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335 Ill. Dec. 225, \*\*\*

TTC ILLINOIS, INC./TOM VIA TRUCKING, (Illinois Insurance Guaranty Fund, Appellant), v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION, et al. (DONALD KEEN, Appellee). TTC ILLINOIS, INC./TOM VIA TRUCKING, (Illinois Insurance Guaranty Fund, Appellant), v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION, et al. (DONALD KEEN, Appellee).

Nos. 5-08-0644WC &amp; 5-08-0645WC Consolidated

APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT, ILLINOIS WORKERS' COMPENSATION COMMISSION DIVISION

918 N.E.2d 570; 2009 Ill. App. LEXIS 1360; 335 Ill. Dec. 225

November 10, 2009, Opinion Filed

**PRIOR HISTORY:** [\*\*1]

APPEAL FROM THE CIRCUIT COURT OF WILLIAMSON COUNTY. No. 08 MR 75. HONORABLE BRAD K. BLEYER, JUDGE PRESIDING. APPEAL FROM THE CIRCUIT COURT OF WILLIAMSON COUNTY. No. 08 MR 76. HONORABLE BRAD K. BLEYER, JUDGE PRESIDING.

**DISPOSITION:** No. 5-08-0644WC, Affirmed. No. 5-08-0645WC, Affirmed.**CASE SUMMARY****PROCEDURAL POSTURE:** The Williamson County Circuit Court (Illinois), in two cases involving separate injuries sustained by appellee employee, confirmed two decisions of the **Commission** that awarded benefits under the **Workers' Compensation Act**, 820 ILCS 305/1 et seq. (1998), to him. Appellant employer appealed.**OVERVIEW:** The employee worked for the employer as a diesel technician. He was injured in two separate work incidents. One injury involved a back injury he sustained. Seven months later, he was injured when a fuel tank exploded. Thereafter, he filed two applications for adjustment of claims pursuant to the **Workers' Compensation Act**. Later and on the same date, both cases were dismissed for want of prosecution. However, the record showed that the employer agreed to reinstatement of the cases. His petitions for reinstatement did not set forth a date on which he would appear before the arbitrator and present his petitions, as required by Ill. Admin. Code tit. 50, § 7020.90(b) (2002). After reinstatement, his cases were tried simultaneously before the arbitrator, who found that he was entitled to a **workers' compensation** award in both cases. The **Commission** affirmed, as did the trial court. The appellate court found that the employer waived the right to notice that would have been supplied in the petitions about when the employee would appear before the arbitrator and present his petitions, especially since the employer agreed not to a date certain as that date, but an unspecified future date.**OUTCOME:** The appellate court affirmed both judgments of the trial court that confirmed two **Commission** decisions awarding **workers' compensation** benefits to the employee.**CORE TERMS:** claimant's, arbitrator's, pain, lumbar, reinstatement, spine, herniation, reinstate, scan, thoracic, notice, fracture, doctor, compression, therapy, recommended, manifest, consolidated, disability, partial, surgery, impression, myelogram, stenosis, severe, opined, leg, sac, want of prosecution, arbitrator's decisions**LEXISNEXIS® HEADNOTES**

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Civil Procedure &gt; Appeals &gt; Briefs

Civil Procedure &gt; Appeals &gt; Records on Appeal

**HN1** Ill. Sup. Ct. R. 342(a) partly provides that an appellant's brief shall include an appendix containing, among other things, a complete table of contents of the record on appeal with page references. The table shall state: (1) the nature of each document, order, or exhibit. [More Like This Headnote](#)

Workers' Compensation &amp; SSDI &gt; Administrative Proceedings &gt; General Overview


Workers' Compensation &amp; SSDI &gt; Administrative Proceedings &gt; Claims &gt; General Overview


Workers' Compensation &amp; SSDI &gt; Administrative Proceedings &gt; Claims &gt; Time Limitations &gt; General Overview


**HN2** See Ill. Admin. Code tit. 50, § 7020.90 (2002).


Workers' Compensation &amp; SSDI &gt; Administrative Proceedings &gt; General Overview


**HN3** Under Ill. Admin. Code tit. 50, § 7020.70(b)(2) (2002), parties may waive the requirements of notice. [More Like This Headnote](#)


Workers' Compensation & SSDI > Administrative Proceedings > General Overview 


Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > Standards of Review > General Overview   
**HN4** Although not binding upon a reviewing court, reviewing courts generally accord deference to the **Commission's** interpretation of its own rules. [More Like This Headnote](#)

Workers' Compensation & SSDI > Administrative Proceedings > General Overview 


Workers' Compensation & SSDI > Administrative Proceedings > Hearings & Review 

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > Standards of Review > Abuse of Discretion   
**HN5** The decision to grant or deny a timely petition to reinstate is a matter which rests within the sound discretion of the **Commission**, and its determination will not be disturbed on review absent an abuse of that discretion. [More Like This Headnote](#)

Governments > Legislation > Statutory Remedies & Rights 

Workers' Compensation & SSDI > Administrative Proceedings > General Overview   
**HN6** A party may waive statutory provisions designed for its benefit. [More Like This Headnote](#)

Governments > Courts > Rule Application & Interpretation 

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview   
**HN7** Where a party fails to cite any legal authority in support of its argument, the issue is waived for purposes of an appeal. Ill. Sup. Ct. R. 341(h)(7). [More Like This Headnote](#)

**COUNSEL:** For Appellant: [Matthew Pelikan](#), [Gregory T. Cook](#), McAnany, Van Cleave & for Phillips, St. Louis, MO.

For Appellee: [David A. Nester](#), [Patrick J. Madigan](#), Nester & Constance, P.C., Belleville, IL.

**JUDGES:** JUSTICE [HOFFMAN](#) delivered the opinion of the court. [McCULLOUGH](#), P.J., [HUDSON](#), [HOLDRIDGE](#), and [DONOVAN](#), JJ., concur.

**OPINION BY:** [HOFFMAN](#)

#### OPINION

**[\*\*227]** **[\*572]** JUSTICE [HOFFMAN](#) delivered the opinion of the court:

TTC Illinois, Inc. /Tom Via Trucking and the Illinois Insurance Guaranty Fund (hereinafter collectively referred to as the Employer/Fund) filed the instant consolidated appeals from separate judgments of the Circuit Court of Williamson County which confirmed two decisions of the Illinois **Workers' Compensation Commission (Commission)** awarding the claimant, Donald Keen, benefits under the **Workers' Compensation Act (Act)** (820 ILCS 305/1 *et seq.* (West 1998)). For the reasons which follow, we affirm both judgments.

