

2016 IL App (1st) 143083

No. 1-14-3083

Filed March 31, 2016

FIFTH DIVISION

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

CONTINENTAL WESTERN INSURANCE COMPANY, INC.,)	Appeal from the
)	Circuit Court
Plaintiff-Appellee,)	of Cook County
)	
v.)	
)	No. 11 CH 31612
KNOX COUNTY EMS, INC., a Corporation, and CHAD)	
STEPHENS, Guardian of the Person and Estate of Stacy)	
Stephens,)	Honorable
)	Moshe Jacobius,
Defendants-Appellants.)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court, with opinion.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment and opinion.

OPINION

¶ 1

Defendant Knox County EMS, Inc. (Knox) appeals from the circuit court's orders granting summary judgment to plaintiff Continental Western Insurance Company, Inc. (Continental) on its declaratory judgment action against Knox and denying Knox's motion to reconsider. Continental had issued a workers' compensation policy to Knox. It sought a ruling that, under the policy, it had no duty to defend Knox against or pay benefits on an Illinois workers' compensation claim brought against Knox by a Knox employee. The circuit court

agreed with Continental that the policy did not cover Illinois workers' compensation claims. It held that Illinois law required Knox to purchase separate workers' compensation insurance coverage for its operations in Illinois and Knox, therefore, had not met the conditions for coverage in the policy's residual market limited other states insurance endorsement. The questions on appeal are whether the circuit court (1) should have dismissed the action as the Illinois Workers' Compensation Commission¹ (commission) had primary jurisdiction over the action and (2) erred in finding that section 4(a)(3) of the Illinois Workers' Compensation Act (Act) (820 ILCS 305/4(a)(3) (West 2012)) required Knox to purchase separate workers' compensation insurance coverage for its Illinois claim. We reverse and remand.²

¶ 2

BACKGROUND

¶ 3

Knox is a provider of ambulance services. Its regular place of business is Indiana but its drivers also make trips into Illinois to pick up patients and take them to Indiana for treatment. Stacy Stephens lived in Indiana and was employed in Indiana by Knox as an emergency medical technician. On September 29, 2010, while in Illinois to pick up a patient for Knox, Stacy was seriously injured in a car accident. Chad Stephens, Stacy's husband and guardian, filed workers' compensation claims on her behalf against Knox in both Indiana and Illinois. Only the Illinois claim is relevant on appeal.

¶ 4

Knox tendered defense of the Illinois claim to Continental. Knox held a workers' compensation insurance and general liability policy issued by Continental for the period from

¹ The parties refer to the Illinois Industrial Commission. Effective January 1, 2005, the name of the Industrial Commission was changed to the "Illinois Workers' Compensation Commission." 820 ILCS 305/1(c) (West 2004). Accordingly, we will use that name.

² This case was originally assigned to Justice Palmer and filed as a Rule 23 order. Ill. S. Ct. R. 23 (eff. July 1, 2011). Subsequent to Justice Palmer's departure from the court, a motion to publish was granted. Justice Gordon has been replaced as the authoring judge. He has reviewed the case and concurs in the result. Presiding Justice Reyes and Justice Lampkin, also having reviewed the opinion, continue to concur.

February 2010 to February 2011. The policy provided in section 3.A of the "Information Page" that Continental would promptly pay the benefits required of Knox by the workers' compensation law of the state of Indiana.

¶ 5 In a "Residual Market Limited Other States Insurance Endorsement" (other states endorsement), the policy also provided for payment of workers' compensation benefits due under the laws of states other than Indiana, but only if certain conditions were met. The endorsement provided:

"We will pay promptly when due the benefits required of you [Knox] by the workers' compensation law of any state not listed in Item 3.A of the Information Page [*i.e.*, any state other than Indiana] if all of the following conditions are met:

a. The employee claiming benefits was either hired under a contract of employment made in a state listed in Item 3.A of the Information Page or was, at the time of injury, primarily employed in a state listed in Item 3.A of the Information Page; and

b. The employee claiming benefits is not claiming benefits in a state where, at the time of injury, (i) you have other workers' compensation insurance coverage, or (ii) you were, by virtue of the nature of your operations in that state, required by that state's law to have obtained separate workers' compensation insurance coverage, or (iii) you are an authorized self-insurer or participant in a self-insured group plan; and

c. The duration of the work being performed by the employee claiming benefits in the state for which that employee is claiming benefits is temporary."

The endorsement carried the warning that, if the insured began operations in any state not listed in section 3.A of the information page, *i.e.*, in any state other than Indiana, it "should do whatever may be required under that state's law, as this endorsement does not satisfy the requirements of that state's workers' compensation law."

¶ 6 Continental defended Knox on the claim under a reservation of rights. It filed a declaratory judgment action against Knox and Stephens in the circuit court of Cook County, seeking a ruling that it had no duty to defend Knox on the Illinois claim or to pay on Knox's behalf any benefits due on the claim. Continental argued that, pursuant to section 3.A of the policy information page, the policy only applied to workers' compensation claims filed in Indiana or alternatively, coverage for claims filed in other states were covered only to the extent of coverage available under Indiana law.

¶ 7 Continental also argued that the "other states" endorsement did not provide coverage for the Illinois claim as Knox could not meet the condition set forth in subparagraph A.1.b of the endorsement. This condition provided that the employee could not be claiming benefits in a state where, at the time of injury, Knox was, by virtue of the nature of its operations in that state, "required by that state's law to have obtained separate workers' compensation insurance coverage." Continental asserted that Knox did not meet this condition as, pursuant to section 4(a)(3) of the Illinois Workers' Compensation Act, Knox was required to insure its entire liability in the State of Illinois, meaning that Illinois law required him to purchase separate workers' compensation insurance coverage for its liability in Illinois.³

³ Section 4(a)(3) of the Act provides, in relevant part, that an employer must "[i]nsure his entire liability to pay such compensation in some insurance carrier authorized, licensed, or permitted to do such insurance business in this State. Every policy of an insurance carrier, insuring the payment of compensation under this Act shall cover all the employees and the entire compensation liability of the insured ***." 820 ILCS 305/4(a)(3) (West 2012).

¶ 8 Continental also argued that Knox failed to meet the condition in subparagraph A.1.b of the endorsement, which required that "[t]he duration of the work being performed by the employee claiming benefits in the state for which that employee is claiming benefits is temporary." It asserted that Stacy was injured while performing work for Knox in Illinois that was not "temporary" given that Knox regularly performed such work in Illinois.

¶ 9 Knox and Continental filed cross-motions for summary judgment. The circuit court granted summary judgment in favor of Continental and against Knox. It agreed with Continental that section A.1.b of the other states endorsement excluded coverage for the Illinois claim because Knox, by virtue of its operations in Illinois, was required under section 4(a)(3) of the Act to have obtained separate Illinois workers' compensation insurance to cover its employees' claims filed in Illinois. The court stated that, "[a]bsent obtaining such Illinois coverage, the policy only covered Indiana claims."

¶ 10 The court noted that, as the parties had filed cross-motions for summary judgment, the question of whether Stacy was working in Illinois on a temporary basis was "not an issue of fact." It then held that, "[i]n any case, the Illinois Workers' Compensation Act requires separate workers' compensation insurance that covers all employees, whether permanent or temporary" and, "[t]herefore, Continental is correct that under Illinois law, coverage must be obtained for an employer's entire liability." The court concluded the other states endorsement excluded coverage of the Illinois claim as Knox could not meet the subparagraph A.1.b condition.

¶ 11 The court denied Knox's motion to reconsider but stayed its order pending additional briefing on the motion to reconsider. On September 30, 2014, after considering that briefing, the court lifted the stay and entered its order denying Knox's motion to reconsider. Knox filed a

timely notice of appeal from the court's orders.

¶ 12

ANALYSIS

¶ 13

Knox raises two arguments on appeal. It first argues Stacy qualifies for Illinois workers' compensation coverage under the policy because it insured its entire liability via the policy endorsement and met all of the conditions for other states coverage in the endorsement. Knox asserts the circuit court erred in holding that section 4(a)(3) of the Illinois Workers' Compensation Act required Knox to purchase a separate Illinois workers' compensation policy and that Knox therefore failed to meet the condition in subparagraph A.1.b of the endorsement. Knox's second argument is that we must vacate the circuit court's ruling and direct the court to dismiss the action as the construction of section 4(a) of the Act should be originally interpreted by the commission, not by the circuit court of Cook County.

¶ 14

1. Jurisdiction

¶ 15

Addressing the jurisdictional argument first, we find the circuit court did not err in undertaking the interpretation of section 4(a) of the Act in deciding the coverage issue. Whether the circuit court had subject matter jurisdiction to construe section 4(a) of the Act is a question of law we review *de novo*. *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 26.

¶ 16

The question of the scope of the commission and the circuit court's jurisdiction over the interpretation of a workers' compensation insurance policy was resolved by our supreme court in *Employers Mutual Cos. v. Skilling*, 163 Ill. 2d 284 (1994). In *Skilling*, an employee had filed workers' compensation claims against its employer for injuries which occurred in Illinois. *Id.* at 285. The employer's workers' compensation insurance carrier filed a declaratory action in the circuit court of McHenry County. It argued it had no duty to defend or indemnify the employer

for injuries occurring in Illinois as its policy provided coverage only for injuries occurring in Wisconsin. The defendants moved to dismiss, arguing the insurer had failed to exhaust its remedies before the commission. The circuit court dismissed the action and the appellate court affirmed. The supreme court reversed and remanded, holding that the circuit court and the commission had concurrent jurisdiction to hear the disputed insurance coverage claim but the circuit court's jurisdiction was paramount over the question of law at issue in the action. *Id.* at 290.

¶ 17 The *Skilling* court stated the Illinois courts have original jurisdiction over all justiciable matters. *Id.* at 287. It explained that, although the legislature may vest exclusive original jurisdiction in an administrative agency, in order for a legislative enactment to divest the circuit courts of their original jurisdiction, "it must do so explicitly" through a comprehensive statutory administrative scheme. *Id.* The court found the pronouncement in the Act that "[a]ll questions arising under this Act *** shall *** be determined by the Commission" was insufficient to divest the circuit courts of jurisdiction over matters arising under the Act. *Id.* (quoting 820 ILCS 305/18 (West 1992)). It held that, instead, the circuit court and the commission had concurrent jurisdiction to hear disputes over insurance coverage. *Id.*

¶ 18 The court then turned to the question of whether the circuit court or the commission had primary jurisdiction over the coverage issue. Under the doctrine of primary jurisdiction, "a matter should be referred to an administrative agency when it has a specialized or technical expertise that would help resolve the controversy, or when there is a need for uniform administrative standards." *Id.* at 288-89. The court concluded that the circuit court should not have declined to resolve the insurance coverage dispute as the dispute presented questions of law that were "the particular province of the courts to resolve." *Id.* at 289. The court stated

"[a]dministrative agencies are given wide latitude in resolving factual issues but not in resolving matters of law." *Id.* The particular question before the circuit court was whether Illinois was included in the scope of coverage afforded by the provisions of the insurance policy. The court held that this was a question of law and, therefore, was a question which the circuit court, and not the commission, was in the best position to address. *Id.*

¶ 19 As in *Skilling*, the declaratory judgment action at bar solely concerns the scope of coverage afforded in a workers' compensation insurance policy. The construction of Continental's insurance policy is not a determination of the factual issues related to a determination of workers' compensation benefits, such as the nature or extent of the injury or the potential defenses to the workers' compensation claim. If it was, the circuit court would have no original jurisdiction in the case and the commission would have exclusive jurisdiction as it would be in a better position to draw on its special expertise to answer these questions. See *Bradley v. City of Marion, Illinois*, 2015 IL App (5th) 140267, ¶¶ 25, 32; *ABF Freight System, Inc. v. Fretts*, 2015 IL App (3d) 130663, ¶¶ 16-19 (citing *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 157-58 (1992)).

¶ 20 Similarly, the construction of the insurance policy does not concern factual determinations regarding whether the enforcement provisions of section 4 apply, such as whether an employment relationship existed, whether the employer was required to provide workers' compensation insurance or whether the employer knowingly or negligently failed to comply with that requirement. If it did, then again, the commission would have primary jurisdiction over the circuit court to determine these fact-intensive questions using its specialized knowledge and expertise. See *Keating v. 68th & Paxton, L.L.C.*, 401 Ill. App. 3d 456, 468 (2010).

¶ 21 Instead, the construction of the insurance policy presents a collateral issue governed by

principles of contract construction. *Bradley v. City of Marion, Illinois*, 2015 IL App (5th) 140267, ¶ 32. As such, following *Skilling*, the declaratory judgment action presents a question of law for the circuit court, not the commission, to determine. *Skilling*, 163 Ill. 2d at 289.

¶ 22 Knox argues, however, that the circuit court's jurisdiction is not primary here as, unlike in *Skilling*, the construction of the insurance policy presents a question as to the meaning of the statute itself. Knox claims that the phrase "insure his entire liability" in section 4(a)(3) is ambiguous as it is not defined in the Act and section 4(a) "does not state, suggest or infer whether an out of state employer who occasionally does business in Illinois is required to have a separate Illinois Workers' Compensation insurance policy." Knox contends that, therefore, the determination of what the legislature meant when it stated an employer is required to insure its "entire liability" requires the specialized knowledge of the commission.

¶ 23 The interpretation of section 4(a)(3) is a question of statutory interpretation, the primary objective of which is to determine and give effect to the intent of our legislature. *People v. Marshall*, 242 Ill. 2d 285, 292 (2011). The language of the statute is the surest and most reliable indicator of legislative intent and we afford that language its plain and ordinary meaning. *Id.* Where the statutory language is clear and unambiguous, we must apply the statute without further aids of statutory construction. *Id.* However, if the statute is ambiguous, then we may consider extrinsic aids of construction in order to discern the legislative intent. *Id.*

¶ 24 Knox points out that "[a] court will give substantial weight and deference to interpretations of ambiguous statutes by the administrative agency or body which is charged with the application and enforcement of the statute because 'courts appreciate that agencies can make informed judgments upon the issues, based upon their experience and expertise.'" *Cella v. Sanitary District Employees' & Trustees' Annuity & Benefit Fund*, 266 Ill. App. 3d 558, 563-64

(1994) (quoting *Illinois Consolidated Telephone Co. v. Illinois Commerce Comm'n*, 95 Ill. 2d 142, 152-53 (1983)). However, "an administrative agency's interpretation of a statute is only entitled to deference if the provision in question is *ambiguous*." (Emphasis in original.) *Id.* at 565. If the language in a statutory provision is plain and unambiguous, then it will be given effect as written. *Id.* The section 4(a)(3) phrase "[i]nsure his entire liability" (820 ILCS 305/4(a)(3) (West 2012)) is not ambiguous.

¶ 25 A statute will be deemed ambiguous if it is capable of being understood by reasonably well-informed persons in two or more different ways. *Marshall*, 242 Ill. 2d at 292. A statute is not ambiguous merely because a term or phrase is undefined. When a phrase is undefined, we presume that the legislature intended the phrase to have its popularly understood meaning. *Metropolitan Life Insurance Co. v. Hamer*, 2013 IL 114234, ¶ 20. We may employ a dictionary to ascertain the meaning of an otherwise undefined word or phrase. *Id.*

¶ 26 Section 4(a) provides that an employer who does not self-insure to the satisfaction of the commission (820 ILCS 305/4(a)(1) (West 2010)), "[f]urnish security, indemnity or a bond guaranteeing the payment by the employer of the compensation provided for in this Act" (820 ILCS 305/4(a)(2) (West 2010)) or "[m]ake some other provision, satisfactory to the Commission, for the securing of the payment of compensation provided for in this Act" (820 ILCS 305/4(a)(4) (West 2010)), must "[i]nsure his entire liability to pay such compensation in some insurance carrier authorized, licensed, or permitted to do such insurance business in this State" (emphasis added) (820 ILCS 305/4(a)(3) (West 2010)).⁴

⁴ Section 4(a) of the Act provides in full:

"(a) Any employer, *** who shall come within the provisions of Section 3 of this Act, and any other employer who shall elect to provide and pay the compensation provided for in this Act shall:

(1) File with the Commission annually an application for approval as a

¶ 27 Section 4(a)(3) requires an employer to "[i]nsure his entire liability to pay such compensation." (Emphasis added.) *Id.* "Entire" plainly means whole, complete and total. Black's Law Dictionary 553 (7th ed. 1999). A "liability" is a legal or a financial obligation. *Id.* at 925. In the context of section 4(a), "such compensation" is clearly the "compensation provided for in this Act" (820 ILCS 305/4(a), 4(a)(3), 4(a)(4) (West 2010)), *i.e.*, the Illinois workers' compensation benefits to which the employer's injured employee is entitled under the Act. Therefore, giving the phrase "insure his entire liability" its plain and ordinary meaning and reading it in context

self-insurer ***.

If the sworn application and financial statement of any such employer does not satisfy the Commission of the financial ability of the employer who has filed it, the Commission shall require such employer to,

(2) Furnish security, indemnity or a bond guaranteeing the payment by the employer of the compensation provided for in this Act ***, or

(3) *Insure his entire liability* to pay such compensation in some insurance carrier authorized, licensed, or permitted to do such insurance business in this State. Every policy of an insurance carrier, insuring the payment of compensation under this Act shall cover all the employees and the entire compensation liability of the insured: Provided, however, that any employer may insure his or her compensation liability with 2 or more insurance carriers or may insure a part and qualify under subsection 1, 2, or 4 for the remainder of his or her liability to pay such compensation, subject to the following two provisions:

Firstly, the entire compensation liability of the employer to employees working at or from one location shall be insured in one such insurance carrier or shall be self-insured, and

Secondly, the employer shall submit evidence satisfactorily to the Commission that his or her entire liability for the compensation provided for in this Act will be secured. Any provisions in any policy, or in any endorsement attached thereto, attempting to limit or modify in any way, the liability of the insurance carriers issuing the same except as otherwise provided herein shall be wholly void.

Nothing herein contained shall apply to policies of excess liability carriage secured by employers who have been approved by the Commission as self-insurers, or

(4) Make some other provision, satisfactory to the Commission, for the securing of the payment of compensation provided for in this Act, and

(5) Upon becoming subject to this Act and thereafter as often as the Commission may in writing demand, file with the Commission in form prescribed by it evidence of his or her compliance with the provision of this Section." (Emphasis added.) 820 ILCS 305/4 (West 2010).

with the rest of section 4(a), there can be only one understanding of this phrase: the employer must carry insurance sufficient to cover its whole/complete/total legal obligation to pay the workers' compensation benefits to which its employee is entitled under the Act.

¶ 28 The phrase "insure his entire liability" is not ambiguous and the circuit court is more than capable of interpreting it without any need for the commission's expertise. Therefore, in the context of this declaratory judgment action, the circuit court's jurisdiction was primary. See *Country Mutual Insurance Co. v. D&M Tile, Inc.*, 394 Ill. App. 3d 729, 736 (2009) (circuit court correctly determined that it had jurisdiction over a declaratory judgment action involving an interpretation of a workers' compensation insurance policy and section 3(17)(b) of the Act (820 ILCS 305/3(17)(b) (West 2006)).

¶ 29 The dispute at bar, although triggered by Stephens' workers' compensation claim, is not itself a workers' compensation case. Instead, it concerns the separate question of how the financial burden to pay Stephens' workers' compensation award, if any, will be distributed. See *Skokie Castings, Inc. v. Illinois Insurance Guaranty Fund*, 2013 IL 113873, ¶¶ 25-26. Specifically, the dispute concerns a question of contract interpretation: whether, under the insurance policy, Continental must pay the workers compensation benefits that Knox owes under the Illinois Act for Stacy's injuries. Although the interpretation of section 4(a) of the Act plays a part in the determination of whether Knox met the requirements of the other states policy endorsement, the action at bar concerns matters of contract and statutory interpretation that are collateral to the adjudication of Stephens' workers' compensation claim arising under the Act. As such, the declaratory judgment action presents questions of law for the circuit court, not the commission, to determine. The commission did not have primary jurisdiction to determine any matter raised in the dispute at bar. Accordingly, the circuit court did not err in deciding the

declaratory judgment action.

¶ 30

2. The Other States Endorsement

¶ 31

As the circuit court had jurisdiction to decide the declaratory judgment action, we turn to the main question at bar: whether Knox was, by virtue of the nature of its operations in Illinois, required by Illinois law to have obtained separate workers' compensation insurance coverage.

¶ 32

Under section A.1.b(ii) of the other states policy endorsement, Continental agreed to:

"pay promptly when due the benefits required of [Knox] by the workers' compensation law of any state not listed in Item 3.A of the information Page [*i.e.*, of any state other than Indiana] if all of the following conditions are met:

* * *

b. The employee claiming benefits is not claiming benefits in a state where, at the time of injury, *** (ii) [Knox was], by virtue of the nature of [its] operations in that state, required by that state's law to have obtained separate workers' compensation insurance coverage ***."⁵

If, as the circuit court found, section 4(a)(3) of the Illinois Workers' Compensation Act required Knox to obtain "separate" workers' compensation insurance coverage for the Illinois claim, then Knox could not comply with section A.1.b(ii) of the endorsement. As a result, the policy would not cover the Illinois claim and the circuit court properly granted summary judgment to Continental and against Knox.

