655 N.E.2d 5 (5th Dist., 1995). *See also Vogel v. Industrial Comm'n*, 821 N.E.2d 807, 813 (2d Dist. 2005). Courts have consistently held that for an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition. Specifically, as the Court in *Lasley Const. Co.*, aptly stated: "the fact that other incidents, whether work related or not, may have aggravated claimant's condition is irrelevant." *Id.*; *See also Teska v. Indus. Comm'n*, 610 N.E.2d 1 (1994) (finding no intervening accident since there would have been no aggravation due to bowling "but for" the original work related accident and the initial injury).

The Arbitrator finds that the evidence leaves no room for a dispute as to causal connection. Petitioner testified that she did not require any formal treatment for her lumbar spine prior to her accidental injury on December 23, 2014. (T.22, 23). Following her accidental injury, however, Petitioner was unable to work. The circumstantial evidence alone supports Petitioner's claim; "a causal connection between work duties and a condition may be established by a chain of events including petitioner's ability to perform the duties before the date of the accident, and inability to perform the same duties following that date." *Darling v. Indus. Comm'n of Illinois*, 176 Ill. App. 3d 186, 193, 530 N.E.2d 1135, 1140 (1988); *International Harvester v. Industrial*

*Comm'n*, 93 Ill.2d 59, 66 Ill.Dec. 347, 442 N.E.2d 908 (1982). Yet, the preponderance of the credible expert opinion evidence in the record also supports a finding of causal connection. Dr. Hurford, prior to her retention by Respondent as a Section 12 examiner, acknowledged that Petitioner's work accident was the "prevailing factor" in Petitioner's need for further evaluation. (PX4). Dr. Conkling likewise believed that Petitioner's current condition was related to her December 23, 2014 injury." (PX3, 7/2/15). Dr. Gornet also stated his belief that Petitioner's current symptoms in their level of magnitude and severity are causally connected to her work related injury as described. (PX7, 6/17/15). The Arbitrator is not persuaded by the second opinion of Dr. Hurford, who, after being retained by Respondent as a Section 12 examiner, changed her opinion and placed Petitioner at maximum medical improvement without administering the injections she had previously recommended if Petitioner remained symptomatic, despite the clear presence of continued symptoms and objective findings on physical examination.

The Arbitrator therefore finds that Petitioner met her burden of proof on the issue of causal connection.

**Issue (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?**

**Issue (K): Is Petitioner entitled to any prospective medical care?**

Upon a claimant's establishment of a causal nexus between injury and illness, employers are responsible for the employees' medical care reasonably required in order to diagnose, relieve, or cure the effects of the claimant's injury. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d 13 (2000); *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill.App.3d 527, 758 N.E.2d 18 (1st Dist. 2001).

As causal connection has been resolved in Petitioner's favor, the Respondent is therefore ordered to pay the medical expenses outlined in Petitioner's group exhibit 1. Respondent shall authorize and pay for the further necessary care recommended by Dr. Conkling and Dr. Gornet, including but not limited to injections, as required by § 8(a) of the Act.

**Issue (L): What temporary benefits are in dispute? (TTD)**

Respondent disputes Petitioner's entitlement to temporary total disability benefits and ceased paying same beyond March 17, 2015. However, the evidence in the record does not support a termination of benefits due and owing beyond that date. Even Respondent's physician, Dr. Hurford, had not released Petitioner with restrictions which would allow her to perform her job duties as of March 17, 2015. (PX4, 3/3/15). In fact, on March 3, 2015, Dr. Hurford restricted Petitioner to no lifting greater than 10 to 15 pounds and no pushing or pulling more than 20 pounds. She also noted that Petitioner's job required lifting a 15 to 20 pound printer with a 10 pound laptop, in addition to various equipment weight 5 pounds each, and moving these items together on a rolling cart, which is clearly work in excess of Petitioner's restrictions. Further, Respondent failed to acknowledge or accommodate Dr. Conkling's attempt to return Petitioner to light duty work on April 3, 2015. (PX3, 3/30/15, 4/6/15).

The evidence in the records of Petitioner's treating physicians, as well as the initial opinion of Dr. Hurford, clearly demonstrate that Petitioner is not at maximum medical improvement and was unable to work until her return to full duty on May 12, 2015. (PX3, 5/4/15, 5/11/15, 5/13/15). Respondent paid benefits from December 24, 2014, through March 17, 2015. The Arbitrator finds that Petitioner is entitled to benefits paid by Respondent, and is entitled to further benefits for the unpaid period of temporary total disability through May 11, 2015. Respondent shall therefore pay further benefits for a period of 7 6/7 weeks for Petitioner's disability from March 18, 2015, through May 11, 2015.

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