On September 11, 2000, the claimant filed two applications **[\*\*2]** for adjustment of claim pursuant to the Act, seeking benefits for injuries he alleged that he received while in the employ of Tom Via on May 28, 1998 (docket No. 00 WC 050293) and January 6, 1999 (docket No. 00 WC 050294). On April 25, 2005, both cases were dismissed for want of prosecution by an arbitrator when the claimant failed to appear on a set hearing date.

The **Commission's** official docket entries reflect that the claimant filed petitions to reinstate both cases on June 27, 2005. However, the petitions did not set forth a date on which the claimant would appear before the arbitrator and present his petitions, and there is no evidence of record that any notices of motion were filed along with the petitions. The record does contain copies of notices of motion dated October 31, 2006, setting the petitions for reinstatement for hearing before the arbitrator on that same date at 9 a.m. The record does not contain a transcript of the proceedings before the arbitrator on October 31, 2006. The transcript of the proceedings **[\*573]** **[\*\*\*228]** before the arbitrator on March 14, 2007, which is contained in the record reflects that the petitions for reinstatement came before him on that date, having been continued **[\*\*3]** from February 13, 2007. According to the transcript of the March 14, 2007, proceedings, the claimant's attorney represented to the arbitrator that, in June of 2005, one of the attorney's representing Tom Via orally agreed to the reinstatement of both cases, and she subsequently issued a letter agreeing to their reinstatement. The claimant's attorney went on to state the following:

"So I just want it clear on the record that the reason the Order to Reinstate was not signed shortly after the Petition to Reinstate is that both parties agreed to reinstate it, but it would be done at a convenient time for the parties when they were both in front of Judge Dibble [the arbitrator] on another case or another matter."

Addressing the issue of reinstatement, the arbitrator stated:

"You thought it was by stipulation, and it was at one point, and now it's not; is that correct?"

The attorney for Tom Via responded:

"Basically, but with respect to that, there never was a meeting before the judge to discuss the issue." Immediately thereafter, the arbitrator granted the petitions and reinstated both of the claimant's cases. In further support of his assertion that the parties had agreed to reinstate the cases, **[\*\*4]** the claimant's attorney relies upon a letter he received dated October 31, 2006, from one of Tom Via's attorney's in which she states:

"Pursuant to our conversation, please be advised that my client has no objection to reinstatement of Mr. Keen's **workers' compensation** claims: 00 WC 050293 and 00 WC 050294."

Following their reinstatement, the claimant's cases were tried simultaneously before the arbitrator. The following factual recitation is taken from the evidence presented at the arbitration hearing.

The claimant was employed by Tom Via as a diesel technician. On July 16, 1996, the claimant injured his back when he and a co-employee were lifting a truck radiator estimated to weigh 300 pounds. The claimant came under the care of Dr. Alan Froehling an orthopaedic surgeon. X-rays of the claimant's back revealed no evidence of any fractures. Dr. Froehling diagnosed the claimant as suffering from a severe lumbar strain and prescribed pain medication.

Dr. Froehling treated the claimant conservatively, prescribing physical therapy and traction. In his notes of a visit on August 14, 1996, Dr. Froehling wrote that the claimant had a full range of motion and was without pain. Dr. Froehling released [\*\*5] the claimant from treatment and authorized him to return to work on August 20, 1996.

The claimant's wife, Tammy Keen, who by the time of the arbitration hearing had been appointed as the claimant's guardian, testified that from the time the claimant returned to work in August of 1996 until May 28, 1998, the claimant did not suffer any further back injuries.

It is uncontested that, on May 28, 1998, the claimant injured his back at work while lifting the front-end spring assembly of a truck which weighed approximately 150 pounds. On June 1, 1998, the claimant sought treatment from Dr. Froehling. In a note of the claimant's visit on that date, Dr. Froehling wrote that the claimant reported severe low-back pain and numbness in his upper right leg. On examination, the doctor observed spasms in the claimant's low back and limited range of motion. X-rays of the claimant's lumbar spine were [\*\*574] [\*\*\*229] "essentially negative." As of that visit, Dr. Froehling diagnosed a severe back strain with some mild left sciatic symptoms. He prescribed pain medication and ordered an MRI scan.

The claimant next saw Dr. Froehling on June 15, 1998, after having an MRI as ordered. Dr. Froehling's notes of that visit state [\*\*6] that the MRI showed a central disc herniation at L4-L5 on the left, but the quality of the images were degraded by a motion artifact. The doctor also noted a "little central bulge at L5-S1 that might also be a small disc herniation." He opined that the claimant was in need of a myelogram and CT scan and noted that he would consider administering lumbar epidural steroid injections.

On July 20, 1998, the claimant underwent a lumbar myelogram. The report of that procedure states that no apparent disc herniation was identified. A slight elevation of the thecal sac at L4-L5 and a very mild impression upon the anterior aspect of the thecal sac at L2-L3 and L3-L4 were noted. According to that report, the claimant's nerve root sheaths appeared normal and the neural arches were intact. Immediately following the lumbar myelogram, the claimant had a CT scan of his lumbar spine. The report of that scan states that no apparent spinal stenosis or disc herniation was identified throughout the spine. Minimal diffuse disc impression upon the anterior aspect of the thecal sac at L4-L5 was noted. However, no significant impression on the thecal sac or traversing nerve roots was observed. A slight bilateral [\*\*7] facet arthropathy at L4-L5 and L5-S1 was also noted.

The claimant continued to treat with Dr. Froehling. He received a series of lumbar epidural steroid injections and underwent physical therapy. Throughout his treatment, the claimant continued to complain of back pain and exhibited flexion intolerance. Dr. Froehling opined that the claimant had a small disc herniation on the left, although "[i]t didn't show to well on the myelogram or CT scan."

At the request of Tom Via, the claimant was examined on October 20, 1998, by Dr. Sherwyn Wayne. In his report of that examination, Dr. Wayne stated that the claimant reported left lower back and buttock pain, which intensifies with prolonged sitting and coughing, and that he received no lasting relief or improvement from the epidural steroid injections or physical therapy. Dr. Wayne outlined the results of his physical examination of the claimant and his review of the claimant's MRI scan, myelogram, and post-myelogram CT scan. According to the report, Dr. Wayne found no objective evidence substantiating the claimant's ongoing complaints. He opined that the claimant required no further diagnostic measures or medical treatment. Dr. Wayne suggested [\*\*8] only that the claimant follow an appropriate daily program of back exercises and that he lose weight. Dr. Wayne found that the claimant had reached maximum medical improvement and was capable of performing his previous work duties. Dr. Wayne opined that the claimant may have initially sustained a mechanical lumbar strain, but there is no evidence of any ongoing pathology or any objective evidence of a permanent partial disability attributable to the claimant's injury at work on May 28, 1998.