¶ 33

Summary judgment is granted when " 'the pleadings, depositions, and admissions on file,

⁵ In order for the other states endorsement to apply, two other conditions also had to be met: (1) the employee claiming benefits was either hired under a contract made in Indiana or, at the time of injury, was principally employed in Indiana and (2) "the duration of the work being performed by the employee claiming benefits in [Illinois]" was "temporary." The question of whether Knox met these conditions is not before us on appeal.

together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " *Id.* ¶ 27 (quoting 735 ILCS 5/2-1005(c) (West 2010)). We review the circuit court's grant of summary judgment *de novo*. *Id.* *De novo* review is also appropriate as the case turns on the construction of provisions of the insurance policy and the Act, questions of law which we review *de novo*. *Id.* As noted previously, our primary objective in construing a statute is to give effect to the legislature's intent and the best indicator of legislative intent is the statutory language. *Id.* ¶ 28.

¶ 34 Section 4(a) of the Act provides that, in order to ensure the payment of workers' compensation benefits, any employer who comes within the provisions of section 3 of the Act must either: (1) self-insure its payment of any compensation due under the Act, (2) furnish security, indemnity or a bond guaranteeing its payment of such compensation, (3) insure its entire liability to pay such compensation, or (4) make some other provision that is satisfactory to the commission for securing of the payment of the compensation. 820 ILCS 305/4(a) (West 2010).

¶ 35 Knox admits in its briefs that it is an employer that comes within the provisions of section 3 of the Act and that it was required to insure its entire liability to pay workers' compensation benefits due under the Act pursuant to section 4(a)(3).⁶ Section 4(a)(3) provides that, if an employer does not self insure or furnish security, indemnity or a bond guaranteeing its payment of the workers' compensation benefits or make some other provision that is satisfactory to the Commission for securing of the payment of the compensation," then the employer must:

"(3) Insure his entire liability to pay such compensation in some insurance carrier

⁶ Section 3 provides that the Act's provisions apply automatically to all employers and their employees engaged in "[c]arriage by land," a business "declared to be extra hazardous." 820 ILCS 305/3(3) (West 2010).

authorized, licensed, or permitted to do such insurance business in this State. Every policy of an insurance carrier, insuring the payment of compensation under this Act shall cover all the employees and the entire compensation liability of the insured: Provided, however, that any employer may insure his or her compensation liability with 2 or more insurance carriers or may insure a part and qualify under subsection 1, 2, or 4 for the remainder of his or her liability to pay such compensation, subject to the following two provisions:

Firstly, the entire compensation liability of the employer to employees working at or from one location shall be insured in one such insurance carrier or shall be self-insured, and

Secondly, the employer shall submit evidence satisfactorily to the Commission that his or her entire liability for the compensation provided for in this Act will be secured. Any provisions in any policy, or in any endorsement attached thereto, attempting to limit or modify in any way, the liability of the insurance carriers issuing the same except as otherwise provided herein shall be wholly void." 820 ILCS 305/4(a)(3) (West 2010).

¶ 36 Knox asserts that it complied with these requirements by contracting for coverage of its entire workers compensation liability with Continental, a carrier authorized and licensed to do business in Illinois. It argues the plain language of section 4(a)(3) does not require it to purchase separate workers' compensation insurance in Illinois to insure its entire liability. We agree.

¶ 37 As held previously, the requirement that an employer must insure its "entire liability" is not ambiguous. Read in context with the rest of section 4(a)(3), it requires an employer to carry insurance sufficient to cover its whole/complete/total legal obligation to pay the workers'

compensation benefits to which its employee is entitled in Illinois under the Act. Section 4(a)(3) provides that this insurance must be in "some insurance carrier authorized, licensed, or permitted to do such insurance business in this State" (*id.*) which Continental is. It further requires that "[e]very policy of an insurance carrier, insuring the payment of compensation under this Act shall cover all the employees and the entire compensation liability of the insured" (*id.*) which the Continental policy does if the other states endorsement applies.

¶ 38 All section 4(a)(3) requires is that the employer acquire the mandated insurance from a carrier authorized, licensed or permitted to do such insurance business in Illinois and that the insurance covers "all the employees and the entire compensation liability." *Id.* Nothing in section 4(a)(3) suggests that the mandated insurance coverage must be in a "separate" policy covering only the workers' compensation benefits due under the Act, *i.e.*, covering only workers' compensation benefits due for injuries occurring in Illinois.

¶ 39 Section 4(a)(3) provides that, as long as (1) the employer's entire compensation liability to "employees working at or from one location shall be insured in one such insurance carrier or shall be self-insured" and (2) the employer has submitted satisfactory evidence to the commission that its entire liability for the compensation provided for in the Act will be secured, then the employer may insure its compensation liability under the Act with two or more insurance carriers. *Id.* In fact, if those two requirements are met, the employer may even choose to insure only "a part" of its liability and then secure the remainder of its liability by either self-insuring (820 ILCS 305/4(a)(1) (West 2010)) or furnishing security, indemnity or a bond guaranteeing payment (820 ILCS 305/4(a)(2) (West 2010)) or making some other provision that is satisfactory to the commission (820 ILCS 305/4(a)(4) (West 2010)).

¶ 40 As our supreme court explained, section 4(a)(3) "affords [employers] the flexibility to use

any of the latter three options (self-insuring; furnishing security, etc.; or 'other') to secure payment of part of their obligation and then to purchase an excess coverage policy for the remainder." *Skokie Castings, Inc.*, 2013 IL 113873, ¶ 6. If, as Continental suggests, section 4(a)(3) is read to require that the employer must insure its liability under the Act in a "separate" (*i.e.*, individual and stand alone) policy, then the employer's flexibility to split its insurance obligation across multiple channels will be read out of section 4(a)(3).

¶ 41 Here, Knox's employees all work from one location. Therefore, section 4(a)(3) requires that Knox's entire workers' compensation liability to its employees "shall be insured in one such insurance carrier or shall be self-insured." 820 ILCS 305/4(a)(3) (West 2010). In other words, under the Act, Knox had the flexibility to either insure its entire liability under one policy or self-insure the entire liability. *Id.* Again, there is no language in section 4(a)(3) requiring that, if the employer chooses to insure rather than self-insure, the insurance be in a separate policy covering only Knox's liability in Illinois under the Act.

¶ 42 The endorsement provides that, if its conditions are met, then Continental "will pay promptly when due the benefits required of [Knox] by the workers' compensation law of any state not listed in Item 3.A of the information Page." This language in the endorsement is clear: if the endorsement applies, then Continental will pay the benefits required of Knox by the workers' compensation law of Illinois, which are the benefits due under the Act. Continental's representative, Gary Richer, testified as much in his discovery deposition. Richer, the assistant vice president of workers' compensation claims for Continental's third-party administrator Berkley Risk Administrators, LLC., testified that the endorsement did not limit the amount of coverage available in an "other state" to the coverage payable under the laws of Indiana. Thus, if the endorsement applies, the Continental policy will provide the insurance required of Knox

under Illinois law, not Indiana law.

¶ 43 The endorsement excludes coverage if, in the state where the employee is claiming benefits, at the time of injury, Knox (1) has "other workers' compensation insurance coverage," (2) was "by virtue of the nature of [its] operations in that state, required by that state's law to have obtained separate workers' compensation insurance coverage," or (3) is self-insured. Exclusions 1 and 3 do not apply here as Knox had no other workers' compensation insurance coverage in Illinois and was not self-insured in Illinois. Exclusion 2 does not apply since, as held above, Illinois law does not require that Knox maintain a "separate" insurance policy for its liability arising under the Act.

¶ 44 As the parties point out, there is no reported Illinois decision construing the condition in a "residual market limited other states insurance endorsement" that there is no coverage under the endorsement if, at the time of injury, the employer is required by the other state's law "to have obtained *separate* workers' compensation insurance coverage." (Emphasis added.) However, in *Zurich American Insurance Co. v. Uninsured Employers' Fund*, 13 A.3d 98 (Md. Ct. Spec. App. 2011), the court of special appeals of Maryland considered the question of coverage under an identical "residual market limited other states insurance endorsement." The court posed the same question as we are deciding here: whether the endorsement exclusion condition is satisfied if the "other state" requires *any* workers' compensation insurance coverage rather than *separate* coverage. *Id.* at 107. The court found it was not. *Id.* Although we are not bound to follow decisions from other states, we may look to *Zurich American Insurance Co.* for persuasive authority. *Fosse v. Pensabene*, 362 Ill. App. 3d 172, 186 (2005).

¶ 45 In *Zurich American Insurance Co.*, the court held that Maryland law required that the employer have insurance coverage but did not require the employer to have "separate" coverage.

Zurich American Insurance Co., 13 A.3d at 107. The court noted that "[t]he Endorsement does not state *** that merely because the state in which injury occurred requires insurance coverage, coverage does not exist under the Endorsement." *Id.* Rather, the endorsement provided coverage "unless" by virtue of the employer's operations in Maryland the employer was required by Maryland law " 'to have obtained separate workers compensation insurance coverage.' " *Id.* Therefore, since the Delaware-based employee was working in Maryland only temporarily and the employer was not required to have *separate* coverage in Maryland under Maryland law, the court found the other states endorsement provided coverage sufficient to satisfy Maryland law. *Id.*

¶ 46 We find similarly here. Illinois law requires Knox to have insurance coverage, not separate insurance coverage. As the court aptly explained in *Zurich American Insurance Co.*, to read the endorsement to mean that coverage does not exist if the other state requires *any* coverage "renders nugatory the word 'separate' " in the endorsement. *Id.* Accordingly, the circuit court erred in finding that section 4(a)(3) of the Act required Knox to have separate insurance for Illinois claims and that Knox, therefore, failed to meet a condition of the endorsement.

¶ 47 The court's order granting summary judgment in favor of Continental and against Knox on this basis is reversed.

¶ 48 We remand to the circuit court for further proceedings on Knox's cross-motion for summary judgment and any unresolved issues in Continental's motion for summary judgment.

¶ 49 CONCLUSION

¶ 50 For the reasons stated above, we reverse the circuit court's grant of summary judgment to Continental and remand for further proceedings.

¶ 51 Reversed and remanded.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify Down	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DARRELL N. NASH,

Petitioner,

15IWCC0602

vs.

NO: 13 WC 36287

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's permanent partial disability 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.

Petitioner testified he is 55 years old and works for Respondent as an "asphalt helper." In that job he repairs potholes, pavement, and "grinding out the streets." In the winter he does "potholes or filling in for radius cuts." In the spring he usually hangs signs. He was currently still involved with his spring/summer work activities of hanging signs.

Petitioner also testified he injured his lower back on October 28, 2013, when he picked up a box of cardboard road signs weighing about 75 to 80 pounds. An MRI taken December 23, 2013 showed degenerative disc disease throughout the lumbar spine with mild right and mild to moderate left foraminal stenosis, a disc bulge at L4-5 with shallow central and left paracentral disc protrusion without significant spinal cord compromise, but mild bilateral foraminal narrowing, and a disc bulge and associated osteophytic ridge at L5-S1 without significant spinal cord compromise, but mild left foraminal narrowing. Petitioner treated with medication and physical therapy until May 8, 2013, at which time he was discharged from treatment and released to full duty.

15IW000602

Petitioner testified that currently he notices pain when he bends over to pick up a parcel of signs. It is in his low back down his left leg. "After a period of time," he has tingling in his feet and a burning sensation in his hip. He drives about 25 minutes to work. When he arrives he has to take his time getting out of the car because of his back. His left leg gets numb from his hip to his toes if he sits in the car too long. He no longer goes to the gym. He tried it once "and it didn't feel good." He does not do as much yard work as he did prior to the accident. Furthermore, he has "some serious pain" in his back, leg and hip after cutting grass. He now has somebody come over to do that. He has ridden his motorcycle twice since being released by Dr. Giresan. It caused numbness and his back "didn't feel good at all;" he was in the process of selling the motorcycle. Picking up laundry, garbage, or his five year old grandchild is painful. He has difficulty sleeping.

The Arbitrator assessed the bases for determining a permanent partial disability award under the 2011 legislation. He placed greater weight on Petitioner's relatively advanced age and heavy labor in finding a higher level of permanent disability. He also noted that Petitioner had not begun his winter activities as an asphalt helper. Therefore, he did not know his ability to perform the tasks involved in pavement grinding. Accordingly, he placed some weight on Petitioner's potential loss of earning potential. Finally, the Arbitrator did not find Petitioner entirely credible because he was not forthcoming. Therefore, he relied on the medical records and not Petitioner's testimony regarding permanent partial disability. He awarded Petitioner 30 weeks of permanent partial disability benefits representing loss of 6% of the person as a whole.

Respondent argues the permanent partial disability award is excessive. It stresses that the Arbitrator improperly determined Petitioner's middle-age status is a factor increasing permanent partial disability. Respondent differs from the Arbitrator arguing he will have to live with his disability for a shorter period of time than a younger worker. It also posits the Arbitrator should not have increased permanency based on the fact Petitioner had not started his winter duties, because Petitioner was released to full duty.

The Commission notes that most arbitrators seem to be using a claimant's relatively advanced age as a factor limiting permanent partial disability rather than increasing it because of his/her having to live with the condition for a shorter period of time. The Commission also concurs with Respondent that the fact Petitioner had not yet begun his winter work responsibilities should not have been a consideration for increasing permanent partial disability based on loss of earning potential. Not only was Petitioner released to full duty, there was no evidence introduced at arbitration regarding the physical demand level of Petitioner's winter duties. The only testimony regarded the weight of the parcel of cardboard signs he had to handle during his spring/summer work activities.

Finally, Petitioner's condition apparently resolved to the point he was released to perform heavy labor with treatment consisting of only medication and physical therapy. Therefore, in looking at the entire record before us, the Commission concludes that an award of 3% loss of the person as a whole is appropriate in this case and modifies the Decision of the Arbitrator accordingly.

15IWC00002

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$971.58 per week for a period of 28&1/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

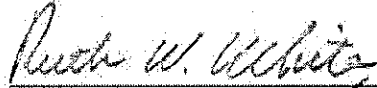
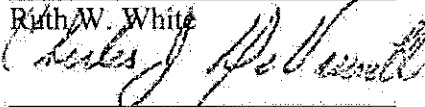
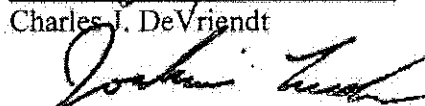
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$726.56 per week for a period of 15 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of 3% of the person as a whole.

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.

The party commencing the proceeding for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

DATED: JUL 3 1 2015


Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

RWW/dw
O-7/15/15
46

131WCC0602

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)1B)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Darrell N. Nash
Employee/Petitioner

Case # 13 WC 36287

v.

Consolidated cases: None

City of Chicago Dept. of Transportation
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 **Stephen Friedman**, Arbitrator of the Commission, in the city of **Chicago**, on **October 6, 2014**. 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 _____

151W000802

FINDINGS

On **October 28, 2013**, 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 **\$75,783.80**; the average weekly wage was **\$1,457.38**.

On the date of accident, Petitioner was **54** years of age, married 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 **\$30,958.71** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$30,958.71**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

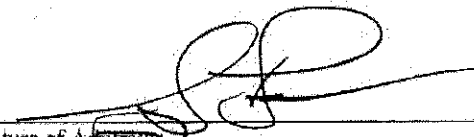
ORDER

Respondent shall pay Petitioner temporary partial disability benefits of **\$971.58/week** for **28 1/7** weeks, commencing **October 28, 2013** through **May 11, 2013**, as provided in Section 8(a) of the Act. Respondent is given a credit of **\$30,958.71** for TTD. This results in a credit for the overpayment of benefits of **\$3,615.67**

Respondent shall pay Petitioner permanent partial disability benefits of **\$721.66/week** for **30** weeks, because the injuries sustained caused the **6%** loss of the person as a whole, as provided in Section 8(d)2 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

October 22, 2014
Date

OCT 22 2014

15IWC0602

Statement of Facts

On October 28, 2013, Petitioner Darrell Nash was employed by Respondent City of Chicago, Department of Transportation as an asphalt helper.

He testified that his job duties included filling potholes, pavement repair and grinding. He posted signs for street repair. He did this from spring to winter. In the winter he filled potholes and operated a radial saw.

On August 28, 2013 he was posting signs. The signs were in a box that weighed 75 to 80 pounds. Petitioner testified that he went to post a sign on a post and as he stepped back, he stepped into a sewer and fell to his left, hitting the ground and landing on his buttocks. Petitioner testified that he reported the accident to his supervisor Mike Flores and was sent to Mercy Works. He drove there. Petitioner testified that he was experiencing sharp agonizing pain in his low back and left leg.

Mercy Works records were admitted as Petitioner's Exhibit 1. The history in Dr. Diadula's 10/28/2013 note is that "he stepped off the curb into a hole. He was trying to catch himself to break the fall, but he twisted and injured his low back. He did not have any impact of his back against the curb." The subjective complaints were low back pain radiating to the left foot with numbness and tingling. He denied any similar condition in the past. He was diagnosed with a low back sprain. He was given Toradol and prescribed Norco and advised to use ice and then heat and home exercises. He was taken off work. On 10/28/13 he was seen in follow up and referred to see an orthopedic back specialist.

Petitioner testified that he was referred to Dr. Gireesan and first saw him on 11/4/13. Petitioner testified that he was recommended for an MRI which was performed on 12/23/13. Petitioner testified that he underwent a second MRI in February, 2014. He had physical therapy through 5/1/14. On May 8, 2014 he was released to return to work full duty. Petitioner testified that at the time of his release his pain was tolerable. He was prescribed 75 Codeine tablets. Petitioner testified that these lasted him 2 ½ months.

Dr. Gireesan's records were admitted as Petitioner's Exhibit 2. The 11/04/2013 note records complaints of pain in the low back and radiation with tingling and weakness. The physical exam notes normal strength, reflexes, sensation and a negative straight leg raising. The assessment was discogenic low back pain. The 12/05/2013 office note has similar finding and allowed Petitioner to return to light work if available.

The MRI performed 12/23/2013 noted multilevel degenerative changes. It also noted a hydronephrosis of the left kidney. Petitioner was referred to an urologist. Petitioner testified that he underwent surgery for a kidney stone in January, 2014. Petitioner testified that the surgery did not change his back pain. The records of Northwestern Memorial Hospital were admitted as Petitioner's Exhibit 4. They document the surgery on January 7, 2014. The January 8, 2014 progress note states that patient reports almost immediate improvement in low back pain. The January 10, 2014 progress note and Discharge Summary both state "pain controlled."

Dr. Gireesan's 01/23/2014 note states that Petitioner is recovering from his kidney surgery and continues to complain of pain in the low back area with radiation to the left lower extremity. The review of the MRI shows deterioration of the disc at L5-S1 but no evidence of any herniated disc. The 2/14/2014 note states Petitioner is sleeping OK. Pain gets worse with shoveling snow and lifting. Petitioner testified that he attempted to shovel snow from his porch, but the pain forced him to have his neighbor do the snow removal. A course of physical therapy was recommended. The 03/21/2014 note records that Petitioner did not report any radiation of pain to the lower extremities. Petitioner testified that he did not make that statement. A further MRI was performed on 02/17/2014. The impression was multilevel degenerative.

1517CC0602

disease, most prominent at L5-S1. The 04/12/2014 note states Petitioner is feeling better. He has 60 percent relief of his pain. He wants to finish PT and return to work. Dr. Gireesan released Petitioner to return to work on 05/08/14. In his note of that date, he notes 5/5 strength in all muscle groups and negative straight leg raising. Petitioner has still some residual back pain .which comes and goes.

The records of Accelerated Rehabilitation Centers were admitted as Petitioner's Exhibit 3. They show physical therapy from 02/24/2014 through discharge on 05/01/2014. Petitioner reported decreased pain since treatment was initiated. There was no numbness or tingling or loss of sensation in his lower extremities.

Petitioner testified on direct examination that he had no prior back problems before the date of accident. On cross examination, he admitted he had back injury on May 22, 2006 with treatment on 3 occasions at Mercy Works, and another back injury in 2007 with treatment at Mercy Works. Petitioner testified that in 2007, he had an MRI which showed degenerative joint disease. Petitioner testified that he saw Dr. Weiner, an orthopedic physician. Petitioner testified that he had no back or left leg complaints from 2007 until the date of accident.

Petitioner testified that he currently is working his regular job duties. Petitioner testified that he drives 25 minutes to work and has to get out of the car with complaints of numbness in his left leg from the hip to the toes. Petitioner testified that he has pain in his back and left leg with many household activities. He does not go to the gym. Petitioner testified that he tried to ride his motorcycle 2 times since the accident and it did not feel good, his left leg would go numb. Petitioner testified that he is trying to sell it.

Petitioner testified that he has not returned to see Dr. Gireesan since May 8, 2014. Petitioner testified that Dr. Gireesan told him there was no more he could do. Petitioner testified that Dr. Gireesan said surgery was an option. He is not taking any prescription medication. Petitioner testified that he was concerned it was habit forming. He takes regular Tylenol. He does his home exercises.

Conclusions of Law

In support of the Arbitrator's decision with respect to (F) Causal Connection, the Arbitrator finds as follows:

As a result of the accident on October 28, 2013, Petitioner sustained an injury to his low back. Petitioner conceded that he had prior work injuries to the low back in 2006 and 2007 on cross examination. He had treatment at Mercy Works at that time and had an MRI which showed degenerative disc disease. He had no medical treatment from 2007 until the date of the accident and had immediate treatment and complaints related to that incident. The Arbitrator finds that Petitioner sustained an aggravation to his degenerative disc disease condition as a result of the accident on October 28, 2013 and that the treatment and complaints thereafter are causally related to that accident.