Following his examination by Dr. Wayne, the claimant continued under the care of Dr. Froehling. The doctor's records reflect that the claimant continued to complain of leg and back pain. On October 26, 1998, Dr. Froehling wrote in his notes that he thought that the source of the claimant's pain was his left L4-L5 disc. Because the doctor felt that the earlier imaging studies of the claimant's back [\*\*575] [\*\*\*230] were not conclusive, he recommended that the claimant undergo an EMG.

Dr. Froehling's notes of a November 16, 1998, visit reflect that the claimant had returned to work and was performing his regular duties. The note also states that the claimant was still complaining of pain in his left leg. Dr. Froehling [\*\*9] wrote that he reviewed the claimant's EMG but that it was "pretty non-specific."

On January 6, 1999, while the claimant was working at Tom Via, a fuel tank exploded, throwing the claimant 20 to 30 feet. The claimant suffered fractured ribs; compression deformities and fractures of the thoracic vertebrae T8, T10 and T11; a left high partial scalp hematoma with subcutaneous emphysema; a small right frontal scalp hematoma; a closed head injury; a ruptured spleen; and a pulmonary contusion.

The claimant was hospitalized at the Barnes/Jewish Hospital from January 7, 1999, through January 27, 1999. While hospitalized, the claimant exhibited delusional and aggressive behavior, memory and attention impairment, and behavioral changes; all consistent with a traumatic head injury.

Following his discharge from the hospital, the claimant received speech therapy, occupational therapy, physical therapy, communicative and cognitive therapy, behavioral therapy, and counseling services. The records of the claimant's treatment reveal that, in addition to other conditions, he suffered from chronic-back pain and headaches.

Without exception, the claimant's treating physicians opined that he suffered permanent [\*\*10] injuries which prevented him from engaging in gainful employment.

For the first time since his visit on November 16, 1998, the claimant was again examined by Dr. Froehling on July 15, 2002. In a

report of that visit, Dr. Froehling noted that, as a result of the explosion on January 6, 1999, the claimant sustained catastrophic injuries, including multiple vertebral compression fractures. He wrote that the claimant was suffering from chronic-back pain for which he as taking pain medication. Dr. Froehling observed that the claimant appeared to be having problems with both the thoracic and lumbar spine. According to his report, Dr. Froehling reviewed the claimant's bone scan and "plain films," which revealed fractures with compression of T8 and T11 that the doctor found may be chronic with some healing problems. However, before recommending further surgical intervention, Dr. Froehling suggested that the claimant undergo a new MRI of his thoracic and lumbar spine.

As recommended by Dr. Froehling, the claimant had an MRI of both his thoracic and lumbar spine on July 17, 2002. As to the claimant's thoracic spine, the radiologist's report contains an impression of a moderate compression fracture [\*\*11] of T8 without cord compression. As to the claimant's lumbar spine, the radiologist noted disc degeneration at multiple levels without significant mass effect and disc desiccation at L2-L3, L3-L4, L4-L5, and L5-S1. The report states that no evidence of spinal stenosis or neural foraminal stenosis in the lumbosacral spine was detected.

In a report dated July 24, 2002, Dr. Froehling outlined his review of the claimant's July 17, 2002, MRI. Dr. Froehling noted the findings as to the thoracic spine, particularly the evidence of a fracture at the T10-T11 facet joint. The report states that the claimant continued to suffer from low-back pain, which Dr. Froehling believed was caused by the derangement of the T10 joint. Dr. Froehling discussed the possibility of a surgical decompression at T10-T11 with the claimant, but recommended [\*\*576] [\*\*\*231] a continued course of conservative treatment. The report makes no mention of any symptoms related to the claimant's lumbar spine.

When deposed on November 14, 2002, Dr. Froehling testified that, although he was not sure he could pinpoint the source, he was of a belief that the claimant's T8 and T11 vertebrae were responsible for his back pain. He stated that the claimant's [\*\*12] complaints of pain were consistent with compression fractures in this area.

In his notes of a visit on January 17, 2003, Dr. Froehling attributed the severe pain which the claimant was suffering to an instability at T8 evidenced on a bone scan. As of this examination, Dr. Froehling recommended that the claimant undergo a posterior fusion with instrumentation from T6 down to T11.

The claimant continued to see Dr. Froehling. In his notes of an examination on June 11, 2003, Dr. Froehling wrote that the claimant complained of headaches and back pain which he attributed to the claimant's chronic compression fractures. The doctor recommended that the claimant have an MRI scan of his thoracic spine.

The claimant had the MRI as recommended and returned to see Dr. Froehling on July 17, 2003. In his notes of that visit, Dr. Froehling wrote that his review of the claimant's recent MRI revealed a small disc herniation at T9-T10, some deterioration in the claimant's spinal condition, and a fracture at T8. Dr. Froehling noted that the claimant's pain was mainly between his shoulder blades.

Dr. Froehling's records reflect that he next saw the claimant on January 28, 2004. At that visit, the claimant [\*\*13] complained of pain in his upper back. According to the doctor's notes, there were no new findings on clinical examination of the claimant.

On the recommendation of Dr. Froehling, the claimant had an MRI of his lumbar spine on May 27, 2005, and an MRI of his thoracic spine on June 1, 2005. The radiologists' reports of those scans contain impressions of a large disc herniation at L5-S1, fracture deformities at T8 and T11, hemangiomas at T7 and T10, moderate spinal stenosis at T10-T11, and compression changes upon the thoracic dural sac at T9-T10.

The claimant saw Dr. Froehling on June 2, 2005, at which time he complained of increased low-back pain along with pain in his right hip and leg. The doctor's notes of that visit state that the claimant was limping and had numbness in the lateral toes on his right foot. Dr. Froehling recorded the results of the MRI's of the claimant's lumbar and thoracic spine. As to the claimant's thoracic spine, the doctor wrote that the scan showed some progressive stenosis at T9-T10 and T10-T11 which may ultimately require decompression. As to the MRI of the claimant's lumbar spine, Dr. Froehling noted "a new finding of disc herniation, not present on his 2002-X-rays[;] [\*\*14] \*\*\* a very large extruded fragment on the right at L5-S1, compressing the right S1 nerve root." Due to the claimant's severe and intractable pain, Dr. Froehling recommended a laminectomy and discectomy at L5-S1.