The Arbitrator notes the incidental finding on the MRI of the kidney stone and the treatment for that condition at Northwestern Memorial Hospital. There is no claim that this treatment was caused by the accident. The Arbitrator finds that the low back and left leg complaints documented and treated by Dr. Gireesan are related to the compensable back injury and not related to this kidney condition.

Accordingly, the Arbitrator finds that petitioner sustained an aggravation of his pre-existing condition of degenerative disc disease in his low back as a result of the accident on October 28, 2013.

In support of the Arbitrator's decision with respect to (L) Nature and Extent, the Arbitrator finds as follows:

The date of accident in this matter is after September 1, 2011 and therefore permanent partial disability must be evaluated pursuant to the provisions of Section 8.1b(b) of the Act.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as an asphalt helper at the time of the accident and that he is able to return to work in his prior capacity as a result of said injury. The Arbitrator notes that this job includes lifting boxes of signs that can weigh up to 80 pounds. Petitioner also does paving work including grinding and filling potholes. This would be considered a heavy job. Because of heavy nature of the work, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 54 years old at the time of the accident. Because of Petitioner's age as an older employee for the type of heavy work that he performs, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner has returned to his regular occupation and has been performing his regular duties. The Arbitrator notes that he has returned to posting signs and has not yet performed the winter duties of pavement grinding. Because of this, the Arbitrator therefore gives some weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner was diagnosed with discogenic back pain corroborated by the MRI studies. The studies did not reveal a disc herniation. The neurological studies were always negative. With respect to Petitioner's current subjective complaints of continued back pain and left leg symptoms, the Arbitrator notes inconsistencies with Petitioner's testimony and the other evidence. Petitioner's testimony that he struck his buttocks on the ground is not documented in the initial histories provided to Mercy Works, Dr. Diadula or Dr. Gireesan. The records of Dr. Gireesan and Accelerated Rehabilitation Center do not document ongoing leg complaints in the May, 2014 visits. Dr. Gireesan's notes do not support Petitioner's testimony concerning a discussion of possible surgery. The Arbitrator also notes that Petitioner did not admit to prior back injuries until confronted with medical records on cross examination. Because of this evidence, the Arbitrator therefore gives greater weight to the medical records and lesser weight to Petitioner's testimony on this factor.

All factors except subsection (i) of §8.1b(b) are relevant in making the award.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 6% loss of use of person as a whole pursuant to §8(d)2 of the Act.

In support of the Arbitrator's decision with respect to (N) Credit, the Arbitrator finds as follows:

The parties agree that Petitioner was paid TTD for a period in excess of the period of lost time. The amount of the overpayment was stipulated to be \$3,615.67. The Respondent is entitled to credit in this amount against the permanent disability awarded herein.

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <u>down</u>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANDREW TULL,
Petitioner,

vs.

NO: 13 WC 42121

EVERGREEN FS, INC.,
Respondent.

16 IWCC0003

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, mileage, temporary total disability and permanent partial disability, 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Respondent runs a fertilizer warehouse, and Petitioner worked 27 years as Respondent's Facility Manager.
2. On July 11, 2013 Petitioner was helping co-workers open a railcar. He crawled under the railcar to hook a come-along to it. The ground was wet due to rain, and they were unloading DAP, which is a very slick substance. As the workers were pulling on the come-along Petitioner slipped and fell on his left knee and shoulder.
3. Petitioner underwent chiropractic care, and Dr. Li ordered lumbar and left shoulder

18 IWC 00003

MRI's. The left shoulder MRI revealed a moderate to high grade partial thickness bursal surface tear, while the lumbar MRI revealed multi-level disc bulges and endplate spurring throughout the lumbar spine, multi-level facet arthrosis, and multi-level mild foraminal narrowing. He was diagnosed with a left shoulder rotator cuff tear and a lumbar spine herniated disc or possible T12 compression fracture.

4. Petitioner eventually underwent 2 left shoulder surgeries in August 2013, followed by physical therapy for his left shoulder and low back.
5. During physical therapy, Petitioner noted that his right shoulder began bothering him because he was using it more, due to his left shoulder issues.
6. A right shoulder MRI was performed in December 2013, and revealed mild to moderate supraspinatus tendinosis without tear, possible biceps tendinosis, possible labral degeneration and possible subacromial decompression.
7. In January 2014 Dr. Li diagnosed a right shoulder biceps and SLAP tear.
8. Petitioner subsequently underwent right shoulder surgery on April 1, 2014. After additional physical therapy, Petitioner was released to work on August 18, 2014.
9. Petitioner travelled from his home in Colfax, IL to Bloomington, IL for medical treatment.

The Commission affirms the Arbitrator's rulings on the issues of accident, causal connection, medical expenses, temporary total disability and permanent partial disability. However, the Commission vacates the award for mileage.

Petitioner travelled approximately 40 miles round trip to and from his medical providers' place of business for treatment. This mileage calculation does not exceed local travel standards, thus Petitioner is not entitled to reimbursement for such travel.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$633.26 per week for a period of 19-6/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$369.93 per week for a period of 112.5 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused a 12.5% loss of use of Petitioner's person as a whole for his left shoulder injury and a 10% loss of use of Petitioner's person as a whole for his right shoulder injury.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner medical expenses in the amounts of \$42,271.40 to Orthopedic and Shoulder Center, \$27,603.00 to Ireland Grove Surgery Center, \$358.20 to Ambulatory Anesthesia, and \$4,656.51 to Prescription Partners under §8(a) of the Act.

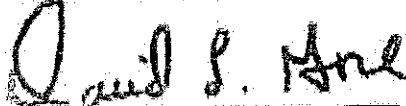
16IWCC0003

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 \$75,000.00. 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.

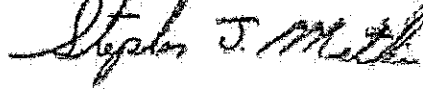
DATED: JAN 4 - 2016
DLG/wde
O: 11/5/15
45



David L. Gore



Mario Basurto



Stephen Mathis

STATE OF ILLINOIS)
)SS.
COUNTY OF McLean)

<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

Andrew Tull
Employee/Petitioner

Case # 13 WC 042121

v.
Evergreen FS Inc.
Employer/Respondent

Consolidated cases: _____

16 IWCC0003

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 **Gregory Dollison**, Arbitrator of the Commission, in the city of **Bloomington, Illinois**, on **February 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. 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 Mileage

161W000003

FINDINGS

On 7-11-13, 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 \$49,394.28; the average weekly wage was \$949.89.

On the date of accident, Petitioner was 55 years of age, *married* with 0 dependent children.

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 \$5,699.38 for TTD, \$4,798.12 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$10,497.50.

Respondent is entitled to a credit of \$1,332.80 under Section 8(j) of the Act. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

ORDER

The Arbitrator finds that all temporary total disability and temporary partial disability benefits due and owing Petitioner prior to April 1, 2014 has been paid and that the credit of \$10,497.50 applies to this period of time. Additionally, Respondent shall pay Petitioner additional temporary total disability benefits of \$633.26/week for 19-6/7 weeks, commencing April 1, 2014 through August 17, 2014, as provided in Section 8(b) of the Act.

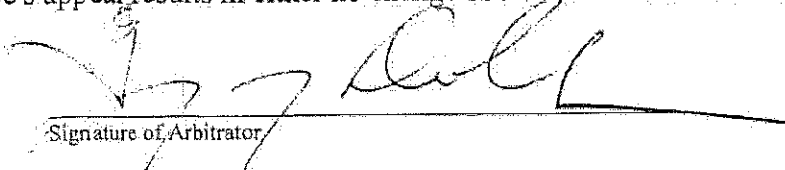
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of \$42,271.40 to Orthopedic and Shoulder Center, \$27,603.00 to Ireland Grove Surgery Center, \$358.20 to Ambulatory Anesthesia, and \$4,656.51 to Prescription Partners, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$569.93/week for 112.5 weeks, because the injuries sustained caused the 12-1/2% loss of the person as a whole for the left shoulder and 10% loss of the person as a whole for the right shoulder, as provided in Section 8(d)2 of the Act.

Respondent is ordered to reimburse Petitioner in the amount of \$2,217.60 for mileage of 3960 miles at \$.56 per mile.

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

3/31/15
Date

16IWCC0003

FINDINGS OF FACT:

Petitioner had been employed by Respondent, Evergreen FS Inc., as a fertilizer plant manager for approximately 26 years prior to July 11, 2013. On that date, Petitioner was called to the plant floor to help open a railcar. Petitioner said that he was using a come-along to pry open the railcar and was pulling with both arms when "something gave." When this occurred Petitioner slipped on a wet floor and went down on his left arm, shoulder and left knee.

Petitioner testified that he noticed immediate pain in his left shoulder, left knee and back. Petitioner said that he continued to work but he noticed left shoulder pain and increasing low back pain.

On July 16, 2013 and July 19, 2013, Petitioner treated with Dr. Duncan, a chiropractor in Colfax. Dr. Duncan's initial intake form and records give a history of accident and symptoms consistent with Petitioner's testimony. Dr. Duncan treated Petitioner's low back and spine. (PX 5)

Petitioner reported his work accident to Respondent and filled out an employee's report of injury for the workers' compensation carrier on July 29, 2013. Both of these forms give a history of work accident and symptoms consistent with Petitioner's testimony. (PX 3, PX 4)

On July 25, 2013, Petitioner treated with his family doctor, Dr. Hancock. Dr. Hancock took a history of accident consistent with Petitioner's testimony. Dr. Hancock's record states that Petitioner had left shoulder and neck pain and that he suspected a rotator cuff tear. Dr. Hancock's record also states that Petitioner had low back pain radiating to his posterior thighs with prior history of degenerative disc disease. Dr. Hancock prescribed light duty work and referred Petitioner to Dr. Li, an orthopedic surgeon. (PX 2)

On July 31, 2013, Petitioner treated with Dr. Li. Dr. Li recorded a history consistent with Petitioner's testimony. Dr. Li rendered an initial diagnosis of left shoulder rotator cuff tear with a lumbar spine herniated disc or possible T12 compression fracture. (PX 19) Dr. Li ordered a MRI of Petitioner's left shoulder and low back on July 31, 2013. With respect to the left shoulder, the radiologist indicated same showed a focal moderate to high grade partial thickness bursal surface tear involving the anterior insertional fibers of the distal supraspinatus tendon, a Grade I to II AC joint separation, and a small amount of fluid in the glenohumeral joint and subacromial-subdeltoid bursa. (PX 6) Petitioner's low back MRI was read as multi-level mild disc bulges without dominant disc herniation or severe spinal stenosis, multiple mild facet arthrosis, and multi-level mild foraminal narrowing. (PX 7)

Petitioner returned to Dr. Li on August 2, 2013. After documenting the MRI results, Dr. Li assessed Petitioner with a left shoulder high grade partial tear of the supraspinatus tendon. Dr. Li recommended surgery for the left shoulder. Dr. Li also assessed Petitioner with a lumbar spine strain and ordered physical therapy. (PX 19)

Dr. Li performed surgery on Petitioner's left shoulder on August 19, 2013 consisting of a left shoulder rotator cuff repair, arthroscopic subacromial decompression, and extensive debridement of anterior, superior and posterior Type I labral tear. Dr. Li's post-operative diagnosis was left rotator cuff tear, impingement syndrome, and Type I anterior, superior and posterior labral tear. (PX 8)

On August 28, 2013, Dr. Li ordered a post-operative CT of Petitioner's left shoulder. The radiologist, Dr. Wong, stated that the anchor device located in the very anterior aspect of the greater tuberosity of the humeral

head was half embedded within the bony confines of the greater tuberosity and was half outside the bony cortex and extended into the superior aspect of the bicipital groove. (PX 9) Dr. Li recommended a second surgery to remove the suture anchor and revise repair arthroscopically. (PX 19)

On August 30, 2013, Dr. Li performed another left shoulder surgery to debride scar tissue and revise the rotator cuff repair as well as removal of the hardware from the bicipital groove. (PX 10)

Post-operatively, Petitioner underwent physical therapy through Dr. Li's office. Petitioner underwent a few sessions for his lower back and the therapist performed passive range of motion on his left shoulder. Petitioner last received therapy for his low back on September 19, 2013. At that time, the therapist noted Petitioner reported significant improvement with his low back symptoms. It was noted he had returned to full functional mobility. (PX 19)

On October 2, 2013, Petitioner reported to Dr. Li and advised the doctor that his left shoulder pain and mobility was improving. Dr. Li continued physical therapy but noted that Petitioner could stop using the CPM machine and Game Ready compression therapy for his left shoulder. Petitioner continued with left shoulder physical therapy. The physical therapy records indicate that Petitioner began using one to five pound weights during therapy between October 2, 2013 and October 31, 2013. During that period, or specifically October 7, 2013, Dr. Li released Petitioner to return to work with restrictions. (PX 19)

Petitioner testified that he had noticed some right shoulder pain shortly after his accident, but it came and went. Petitioner said that during therapy, he was using the weights with both of his hands and that he was increasing the use of his right arm. Petitioner said that, as the therapist increased the poundage of the free weights he was using, he began to experience increasing right shoulder pain. Petitioner said that the therapist had also recommended home exercises using bands and free weights. Petitioner said that he performed range of motion with the different bands attached to a door. Petitioner said that as he performed these exercises, his right shoulder pain increased and it became more difficult to perform the exercises.

Petitioner testified that on November 8, 2013, he informed his physical therapist that he was having some pain in his right shoulder. Petitioner provided that the pain in his right shoulder after his July 11, 2013 accident was different than the pain he had in the past and as such he mentioned it to his therapist. Therapy records from November 8th, show Petitioner informed the therapist of experiencing pain and weakness of the right rotator cuff. (PX 19)

On November 11, 2013, Petitioner reported that his left shoulder was great, but his right shoulder was sore. Petitioner also provided that he had been performing his Home Exercise Program with one (1) set of ten (10). (PX 11) On November 15, 2013, Petitioner reported that his right shoulder "...has been bothering me lately... I'm doing more with it than usual." (PX 12) By November 22, 2013, Petitioner complained his right shoulder hurt worse than his left. (PX 13) Petitioner testified that by November 22, 2013, he was lifting up to fifty (50) pounds during therapy.

Therapy notes from December 3, 2013 show Petitioner reported that "[his left shoulder] motion is really good but I can tell my strength isn't all the way back yet. My right shoulder has been bothering me and I want to get my strength all the way back with the left. I'm going to need this left shoulder to be strong because I've been over using my right lately and it's been hurting. I have had problems with my right shoulder in the past so I really need this left shoulder to be full strength." (PX 15)

On January 3, 2014, the therapist's progress note stated that Petitioner had some mild impairment in his left shoulder consisting of weakness doing yard work, hobbies and work. The therapist noted that Petitioner had good range of motion in the left shoulder but still demonstrated mild weakness in the left shoulder

abduction and external rotation. The therapist stated that Petitioner's shoulder strength was 70%. The therapist felt Petitioner met all his goals regarding the left shoulder. However, Petitioner was still expressing concerns about his right shoulder. (PX 15)

At Dr. Li's request, Petitioner underwent a MRI of the right shoulder on January 10, 2014. The radiologist stated that Petitioner had mild to moderate supraspinatus tendinosis without tear, possible biceps tenodesis, and a hyper intensive signal along the base of the superior labrum as well as multifocal post-operative changes. (PX 16) Dr. Li diagnosed Petitioner as having a right shoulder biceps and SLAP tear. (PX 17)

On February 10, 2014, Dr. Li reported Petitioner could advance activities as tolerated and had reached maximum medical improvement with respect to his left shoulder. Dr. Li also provided Petitioner required additional treatment for his right shoulder in the form of a right shoulder arthroscopic shoulder surgery. (PX 19)

Petitioner returned to Dr. Li on March 31, 2014. Dr. Li noted Petitioner wanted to discuss his injury at work related to his right shoulder complaints. Dr. Li recorded the following, "He denies any Right shoulder injury before accident and denies any accident since. He was pulling a comealong with both hands and slipped, falling on his left shoulder. However, he was pulling with his Right shoulder when he slipped but did not fall on it. He noticed more pain with [his] Right shoulder as he was rehabilitating [the] left shoulder. He has had previous Bristow procedure which is extra-articular and is unrelated to current Biceps and Labral pathology." (PX 19)

On April 1, 2014, Dr. Li performed a right shoulder arthroscopy with arthroscopic subacromial decompression, extensive debridement of the anterior, superior and posterior labral tears as well as a partial thickness rotator cuff tear, and biceps tenodesis. Dr. Li's post-operative diagnosis was a right shoulder biceps tendon tear; partial thickness rotator cuff tears; superior labral tear, anterior labral tear, and posterior labral tear; and impingement syndrome. (PX 18)

At Respondent's request, Petitioner underwent a Section 12 examination with Dr. Michael Cohen on July 9, 2014. In his narrative report Dr. Cohen stated that Petitioner reported that he did not have pain in his left shoulder, however he still had weakness with overhead activities and that his function was pretty close to normal. On the right side, Petitioner reported continued catching in his right shoulder with some decreased strength. Petitioner felt he was 75% to 80% better on the right side than he was pre-operatively. On exam, Petitioner had full abduction and internal rotation which was symmetric in both shoulders. He had full supraspinatus bilaterally with no pain. He had negative impingement signs bilaterally and he had negative Speed's and Yergason's tests on the right shoulder. His right biceps muscle was distally displaced. Dr. Cohen opined Petitioner was at maximum medical improvement on the left shoulder and that the July 11, 2013 accident caused Petitioner's left shoulder condition requiring surgery. Dr. Cohen further opined that because Petitioner did not lodge complaints concerning his right shoulder to Dr. Duncan, Dr. Li, or the physical therapist until November 11, 2013, he did not believe Petitioner had any significant injury to his right shoulder during his work accident on July 11, 2013. Dr. Cohen indicated he would expect Petitioner to be performing most activities with his dominant right arm even without injury. Dr. Cohen opined that the subsequent treatment to the right shoulder was not causally related to said accident. (RX 1)

Post-operatively, Petitioner underwent physical therapy at Dr. Li's office through August 13, 2014. On said date, the therapist recorded Petitioner conveyed right shoulder muscle soreness and a dull ache with 1 out of 10 pain level. The therapist noted that Petitioner's pain was occasional, dull, and aching; Petitioner still had an occasional report of "impingement" type symptoms with overhead work and that he was instructed to take frequent breaks while performing overhead work. Lastly, the therapist noted a slight restriction in range of motion and 4+/5 strength. Petitioner was discharged from therapy with a note that he had met all goals of therapy. (PX 19)

Dr. Li released Petitioner to return to full duty work on August 13, 2014 with instructions to continue his home exercise program. (PX 19)

On September 3, 2014, Dr. Li authored a narrative report. Dr. Li noted that Petitioner was pulling a come along with both hands and slipped and fell on his left shoulder while at work on July 11, 2013. Dr. Li stated that Petitioner sustained a rotator cuff tear and required surgery on his left shoulder. Dr. Li stated that as Petitioner was rehabilitating his left shoulder, he was relying more on his right arm for daily activities and began to develop pain in his right shoulder. Dr. Li stated that Petitioner required surgery on his right shoulder to address the labral tear and biceps tendon tear. Dr. Li stated that it was his opinion within a reasonable degree of medical certainty that the July 11, 2013 accident contributed to the injury to both of Petitioner's shoulders. Dr. Li stated that the left was more severely injured and more painful than the right. Dr. Li stated that the right shoulder injuries consisting of the labral tears and the biceps tendon tear produced less symptoms and only manifested when he started to resume more normal activities. Dr. Li stated that Petitioner had a previous Bristow procedure in 1983 and that he had not had problems in his right shoulder until after the July 11, 2013 accident. (PX 1)

Petitioner saw Dr. Li on September 10, 2014. At that time, Dr. Li noted Petitioner was tolerating work but that some duties temporarily aggravate his shoulder. The doctor recommended that Petitioner continue his home exercise program and that he advance to activities as tolerated. Dr. Li released Petitioner to full duty work. (PX 19)

On December 3, 2014, Petitioner, at Respondent's request, was evaluated by Dr. Fletcher, for an AMA impairment rating. On exam, Petitioner had tenderness over the anterior right shoulder with some restriction of motion. In his report, Dr. Fletcher stated that Petitioner had a status post-left shoulder rotator cuff repair, impingement syndrome, and Type I anterior, superior and posterior labral tear; a status post-right shoulder biceps tendon repair, partial thickness rotator cuff tear, superior labral tear, anterior labral tear and posterior labral tear, impingement syndrome; and a lumbar strain superimposed on pre-existing degenerative disc disease. Dr. Fletcher gave Petitioner a 0% permanent impairment rating under the AMA guidelines, 6th edition, for the lumbar sprain; 5% for the right shoulder; and 4% for the left shoulder. (RX 2)

Records submitted show Petitioner underwent a right shoulder MRI, at Dr. Li's request, on December 5, 2014. The MRI showed mild to moderate supraspinatus tendinosis without tear; possible biceps tenodesis; possible residual labral degeneration and/or tear, and possible subacromial decompression. (PX 16) Petitioner testified that he returned to Dr. Li on December 8, 2014. At that time the doctor did not recommend any further treatment.

At the time of arbitration, Petitioner testified that his left shoulder improved since the surgery. Petitioner said that he still has some pain in his left shoulder when he reaches over his head and behind himself. Petitioner said that he does not have the strength in his left shoulder that he had before the accident. Petitioner said that he experiences a pinching sensation in his left shoulder when he lifts above shoulder height.