Dr. Froehling's notes of the claimant's visit on June 29, 2005, state:

"Donald and I had a conversation about his disc herniation. In 2002, he had a bulging disc at L4-5. At that time, he had a desiccated L5-S1 disc, but no bulging or herniation. Now he has a herniation at L5-S1. These interval findings suggest that it is going to be hard to make a causal relationship for him. Based on this, we are going to run things through his group insurance carrier. [\*\*577] [\*\*\*232] His wife is asking to talk to the attorney, and that will be fine."

On the following day, June 30, 2005, Dr. Froehling made the following entry in his records:

"Donald's wife came in to drop off the report from the 1999 MRI scan that in fact did show that he had tiny bulges at L4-5 and L5-S1 way back in those days. I explained to her what I thought this meant. She and I commiserated a little bit about Donny's condition, and how we are going to go ahead and take care of him. He is scheduled for surgery."

On July 8, 2005, the claimant [\*\*15] underwent a lumbar laminectomy and discectomy at L5-S1 to decompress the right S1 nerve root. Dr. Froehling continued to treat the claimant post-operatively. According to a letter from Dr. Froehling to the claimant's attorney, following the surgery, the claimant experienced "good relief" from his leg pain and his lumbar pain symptoms gradually resolved.

In that same letter which was dated March 3, 2007, Dr. Froehling wrote that the claimant's 1998 injury never fully resolved. According to the letter, the claimant returned to work following his injury in 1998 with continued complaints of significant lumbar pain. He noted that there was "demonstrated evidence of injury to the L4/5 and L5/S1 discs at that time." That letter contains the following paragraph:

"Over a period of time, his lumbar condition deteriorated to the extent that a disc herniation developed at L5/S1, which required surgical intervention. I believe that the 1998 injury played a significant role with respect to the causation of the disc herniation and is related to the need for the surgery in 2005. With respect to impairment/disability, the lumbar condition would be expected to affect his ability to perform diesel mechanic [\*\*16] tasks with impairments in bending and lifting, estimated at 20% of a man as a whole."

Following the consolidated hearing on both of the claimant's cases, the arbitrator issued separate decisions. In his decision in case No. 00 WC 050293, relating to the May 28, 1998, incident, the arbitrator found that the claimant sustained low-back injuries at L5-S1 arising out of and in the course of his employment with Tom Via and that timely notice was given. The arbitrator awarded the claimant permanent partial disability benefits under section 8(d)(2) of the Act (820 ILCS 305/8(d)(2)) (West 1998)) for a 25% loss of a person as a whole and ordered Tom Via to pay all of the outstanding medical bills incurred by the claimant as a result of the incident, including the expenses related to a lumbar laminectomy and discectomy at L5-S1 which the claimant underwent on July 8, 2005.

In his decision in case No. 00 WC 050294, relating to the January 6, 1999, incident, in which the claimant suffered numerous injuries as the result of an explosion, the arbitrator found that the claimant's injuries arose out of and in the course of his employment with Tom Via and that timely notice was given. Finding that the [\*\*17] claimant was totally and permanently disabled, the arbitrator awarded the claimant benefits under section 8(f) of the Act (820 ILCS 305/8(f)(West 1998)) for the remainder of his lifetime.

Tom Via sought reviews of both of the arbitrator's decisions before the **Commission**. In separate unanimous decisions, the **Commission** affirmed and adopted the arbitrator's decisions.

Employer/Fund filed separate actions in the Circuit Court of Williamson County for judicial review of the **Commission's** decisions. The circuit court confirmed both [\*\*578] [\*\*233] decisions, and the Employer/Fund filed timely notices of appeal. This court, on its own motion, consolidated the appeals for disposition.

Before addressing the issues raised by the Employer/Fund in these consolidated appeals, we are compelled to comment on the Employer/Fund's failure to file a brief in compliance with Supreme Court Rule 342 (210 Ill. 2d R. 342). <sup>HN1</sup> Supreme Court Rule 342 (a) provides, in relevant part, that the appellant's brief shall include an appendix containing, among other things, a complete table of contents of the record on appeal with page references. "The table shall state: (1) the nature of each document, order, or exhibit." 210 Ill. 2d R. [\*\*18] 342(a).

In this case, the record consists of 2,471 pages contained in 12 volumes. The Table of Contents of the Record which is contained in the appendix to the Employer/Fund's brief is 1 1/2 pages long and contains only 28 entries. Within the record, however, are numerous exhibits such as deposition transcripts and medical records which are not set forth in the Employer/Fund's Table of Contents. Our review was made extremely difficult in this case because we were required to search the record for a number of exhibits which were not listed in the Table of Contents. We remind the Employer/Fund that this court is not a repository into which an appellant may dump thousands of unindexed record pages; thereby placing the burden upon the court to search through the record for relevant information. In the future, counsel for the Employer/Fund would be well served to file briefs made in compliance with the Supreme Court Rules, as briefs that do not conform to those rules may be stricken and new briefs ordered.

Turning now to the merits of these consolidated appeals, we address the Employer/Fund's first argument; namely, that the reinstatement of the claimant's cases after they were dismissed [\*\*19] by an arbitrator for want of prosecution was erroneous as a matter of law.

As noted earlier, both of the claimant's cases were dismissed on April 25, 2005. Section 7020.90 of the Rules of Practice before the **Commission** provides as follows:

<sup>HN2</sup> "a) Where a case has been dismissed from the arbitration call for want of prosecution, the parties shall have 60 days from receipt of the dismissal order to file a petition for reinstatement of the cause onto the arbitration call. Notices of dismissal shall be sent to all parties.

b) Petitions to Reinstatement must be in writing. The petition shall set forth the reason the cause was dismissed and the grounds relied upon for reinstatement. The petition must also set forth the date on which Petitioner will appear before the Arbitrator to present his petition. A copy of the petition must be served on the other side at the time of filing with the **Commission** in accordance with the requirements of Section 7020.70.

c) Petitions to Reinstatement shall be docketed, and assigned to be heard by the same Arbitrator to whom the case was originally assigned. Both parties must appear at the time and place for hearing. Parties will be permitted to present evidence in support [\*\*20] of, or in opposition to, the petition. The Arbitrator shall apply standards of fairness and equity in ruling on the Petition to Reinstatement and shall consider the grounds relied on by Petitioner, the objections of Respondent and the precedents set forth in **Commission** decisions." 50 Ill. Adm. Code § 7020.90 (2002).