Petitioner denied any problems with his left shoulder before his accident on July 11, 2013. Petitioner stated that he had experienced low back problems ever since he was a young man and that same was intermittent. Petitioner also testified that he had undergone right shoulder surgery approximately 28 years ago. Petitioner said that prior to his July 11, 2013 work accident, he had some aches and pains in his right shoulder that he attributed to as arthritis. Petitioner said that there was physically nothing wrong with his right shoulder when he arrived at work on July 11, 2013. Petitioner provided that currently, his right shoulder is a lot weaker than his left shoulder. He is right hand dominant and his activities are limited with his right shoulder. Petitioner also complained of right shoulder clicking and stiffness.

Petitioner testified that he underwent a physical examination for work at Medical Hills Internists with Dr. Hancock on July 10, 2012. Petitioner testified and the records show he complained of right anterior shoulder pain around his previous surgical site. He also complained of pain with internal-external rotation. An x-ray performed that day showed evidence of a prior surgical procedure from 28 years ago. There was a surgical threaded screw in the glenoid. Also noted were mild degenerative changes. (RX 6) Petitioner testified that Dr. Hancock did not treat him for his right shoulder on July 10, 2012 and that the x-ray was part of the physical exam. Petitioner said that after his accident on July 11, 2013, he did not have any other injury or insult to his right shoulder

Petitioner testified on cross examination that he had undergone a few physical therapy sessions for his back after his accident and that he believed his back returned its prior baseline. Petitioner also testified that although he has a full release to return to work and that he has resumed his duties managing the fertilizer plant, he and Respondent agreed that he should no longer climb or unload railroad cars.

Lastly, Petitioner testified that he lives in Colfax and that there is no orthopedic or medical doctor in Colfax. Petitioner said that, in accordance with Petitioner's Exhibit 22, he made 48 trips at 40 miles a trip to treat at Dr. Li's office before January 10, 2014 and that he made 51 trips at 40 miles a trip thereafter.

With respect to issue (C), Did an Accident Occur That Arose Out of and In the Course of Petitioner's Employment by Respondent, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner sustained a work related accident on July 11, 2013 that arose out of and in the course of his employment with Respondent when he was using a come-along with both arms to open a rail car and "something gave" causing him to slip on a wet floor and fall on his left arm, shoulder and left knee.

With respect to issue (F), Is Petitioner's Current Condition of Ill-Being Causally Related to the Injury, the Arbitrator finds as follows:

The Arbitrator finds that, as a result of the accident on July 11, 2013, Petitioner sustained an injury to his left and right shoulder and that he sustained a temporary aggravation of his low back.

Respondent's Section 12 examiner, Dr. Cohen, agrees with Dr. Li that a causal relationship exists between the accident sustained and Petitioner's left shoulder condition which required surgery on July 31, 2013 and August 19, 2013. With respect to his lumbar condition, the Arbitrator relies on Dr. Li's records and finds that Petitioner sustained a temporary aggravation of his pre-existing degenerative lumbar disc disease as a result of the aforementioned accident.

Regarding the right shoulder, the Arbitrator relies on Dr. Li's September 3, 2014 narrative report, the treating physical therapy records, and Petitioner's testimony and finds that Petitioner aggravated his right shoulder condition during the July 11th accident while he was pulling on the come-along and "something gave." In his narrative report, Dr. Li stated that during the accident, Petitioner's left shoulder was more severely injured than his right shoulder and was more painful. Dr. Li stated that Petitioner's right shoulder injuries consisting of labral tears and a biceps tendon tear produced less symptoms than his left shoulder rotator cuff tear and that his right shoulder symptoms manifested when Petitioner began to resume more normal activities. The Arbitrator finds it reasonable to conclude, as Dr. Li and the physical therapy records demonstrate, then when Petitioner was rehabilitating his left shoulder, he was using his right arm more and began to develop more pain and symptoms in his right shoulder.

The Arbitrator notes that, although Petitioner had some ongoing pain in his right shoulder since his Bristow procedure in 1983, it was intermittent and he did not seek medical care until after the July 11, 2013 accident. After the accident, Petitioner was sedentary and his right shoulder symptoms did not manifest until he became more progressively physically active in rehabilitation for his left shoulder. The Arbitrator notes that Petitioner did not begin lifting one pound free weights with both arms until October 2013. Petitioner voiced complaints to the therapist by November 8, 2013 as the level of weights and activity increased. The Arbitrator finds it significant that Petitioner did not have any other injury or insult to his right shoulder after his July 11, 2013 work accident. The Arbitrator also finds compelling Dr. Li's March 31, 2014 notation that Petitioner's previous Bristow procedure was extra-articular and not related to Petitioner's current biceps and labral pathology.

With respect to 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, the Arbitrator finds as follows:

Having found that Petitioner's right and left shoulder conditions requiring surgery and Petitioner's low back condition is causally related to Petitioner's work accident, the Arbitrator orders Respondent to pay the following reasonable and necessary medical bills under the fee schedule:

Orthopedic and Shoulder Center	\$47,271.40
Ireland Grove Surgery Center	\$27,603.00
Ambulatory Anesthesia	\$358.20
Prescription Partners	\$4,656.51.

Respondent shall be given a credit of \$1,332.80 for 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.

With respect to issue (K), What Temporary Total Disability Benefits Are In Dispute, the Arbitrator finds as follows:

The parties stipulated and the Arbitrator finds that Petitioner was temporarily totally disabled and temporarily partially disabled from his left shoulder condition through February 7, 2014. The parties further stipulated, and the Arbitrator finds that all temporary total disability benefits and temporary partial disability benefits for that period of time have been paid.

Petitioner underwent right shoulder surgery on April 1, 2014. Dr. Li released Petitioner to return to work full duty on August 18, 2014. Having found the requisite causal relationship, the Arbitrator therefore awards additional temporary total disability benefits for 19-6/7 weeks, from April 1, 2014 through August 17, 2014.

With respect to issue (L), What is the Nature and Extent of the Injury, the Arbitrator finds as follows:

Pursuant to Section 8.1(b) of the Act, the Arbitrator, in determining the level of permanent partial disability, must use 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 the injury;
- iv. The employee's future earning capacity; and
- v. Evidence of disability corroborated by the medical records.

16IWCC0003

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

The Level of impairment reported by Dr. Fletcher pursuant to the American Medical Association's Guide to the Evaluation of Permanent Impairment, 6th Edition, is 0% for the lumbosacral strain; 5% for the right shoulder; and 4% for the left shoulder.

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

Petitioner's occupation has been as a facility manager for Respondent, a fertilizer plant, for 26 years. Petitioner's work included some climbing, lifting, and heavy work activities. Petitioner testified that, although he was released to full duties by Dr. Li, he and his employer had made modifications for his work and he no longer climbs or unloads railroad cars since his accident.

With regard to (iii.) the age of employee at the time of the injury:

Petitioner was 55 years old as of the date of loss and had over 10 years to work before retirement age.

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

Petitioner's future earning capacity, at the present time, appears to be undiminished as a result of the injuries.

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

Petitioner has demonstrated evidence of disability corroborated by his treating medical records. Petitioner has credibly testified that he experiences a pain and pinching sensation in his left shoulder when he lifts above shoulder height or behind himself. The Arbitrator finds it credible that Petitioner has less strength in his left shoulder than he had before the accident as this is consistent with a left rotator cuff repair, subacromial decompression and extensive debridement of anterior, superior, and posterior Type I labral tears requiring two surgeries. The Arbitrator notes the January 3, 2014 physical therapy notation that Petitioner had weakness in his left shoulder doing yard work, hobbies and work, and that he had mild weakness in the left shoulder on abduction and external rotation with a 4+/5 shoulder strength. Petitioner's complaints are consistent with Dr. Cohen's report of July 9, 2014 when Petitioner informed Dr. Cohen of pain in his left shoulder and weakness with overhead activities and Dr. Fletcher's AMA impairment examination on December 3, 2014.

As it relates to the lumbosacral pain, Petitioner testified that after physical therapy through Dr. Li's office, he resumed his pre-injury baseline pain.

As it relates to the right shoulder, Petitioner credibly testified that his right shoulder was weaker than his left shoulder and that it was not at full capacity. Petitioner testified that he gets a clicking in his right shoulder and that it is often stiff. Petitioner's testimony is consistent with the therapist's August 13, 2014 note which stated that Petitioner has occasional reports of "impingement" type symptoms with overhead work, a slight restriction in range of motion, and 4+/5 strength in the right arm and shoulder. Petitioner's testimony is consistent with Dr. Li's September 10, 2014 record stating that he was tolerating work but that some duties temporarily aggravate his right shoulder and with Dr. Fletcher's December 3, 2014 AMA impairment report. The Arbitrator notes that Petitioner had a pre-existing right shoulder condition which produced some occasional discomfort prior to his work related accident.

After considering all five factors, the Arbitrator finds that as a result of the accident sustained, Petitioner is permanently disabled to the extent 12-1/2% under Section 8(d)2 of the Act for his left shoulder condition of ill-being; 10% man as a whole for his right shoulder condition of ill-being; and 0% permanency for the aggravation of Petitioner's pre-existing low back condition.

With respect to issue (O), Mileage, the Arbitrator finds as follows:

Petitioner lived and worked in Colfax, Illinois, a rural town 40 miles from Bloomington, Illinois. This necessitated that Petitioner travel 40 miles round trip to Bloomington to treat with his orthopedic surgeon, Dr. Li. Petitioner made a total of 99 trips at 40 miles a trip, or 3,960 miles, to treat with Dr. Li and to attend physical therapy post-accident. In 2014, the IRS allowed \$.56 per mile.

The Arbitrator therefore orders Respondent to reimburse Petitioner in the amount of \$2,217.60 for mileage.

16 IWCC0003

STATE OF ILLINOIS)
) SS.
COUNTY OF)
CHAMPAIGN)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Paul Lowther,
Petitioner,

vs.

NO. 14WC006442

Decatur Ambulance,
Respondent.

16 IWCC0005

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the parties herein and notice given, the Commission, after considering the issues of temporary total disability, causal connection, medical expenses, permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 2, 2015 is hereby affirmed and adopted.

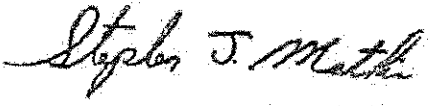
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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

16 IWCC0005

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$22,300.00. 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.

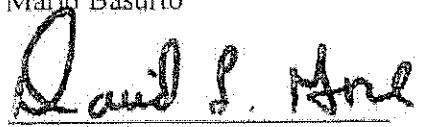
DATED: JAN 9 - 2015
SJM/sj
o-11/5/2015
44



Stephen J. Mathis



Mario Basurto



David L. Gore

STATE OF ILLINOIS

16 IWCC0005
JSS.

COUNTY OF CHAMPAIGN)

- 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**

PAUL LOWTHER

Employee/Petitioner

Case # 14 WC 6442

v.

Consolidated cases: _____

DECATUR AMBULANCE

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 Molly Dearing**, Arbitrator of the Commission, in the city of **Urbana**, on **January 30, 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. 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 _____

16IWCC0005

FINDINGS

On **December 10, 2013**, 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$25,361.14**; the average weekly wage was **\$575.20**.

On the date of accident, Petitioner was **52** years of age, *single* 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 **\$6,122.48** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$8,950.20** in non-occupational indemnity disability benefits.

Respondent is entitled to a credit for all **medical bills** 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.

ORDER

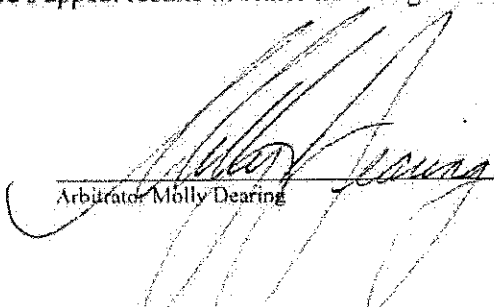
Respondent shall pay all reasonable and necessary medical services with dates of service through **March 13, 2014**, as provided in Sections 8(a) and 8.2 of the Act, and subject to the fee schedule. All medical bills for services rendered after **March 13, 2014** are denied as unrelated to Petitioner's work injury.

Respondent shall pay Petitioner temporary total disability benefits of **\$383.47/week** for **13** weeks, commencing **December 13, 2013** through **March 13, 2014**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **\$345.12/week** for **50** weeks, because the injuries sustained caused the **10%** loss of the person as a whole, as provided in Section 8(d)2 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.


Arbitrator Molly Dearing

March 31, 2015
Date

APR 2 - 2015

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISIONPAUL LOWTHER

Employee/Petitioner

v.

Case # 14 WC 6442

DECATUR AMBULANCE

Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

The parties stipulated that Petitioner sustained an injury that arose out and in the course of his employment with Respondent on December 10, 2013. Arb. X 1. At the time of his accident, Petitioner was fifty two years of age and he was employed by Respondent as a paramedic. He had been employed in a capacity as a paramedic for 30 years. Petitioner's job duties for Respondent included performing rig and equipment inspections, cleaning, and responding to emergency and non-emergency calls. In his capacity as a paramedic, Petitioner may be required to lift a patient from the basement of a house, from a 50-foot ravine in a car, or in a confined space in an industrial plant, and he testified that the physical demands of his position depended upon the situation of the call. Transporting patients required placing the patient on a stretcher weighing 60 pounds and the average size of a patient was approximately 250 pounds. Petitioner generally had a partner and a fireman present to assist him in responding to calls. At the time of his accident, Petitioner estimated he responded to eight to twelve calls per shift and worked 56 hours per week.

Petitioner denied any spinal difficulties at the time he began working for Respondent. He testified that over the course of the past ten years, he experienced intermittent, recurrent back pain four to five times per year as a result of both work and home activities. In those instances, he took over-the-counter medication and returned to his next work shift. Petitioner may have taken a sick or personal day to recuperate. Petitioner testified that on one or two occasions, when bringing a patient to the emergency department, he requested a muscle relaxant from the emergency room physician, which he accompanied with rest.

On May 24, 2013 Petitioner was working in a storage unit when he moved a tool box and had an onset of back pain. He presented to the emergency room at Decatur Memorial Hospital on June 1, 2013 and then to Dr. David Fletcher on June 26, 2013. Petitioner reported to Dr. Fletcher injuring his lumbar spine when he lifted a 60-pound tool box. Petitioner complained of a dull aching pain in his low back with intermittent stabbing pains and intermittent pain that radiated into his hips. Petitioner reported that standing, walking and medications help decrease his pain. Dr. Fletcher noted a past medical history of degenerative disc disease and disc herniation, as well as diabetes, heart disease, and obesity. Dr. Fletcher ordered an x-ray of Petitioner's pelvis and hips to rule out degenerative joint disease of the hips, which were interpreted as normal. Dr. Fletcher ordered a CT myelogram of Petitioner's lumbar spine. He referred Petitioner to Dr. Huss for a hip examination and to Dr. Trudeau for lower extremity nerve studies. Dr. Fletcher removed him from work and noted that "I question his ability to do paramedic work; I would suggest he consider

applying for SSDI." PX 2. Petitioner testified that he was advised by Dr. Fletcher to consider applying for Social Security Disability benefits following the May 24, 2013 incident, but denied that Dr. Fletcher advised him he was unable to return to work as a paramedic. He followed Dr. Fletcher's recommendation and applied for Social Security Disability sometime between May 2013 and October 2013 even though he was only temporarily disabled and had reason to believe he would improve. Petitioner testified that at the time he applied, he was uncertain whether he would return to work. He acknowledged that the May 24, 2013 incident was not work related.

Petitioner underwent a lumbar myelogram and CT scan on July 5, 2013. The myelogram revealed moderate anterior epidural defects at L2-3 and L3-4 due to predominant osteophyte formation, some degree of narrowing of the thecal sac at L2-3 and L3-4, and some degree of central spinal stenosis at the mid lumbar level. The post-myelogram CT performed the same day showed the lumbar vertebrae to be normally aligned without fracture, deformity, or lesion, a mild disc bulge at L1-2, a moderately large disc/osteophyte complex posteriorly causing a moderate to severe central spinal stenosis at L2-3, marked narrowing of disc space and moderate disc/osteophyte complex posteriorly causing moderate central spinal stenosis at L3-4, marked narrowing of the disc space and small disc/osteophyte complex posteriorly causing at L4-5 and L5-S1, and no definite disc herniations or foraminal stenosis. PX 3.

Petitioner presented to Dr. Edward Trudeau on July 8, 2013 and complained of bilateral low back pain and intermittent pain that radiated into his hips. Electrodiagnostic studies revealed bilateral L3 radiculopathies, left greater than right in electroneurophysiologic testing, and no evidence of other radiculopathy. Dr. Trudeau opined that Petitioner may desire to consider further conservative modalities of treatment, such as physical therapy, stretches, or medication, or more aggressive measures, including injections or an evaluation with a spinal specialist for the possibility of a decompressive surgical procedure. PX 2.

Petitioner presented to Dr. Timothy VanFleet on July 10, 2013. Petitioner reported low back pain and pain radiating to his buttocks and posterior thighs bilaterally. Dr. VanFleet noted bilateral leg weakness, muscle spasms in his legs, but no numbness or weakness of the legs or feet. Upon examination, Dr. VanFleet noted symmetric strength, reflexes and sensation, and no evidence of any tension signs. Dr. VanFleet diagnosed Petitioner with lower back pain and lumbar canal stenosis. Dr. VanFleet opined that Petitioner was symptomatic due to his underlying spinal stenosis. He ordered Petitioner undergo an epidural injection and he removed Petitioner from work. On July 16, 2013, Petitioner underwent left L5 and right L3 transforaminal epidural steroid injections with Dr. Paul Smucker. PX 2.

Petitioner returned to see Dr. Fletcher on July 24, 2013. Petitioner complained of weakness in his legs and a dull pain in his bilateral hips. He reported undergoing an epidural steroid injection that was successful in relieving his pain. Dr. Fletcher received an incident report from Petitioner dated July 8, 2013, wherein Petitioner stated that, "Throughout the past several years I have had episodes of low back pain from work, which were resolved with ICE and Advil for 2-3 days, and also sometimes with a muscle relaxer at home. On 5/24/2013 I was lifting a box of tools when the sharp pain in my back, came back. The latest episode could not be resolved and I was given pain RX and sent home and followed up with my primary M.D., Hima Athuri on 6/4/2013...I was referred to a DR. Trudeau that based on the results of the Myelogram and current condition of my back was a direct result of my job, of being a Paramedic, lifting and twisting, going up and down stairs, carrying Patients, some being very heavy for several years...I have been advised by my

doctors to file for workman's comp benefits." PX 3, RX 12. Dr. Fletcher continued Petitioner's off-work status, and noted that Petitioner had presented a convincing history that his present condition was work related and an aggravation of his pre-existing condition. PX 3, RX 12.

Petitioner presented to Dr. Stephen Huss on August 6, 2013. Petitioner completed a questionnaire dated August 2, 2013 in which he stated that he was seeing Dr. Huss for an injury to both hips that had been reported to workers' compensation, but was denied. Petitioner also completed a pain diagram, wherein Petitioner noted complaints with respect to his low back and lateral buttocks, bilaterally. His chief complaint on August 6, 2013 was a complex of pain involving his back and hips including lateral hips and occasionally descending down to his knees. Dr. Huss injected the right greater trochanteric region and trochanteric bursa with Depomedrol. He diagnosed a lumbosacral strain with spinal stenosis and radicular pain from spine to knees. RX 12.

Petitioner returned to Dr. VanFleet on August 21, 2013 and reported feeling much better following a left L5 and right L3 epidural steroid injection, though he continued to have low back pain after sitting for long periods of time. Dr. VanFleet ordered physical therapy for core muscle conditioning and noted that Petitioner would likely return to work in three to four weeks. PX 2.

On September 25, 2013, Petitioner returned to Dr. VanFleet, at which time Petitioner noted some back pain with improved leg pain. A physical examination demonstrated no evidence of any tension signs, no leg or foot numbness, but continued bilateral leg weakness. Petitioner felt additional therapy would help with his leg weakness. Dr. VanFleet ordered four additional weeks of physical therapy and noted that he anticipated a release thereafter. PX 2.

On October 25, 2013, Petitioner followed-up with Dr. VanFleet after having completed physical therapy, and Petitioner reported feeling well and wanted to return to work. Dr. VanFleet noted that Petitioner was doing well and allowed Petitioner to return to work without restrictions the following day. Petitioner was discharged from Dr. VanFleet's care at that time. Dr. VanFleet ordered additional physical therapy of twice a week for two weeks. PX 2. Petitioner testified he did not undergo the additional two weeks of physical therapy because he was feeling well and that he notified Dr. VanFleet of same. Petitioner testified that at the time of his release to return to work, he felt fine, was without pain, and was able to perform his job. Petitioner returned to working 56-hours per week, and he denied taking any sort of medication, pain relievers, or muscle relaxers at that time.

A physical therapy note from St. John's Hospital Rehabilitation of November 11, 2013 documents a telephone call with Petitioner on that date. Petitioner reported 0/10 pain, good functionality following a return to work full duty, and that he had not attended any therapy visits after October 21, 2013. PX 2.

On December 10, 2013, Petitioner responded to a call at work in which a 300-pound patient had fractured his ankle. Petitioner and his partner lifted the patient from the ground to the gurney when Petitioner's feet slipped out from underneath him and he fell on his buttocks. Petitioner testified he felt immediate pain across his low back, though they were able to move the patient onto the stretcher and transport him to the hospital. Petitioner completed his shift. Thereafter, he rested, applied heat to his back, and took Skelaxin on his following two days off.

objective basis." He opined that Petitioner's work injury aggravated his extensive underlying degeneration and his symptoms had persisted despite conservative care. Dr. Butler noted that Petitioner had exhausted conservative measures for his lumbar condition, and both surgical and nonsurgical options were presented to Petitioner for consideration. Dr. Butler recommended surgical treatment by virtue of a multi-level decompressive laminectomy and spinal fusion from L2 to S1, and Petitioner elected to proceed with surgical treatment. PX 4.

Thereafter, Petitioner returned to Dr. Fletcher on a periodic basis without significant change. Dr. Fletcher continued to excuse Petitioner from work through January 9, 2015. PX 4, 5.

Petitioner testified that he elected not to proceed with Dr. Butler's recommendation of surgical intervention because of the extensiveness of the surgery, his multiple medical problems of diabetes and heart difficulties, and the lack of lumbar mobility the surgery may pose. Petitioner testified that his condition has worsened since the accident and is more severe than it was following the May 24, 2013 incident. He continues to have pain across his lower back and down the lateral sides of both hips. Petitioner testified that his pain oftentimes goes down the back of one leg down into his knee and sometimes into both knees. Petitioner testified that he currently experiences increasing pain towards his mid-thoracic level in his back. He is unable to sit for extended periods of time without pain and he has a limited ability to stand. Petitioner cannot walk extended distances before stopping and he has increased weakness in his legs. Petitioner takes Norco and generic Flexeril four to five days per week, and Tylenol or Advil on other days to avoid narcotic prescription addiction.

Dr. David Fletcher testified by way of evidence deposition on June 19, 2014. Dr. Fletcher is board certified in occupational medicine. Dr. Fletcher testified that he initially treated Petitioner in July 2013 following a non-work related lifting incident with complaints of significant back pain without radicular type pain. At that time, Petitioner related to Dr. Fletcher that his back pain was simply one of many instances of back pain he had while working as a paramedic. Dr. Fletcher indicated that Petitioner provided to him a history of a cumulative trauma origin of his condition at due to the nature of his job duties. Dr. Fletcher opined that Petitioner's job duties as a paramedic over the course of 30 years of bending, lifting, twisting and oftentimes lifting heavy patients would be a causative factor in the development of Petitioner's degenerative lumbar spinal condition. Dr. Fletcher was of the opinion at that time that Petitioner was incapable of returning to work as a paramedic based upon his pre-existing condition. Dr. Fletcher recommended that Petitioner not return to work as a paramedic, consider himself disabled, and apply for disability. PX 1.

Dr. Fletcher testified that following Petitioner's work accident of December 10, 2013, he referred Petitioner to Dr. Jesse Butler, as Petitioner did not wish to return to see Dr. VanFleet because Dr. VanFleet did not operate on him following his injury in May 2013. Dr. Fletcher testified that Dr. Butler recommended a multi-level lumbar fusion from L2 through S1 due to the extensive amount of degenerative disc disease and disc collapse. Dr. Fletcher opined that said procedure was reasonable and necessary in Petitioner's care and treatment given Petitioner's clinical presentation "and the fact that he is no going to get much better to be able to increase his functional activities unless the degenerative disc disease is dealt with..." Dr. Fletcher opined that Petitioner should not return to work as a paramedic even if he were to undergo surgery. Without undergoing surgery, Dr. Fletcher opined that Petitioner could not perform the job tasks of a paramedic because "to put him back as a paramedic at the current time would be like a ticking time bomb because of the amount of degenerative disc disease... It would be, in my opinion, a disaster to return him back

to work at the present time." Dr. Fletcher explained that Petitioner returning to his paramedic position places him at risk for reinjuring himself that could further incapacitate him. Dr. Fletcher opined that the work accident of December 10, 2013 was sufficient to aggravate his pre-existing condition so as to cause it become symptomatic and require treatment. Dr. Fletcher explained that his causation opinion was premised upon a lack of Petitioner having radicular symptoms prior to the work accident and Petitioner's improvement following his period of disability in 2013. He acknowledged that Petitioner reported pain on both sides of his lumbar spine into his buttocks and radiating distally down to at least his knees while undergoing treatment with Dr. Huss and that Dr. Trudeau assessed a L3 radiculopathy following EMG/NCV studies. Dr. Fletcher commented that he had "never been showed these before" when presented with medical records on cross examination. Dr. Fletcher testified that Petitioner suffered a progression in his lumbar pathology at L3-4, though he stated that the different magnets between the MRI and myelogram renders preciseness difficult, and Petitioner's large size compromised the clarity of the testing. He testified that Petitioner's history of smoking could compromise Petitioner's spine condition as smoking decreases the blood supply to discs causing them to degenerate faster than the normal aging process. Dr. Fletcher denied any indications of symptom magnification during his treatment of Petitioner. PX 1.

Petitioner underwent an examination with Dr. Morris Soriano on March 5, 2014 pursuant to Section 12 of the Act. After performing a physical examination of Petitioner, reviewing his medical records and diagnostic studies, and taking a history of accident and illness from Petitioner, Dr. Soriano diagnosed Petitioner with a lumbar strain as a result of his December 10, 2013 work accident. He opined that Petitioner's ongoing subjective complaints have no relationship to any objective findings on physical examination or any relationship to his long-standing multi-level degenerative disc disease in his lumbar spine. Dr. Soriano explained that he found three Waddell's signs upon examination consistent with symptom exaggeration and functional illness. He stated that Dr. Butler's recommendation to fuse L1 through S1 has no relationship to his work lifting injury, as he opined it was improbable that a single lifting injury aggravated five levels of the lumbar spine, the radiological studies do not evidence any acute aggravation of the lumbar spine, and "I know of no standard of care that would recommend complete spinal reconstruction for multi-level degenerative disc disease." Dr. Soriano further opined that Petitioner requires no further treatment for his work injury and that he reached maximum medical improvement from his lumbar strain. He testified that Petitioner could have returned to work from his lumbar strain within four weeks of his work accident, and that he has not suffered any disability pursuant to the AMA Guidelines, 6th Edition resultant from his work injury. RX 1.

Following his review of Petitioner's MRI of February 4, 2014, Dr. Soriano issued an addendum report and stated that he found no change between Petitioner's June 12, 2013 MRI and that of February 4, 2014. He opined that Petitioner's lumbar pathology at L1-2 and L2-3 were all present prior to the accident and were not aggravated by the single lifting indicant of December 10, 2013. His opinions remained unchanged from his report of March 13, 2014. RX 2.

Dr. Soriano testified by way of evidence deposition on October 2, 2014. Dr. Soriano is board certified in neurosurgery, and he is a fellow in the American Academy of Disability Evaluating Physicians. Dr. Soriano testified that, in formulating his opinions, he understood that Petitioner's condition plateaued and he returned to work from October 25, 2013 until December 10, 2013. Dr. Soriano noted that Petitioner's MRI of February 4, 2014 revealed that Petitioner's bones were virtually fused to themselves between L3 and S1 due to osteophyte complexes and because the discs

themselves were so collapsed "the bones are almost basically kissing each other." Dr. Soriano did not feel that the essential bone fusion in Petitioner's lumbar spine was caused or aggravated by his work accident, and he testified that he believes the collapsed disc spaces are sufficient to prevent pain emanating from the degenerative spine. Dr. Soriano opined that because Petitioner's bones are fused with bridging osteophytes, it is not possible, absent fractures of the osteophytes or evidence of spinal instability, for Petitioner to have aggravated his low back condition beyond a temporary aggravation of a facet. He explained that "[i]t would be hard to aggravate a spinal segment where it's already fused to itself from a fall on your buttocks." Dr. Soriano testified that he is familiar with the physical demands of a paramedic as a paramedic/EMT instructor. Dr. Soriano opined that fusing Petitioner from L1 to S1 would have rendered Petitioner totally disabled because he would not be able to bend, twist or turn. Dr. Soriano testified that Petitioner's continued complaints of pain and symptoms into his leg are resultant from nonorganic sources. He stated that, "I think this is a gentleman, as I said, that every quickly applied for Social Security disability, very quickly was off of work, is involved in a worker's compensation medicolegal claim. I think that there is a lot of signs of secondary gain here that might be a good explanation as to why the pain has not been temporary." RX 3.

CONCLUSIONS OF LAW

In regard to disputed issue (F), the Arbitrator finds that Petitioner has failed to prove by a preponderance of the credible evidence that his current condition of ill-being is causally related to his work accident. In so concluding, the Arbitrator finds probative Petitioner's treating record from Springfield Clinic of December 12, 2013, two days after his work accident, wherein Petitioner did not report any work injury or any low back complaints. While his appointment on that date was a follow-up visit regarding his type 2 diabetes mellitus, Petitioner apparently thought it significant to report to the physician that he had received his pneumococcal vaccine in November 2012, but did not report any work accident or low back complaints. The Arbitrator notes that Petitioner was reportedly in a "good mood" on that date and the physical examination did not reveal any lumbar symptomatology, which contradicts Petitioner's testimony regarding his condition in the two days following his work accident. If Petitioner had severe pain the morning following his work accident as he reported to Dr. Butler (PX 4), if Petitioner's pain level was indeed a seven out of ten when he reported to St. Mary's Occupational Health Services on December 13, 2013 (PX 3, RX 5), and if Petitioner's pain had remained constant since his work accident as he reported to Dr. Fletcher (RX 5), then it is reasonable to presume that Petitioner would have reported his complaints and/or his work accident while seeing his physician on December 12, 2013. The Arbitrator finds the absence of any such reports from Petitioner on that date demonstrates a lack of any causal relationship between his work accident and his current condition of ill-being.

The Arbitrator also finds the striking similarity of Petitioner's complaints before and after his work injury indicative of a lack of a causal connection between the work accident and his current condition of ill-being. Prior to the accident, Petitioner reported to Dr. VanFleet sharp low back pain that radiated into his buttocks bilaterally and his left and right posterior thighs, as well as spasms and weakness in his lower extremities. His pain was exacerbated by sitting and bending (PX 2), but Petitioner testified that his symptoms also manifested in the absence of any activity. Following his work accident, Petitioner reported complaints of spasms in his right leg, bilateral hip pain, and low back pain worsened by sitting and improved with walking, standing and lying flat. PX 3, RX 11. Essentially, Petitioner's current complaints of low back pain, bilateral hip pain, and lower extremity spasms remain unchanged following his accident when compared with those before December 10,

2013, as does the mechanism that primarily incites those symptoms, namely sitting. The lack of any change in symptomatology undermines the suggestion of a causal relationship between his current complaints his work accident, and instead, suggests his degenerative lumbar condition to be the sole cause of his pre-accident and present condition.

In concluding that Petitioner has failed to prove that his current condition of ill-being is causally related to his work accident, the Arbitrator finds the opinions of Dr. Soriano more persuasive than those of Dr. Fletcher. The Arbitrator notes that Dr. Soriano's opinions are well-informed in that he reviewed Petitioner's pre-accident and post-accident medical records and diagnostic studies when formulating his opinions, whereas it is unclear what Dr. Fletcher had reviewed, as he commented that "I've never been showed [sic] those before" when presented with records on cross examination. PX 1. The Arbitrator also notes Dr. Soriano's credentials and qualifications in comparison to that of Dr. Fletcher. Dr. Soriano is board certified in neurosurgery, treats conditions similar to that of Petitioner's, and regularly performs spinal surgical procedures (RX 3), whereas Dr. Fletcher practices occupational medicine and refers patients to spine surgeons for treatment. PX 1. The Arbitrator finds this distinction significant in this case, given the issue concerning the etiology of Petitioner's current lumbar condition, the nature of Petitioner's condition, and the extensive surgical treatment recommended by Dr. Butler, all of which the Arbitrator finds more properly postured to a neurosurgeon such as Dr. Soriano. The Arbitrator notes that Petitioner did not present any opinions from his treating spine surgeon, Dr. Butler. The Arbitrator also notes Dr. Soriano's experience with the position of a paramedic as an EMT/paramedic instructor (RX 1), whereas Dr. Fletcher's familiarity appears to be gleaned from the physical demands classification of a paramedic by the U.S. Dictionary of Occupational Titles (See PX 1), which goes to the weight of each physician's respective opinions regarding Petitioner's capability of working in that capacity and lends authority to Dr. Soriano's opinions that Petitioner is able to resume work as a paramedic without restrictions.

Further, the Arbitrator finds Dr. Fletcher's opinions unpersuasive in that his opinions are not well-founded in the record. Dr. Fletcher testified that his causation opinion was based upon Petitioner's improvement from his lifting injury on May 24, 2013 following a period of disability and his lack of radicular symptoms prior to the work accident of December 10, 2013. Dr. Fletcher originally believed that Petitioner had returned to work in August or September 2013 following his May 24, 2013 lifting incident, though the record reveals that Petitioner was not released to return to work without restrictions by Dr. VanFleet until October 25, 2013. PX 2. As such, in formulating his opinions, Dr. Fletcher was under the impression that Petitioner was disabled following his May 24, 2013 accident for a shorter time period prior to his work accident than what he actually was. Moreover, the Arbitrator finds that the record is replete with references to Petitioner's radicular symptomatology prior to his work accident, which contradicts a basis of Dr. Fletcher's causation opinion. Petitioner reported pain and weakness in his lower extremities to Dr. VanFleet (PX 2), and pain on both sides of his lumbar spine into his buttocks and radiating down to his knees while undergoing treatment with Dr. Huss. RX 12. Dr. Trudeau assessed a L3 radiculopathy following Petitioner's electrodiagnostic studies of July 8, 2013, and Dr. Fletcher's own records reflect that Petitioner complained of intermittent low back pain that radiated into his hips and weakness in his lower extremities. PX 2, 3. The Arbitrator finds that the evidence in the record undermines Dr. Fletcher's causation opinion, and the Arbitrator accordingly does not afford those opinions evidentiary weight.

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The Arbitrator is further disinclined to afford the opinions of Dr. Fletcher weight in light of the totality of his opinions in the record. On June 26, 2013, only one month after Petitioner's May 24, 2013 lifting incident, Dr. Fletcher questioned Petitioner's "ability to do paramedic work; I would suggest he consider applying for SSDI." PX 2. The Arbitrator notes that Dr. Fletcher opined that Petitioner was permanently unable to return to work both before and after the work accident, and he additionally opined that following the work accident, Petitioner was unable to return to his former employment with or without surgical intervention. PX 1, 3, 4, 5. Dr. Fletcher proffered causation opinions in this case based upon an acute trauma theory and a cumulative trauma one, as he opined that Petitioner's current lumbar condition was both aggravated by his work accident of December 10, 2013 and by his general work duties as a paramedic for 30 years. Dr. Fletcher also opined that Petitioner's condition following his May 24, 2013 lifting incident was work related as an aggravation of his pre-existing condition (PX 3, RX 12), which the Arbitrator finds suspect given that Petitioner acknowledged that the May 24, 2013 incident was not work related in any way. The Arbitrator finds that, based upon the foregoing, Dr. Fletcher hastily opines Petitioner to be permanently and totally disabled from his position as a paramedic, and he appears to find Petitioner's incidents are work related irrespective of the facts or circumstances.

Lastly, the Arbitrator echoes the concerns of Dr. Soriano regarding the etiology of Petitioner's ongoing complaints and his motives in pursuing his present worker's compensation claim. The Arbitrator notes Petitioner's attempts at obtaining Social Security Disability very shortly after both his May 24, 2013 and December 10, 2013 incidents despite his acknowledgement that his disability was temporary and that he had reason to believe he would improve following the former injury, as well as his attempt at developing his condition following the May 24, 2013 incident, which he testified was unrelated to his employment, into a cumulative trauma worker's compensation claim. See PX 3, RX 12. This evidence suggests that Petitioner seeks to be deemed disabled by whatever means available, which goes to the reliability of his testimony.

Based on the foregoing and the record in its entirety, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the credible evidence that his current condition of ill-being is causally related to his work accident of December 10, 2013.

In regard to disputed issue (J), consistent with the opinions of Dr. Soriano and the Arbitrator's foregoing conclusions, the Arbitrator finds that Respondent is liable for medical bills incurred in Petitioner's care and treatment up to and including March 13, 2014, the date of Dr. Soriano's report in which he opined that Petitioner required no further treatment relative to his work injury and was at maximum medical improvement. RX 1. Petitioner's treatment from the date of accident to March 13, 2014 was reasonable and necessary to treat his lumbar strain resultant from his work accident of December 10, 2013. Respondent shall pay all reasonable and necessary medical services with dates of service through March 13, 2014, as provided in Sections 8(a) and 8.2 of the Act, and subject to the fee schedule. All medical bills for services rendered after March 13, 2014 are denied as unrelated to Petitioner's work injury. Respondent shall be given credit for all medical bills 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.

In regard to disputed issue (K), Petitioner seeks temporary total disability benefits from December 13, 2013 through the present Arbitration hearing (Arb. X 1) in which Dr. Fletcher removed Petitioner from work following his work accident. PX 3, 4, 5. Consistent with the

opinions of Dr. Soriano and the Arbitrator's foregoing conclusions, Respondent shall pay Petitioner temporary total disability benefits for a period of 13 weeks, commencing December 13, 2013 through March 13, 2014, at which time Dr. Soriano opined Petitioner could have returned to work within four weeks of the work accident and that Petitioner was at maximum medical improvement for the lumbar strain resultant from his work accident of December 10, 2013. RX 1. All temporary total disability benefits for time periods thereafter are denied. Respondent shall be given a credit in the amount of \$6,122.48 for temporary total disability benefits that has been paid, and a credit in the amount of \$8,950.20 for nonoccupational indemnity disability benefits that has been paid, as stipulated by the parties.

In regard to disputed issue (L) and consistent with 820 ILCS 305/8.1b, permanent partial disability shall be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1b of the Act; (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. 820 ILCS 305/8.1b. No single enumerated factor shall be the sole determinant of disability. *Id.*

With regard to subsection (i) of 8.1b(b), the Arbitrator notes that Dr. Soriano was requested by Respondent to perform an impairment rating pursuant to the AMA Guides Sixth Edition, and he opined that "[o]n an objective radiological and physical exam basis, I do not believe he has sustained any permanent *disability* as a result of his employment, according to the 6th Edition of the AMA Guides." RX 1 (emphasis added). The Arbitrator recognizes that permanent partial disability and impairment as defined by the AMA Guides Sixth Edition are not the same, and the Arbitrator makes note of this distinction when assessing the weight given to Dr. Soriano's findings and in determining the permanency award. Because it is unclear as to whether Dr. Soriano appropriately applied the AMA Guides in formulating his opinion, the Arbitrator gives no weight to this factor.

With regard to subsection (ii) of 8.1b(b), Petitioner was employed by Respondent as a paramedic at the time of his accident, but he has not yet returned to his prior position. Dr. Fletcher testified that a paramedic is classified as a heavy demand position in the U.S. Dictionary of Occupational Titles (PX 1), and Petitioner testified that he transported patients weighing on average 250 pounds on stretchers that weigh 60 pounds. He further testified that he may be required to lift a patient from the basement of a house, from a 50-foot ravine in a car, or in a confined space in an industrial plant. Dr. Soriano, an EMT/paramedic instructor, opined that Petitioner can return to his position as a paramedic without restriction. The Arbitrator concludes that the heavy physical demands of Petitioner's position as a paramedic significantly affect his permanent partial disability, and the Arbitrator places great weight on this factor.

With regard to subsection (iii) of 8.1b(b), Petitioner was fifty two years of age at the time of the accident. Arb. X 1. There was no evidence presented at Arbitration as to how his age has affected any permanent partial disability, and as such, the Arbitrator gives no weight to this factor.

With regard to subsection (iv) of 8.1b(b) and in accordance with the opinions of Dr. Soriano, Petitioner can return to his position as a paramedic without restrictions, and as such, the Arbitrator concludes that Petitioner's work accident has not impaired his future earning capacity. The Arbitrator places some weight on this factor.

16 IWCC0005

With regard to subsection (v) of §8.1b(b), as a result of his work accident, Petitioner sustained a lumbar strain that was treated conservatively with pain medications and physical therapy. Petitioner testified that he continues to have pain in his low back and bilateral hips worsened with sitting. He has pain across his lower back and down the lateral sides of both hips that oftentimes radiates into the back of one leg down into his knee or both knees. Petitioner testified that he also currently experiences pain towards his mid-thoracic level. He is unable to sit or stand for extended periods of time without pain, and he has difficulty with walking distances. On February 14, 2014, Petitioner reported to Dr. Butler suffering continued low back pain, and persistent radiation of pain to the anterior thigh and knee on the right, and Petitioner reported to Dr. Fletcher low back pain, right leg symptoms, and soreness in his low back and hips bilaterally. The Arbitrator finds that Petitioner's complaints following his work accident are corroborated by his treating records, and the Arbitrator places great weight on this factor.

The Arbitrator notes that the determination of permanent partial disability benefits is not simply a calculation, but an evaluation of all the factors as stated in the Act in which consideration is not given to any single factor as the sole determinant. Based on the above factors, and the record in its entirety, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 10% loss of use of his person as a whole, pursuant to Section 8(d)2 of the Act.

14 WC 16708

Page 1

STATE OF ILLINOIS)

) SS.

COUNTY OF SANGAMON)

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RONDA YOUNG,

Petitioner,

16 IWCC0013

vs.

NO: 14 WC 16708

STATE OF ILLINOIS, DEPARTMENT OF
HEALTH AND FAMILY SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, casual connection, medical expenses, temporary total disability, and nature and extent, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

On page four, paragraph five, sentence two, the Commission strikes the Arbitrator's statement with regard to the AMA impairment rating from: "Dr. Li did not state in either the report or his deposition testimony whether the AMA impairment rating was in regard to the right upper extremity or to the whole person." The Commission replaces this with "Dr. Li's Upper Extremity Impairment Evaluation of August 11, 2014 reflects that Petitioner's AMA impairment rating was 1% entrapment of the right upper extremity or 1% of the whole person." On page four, paragraph five, sentence three, the Commission corrects "minimal" to "moderate."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 20, 2015, as clarified herein, is hereby affirmed and adopted.