The Employer/Fund's entire argument on this issue is based upon the failure of the claimant's petitions to set forth the date upon which they would be heard as required in section 7020.90(b) (50 Ill. Adm. Code § 7020.90(b) [\*\*579] [\*\*234] (2002)). In the Statements of Exception filed with the **Commission** in support of its petitions for review of the arbitrator's decisions in these cases, Tom Via argued not only that the arbitrator erred in granting the claimant's petitions for reinstatement but also that the petitions were untimely when originally filed because they did not comply with the provision of section 7020.90(b).

The claimant asserts that Tom Via waived any notice of the date upon which his petitions would be presented before the arbitrator. In support of his waiver argument, the claimant relies upon the statements of his attorney to the arbitrator that, in June of 2005, one of the attorney's [\*\*21] representing Tom Via orally agreed to the reinstatement of both cases, and the October 31, 2006 letter, in which Tom Via's attorney wrote that her client had no objection to the reinstatement of both of the claimant's cases. The claimant also relies on <sup>HN3</sup> section 7020.70(b)(2) of the Rules of Practice before the **Commission**, which provides that parties may waive the

requirements of notice. See 50 Ill. Adm. Code § 7020.70(b)(2) (2002).

**HN4** Although not binding upon us, we generally accord deference to the **Commission's** interpretation of its own rules. *Banks v. Industrial Comm'n*, 345 Ill. App. 3d 1138, 1141, 804 N.E.2d 629, 281 Ill. Dec. 664 (2004). In affirming and adopting the arbitrator's decisions, the **Commission** implicitly rejected Tom Via's arguments concerning the timeliness of the claimant's petitions seeking reinstatement of his claims. We find nothing clearly erroneous, arbitrary, or unreasonable about the **Commission's** actions in this regard.

Although the 60-day limit for filing a petition to reinstate a case after it has been dismissed by an arbitrator for want of prosecution is jurisdictional in nature, we do not believe that the same is true of the content requirements of such a petition as contained **[\*\*22]** in section 7020.90(b). In *Banks v. Industrial Comm'n*, 345 Ill. App. 3d 1138, 804 N.E.2d 629, 281 Ill. Dec. 664 (2004), the **Commission** also found that a petition to reinstate which did not comply with section 7020.90(b) was timely filed. *Banks*, 345 Ill. App. 3d at 1141. Rather, the section 7020.90(b) violation in *Banks* formed the basis of the **Commission's** discretionary decision to deny a petition to reinstate. *Banks*, 345 Ill. App. 3d at 1141-43. As the Employer/Funds's only criticism of the claimant's petitions to reinstate is their failure to set forth the date upon which they would be heard as required in section 7020.90(b), we reject the argument that the **Commission** erred as a matter of law in reinstating the claimant's cases. However, just as in *Banks*, we must address the question of whether the **commission** abused its discretion in the matter.

**HN5** The decision to grant or deny a timely petition to reinstate is a matter which rests within the sound discretion of the **Commission**, and its determination will not be disturbed on review absent an abuse of that discretion. *Banks*, 345 Ill. App. 3d at 1140; see also *Conley v. Industrial Comm'n*, 229 Ill. App. 3d 925, 930, 594 N.E.2d 730, 171 Ill. Dec. 586 (1992). We find no abuse of **[\*\*23]** that discretion in this case.

**HN6** A party may waive statutory provisions designed for its benefit. See *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 183, 890 N.E.2d 934, 322 Ill. Dec. 15 (2008). The notice provision of section 7020.90(b) is clearly for the benefit of the respondent. Requiring a claimant to set forth the date on which he will appear before the arbitrator to present his petition to reinstate **[\*\*235]** state **[\*580]** works to minimize the prejudice to a respondent which might result from delays in prosecuting a claim such as the unavailability of witnesses or their diminished recollection of the facts. See *Banks*, 345 Ill. App. 3d at 1141-43.

The record in this case contains evidence that, as early as June 2005, Tom Via's attorney agreed to the reinstatement of the cases, which was to be accomplished on a "convenient" date when both parties were before the arbitrator on some other matter. The October 31, 2006, letter from Tom Via's attorney further supports the conclusion that Tom Via agreed to the reinstatement of both cases. Having agreed to reinstatement on some unspecified "convenient" date, Tom Via acquiesced in the deficient petitions filed by the claimant and, thereby, waived the protection of the notice **[\*\*24]** provision in section 7020.90(b). Further, unlike the facts in *Banks*, it appears that any delay in calling the claimant's petitions to reinstate for hearing before the arbitrator was the product of an agreement to which the respondent, Tom Via, was a party.

There being no further assignments of error in the circuit court's order confirming the **Commission** decision relating to the claimant's January 6, 1999, injury, we affirm the circuit court's judgment in our docket No. 5-08-0644WC.

Next, the Employer/Fund contends that the **Commission's** finding that the claimant's need for surgery on July 8, 2005, was causally related to his injury on May 28, 1998, is against the manifest weight of the evidence. However, **HN7** the Employer/Fund has failed to cite any legal authority in support of its argument, and, as a consequence, the issue has been waived for purposes of this appeal. 210 Ill. 2d R 341(h)(7); *Service Adhesive Co. v. Industrial Comm'n*, 226 Ill. App. 3d 356, 366, 589 N.E.2d 766, 168 Ill. Dec. 366 (1992). Waiver aside, we find the argument lacking in merit.

Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the **Commission**, and its resolution **[\*\*25]** of such a matter will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244, 461 N.E.2d 954, 78 Ill. Dec. 120 (1984). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894, 169 Ill. Dec. 390 (1992).

In his letter of March 3, 2007, Dr. Froehling stated his belief that the claimant's 1998 injury played a significant role with respect to the causation of his L5-S1 disc herniation and is related to the claimant's need for surgery in 2005. It is the function of the **Commission** to decide questions of fact, judge the credibility of witnesses, and resolve conflicting evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 38 Ill. Dec. 133 (1980). In this case, the arbitrator relied upon Dr. Froehling's causation opinions and noted that Tom Via had not produced any credible evidence that the claimant's disc injury was not related to his work accident on May 28, 1998. The **Commission** adopted the arbitrator's finding in this regard, and we cannot say that the **Commission's** resolution of the **[\*\*26]** issue is against the manifest weight of the evidence.

Finally, the Employer/Fund contends that the **Commission's** award of permanent partial disability benefits to the claimant for a 25% loss of a person as a whole as a result of his injury on May 28, 1998, is against the manifest weight of the **[\*581]** **[\*\*236]** evidence. Again, however, the Employer/Fund fails to support its argument with citation to authority in support of its argument, and, as a consequence, this issue too has been waived. 210 Ill. 2d R 341(h)(7); *Service Adhesive Co.*, 226 Ill. App. 3d at 366. We also reject the argument on the merits.

The Employer/Fund appears to argue that the claimant's L5-S1 herniation is not causally related to his injury on May 28, 1998, and, as a consequence, the **Commission's** award of permanent partial disability benefits for a 25% loss of a person as a whole as a result of the claimant's injury on May 28, 1998, is against the manifest weight of the evidence. As noted earlier, however, Dr. Froehling's causation opinions sufficiently demonstrated a causal connection between the claimant's L5-S1 herniation and his injury at work on May 28, 1998. Having previously rejected the premise upon which the Employer/Fund's **[\*\*27]** argument is based, we, likewise, reject its argument regarding the nature and extent of the claimant's injuries resulting from his May 28, 1998, accident.

Based upon the foregoing analysis, we affirm the circuit court's order confirming the **Commission's** decision relating to the claimant's May 28, 1998, injury which was docketed in this court as case No. 5-08-0645WC.

No. 5-08-0644WC, Affirmed.

No. 5-08-0645WC, Affirmed.

McCULLOUGH, P.J., HUDSON, HOLDRIDGE, and DONOVAN, JJ., concur.


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8 IWCC 645; 2008 Ill. Wrk. Comp. LEXIS 782, \*

DONALD KEEN, PETITIONER, v. TOM VIA TRUCKING, RESPONDENT,

NO. 00WC 50293

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF FRANKLIN

8 IWCC 645; 2008 Ill. Wrk. Comp. LEXIS 782

June 4, 2008

**CORE TERMS:** pain, arbitrator, lumbar, herniation, surgery, leg, disputed issues, disability, impairment, credibly, lifting, notice, accrue, nerve, root

**JUDGES:** James F. DeMunno; Mario Basurto; David L. Gore

**OPINION:** [\*1]

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, medical expenses, 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 August 8, 2007 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 \$ 65,700.00. The probable cost of the record to be filed as return to Summons is the sum of \$ 35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

ATTACHMENT

ILLINOIS WORKERS' COMPENSATION COMMISSION [\*2] ARBITRATION DECISION

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 **John Dibble**, arbitrator of the Commission, in the city of **Whittington**, on **April 10, 2007 and July 11, 2007**. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues below, and attaches those findings to this document.

#### DISPUTED ISSUES

F. Is the petitioner's present condition of ill-being causally related to the injury?

Alan Froehling, M.D.'s medical report of March 3, 2007 was admitted as by stipulation of the parties. Petitioner was referred to Dr. Froehling by Respondent.

Dr. Froehling states in his report that Donald **Keen** originally injured his lumbar spine 7/16/96. On 8/14/96 he was free of pain and was returned to full employment 8/20/96. Diagnosis was lumbar strain, resolved.

Don **Keen** sustained another lumber injury 5/28/98 lifting a front end spring assembly weighing about 150 pounds. This is the claimed work comp. injury. On 6/15/98 Dr. Froehling reviewed an MRI which showed evidence of a disc injury at L4-5 and [\*3] L5-S1. **Keen** was treated with therapy, epidural injections, myelogram, CT scan and other conservative treatment.

Dr. Sherwyn Wayne saw the petitioner for an IME in October of 1998. On the basis of Dr. Wayne's report, Petitioner's workers' compensation benefits were terminated. According to Dr. Froehling, "he was forced to return to work." "When I saw him 11/16/98, I found him to have pain in the lower back and left leg. He was not released from my care."

Tammy **Keen** testified on behalf of Donald **Keen** since he is a legally disabled adult. Tammy **Keen** credibly testified that Donald **Keen**



continued to have low back pain and leg pain.

On 6/2/05 Donald **Keen** reported an increase of low back pain and hip and leg pain. There was no intervening trauma. An MRI demonstrated a large L5-S1 disc herniation with a free fragment in the canal, compressing on the S1 nerve root. On 7/8/05 a lumbar laminectomy and discectomy at L5-S1 was performed to decompress the right S1 nerve root.

Concerning the lumbar disc and surgery Dr. Froehling states "over a period of time, his lumbar condition deteriorated to the extent that a disc herniation developed at L5-S1, which required surgical intervention. I believe [\*4] that the 1998 injury played a significant role with respect to the causation of the disc herniation and is related to the need for surgery in 2005.

Respondent has not produced any credible evidence that the petitioner's disc injury and resultant surgery was not related to the injury of 5/28/98.

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

Dr. Froehling has treated the petitioner from July of 1996 through his last visit 2/26/07. Dr. Sherwyn Wayne only saw the petitioner time one time in October of 1998. Dr. Froehling states in his report, "With respect to impairment/disability, the lumbar condition would be expected to effect his ability to perform diesel mechanic tasks with impairments in bending and lifting ..."

"In the future, I anticipate that Donald needs further care and periodic re-examination to monitor his condition. There is a potential for recurrent herniation at L5-S1, and possible later need for additional intervention depending on his clinical course."

Tammy **Keen** credibly testified about Donald **Keen's** limitations and continued complaints of pain.

#### FINDINGS

On 5/28/98, the respondent **Tom Via** Trucking was operating under and subject to the provisions of the [\*5] Act.

On this date, an employee-employer relationship **did** exist between the petitioner and respondent.

On this date, the petitioner **did** sustain injuries that arose out of and in the course of employment.

Timely notice of this accident **was** given to the respondent.

In the year preceding the injury, the petitioner earned **\$ 45,500.00**; the average weekly wage was **\$ 875.00**.

At the time of the injury, the petitioner was **38** years of age, **single** with **1** child under 18.

To date, petitioner has been paid by the respondent for TTD and/or maintenance benefits.

#### ORDER

The respondent shall pay the petitioner the sum of \$ 525.00 per week for a further period of 125 weeks, as provided in Section 8(d) (2) of the Act, because the injuries sustained caused 25% disability to the man as a whole.

The respondent shall pay the petitioner compensation that has accrued.