16IWCC0013

14 WC 16708

Page 2

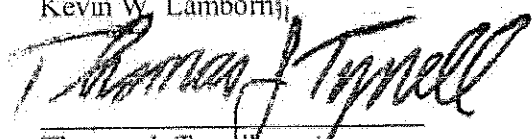
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.


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

DATED:
KWL/kmt
11/09/15
42

JAN 6 - 2016


Kevin W. Lamborn


Thomas J. Tyrrell


Michael J. Brennan

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

16 IWCC0013

Ronda Young
Employee/Petitioner

Case # 14 WC 16708

v.

Consolidated cases: n/a

State of Illinois Department of Health and Family Services
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 February 25, 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. 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 _____

16IWCC0013

FINDINGS

On June 14, 2013, 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 \$55,826.76; the average weekly wage was \$1,073.59.

On the date of accident, Petitioner was 39 years of age, married with 0 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 \$4,459.53 under Section 8(j) of the Act.

ORDER

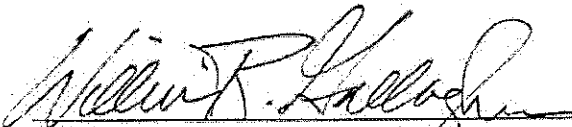
Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 3, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of \$4,459.53 for medical benefits that have been paid, and Respondent shall hold Petitioner 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.

Respondent shall pay Petitioner temporary total disability benefits of \$715.73 per week for six weeks commencing December 17, 2013, through January 27, 2014, as provided in Section 8(b) of the Act.

~~Respondent shall pay Petitioner permanent partial disability benefits of \$644.15 per week for 23.75 weeks because the injuries sustained caused the 12 1/2% loss of use 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.


William R. Gallagher, Arbitrator
ICArbDec p. 2

April 15, 2015
Date

APR 20 2015

Petitioner filed an Application for Adjustment of Claim which alleged she sustained a repetitive trauma injury arising out of and in the course of her employment for Respondent. The Application alleged a date of accident (manifestation) of June 17, 2013, and that Petitioner sustained repetitive trauma to her right hand (Arbitrator's Exhibit 2). Respondent disputed liability on the basis of accident and causal relationship.

Petitioner began working as a caseworker for Respondent in January, 2007. Petitioner testified that her job consisted primarily of processing applications which required her to input significant amounts of data in a computer. Petitioner worked seven and one-half hours per day and she stated that she was typing approximately 90% of the time. Even when Petitioner received telephone calls, she would many times type simultaneously. Petitioner is right hand dominant and she also used her right hand for operation of the computer mouse.

Petitioner stated that sometime around the end of 2012, or beginning of 2013, she began to experience symptoms of pain, numbness and tingling in her right hand. These symptoms were more intense when she was typing.

Petitioner initially sought medical treatment from Dr. Hima Atluri, her family physician, sometime in late 2012/early 2013 (Dr. Atluri's records were not tendered into evidence). Dr. Atluri referred Petitioner to Dr. Douglas Dove, a neurologist.

Dr. Dove initially saw Petitioner on March 15, 2013, and he performed an EMG/NCV of both upper extremities which were positive for right carpal tunnel syndrome. He also ordered various lab tests, most of which were normal. At that time, he prescribed a wrist splint. Dr. Dove again saw Petitioner on June 17, 2013 (the manifestation date alleged in the Application), but her hand symptoms had not improved. Dr. Dove recommended referral to a surgeon (Petitioner's Exhibit 2).

On June 20, 2013, Petitioner completed and signed a Workers' Compensation Employee's Notice of Injury form wherein she reported that she sustained a repetitive motion injury to her right hand and that she had symptoms of pain, numbness and tingling in the right hand, wrist, fingers and arm (Respondent's Exhibit 2). On that same day, Petitioner's supervisor, Sally Longest, completed a Supervisor's Report of Injury or Illness which stated that Petitioner reported that she sustained a repetitive motion injury with pain in the right wrist and hand (Petitioner's Exhibit 1; Deposition Exhibit 3).

On October 16, 2013, Petitioner was seen by Dr. Michael Neumeister, a plastic surgeon. At that time, Petitioner informed Dr. Neumeister that 90% of her job involved typing and she wanted to know if this significantly contributed to the development of carpal tunnel syndrome. Dr. Neumeister indicated in his record of that date that it was a possibility (Petitioner's Exhibit 1; Deposition Exhibit 2).

Dr. Neumeister performed surgery on December 17, 2013, and the procedure consisted of an open right carpal tunnel release. Petitioner recovered from the surgery and remained under Dr.

16 IWCC0013

Neumeister's care until he discharged her on February 13, 2014 (Petitioner's Exhibit 1; Deposition Exhibit 2).

At the direction of Respondent, Petitioner was examined by Dr. Lawrence Li, an orthopedic surgeon, on August 11, 2014. In connection with his examination of Petitioner, Dr. Li reviewed medical records provided to him by Respondent. He agreed that Petitioner's right carpal tunnel syndrome was properly diagnosed and treated; however, he opined that there was not a causal relationship between the condition and Petitioner's job duties of typing and filing. Dr. Li also opined that Petitioner had an AMA impairment rating of one percent (1%); however, it was not clear from the report whether the impairment was attributable to the right upper extremity or whole person (Respondent's Exhibit 1; Deposition Exhibit 2).

Dr. Li was deposed on December 8, 2014, and his deposition testimony was received into evidence at trial. Dr. Li's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. Dr. Li agreed that Petitioner had right carpal tunnel syndrome which was properly treated but he opined that the condition was not related to Petitioner's repetitive typing/keyboarding. Dr. Li testified that so long as there was not an ergonomic issue with Petitioner's workstation wherein she would have been required to maintain a wrist position of equal or greater than 40° of either extension or flexion, that the carpal tunnel syndrome was not related to typing/keyboarding (Respondent's Exhibit 1; pp 6-7, 10-11).

Dr. Li was cross-examined at length regarding his opinion as to causality. He agreed that he never saw Petitioner's workstation nor did he either perform or review an ergonomic study of it. Dr. Li opined that even if Petitioner's job required typing 100% of the time, that this, in and of itself, would not be causative of carpal tunnel syndrome (Respondent's Exhibit 1; pp 11-12, 17-18).

Dr. Li was also questioned about his impairment rating which he stated was pursuant to the AMA guidelines. He did not specifically testify whether it was to the right upper extremity or a person as a whole (Respondent's Exhibit 1; pp 27-29).

Dr. Neumeister was deposed on January 28, 2015, and his deposition testimony was received into evidence at trial. Dr. Neumeister's testimony regarding his diagnosis and treatment of Petitioner's condition was consistent with his medical records. Although he could not produce a return to work slip for Petitioner, he testified that he authorized her to return to work on January 28, 2014 (Petitioner's Exhibit 1; pp 8-13).

In regard to causality, Dr. Neumeister was asked to assume various facts pertaining to Petitioner's job duties which included her typing 90% of the time and whether there was a causal relationship between her work duties and the right carpal tunnel syndrome. Dr. Neumeister testified that while he did not know "...exactly what caused the carpal tunnel", the work activity aggravated it. Dr. Neumeister further stated that he did not believe that there was a certain duration or number of activities that could precipitate carpal tunnel syndrome because everyone's anatomy is different. He specifically noted that some individuals have a larger carpal tunnel than others. Because of differences in everyone's physiology, various individuals will react differently to different durations and levels of activities (Petitioner's Exhibit 1; pp 15-20).

16 IWCC0013

Petitioner testified that she returned to work for Respondent on January 28, 2014, and continues to work at present. Petitioner still has complaints of pain which she notices at work when she is typing. She also has experienced diminished grip strength.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained a repetitive trauma injury to her right hand arising out of and in the course of her employment for Respondent that manifested itself on June 17, 2013, and that her current condition of ill-being is causally related to same.

In support of this conclusion the Arbitrator notes the following:

Petitioner's testimony regarding her job duties and the repetitive use of her right hand was unrebutted.

Petitioner's primary treating physician, Dr. Neumeister, testified that Petitioner's repetitive work activity aggravated the carpal tunnel syndrome condition. He further testified that he did not believe that there was a specific duration or number of activities that could precipitate carpal tunnel syndrome because everyone's anatomy/physiology is different and, as such, various individuals will respond in different ways to repetitive activities.

Dr. Li testified that, in the absence of an ergonomic issue, the amount of typing Petitioner did on a daily basis, even if it was 100% of the time, did not matter. He still opined that Petitioner's carpal tunnel syndrome was not related to her repetitive work activities. Dr. Li did not have any specific knowledge as to whether or not there were ergonomic issues in regard to Petitioner's workstation.

The Arbitrator finds the opinion of Dr. Neumeister more persuasive than that of Dr. Li.

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

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 3, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of \$4,459.53 for 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.

In support of this conclusion the Arbitrator notes the following:

16 IWCC0013

There was no dispute regarding the diagnosis of carpal tunnel syndrome and the reasonableness and necessity of the treatment Petitioner received.

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

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of six weeks commencing December 17, 2013, through January 27, 2014.

In support of this conclusion the Arbitrator notes the following:

There was no dispute that Petitioner was totally disabled for the aforesated period of time.

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

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 12 1/2% loss of use of the right hand.

In support of this conclusion the Arbitrator notes the following:

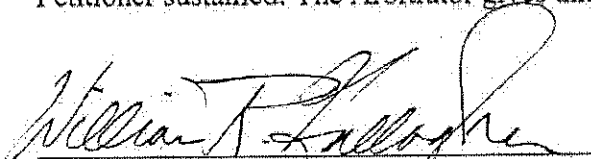
Dr. Li, Respondent's Section 12 examiner, stated in his report and, when deposed, that Petitioner had an AMA impairment rating of one percent (1%). Dr. Li did not state in either the report or his deposition testimony whether the AMA impairment rating was in regard to the right upper extremity or to the whole person. The Arbitrator gives this factor minimal weight.

Petitioner is a case worker and her job requires repetitive use of both upper extremities, in particular, her dominant right hand. The Arbitrator gives this factor significant weight.

Petitioner was 39 years old at the time of the manifestation. She will have to live with the effects of this injury for the remainder of her working and natural life. The Arbitrator gives this factor moderate weight.

~~There was no evidence that this injury will have any effect on Petitioner's future earning capacity. The Arbitrator gives this factor moderate weight.~~

The medical records revealed that Petitioner had right carpal tunnel syndrome which ultimately required surgery. Petitioner still has complaints of pain in the right hand especially when she is typing as well as diminished grip strength. These complaints are consistent with the injury Petitioner sustained. The Arbitrator gives this factor significant weight.


William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="text" value="up"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DONNIE LYNCH,

Petitioner,

vs.

NO: 14 WC 34468

METRO EAST INDUSTRIES,

16 IWCC0020

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of permanency, 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.

Based on the evidence presented on arbitration, the Commission finds that Petitioner sustained the loss of use of 25% of the left arm pursuant to Sections 8(e) and 8.1b.

Based on the accident occurring subsequent to September 1, 2011, the determination of permanent partial disability is governed by Section 8.1b of the Act. Pursuant to same, the issue of permanency is to be based on this Section's five enumerated factors.

The Commission initially notes that Petitioner has a congenital deformity involving the lack of fingers on his right hand. The accident at issue in this case involved an injury to the left elbow, and he was diagnosed with severe cubital tunnel syndrome, for which he underwent surgical decompression of the ulnar nerve with anterior transposition on July 11, 2014, along with myofascial lengthening of the flexor pronator tendon origin. He subsequently returned to full work duties and was released by Dr. Brown on October 15, 2014.

Petitioner worked and works for Respondent as a metal fabricator. He testified that the job involves repairing damaged locomotives, which included cutting, grinding, replacing and

welding steel.

16 I W C C 0 0 2 0

With regard to an American Medical Association (AMA) impairment rating, we note that neither party entered such a rating into evidence. This factor will therefore not be taken into account.

As noted, Petitioner's occupation involves metal fabrication. Based on his un rebutted testimony, the job involves having to work with steel, grinders and welding equipment. As such, we believe that the job is significantly physical, in particular with regard to the use of the hands and arms. The clear implication is that the Petitioner is required to use his upper extremities to accomplish his work tasks.

The Petitioner was 37 years old at the time of the accident. He therefore still has a significant period of work life ahead of him before he reaches a general retirement age.

With regard to future earning capacity, no specific testimony was introduced. Petitioner testified that he returned to his full work duties with Respondent, and was earning the same wages he did prior to his injury.

Petitioner testified that his left arm remains weaker than it was pre-accident. He noticed that when performing his work duties, the arm would tire faster than it had in the past. He also noted some intermittent ongoing left elbow pain, noting it was not excruciating, but that it felt tight and that he would have to stretch it out. The August 20, 2014 report of Dr. Brown indicated Petitioner had no numbness or tingling, but did have some ongoing medial elbow edema, along with some soreness and weakness. His range of motion was good. At the last visit of October 15, 2014, Dr. Brown noted good active range of motion and that Petitioner had done very well. When asked on cross examination if the gradually improving grip strength noted by Dr. Brown had continued, Petitioner testified: "I think I basically have been stagnant. There's nowhere near the grip that I used to have." (Tr. 14-15).

The Petitioner is a relatively young man with significant a preexisting right hand disability. As such, he is forced to rely on his left upper extremity more than the typical person. The Petitioner credibly testified that while he has been able to continue working, he does have some ongoing weakness and pain in the left arm and elbow. Taking that into account along with the fact that his current job is significantly physical and clearly requires the use of the upper extremities, we believe that the Petitioner has sustained the loss of 25% of the left arm.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Petitioner's award for permanent partial disability is modified from 20% of the left arm to 25% of the left arm.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$507.02 per week for a period of 63.25 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of use of 25% of the left arm.

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

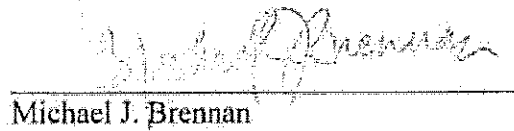
16 IWCC 0020

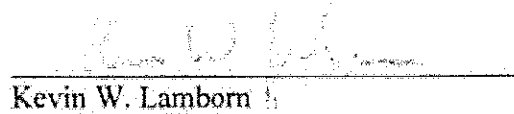
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$32,200.00. 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: JAN 6 - 2016
TJT: pvc
O 11/23/15
51


Thomas J. Tyrrell


Michael J. Brennan


Kevin W. Lamborn

16 IWCC0020

STATE OF ILLINOIS)
)SS.
COUNTY OF Madison)

- | | |
|-------------------------------------|---------------------------------------|
| <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

Donnie Lynch
Employee/Petitioner

Case # 14 WC 34468

v.

Consolidated cases: _____

Metro East Industries
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 **Edward Lee**, Arbitrator of the Commission, in the city of **Collinsville**, on **3/19/15**. By stipulation, the parties agree:

On the date of accident, **4/30/14**, 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 **\$43,942.08**, and the average weekly wage was **\$845.04**.

At the time of injury, Petitioner was **38** years of age, *single* with **3** 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

16 IWCC0020

Respondent shall pay Petitioner the sum of \$507.02/week for a further period of 50.5 weeks, as provided in Section 8(e)(10) of the Act, because the injuries sustained caused 20% loss of use of the left arm.

Respondent shall pay Petitioner compensation that has accrued from 10/15/14 through 3/19/15, and shall pay the remainder of the award, if any, in weekly payments.

The parties have stipulated that reasonable, necessary and related medical expenses have been or will be paid by Respondent per the Illinois Medical Fee Schedule.

The parties have stipulated that all temporary total disability benefits have been paid by Respondent.

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

5/11/15
Date

MAY 20 2015

Illinois Workers Compensation Commission

Donnie Lynch,

Petitioner,

v.

Metro East Industries, Inc.

Respondent.

14 WC 34468

16 IWCC0020

FINDINGS OF FACT

Petitioner is 39 years old and has three minor children. He was worked as a fabricator for Respondent for three years. His job duties include welding, cutting bad steel out, replacing steel and repairing locomotives.

On April 30, 2014 he was injured when he was coming down off of a locomotive and he struck his left elbow on a metal door. He received treatment at Midwest Occupational and they ultimately referred him to Dr. David Brown.

Dr. Brown diagnosed ulnar neuropathy and cubital tunnel syndrome. On July 11, 2014, Petitioner underwent surgery with Dr. Brown which included decompression of the ulnar nerve, left cubital tunnel with anterior submuscular transposition of the ulnar nerve with myofascial lengthening of the flexor pronator tendon origin. Dr. Brown released Petitioner at maximum medical improvement on October 15, 2014.

Petitioner was born with no fingers on his right hand. As a result, he has never been able to lift, grab or manipulate with his right hand. He described himself as very left hand dominant.

Petitioner described his left arm as a lot weaker than it used to be. When doing grinding, cutting, welding and any of his jobs, his left arm is not as strong as it used to be and his left hand and arm tire a lot faster. He has pain that kind of comes and goes, not a constant pain. He has to stretch his left arm out a little bit because it gets tight. He has pain in his elbow. He is able to perform his job full duty. At the end of the work day he described his left arm as "really tired". This injury has affected his personal life because all of his children are involved in sports, but he has not tried to throw a ball. He is the vice president of the Little League Association and he has recruited help for heavy lifting.

Prior to working for Respondent, Petitioner was a pipefitter for 15 years. His job history also includes HVAC work and general labor. His entire adult life has been spent doing general labor, pipefitting, HVAC work and/or working for Respondent.

Pre-employment testing forms (Pet. Ex. 3) with Respondent show that his grip strength in the left hand was tested on July 5, 2012 and was 140 lbs, 135 lbs, and 130 lbs.

On October 15, 2014, when Dr. Brown released Petitioner at maximum medical improvement, Petitioner's grip strength was measured at 66, 81, 69.

CONCLUSIONS OF LAW 16 IWCC0020

In determining the Petitioner's permanent partial disability pursuant to 820 ILCS 305/8.1(b), the Arbitrator relies on the following:

- 1) Neither party submitted a rating.
- 2) Petitioner's current occupation as a fabricator involves welding, cutting steel, replacing steel and repairing locomotives. Petitioner's entire adult life has been spent in working heavy physically demanding occupations such as general labor, HVAC, pipefitting and fabricating. The Arbitrator places great weight on this factor.
- 3) Petitioner was 38 years old at the time of the injury. Petitioner has years remaining in the work force. The Arbitrator places great weight on this factor.
- 4) Petitioner continues to work in the same position as prior to the work injury. However, his diminished grip strength may impact his future earnings capacity if he were to seek new employment in the physically demanding fields in which he is experienced. The Arbitrator places little weight on this factor.
- 5) Petitioner testified that he is very left hand dominant due to being born with no fingers on the right hand. He cannot lift, grab or manipulate with the right upper extremity, which places significant importance on the left arm. His left hand and arm tire faster and easier than they did pre-injury. He described largely decreased grip strength which is corroborated by pre and post injury records. The pre and post injury grip strength testing shows a decline from prior the injury of 140, 135 and 130 pounds, down to 66, 81 and 69 pounds at the time of maximum medical improvement. Objective medical testing shows a decrease in grip strength between his average pre-injury grip strength of 135 pounds down to an average post-injury grip strength of 72 pounds, which represents a 53% reduction in grip strength. The Arbitrator places great weight on this factor.

Based on the above review, the Arbitrator awards 20% loss of use of the left arm.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

James Belford,

Petitioner,

vs.

No. 11 WC 45948

State of Illinois/Pinckneyville Correctional Center,

16IWCC0038

Respondent.

DECISION AND OPINION ON REVIEW UNDER SECTIONS 19(h) AND 8(a)

Timely Petition for Review under sections 19(h) and 8(a) having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of further permanent disability and further medical benefits, and being advised of the facts and law, denies the 19(h) petition and grants the 8(a) petition for the reasons set forth below.

On February 13, 2013, the Arbitrator filed a decision awarding medical expenses in the sum of \$3,533.00 pursuant to sections 8(a) and 8.2 of the Act and permanent disability benefits corresponding to 4 percent disability to the person as a whole. Neither party appealed the Arbitrator's decision.

On February 3, 2015, Petitioner timely filed a petition for review under sections 19(h) and 8(a) asking the Commission to "review the prior award and enter an order for prospective medical benefits and payment of the award related to Petitioner's work injury of November 7, 2011." In his brief on review, Petitioner asks the Commission to award additional chiropractic bills and permanent partial disability benefits corresponding to 2 percent further disability to the person as a whole. Respondent, in its response brief, agrees that it is liable for the reasonable and necessary medical bills in Petitioner's Exhibit 3 pursuant to sections 8(a) and 8.2 of the Act. However, Respondent does not agree that Petitioner's permanent disability has materially increased.

At the 19(h)/8(a) hearing on August 6, 2015, Petitioner testified that after the arbitration hearing on January 15, 2013, he continued to perform the regular job duties of correctional officer. At some point, he was promoted to correctional sergeant. He has been able to perform the job duties of correctional sergeant. However, Petitioner has sought additional medical care for pain in the low back and right leg, as well as some stiffness. Petitioner feels being on his feet all day aggravates his condition. At the end of the shift, he feels stiffness and occasional pain. Outside of work, Petitioner keeps physically active and performs calisthenics exercises regularly. The exercises and chiropractic treatment help alleviate the symptoms. Petitioner feels he would require surgery if he did not have chiropractic treatment. He would like to avoid surgery.