The respondent shall pay the unpaid medical bills for past medical services, as provided in Section 8(a) of the Act as stipulated per Arbitrator's exhibit one, the Request For Hearing form.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within [\*6] 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 of 4.73% shall accrue from the date listed below to the date 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

August 1, 2007

Date

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8 IWCC 646; 2008 Ill. Wrk. Comp. LEXIS 783, \*

DONALD KEEN, PETITIONER, v. TOM VIA TRUCKING, RESPONDENT,

NO. 00WC 50294

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF FRANKLIN

8 IWCC 646; 2008 Ill. Wrk. Comp. LEXIS 783

June 4, 2008

**CORE TERMS:** fracture, pain, brain, medications, arbitrator, thoracic, traumatic, seizure, chronic, rib, compression, disorder, headaches, head injury, pulmonary, ill-being, constant, shoulder, spleen, memory loss, specializes, depression, aggressive, permanent, cognitive, contusion, decreased, explosion, causally, patient

**JUDGES:** James F. DeMunno; Mario Basurto; David L. Gore

**OPINION:** [\*1]

[EDITOR'S NOTE: THE ORIGINAL SOURCE CONTAINED ILLEGIBLE WORDS AND/OR MISSING TEXT. THE LEXIS SERVICE WILL PLACE THE CORRECTED VERSION ON-LINE UPON RECEIPT.]

#### 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, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 8, 2007 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 \$ 75,000.00. The probable cost of the record to be filed as return to Summons is the sum of \$ 35.00, payable to the Illinois Workers' Compensation Commission in [\*2] the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

#### ATTACHMENT

#### ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

##### Whittington

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 **John Dibble**, arbitrator of the Commission, in the city of **Whittington**, on **April 10, 2007** and **July 11, 2007**. 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

F. Is the petitioner's present condition of ill-being causally related to the injury?

K. What amount of compensation is due for temporary total disability?

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

[ILLEGIBLE WORDS] operating under and subject to the provisions of the Act.

. On this date, an employee-employer relationship *did* exist between the petitioner and respondent.

. On this date, the petitioner *did* sustain injuries that arose out of and in the course of employment.

[\*3] . Timely notice of this accident **was** given to the respondent.

. In the year preceding the injury, the petitioner earned \$ **45,500.00**; the average weekly wage was \$ **875.00**.

. At the time of injury, the petitioner was **38** years of age, **single** with **1** children under 18.

. Necessary medical services **have** been provided by the respondent.

. Temporary totally disability have been paid through January 09, 2007..

#### ORDER

. The respondent shall pay the petitioner the sum of \$ **583.33**/week for a further period of **life**, as provided in Section **8(f)** of the Act, because the injuries sustained caused **The permanent total disability of the Petitioner**.

. The respondent shall pay the petitioner compensation that has accrued, and shall pay the remainder of the award in weekly payments.

. The respondent shall pay the further sum of \$ **0** for necessary medical services, as provided in Section 8(a) of the Act.

. The respondent shall pay \$ **0** in penalties, as provided in Section 19(k) of the Act.

. The respondent shall pay \$ **0** in penalties, as provided in Section 19(1) of the Act.

. The respondent [\*4] shall pay \$ **0** in attorneys' fees, as provided in Section 16 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 of 4.73% 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

**August 1, 2007**

Date

#### THE ARBITRATOR FINDS THE FOLLOWING FACTS

On January 6, 1999, the petitioner, Donald **Keen** was working at **Tom Via** Trucking when an explosion occurred causing numerous injuries.

Donald **Keen**, was taken by ambulance to Marion Memorial Hospital. His immediate injuries were fractures to the right ribs 4 through 7, fractures to the left ribs 3 through 6, compression deformities and fractures of the thoracic vertebra T8, T10 and T11. CT scan of the brain revealed a large left high parietal scalp hematoma with subcutaneous [\*5] emphysema and a small right frontal scalp hematoma. Petitioner suffered a closed head injury, lacerated spleen, pulmonary contusion. The petitioner was intubated and transferred to Barnes Hospital.

#### BARNES HOSPITAL

Petitioner was hospitalized at Barnes/Jewish Hospital from 1/7/99 through 1/27/99. Petitioner sustained multiple injuries when he was thrown 20 to 30 feet from a fuel tank explosion. He was admitted to the ICU. His injuries included the previously diagnosed rib fractures and thoracic vertebra fractures. It was noted that the compression fracture at T8 was a comminuted burst fracture with 50 percent loss of height. The compression fracture at T11 had 30 percent loss of height. An MRI of 2/25/99 showed multiple abnormalities in the left frontal region secondary to a diffuse axonal injury. Petitioner also suffered pulmonary contusions, left skull and scalp lacerations, a concussion and a spleen laceration. Chest x-rays revealed plural thickening and a respiratory impaired patient with a lung contusion.

During his hospitalization Mr. **Keen** exhibited delusional behavior with episodes of aggression consistent with a traumatic head injury. He showed impairments in memory, [\*6] attention, executive control as well as behavior changes. He was discharged to receive out-patient speech, occupational and physical therapy.

#### CCS

The Center for Comprehensive Services, Inc. specializes in the care and treatment of brain injury patients. Mr. **Keen** was under their care from 3/1/99 through the year 2000. During his treatment with CCS, Mr. **Keen** exhibited delusions, aggressive behavior, confusion, seizure disorder, constant ringing in his ears, irritability, blurred vision, decreased coordination and balance, decreased sexual libido, dizziness when standing or turning quickly, constant headaches, fatigue, distractibility, difficulty in breathing and ongoing chronic spinal pain.

On 1/25/00 it was recommended that pain management was an ongoing issue for the foreseeable future. In her last note, Michelle Vaughn stated that due to back pain and headaches, gainful employment is extremely unlikely. He received speech therapy, occupational therapy, physical therapy, communication and cognitive therapy, behavior therapy and counseling services at CCS. When last seen by the physical therapist he had limited range of motion in his left shoulder, he had difficulty lifting [\*7] from the floor, he was to avoid lifting heavy objects. A pre-driver screening test occurred 7/19/99 which revealed that petitioner was unable to drive based on pain, visual memory, decreased attention deficit, and an inability to trace pictures. He had chronic pain on a daily

basis consisting of headaches, ringing in the ears and spinal pain. Petitioner's injuries caused difficulty with sleeping.