On cross-examination, Petitioner testified that his promotion came with a pay raise. Petitioner admitted that no doctor has recommended surgery for his back condition. Petitioner further admitted that during the arbitration hearing he testified he had some low back pain with pain radiating to the right leg and occasionally the left leg. Riding in a car for long periods of time bothered him. The pain also affected his sleep. Petitioner admitted that he has substantially the same symptoms when his condition flares up now. His condition returns to baseline after a period of chiropractic treatment.

Petitioner introduced into evidence medical records and bills from McGuire Chiropractic Clinic. The records start on September 24, 2014, noting: "[The patient] started having pain in his low back and right hip 3 days ago for no reason. The pain has progressively gotten worse with no relief. The past day, the pain has started into his right thigh." Petitioner underwent regular chiropractic treatment through November 10, 2014, reporting progressive improvement. Petitioner suffered another flare-up in late June of 2015, after driving a long distance. He received regular chiropractic treatment from July 6, 2015, through July 31, 2015, once again reporting progressive improvement until experiencing another flare-up in late July of 2015.

As noted, Respondent agrees that it is liable for the reasonable and necessary medical bills in Petitioner's Exhibit 3 pursuant to sections 8(a) and 8.2 of the Act.

With regard to the 19(h) petition, the Commission finds that Petitioner failed to prove a material increase in his permanent disability. On cross-examination, Petitioner admitted that no doctor has recommended surgery for his back condition. Petitioner further admitted his symptoms are substantially the same as they were at the time of the arbitration hearing. The symptoms wax and wane. After a flare-up, his condition returns to baseline with chiropractic treatment.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's petition under §19(h) is denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical bills in Petitioner's Exhibit 3 pursuant to §§8(a) and 8.2 of the Act.

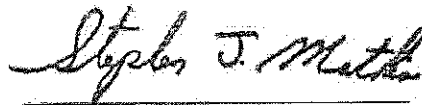
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

16IWCC0038

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.

Pursuant to §19(f)(1) of the Act, there shall be no right of appeal as the State of Illinois is Respondent in this matter.

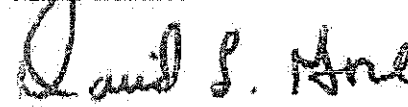
DATED: JAN 19 2016
o-12/10/2015
SM/sk
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Stephen Mathis



Mario Basurto



David L. Gore

16IWCC0038

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

James Belford
Employee/Petitioner

Case # 11 WC 45948

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 **Joshua Luskin**, Arbitrator of the Commission, in the city of **Herrin**, on **1/15/13**. By stipulation, the parties agree:

On the date of accident, **11/7/11**, 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 **\$57,921.00**, and the average weekly wage was **\$1,113.87**.

At the time of injury, Petitioner was **40** years of age, *married* with **1** dependent child.

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**.

16IWCC0038

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

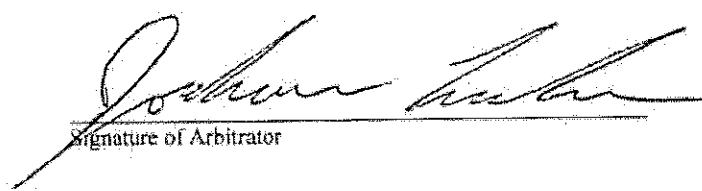
Respondent shall pay Petitioner the sum of \$668.32/week for a further period of 20 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused **permanent partial disability to the petitioner's whole body as a whole in the amount of 4%**.

Respondent shall pay Petitioner compensation that has accrued from 12/29/12 through **the present**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay reasonable and necessary medical services of \$3,533.00, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for 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 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

February 4, 2013

Date

FEB 13 2013

16IWCC0038

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAMES BELFORD,)
)
Petitioner,)
)
vs.) No. 11 WC 45948
)
STATE OF ILLINOIS/PINKNEYVILLE C.C.,)
)
Respondent.)

ADDENDUM TO ARBITRATION DECISION

STATEMENT OF FACTS

The petitioner, a Correctional Officer, was injured in an altercation with an inmate on November 7, 2011. On November 10, he saw his family physician, Dr. Nanni, complaining of low back pain radiating to the right leg. Dr. Nanni recommended medication, heat and rest. See generally PX3. On November 15, Dr. Nanni noted that "[s]ymptoms related to the injury have improved." The petitioner was released to work without restrictions at that time.

On November 17, 2011, the petitioner presented to Dr. Nanni complaining of scrotal pain over the past day. Dr. Nanni noted the injury the week before and prescribed a support strap. No history of scrotal trauma was noted, but he noted the initial injury did include a groin strain. The petitioner did not follow up with Dr. Nanni thereafter. PX3.

On April 2, 2012, the petitioner saw Dr. Gornet complaining of persistent pain. He had been working full duty during this period. The petitioner related a prior history of low back pain for which he had sought chiropractic care in 2009. Dr. Gornet prescribed an MRI scan. See PX4.

The MRI was performed on May 21 and demonstrated degenerative disk disease with an annular tear at L5-S1 with a herniation at that level. The radiologist observed a disk bulge at L4-5, but no herniation at that level. PX5. Dr. Gornet reviewed the films that day and opined the L4-5 level was herniated. However, Dr. Gornet noted the claimant was tolerating his symptoms and recommended observation only without further treatment at that time. PX4. Follow-up visits with Dr. Gornet in September and November 2012 noted only intermittent symptoms without substantial problems. On November 29, Dr. Gornet assessed the petitioner at maximum medical improvement.

On July 6, 2012, the petitioner was examined by Dr. Timothy VanFleet pursuant to Section 12 of the Act. See PX6. Dr. VanFleet reviewed the MRI and assessed the

petitioner with degenerative disk disease with improving back pain secondary to a back strain. He opined the symptoms were related to the work incident although the degeneration predated the incident. He recommended home exercise.

The petitioner testified he has returned to the same position he held prior to the accident, and is able to perform all job duties. He complains of residual back pain for which he takes over the counter medication.

OPINION AND ORDER

The respondent is directed to pay the medical bills identified in PX1 within the limits of Section 8.2 of the Act, as these appear reasonably targeted at relieving the petitioner's complaints pursuant to Section 8(a) of the Act. While the appointment on November 17, 2011 indicates a one day history of groin pain, it is close in both temporal relationship to the accident and the location of the injury in the body to conclude that it was a related condition. 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 rating was submitted by the parties. The Arbitrator therefore relies on the other factors in arriving at a conclusion relative to this matter. The petitioner was 40 years old at the time of the incident. He is a Corrections Officer and missed only about one week from work. He has continued to work in his pre-injury capacity and no evidence of earnings impairment is apparent or likely. The petitioner does continue to describe some residual symptoms, but treated conservatively throughout and no physician recommended any invasive care. The petitioner's work-related accident resulted in a back strain superimposed on pre-existing degeneration; while he apparently never had previous invasive care, it is also notable that he did have prior back symptoms, as evidenced by his prior chiropractic treatment. The petitioner having reached maximum medical improvement, respondent shall pay the petitioner the sum of \$668.32/week for a further period of 20 weeks, as provided in Section 8(d)2 of the Act, as the injuries sustained caused permanent loss of use to the petitioner's whole body to the extent of 4% thereof.

STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <u>down</u>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RICKY STEVENS,
Petitioner,

vs.

NO: 13 WC 21942

CERRO FLOW,
Respondent,

16 IWCC0046

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, notice, medical expenses, temporary total disability, and nature and extent, 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 modifies the permanency award and reduces it to 10% loss of use of each hand. Although we agree with the Arbitrator's analysis of the first four factors under Section 8.1b(b), we find that Petitioner's complaints of pain are not fully corroborated by the medical records.

Petitioner testified that most of the numbness and tingling in his hands went away after the surgeries but he still has some soreness. However, he also testified that he was told by the doctor that it could take up to a year for the soreness to go away. Therefore, it isn't clear whether this soreness is actually a permanent condition. Petitioner also testified that he doesn't think that his grip strength has returned completely but that he returned to work because he knew he was going to retire. We note that the most recent medical record on April 24, 2014, does not mention anything about soreness or diminished grip strength. Petitioner's surgeon, Dr. Beatty, testified that Petitioner had good results from the surgeries, was returned to work full duty on April 28, 2014, and that the hand therapist felt that Petitioner had recovered to resume full duty.

In addition, Petitioner has been diagnosed with bilateral osteoarthritis of the hands so it isn't clear what portion of his current complaints are related to that versus his work-related

16IWCC0046

carpal tunnel syndrome. On November 12, 2009, Dr. Byler diagnosed Petitioner with widespread degenerative arthritis in the hands and wrists. On January 4, 2010, Dr. Howard diagnosed osteoarthritis of the interphalangeal joints of both hands. Petitioner's Dr. Beatty testified that he was aware of this diagnosis and that Petitioner's work did not cause the osteoarthritis but did cause the carpal tunnel syndrome. Respondent's Section 12 examiner, Dr. Strecker, testified that, in his opinion, Petitioner may have had mild carpal tunnel syndrome but his major complaint was based on his rheumatoid arthritis, which is a progressive disease over time and was not related to Petitioner's work duties.

Although we affirm the finding that Petitioner's carpal tunnel syndrome is work-related, there is no evidence that the osteoarthritis is. As such, it is more likely than not that his current symptoms of soreness and reduced grip strength are also related to his progressive arthritic condition and not due to the carpal tunnel syndrome. Therefore, we find that Petitioner has proven that his work injury has resulted in the loss of use of 10% of each hand.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$447.95 per week for a period of 12-6/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$403.15 per week for a period of 38 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of use of 10% of the right hand and 10% of the left hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$8,873.34 for medical expenses under §8(a) of the Act subject to the fee schedule in §8.2 of the Act.

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

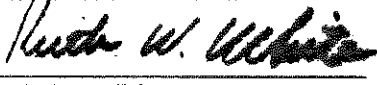
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$30,100.00. 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: JAN 21 2016

SE/
O: 12/2/15
49


Charles J. DeVriendt


Ruth W. White


Joshua D. Luskin

STATE OF ILLINOIS)
)SS.
 COUNTY OF St. Clair)

- | | |
|-------------------------------------|---------------------------------------|
| <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

Ricky Stevens
 Employee/Petitioner

Case # **13 WC 021942**

v.

Consolidated cases: _____

Cerro Flow
 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 **Michael Nowak**, Arbitrator of the Commission, in the city of **Belleville**, on **11/25/14**. 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 **Statute of Limitations**

16IWCC0046

FINDINGS

On **4/19/13**, 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 **\$32,252.37**; the average weekly wage was **\$671.92**.
On the date of accident, Petitioner was **60** years of age, *married* with **0** dependent children.
Petitioner *has not* received all reasonable and necessary medical services.
Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$447.95/week for 12 6/7 weeks, commencing 1/28/14 through 4/27/14, as provided in Section 8(b) of the Act. Respondent shall be given a credit for any amounts that have been paid for Short Term Disability.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of \$3,131.34 to Southwestern Illinois Plastic & Hand Surgery, \$4,762.00 to Apex Physical Therapy, and \$980.00 to Dr. Khan, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for 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.

Based on the factors enumerated in §8.1b of the Act, which the Arbitrator addressed in the attached findings of fact and conclusions of law, and the record taken as a whole, Respondent shall pay Petitioner permanent partial disability benefits of \$403.15/week for 53.2 weeks, because the injuries sustained caused the 14 % loss of the right hand and 14 % loss of the left 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

1/28/15
Date

FEB 9 - 2015

FINDINGS OF FACT

The Petitioner was a 62 years of age on the date of hearing. He worked for the Respondent for 29 years, primarily on a set of machines known as Schumag machines. In general, these machines turned rolls of copper pipe into straight lengths of pipe. The Respondent provided two DVD's showing the operation of Schumag machines 2 & 3. (RX 2, 3) The Petitioner agreed that the DVD's accurately show a portion of the job duties, but not all. The operators turn a basket containing copper coils that weighs about 2000 pounds in order to achieve the proper alignment. He then must grab onto a coil of copper and pull it, hammer the end and place a plug in it. He then has to shove the tube into the machine, which requires force to accomplish. If all runs smoothly, the operator will send the copper through the machine with a series of buttons, and the copper pipe exits the machine and rolls into a tray. The operator must guide the coils and straighten them by hand. This is the operation shown in the DVD and in the ergonomic analysis provided by the Respondent.

The Petitioner testified that in reality there are many additional tasks required of the operator which are not included in either the DVDs or the ergonomic evaluation. Most days, the machine does not operate smoothly and the tubing gets jammed. He then must use a hacksaw to cut the tubing out. Some days he will use a hacksaw most of the day, but he always uses one at least 15-20 times a day. He also uses a hammer throughout the day. The hammer is a large brass hammer that weighs 2-3 pounds. This must be used multiple times per hour. He also is required to replace the sheer blade on both machines multiple times a day. This requires him to use wrenches, Allen wrenches, and ratchets to loosen the bolts to remove the old blade and the reverse to install the new one. The use of these tools requires pressure and torque of the hands. The Petitioner was also required to make most repairs on the machines, which required frequent use of hand tools, including wrenches, pliers, and hammers. Part of the job required measuring the tubing with a micrometer, which required him to handle the copper tubes with his hands many times per day. The Petitioner described the job as very difficult and very hand intensive.

In 2009 the Petitioner first complained of pain in his wrists and reported to the company physician. (RX 1,2) He was referred to Dr. Howard, an orthopedic surgeon in January, 2010. Dr. Howard reported that the Petitioner had multi-joint osteoarthritis of his hands, but did not have carpal tunnel syndrome. He reported that the employment was not a cause of the Petitioner's symptoms. (RX 4)

The Petitioner testified that he continued to work full duty, but his hand condition deteriorated. In addition to pain, he developed numbness and tingling in both hands. By April of 2013 the symptoms had gotten bad enough that he sought treatment from his family doctor, Dr. Reid, and was referred to Dr. Khan, who performed a nerve conduction study on 4/15/13 and diagnosed the Petitioner with carpal tunnel syndrome. (PX 2) Petitioner became aware of the diagnosis and that it was related to his employment on 4/19/13. He reported this to his employer at that time.

The Petitioner sought treatment from Dr. Beatty, a hand surgeon from Edwardsville, Illinois. Dr. Beatty confirmed the diagnosis of bilateral carpal tunnel syndrome and recommended surgery. Dr. Beatty released the right carpal tunnel on 1/28/14 and the left on 2/18/14. After post-operative physical therapy, the Petitioner was released to full duty on 4/28/14. (PX 5, p. 12; PX 4, p. 7) He testified that he was able to tolerate the discomfort in his hands while working until his retirement in August of 2014. He testified that he continues to have some slight numbness in his hands, although it is much better than before surgery. He notices a loss of grip strength bilaterally and has pain in both hands. The Arbitrator found Petitioner to be a sincere and credible witness.

Dr. Beatty testified that the Petitioner's job activity would be the cause and the basis for the development of bilateral carpal tunnel syndrome or worsening of preexisting carpal tunnel syndrome. (PX 5, p. 10) Dr. Beatty

had not reviewed the DVD's or job analysis, but relied on the Petitioner's job description. The job described in the form attached to Dr. Beatty's deposition is consistent with Petitioner's description of his job duties at the time of Arbitration. Dr. Beatty also considered it significant that the Petitioner's job activities caused his condition to intensify.

The Petitioner testified that he is diabetic and that in the past he has had difficulty in maintaining the correct blood sugar. It is now under control, however and has been for some time. Dr. Beatty did not believe that the compression neuropathy shown on the NCS/EMG was caused by diabetes, nor was it relevant to his opinion regarding causation. (PX 5, p.18)

The Petitioner was examined by Dr. William Strecker on 5/14/11, pursuant to § 12. He examined the Petitioner and reviewed some prior medical records. His diagnosis was osteoarthritis. He was uncertain whether the Petitioner had carpal tunnel syndrome. (RX 7, p.14) He had reviewed the DVDs and the ergonomic analysis performed by Apex. His opinion was that the Petitioner's job was not a factor in the development of the Petitioner's hand complaints. (RX 7, p. 18) He testified that the Petitioner's BMI and his age were more likely causes of his condition. Dr. Strecker did not review the NCS performed by Dr. Khan. He had not reviewed Dr. Beatty's records. He further did not know that the Petitioner used a hacksaw or hand tools while at work. (RX7. p. 24-25)

The ergonomic analysis was prepared by Apex Physical Therapy. It appears to have been made in conjunction with the DVD recording. The worker was required to push ½" tubing into the machine which required 25 lbs of pushing force and 50 lbs of grip force for 5 repetitions. On the other machine the 7/8" tubing required 45-50 lbs of pushing force and 50-60 lbs of grip force for 5 repetitions. (RX 10) The frequency of the repetitions is unclear. The report measures multiple factors, but it does not represent a complete picture of Petitioner's duties. It does not, for example include using a hack saw, 2-3 pound hammer, and hand tools on a repeated basis.

CONCLUSIONS OF LAW

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

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

An injury is accidental within the meaning of the Act if "a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labor." *Laclede Steel. Co. v. Industrial Commission*, 128 N.E.2d 718, 720 (Ill. 1955); *General Electric Co. v. Industrial Commission*, 433 N.E.2d 671, 672 (Ill. 1982). In a repetitive trauma case, the issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture*, 99 I.L.C. 0961 (1999). 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. Industrial Commission*, 723 N.E.2d 846 (3rd Dist. 2000).

In *Edward Hines Precision Components v. Indus. Comm'n*, 825 N.E.2d 773, (2nd Dist. 2005). the Court expressly stated, "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780. Similarly, the Commission recently noted in *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, a claimant

must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All Steel, Inc. v. Indus. Comm'n*, 582 N.E.2d 240 (2nd Dist. 1991) and *Edward Hines supra*.

In this case, the evidence shows that Petitioner worked in the Respondent's factory for 29 years, primarily performing the same job duties. The job, as Petitioner described it at the Hearing, is quite hand intensive. He testified that he must pull copper coils off a spool and use a 2-3 lb hammer to strike the end. He must shove it into the machine, which takes force. Petitioner's testimony in this regard is consistent with the DVDs Respondent offered into evidence. (RX 12, 13) The Petitioner also testified that he was frequently required to use a hack saw to cut pieces of tubing in order to extricate them from the machine when it would jam. Sometimes he would use the hack saw most of the day, other days it would be less, but always at least 15-20 times per day. He also testified that he was required to use wrenches, Allen wrenches, pliers and other tools multiple times throughout the day. His testimony about the frequency of use of these tools was credible and unrefuted.

The Respondent admitted DVDs of the Petitioner's job as well as an ergonomic study. Petitioner agreed that the videos show the machine running. He indicated, however they do not show the operator using the tools as described above. He testified that during the short time of the video the machine was running smoothly, but that was the exception to the norm. The Petitioner was credible in his description of the job activities and his testimony as a whole. The Arbitrator finds the DVDs and ergonomic study do not completely and accurately represent the Petitioner's job duties and therefore give them little weight.

Petitioner's treating doctor, Michael Beatty, testified that he reviewed the detailed job description prepared by the Petitioner which is consistent with the Petitioner's testimony at the hearing. Dr. Beatty had the opportunity to review all of the prior medical records. His clinical examination showed the Petitioner to have bilateral carpal tunnel syndrome. This diagnosis was confirmed by the NCS. Dr. Beatty testified that the job duties as described, taken as a whole with all of the other factors was a cause or at least an aggravating cause of the carpal tunnel syndrome. (PX5 p. 10)

The Section 12 examiner, Dr. Strecker's testified he watched the videos and looked at the ergonomic study. He was unaware, however, that the Petitioner used a hacksaw or any hand tools on the job. He was not even certain that the Petitioner actually had carpal tunnel syndrome, but felt that his problems were caused by underlying osteoarthritis. He had not reviewed the nerve conduction study or Dr. Beatty's reports before his deposition. His testimony that many other issues could be causes of carpal tunnel syndrome, i.e. BMI, age, normal daily life, diabetes; but working 29 years in an industrial setting as described by the Petitioner could not have been a contributing factor is not persuasive. The Arbitrator finds the testimony and opinions of Dr. Beatty much more persuasive.

Based on the above, and the record taken as a whole, the Arbitrator concludes that the Petitioner's condition of ill-being did arise out of and in the course of his employment and is causally related thereto.

16 I W C C 0 0 4 6

Issue (D): What was the date of the accident?

Issue (E): Was timely notice of the accident given to Respondent?

Issue (O): Was the application for adjustment of claim filed within the applicable Statute of limitation?

The Petitioner first made complaints of hand pain to his employer in 2009. In 2010 he was referred to Dr. Howard who reported that the Petitioner did not have carpal tunnel syndrome, but did have osteoarthritis in his hands which was not related to his work. From 2010 through 2013, the Petitioner continued to work full duty. He testified that his hands gradually got worse during that time and he started to develop more numbness in his hands. His hands were much worse in April 2013, so he sought treatment on his own. He had diagnostic testing on his upper extremities on 4/15/13 which revealed bi-lateral carpal tunnel syndrome. He was informed of his diagnosis on 4/19/13. He immediately reported this to his supervisor. Petitioner's testimony in this regard was credible and supported by the records in evidence. It was not refuted.

Petitioner was justified in relying on the opinion of Dr. Howard in 2010. The Arbitrator finds that Petitioner's condition manifested itself on 4/19/13 which is the date he was advised of his diagnosis and its relationship to his employment. He immediately informed Respondent, and filed his application for adjustment of claim on 7/8/13. Appropriate notice was given to Respondent and the claim was filed well within the Statute of Limitation.

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?

Respondent did not dispute the reasonableness and necessity of the medical bills. The dispute was based upon the issues of causal connection and accident. Based upon the foregoing findings of the Arbitrator, Respondent shall pay the following medical bills pursuant to the fee schedule:

Southwest Illinois Plastic and Hand Surgery	\$3,131.34
Apex Physical Therapy	\$4,762.00
Dr. Khan	\$ 980.00

Respondent shall be given a credit for any 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.

Issue (K): What temporary benefits are in dispute?

The only dispute regarding TTD was Respondent's liability there for based upon the issues of causal connection and accident. Petitioner worked up until the date of his first surgery on 1/28/14. He was released to return to work following his second surgery as of 4/28/14. The Arbitrator notes that the parties indicated on the Request for Hearing form that the period of disability ended on 4/14/14. It is clear from the records, however that Dr. Beatty did not release Petitioner to return to work until 4/28/14. (PX 5, p. 12; PX 4, p. 7) The Arbitrator finds Petitioner is entitled to TTD benefits in the amount of \$448.17 per week for a period of 12 6/7 weeks for the period of 1/28/14 through 4/27/14. Respondent shall be given credit for any payments made for short term disability.

Issue (L): What is the nature and extent of the injury?

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was able to return to work full duty following his surgeries and subsequently retired in August of 2014. The Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 60 years old at the time of the accident. The Arbitrator gives *lesser* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner has retired. The Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the Petitioner was a credible witness. Because the medical records and testimony of his treating surgeon corroborate the Petitioner's complaints of pain, weakness and loss of function in his hands, the Arbitrator therefore gives *greater* weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 14% loss of use of each hand pursuant to §8(e) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Barbara Thrush,
Petitioner,

16IWCC0051

vs.

NO: 14 WC 20713

Menards,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, temporary total disability, permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

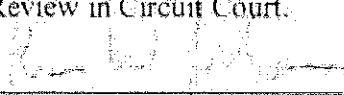
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 24, 2015, is hereby affirmed and adopted.


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


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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$22,300.00. 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: JAN 22 2016
KWL/vf
O-1/12/16
42


Kevin W. Lamborn


Thomas J. Tyrrell


Michael J. Brennan

STATE OF ILLINOIS)
)SS.
COUNTY OF WILL)

<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
CORRECTED ARBITRATION DECISION

16 IWCC0051

Pms
4/20/15

Case # 14 WC 20713

Barbara Thrush
Employee/Petitioner

v.

Consolidated cases: none

Menards
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 **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **New Lenox**, on **11/14/14**. 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 _____

16IWCC0051

FINDINGS

On 8/22/13, 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 with respect to her right shoulder is causally related to the accident, but Petitioner's current condition of ill-being with respect to her cervical spine is not causally related to the accident.

In the year preceding the injury, Petitioner earned \$30,460.19; the average weekly wage was \$585.77.

On the date of accident, Petitioner was 49 years of age, single with no dependent children.

Petitioner has received all reasonable and necessary medical services related to the right shoulder.

Respondent has paid all appropriate charges for all reasonable and necessary medical services relating to the right shoulder.

Respondent shall be given a credit of \$9,502.70 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$9,502.70. (Arb.Ex.#2).

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 \$390.51 per week for 25 weeks, commencing 1/7/14 through 6/30/14, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from ~~8/23/14~~ 8/23/13 through 11/14/14, and shall pay the remainder of the award, if any, in weekly payments. Pmo 4/29

Respondent shall be given a credit of \$9,502.70 for temporary total disability benefits that have been paid.

Respondent shall pay Petitioner permanent partial disability benefits of \$351.46 per week for 62.5 weeks, because the injuries sustained caused the 12.5% loss of the person as a whole, as provided in §8(d)2 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.

Peter J. Kelly

Signature of Arbitrator

4/20/15
Date Pmo 4/20/15

APR 24 2015

161WCC0051

STATEMENT OF FACTS:

At the time of her injury, Petitioner was a 49 year old General Laborer and Warehouse Employee who had worked for Respondent since April 1999. On August 22, 2013, Petitioner was painting while standing on a picker approximately 5 feet off the ground. She was wearing a harness that went over her bilateral shoulders, under the bilateral buttocks, and buckled over her chest. Her right foot slipped and fell through the floor board causing her entire leg, up to her right hip, to fall through the board. Her left leg was still on the picker's platform board when this happened causing the harness to catch her. Petitioner twisted back and to the right and felt immediate pain in her right shoulder. The harness caused bruising to her right arm, right shoulder, right shoulder blade and right thigh. Petitioner is left hand dominant.

Petitioner's initial medical treatment was on September 9, 2013 when she was examined by Dr. Charles Woodward at Provena Mercy Medical Center. Petitioner was referred to this clinic by the Respondent. Petitioner complained of right shoulder pain and was unable to raise her arm past 45 degrees. She was prescribed a MRI of the right shoulder and provided with light duty work restrictions of no lifting over 5 pounds with the right arm and no pushing or pulling over 10 pounds. Respondent was able to accommodate the restrictions. (PX1).

A MRI of the right shoulder was performed at Provena Mercy Medical Center on September 19, 2013. The MRI revealed: 1. Fluid signal intensity within the subacromial/subdeltoid bursa, 2. High signal intensity in the anterior distal most aspect of the supraspinatus tendon suggestive of at least degenerative changes and tendinopathy. Partial intrasubstance injury/tear extending to the bursal surface cannot be excluded. There is also probable tendinopathy involving the subscapular tendon distally, and 3. There is at least degenerative change and possibly a labral tear involving the anterior superior labrum. (PX1).

On examination with Dr. Woodward on September 20, 2013, Petitioner had a positive Neer test and a positive Hawkins sign. Dr. Woodward prescribed and performed a cortisone injection to the right shoulder. After the injection Petitioner had a decrease in the pain. Dr. Woodward prescribed a course of physical therapy. (PX1).

Petitioner's shoulder complaints did not improve with physical therapy and on October 29, 2013, Dr. Woodward referred Petitioner to Dr. John Pinello at Castle Orthopaedics for an orthopedic evaluation. (PX1).

Petitioner was examined by Dr. Pinello on November 4, 2013. The doctor prescribed and performed an injection into the subacromial space and provided the Petitioner with light duty work restrictions of no use of the right arm. Respondent was able to accommodate the restrictions. (PX2).

Dr. Pinello re-examined Petitioner on November 19, 2013. The injection did not provide lasting relief. Range of motion in the right shoulder was limited with pain. The doctor recommended conservative treatment with the continued use of Voltaren and recommended additional physical therapy. (PX2).

On December 16, 2013, Petitioner sought a second opinion with Dr. Jeffrey Grosskopf, an orthopedic surgeon with Grosskopf Orthopedics. Dr. Grosskopf prescribed a right shoulder surgery and allowed for light duty work through the date of the surgery. Respondent was able to accommodate the restrictions. (PX3).

On January 7, 2014, Petitioner underwent right shoulder surgery performed by Dr. Grosskopf at Valley Ambulatory Surgery Center. The procedures performed included arthroscopic superior labral repair, supraspinatus tendon debridement, and acromioplasty. Petitioner postoperative diagnoses included a superior

labral tear extending into the anterior upper edge of the labrum, a 10% undersurface supraspinatus tendon tear in the anterior third, and impingement syndrome. Petitioner was taken off of work. (PX3).

Petitioner began a course of physical therapy at West Physical Therapy on January 16, 2014. (PX6).

On March 3, 2014, Petitioner underwent an injection to the right glenohumeral joint performed by Dr. Grosskopf. She was having pain at 6/10 with constant pain in the posterior upper arm and anterolateral shoulder. (PX3).

On April 3, 2014, Dr. Grosskopf prescribed and performed an injection to the right subacromial space. After five minutes Petitioner had less shoulder pain with motion and less pain into the triceps and radial forearm. Petitioner was referred to Dr. Yuan Chen, a pain management doctor because Dr. Grosskopf thought a cervical spine issue may be contributing to the pain and symptoms. Petitioner was prescribed a cervical MRI. (PX3).

The cervical spine MRI was performed on April 10, 2014 and revealed mild anterior spurring at C3-C6 with no localized herniations. (PX3).

Dr. Grosskopf re-examined Petitioner on April 14, 2014. Petitioner had pain in the base of the neck but no radiation into the arm. Range of motion in the cervical spine was reduced 25%. Petitioner was referred to Dr. Chen and advised to continue physical therapy. (PX3).

At the request of the Respondent, Petitioner visited Dr. Sean Salehi for purposes of a Section 12 examination on May 15, 2014. On examination, Petitioner was unable to raise the right arm over the horizontal plane and she had tenderness over the right shoulder, right clavicle and right armpit. Dr. Salehi opined that "the mechanism of injury described is consistent with having resulted in what appears to be primary right shoulder pathology. There is nothing in the history or documentation to suggest cervical complaints... No treatment for the cervical spine is warranted, and instead all focus should be made on the shoulder pathology which falls beyond my area of expertise. Since I do not believe there is a work injury regarding the cervical spine I will not use the term MMI regarding this region of the body. There are no work restrictions as it relates to his cervical spine." (RX1).

Petitioner was re-examined by Dr. Grosskopf on May 29, 2014. Her greatest pain was in the axilla. She had stiffness on the right side and tightness that was slowly resolving. Dr. Grosskopf related the pain complaints to the stretch trauma suffered at the time of her original injury. Dr. Grosskopf ordered a referral to Dr. Chen for pain management evaluation. Petitioner was prescribed Ultram and advised to continue physical therapy. Petitioner was kept off of work. (PX3 & PX4).

Petitioner's last physical therapy appointment was at West Physical Therapy on June 2, 2014. Petitioner attended 56 therapy sessions and at the last examination she was having scapular impairment, right lower cervical closing restrictions and tenderness over the right subscapularis musculature. No additional therapy sessions were authorized by the insurance company. (PX6).

At the request of Respondent, Petitioner was examined by Lawrence Lieber on June 30, 2014 for purposes of a Section 12 examination. On examination of the right shoulder, flexion and range of motion were decreased at the extremes due to pain. She had positive AC tenderness, positive greater tuberosity, positive impingement, positive O'Brien, positive reverse O'Brien, positive apprehension and positive Speed test. Strength was affected by pain. Dr. Lieber opined, "There appears to be a direct causal relationship between the Petitioner's subjective complaints, subsequent right shoulder surgery, and that of the isolated August 22, 2013 work event." Petitioner

was found to be at maximum medical improvement for the right shoulder condition and found 5% permanent partial impairment of the right upper extremity that converts to 3% impairment for the individual as a whole. (RX2 & RX3).

Dr. Grosskopf re-examined Petitioner on July 3, 2014. Petitioner's greatest pain was in the axilla. Dr. Grosskopf reviewed the report of Dr. Salehi and expressed confusion that the IME doctor did not address the periscapular pain which was Petitioner's biggest pain issue. Dr. Grosskopf prescribed MethylPrednisolone and advised Petitioner to remain off of work. (PX4).

On July 31, 2014, Petitioner was examined by Dr. Grosskopf. In reviewing the §12 report, Dr. Grosskopf opined, "Ms. Thrush clearly describes her worst pain in her axilla and medial scapular border. In Lieber's report, this pain is not reported at all and the pain mentioned is not described accurately. He describes her motion as decreased due to pain, yet he does not record her motion as he does for her normal shoulder. He gives her a 5% impairment of her right upper extremity, he documents some weakness and unknown degree of lost motion AND then states in paragraph 7 of his plan, 'there is no objective evidence of any functional impairment of the right shoulder area which would restrict this individual from returning to full employment, with no restrictions.' This report contradicts itself and did not even mention or address her biggest pain complaint! Unfortunately, her work comp benefits have been stopped. She has no alternative other than to try light duty work as she has no income and no health benefits since the above occurred." Petitioner was prescribed Ultram and allowed a light duty work release effective August 4, 2014 with restrictions of no lifting over 10 pounds. (PX4).

Petitioner returned to work in a light duty capacity effective August 4, 2014. Petitioner has continued to work in a light duty capacity through the date of the hearing.

Petitioner was re-examined by Dr. Grosskopf on August 21, 2014. Petitioner had pain from the shoulder blade to the axilla. There was right sided neck ache and stiffness. Petitioner was once again referred to Dr. Chen for pain management evaluation. (PX4).

Petitioner was examined by Dr. Yuan Chen on September 30, 2014. Petitioner complained of pain in the neck, right shoulder, scapula and anterior chest wall area. The pain was without numbness or tingling sensations but was with significant weakness in the right upper extremity. On physical examination there was significant tenderness on palpation in the right cervical paraspinal area. Range of motion was limited for extension, lateral flexion and rotation due to the significant discomfort in the neck and right scapula. Petitioner was diagnosed with cervical facet dysfunction and prescribed a set of cervical medial branch nerve blocks for facet treatment. The doctor's goal with the injections was to allow the deposit of the anti-inflammatory medication precisely into the irritated area to offer the Petitioner adequate pain relief. (PX5).

Petitioner was re-examined by Dr. Grosskopf on October 2, 2014. On physical examination Petitioner had tenderness on palpation at the bicipital groove. There was active abduction to 150 degrees, active forward flexion to 155 degrees, active internal rotation and external rotation at 90 degrees of abduction was 80 degrees. No weakness in the right shoulder was observed. No pain was elicited during a Neer impingement test and Speed's test was negative. Her c-spine examination remained unchanged. She had slight motion restriction with pain into the right neck and right shoulder blade with extension and bending to the right. Petitioner was allowed to continue working light duty with no lifting over 10 pounds, no over the shoulder work and no working more than 40 hours per week. (PX4).

Petitioner was re-examined by Dr. Grosskopf on November 13, 2014. Dr. Grosskopf recommended to continue treatment on the cervical spine with Dr. Chen and continued the work restrictions no lifting over 10 pounds, no over the shoulder work and no working more than 40 hours per week. (PX8).

As of the hearing date, Petitioner had continued complaints of pain and discomfort in her right shoulder and cervical spine. She is unable to lift her right arm overhead or reach for items that are over her head. She experiences an increase in shoulder pain while walking her dogs and playing with her three year old grandson. She experiences headaches and has a constant pain in the neck that she rates as a 5/10. Sleeping is difficult and she has a hard time turning her neck while driving. For pain relief she takes Tramadol at night and Ibuprofen during the day. When her pain levels are high she uses ice for pain relief.

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

Petitioner testified that she never had problems with her right shoulder before the accident on August 22, 2013. On the date of the accident, Petitioner was painting while standing on a picker approximately 5 feet off of the ground. She was wearing a harness at the time of the accident that went over her bilateral shoulders, under the bilateral buttocks, and buckled over her chest. Her right foot slipped and fell through the floor board causing her entire leg, up to her right hip, to fall through the board. Her left leg was still on the picker's platform board when this happened causing the harness to catch her. Petitioner twisted back and to the right and felt immediate pain in her right shoulder. The harness caused bruising to her right arm, right shoulder, right shoulder blade and right thigh.

At the request of Respondent, Petitioner visited Dr. Lawrence Lieber on June 30, 2014 for purposes of a §12 examination. Dr. Lieber opined that "[t]here appears to be a direct causal relationship between the Petitioner's subjective complaints, subsequent right shoulder surgery, and that of the isolated August 22, 2013 work event." (RX2).

Petitioner is also alleging that her current cervical condition is related to her work accident of August 22, 2013. However, the first mention of a cervical problem in the medical records is April 3, 2014. This is almost eight (8) months after the original accident. Petitioner underwent a cervical MRI that revealed mild anterior spurring at C3-C6. No localized herniations were revealed. Dr. Grosskopf referred Petitioner for pain management related to the cervical spine with Dr. Chen. (PX3 & PX4). Dr. Chen examined Petitioner on September 30, 2014 and diagnosed her with cervical facet dysfunction. She was prescribed a set of cervical medial branch nerve blocks for facet treatment. (PX5).

At the request of Respondent, Petitioner visited Dr. Sean Salehi on May 15, 2014 for purposes of a §12 examination. Dr. Salehi opined that "the mechanism of injury described is consistent with having resulted in what appears to be a primary right shoulder pathology. There is nothing in the history or documentation to suggest cervical complaints... No treatment for the cervical spine is warranted, and instead all focus should be made on the shoulder pathology which falls beyond my area of expertise. Since I do not believe there is a work injury regarding the cervical spine I will not use the term MMI regarding this region of the body. There are no work restrictions as it relates to his cervical spine." (RX1).

Based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner's current right shoulder condition is causally related to the work accident of August 22, 2013. However, the Arbitrator finds that Petitioner failed to prove by a preponderance of the credible evidence that her current condition of ill-being

with respect to her cervical condition and need for medical treatment for same is not causally related to the work accident of August 22, 2013.

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 presented medical bills from TOP Pain Center, IWP, and Grosskopf Orthopaedics. (PX4, PX5 & PX7). All of the outstanding medical bills are related to treatment for the cervical spine and post-date the §12 examination with Dr. Salehi.

Therefore, based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to causation (issue "F", supra), the Arbitrator finds that Petitioner failed to prove her entitlement to medical expenses related to her cervical spine, including prospective medical treatment in the form of the cervical medial branch nerve blocks prescribed by Dr. Chen. As a result, Petitioner's claim for same is hereby denied.

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

Petitioner claims that she is entitled to TTD benefits for the period between January 7, 2014 and August 3, 2014, a period representing 29-6/7 weeks. Respondent claims the benefits should have been terminated on May 22, 2014. (Arb.Ex.#1).

The Arbitrator has reviewed the evidence and finds Petitioner is entitled to TTD benefits for 25 weeks, representing the period between January 7, 2014 through June 30, 2014. The Arbitrator notes that Petitioner was found MMI with respect to the right shoulder condition effective June 30, 2014, the date of the §12 examination and impairment rating by Dr. Lieber. (RX2 & RX3). Prior to June 30, 2014, no doctor had released Petitioner to return to work full duty with respect to the shoulder condition. Dr. Salehi released Petitioner on May 15, 2014 for the cervical condition but deferred any issues on the shoulder to a shoulder specialist. Petitioner was off of work and receiving medical treatment for the right shoulder condition through June 30, 2014 when Dr. Lieber found Petitioner to be at maximum medical improvement.

Based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to causation (issue "F", supra), the Arbitrator finds that Petitioner was temporarily totally disabled from January 7, 2014 through June 30, 2014, for a period of 25 weeks pursuant to §8(b) of the Act.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that even though this matter was tried pursuant to §19(b) of the Act, the parties agreed that if the Arbitrator determined that Petitioner's condition had reached maximum medical improvement, the Arbitrator could rule on the issue of nature and extent. Based on the Arbitrator's finding to the effect that Petitioner failed to prove that her current condition of ill-being with respect to her cervical spine was causally related to the accident (issue "F", supra), and that Petitioner's condition with respect to her right shoulder had reached MMI as of June 30, 2014 (issues "F" & "K", supra), the Arbitrator finds it appropriate to make a determination as to the nature and extent of the injury.

Pursuant to §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 report the level of impairment in writing. The 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. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination 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. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that the record contains an impairment rating by Dr. Lieber of 5% of the right upper extremity, which the doctor indicated translated to 3% impairment of a whole person pursuant to the most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment. (RX2). The Arbitrator notes that this level of impairment does not necessarily equate to permanent partial disability under the Workers' Compensation Act, but instead is a factor to be considered in making such a disability evaluation.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a general laborer and warehouse employee at the time of the accident and that she returned to work in that capacity, and continues to do so as of the hearing date.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 49 years old at the time of the accident. (Arb.Ex.#1).

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that there is no evidence that Petitioner's future earnings capacity has been appreciably diminished as a result of the accident.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner underwent right shoulder surgery performed by Dr. Grosskopf at Valley Ambulatory Surgery Center on January 7, 2014. The procedures performed included arthroscopic superior labral repair, supraspinatus tendon debridement, and acromioplasty. Petitioner postoperative diagnoses included a superior labral tear extending into the anterior upper edge of the labrum, a 10% undersurface supraspinatus tendon tear in the anterior third, and impingement syndrome. (PX3). Petitioner completed a course of physical therapy at West Physical Therapy. (PX6).

Petitioner was examined by Dr. Lieber at the request of Respondent on June 30, 2014. On examination of the right shoulder, flexion and range of motion were decreased at the extremes due to pain. She had positive AC tenderness, positive greater tuberosity, positive impingement, positive O'Brien, positive reverse O'Brien, positive apprehension and positive Speed test. Strength was affected by shoulder pain. (RX2).

Petitioner was examined by Dr. Grosskopf on October 2, 2014. On physical examination Petitioner had tenderness on palpation at the bicipital groove. There was active abduction to 150 degrees, active forward flexion to 155 degrees, active internal rotation and external rotation at 90 degrees of abduction was 80 degrees. (PX4).

The determination of 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, after applying §8.1b of the Act and considering the relevance and weight of all these factors, including Dr. Lieber's AMA impairment rating, the Arbitrator finds that sustained permanent partial disability to the extent of 12.5% person-as-a-whole pursuant to §8(d)2 of the Act.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

The parties submitted into evidence an agreed stipulation to the effect that Respondent paid \$9,502.70 in temporary total disability benefits in this claim. (Arb.Ex.#2). The Arbitrator notes that this amount supersedes the amount the parties had originally agreed to in the Request for Hearing form (Arb.Ex.#1).

Therefore, Respondent is entitled to a credit for TTD paid in the amount of \$9,502.70.