**DR. LINDLEY MEINERT-EBELING, Ph.D.**

Dr. Ebeling is a neuropsychologist. She consistently saw Donald **Keen** through her work at Center for Comprehensive Studies. She was in charge of his therapy. She specializes in brain injury patients. Her deposition was taken July 31, 2003. She treated petitioner from 4/20/99 through 1/15/02. During her treatment petitioner has shown signs of delusion, aggressive behavior, confusion, distraction, disorientation, long term memory loss, lack of fine motor skills, decreased problem solving, lack of ability to manage money, difficulty with concentration, constant headaches, ringing in the ears, problems with coordination and balance, lack of libido, seizure disorder, lack of social skills and trust. All of these symptoms are consistent with her diagnosis [**\*8**] of post concussive syndrome, depression, rebound headaches and post traumatic stress disorder. The diagnosis is directly related to the head injury of 1/6/99. The MRI of 2/25/99 shows traumatic brain injury to the left frontal region of the brain.

It is Dr. Ebeling's opinion that due to petitioner's brain injury he is not able to work. She further states that he has depression from post traumatic stress that further keeps him from working in any gainful employment.

**JAMES WACHTER, M.D.**

James Wachter is a board certified physician specializing in family medicine. He took over the care and treatment of Donald **Keen** from family physician Moira Wristen. He continues to see Donald **Keen** through the present time. Dr. Wachter sees petitioner for all his injuries and continued medical management.

Dr. Wachter's diagnosis is traumatic brain injury, psychosis/post head injury and shortness of breath due to chemical exposure. During his treatment Donald **Keen** has had constant pain, shortness of breath, poor judgment, slow speech, memory loss, constant headaches and other symptoms from traumatic brain injury.

Dr. Wachter manages petitioner's medications. He is currently taking 16 medications [**\*9**] on a daily basis. The medications are reasonable and necessary and will be needed by Donald **Keen** the rest of his life. Several attempts to wean petitioner from certain medications were futile. Donald **Keen** became aggressive and did not respond well. In addition to the medications, petitioner will need to be seen by a physician at least 4 times a year.

It is Dr. Wachter's opinion that petitioner's injuries are permanent. He will continue to suffer pain on a daily basis indefinitely. He has not been able to work since the accident nor is there a likelihood that he will ever be able to work. He will definitely not be able to work as a mechanic.

**LORI GUYTON, M.D.**

Dr. Guyton is a neurologist that specializes in brain injuries. It's her opinion that Donald **Keen** suffered from a traumatic brain injury, seizure disorder, mid back pain, memory loss, depression, behavioral changes, all related to the accident of 1/6/99. Petitioner has suffered a permanent brain injury. He cannot work as a mechanic. She stated "I'm not sure what he could ever do". He will be limited in his activities the rest of his life. Petitioner will need narcotic and seizure medications the rest of his life.

**[\*10] ALAN FROEHLING, M.D.**

Dr. Froehling's deposition was taken November 14, 2002. Petitioner was referred to Dr. Froehling July 15, 2002 from Dr. Wachter due to continued severe back pain. A bone scan June 14, 2002 revealed active intake in the thoracic spine. It's his opinion that there's a chronic fracture to the thoracic spine with healing problems. An MRI 7/17/02 revealed facet joint protrusion at T10 and T11 which could be intruding on the spinal canal. Petitioner continues to wear a black corset. It's Dr. Froehling's opinion that petitioner has had chronic pain in his thoracic area which will continue into the future. He will not be able to engage in manual labor due to his back injuries. It is further his opinion that Donald **Keen** cannot work at all because of his multiple injuries. The thoracic fracture at T8 is still healing but is stable. It may continue to remodel. Future surgery at T8 is possible.

**TERRENCE GLENNON, M.D.**

Dr. Glennon specializes in physical medicine and rehabilitation. Petitioner was referred to Dr. Glennon because of his multiple injuries including bilateral shoulder impingements.

Dr. Glennon's final report is dated 3/11/02. The petitioner [**\*11**] has a history of an explosion incident being thrown 25 feet. He has multiple fractures of the thoracic vertebrae and of the ribs. The CT scan of the brain shows a left-sided lesion with a diffuse exonal injury. He has musculoskeletal pain and emotional anxiety. He is on multiple medications. He developed aggressive behavior when tried to wean off of medications. It is my opinion that Mr. **Keen** has reached maximum medical improvement. He will suffer chronic pain into the future. He will continue to have cognitive effects of a brain injury. He has seizures related to the incident. He will need inhalers due to a respiratory injury due to chemical exposure at the time of the incident. He is completely disabled. He has recovered as well as he can.

Dr. Glennon also has diagnosed bilateral shoulder impingements that cause petitioner pain and continued disability.

**HEARTLAND REHABILITATION**

Petitioner was referred by respondent to Heartland Rehabilitation for a functional capacity evaluation 8/8/00. It is the opinion of Heartland Rehabilitation that Mr. **Keen** is not able to work. He indicated good effort and valid test results. Patient was unable to answer the questionnaire before the [**\*12**] treatment due to poor cognition and a short attention span. Medical intervention appears to be necessary before Mr. **Keen** will be feasible for employment. Mr. **Keen** did not demonstrate any symptoms/disability exaggeration behavior. He passed validity criteria suggesting good effort and valid results. The results indicate Mr. **Keen** is unable to work for an 8-hour day according to U.S. Department of Labor. Mr. **Keen's** impairment is not only physical but also due to poor cognition and balance disturbances.

**DR. SANJABI**

On 8/25/99 Dr. Sanjabi saw Donald **Keen** for shortness of breath and nocturnal dyspneas. He had an abnormal pulmonary function test. It's his impression that he has had a severe gas exchange problem suggestive of restrictive obstructive pattern. He has gained a lot of weight post-trauma from being inactive. Usually post-traumatic conditions especially with chemical exposure later become correctable. He does not see any evidence of that in this man. On 10/1/99 Dr. Sanjabi stated that the sleep apnea was not there prior to the accident. He states it's at least indirectly related to the incident.

#### DAVID M. PEEPLES, M.D.

The respondent ordered an IME of Donald **Keen** 5/1/07. Dr. Peeples is board certified in neurology and electrodiagnostic medicine. He's reviewed all of Donald **Keen's** medical records. It is his opinion within a reasonable degree of medical certainty that Mr. **Keen** sustained a significant traumatic brain injury as a result of the work injury of 1/6/99. He has residual cognitive and neuropsychiatric abnormalities as well as chronic pain and pulmonary dysfunction. The medications that he is presently on are appropriate and necessary. I would consider all of them to be directly related in a prevailing fashion to the work incident of 1/6/99. In all likelihood he will need these medications permanently.

The medical records reveal that Donald **Keen** suffered multiple injuries in the January, 1999 explosion. He suffered head trauma, multiple trauma and burns, multiple broken ribs, thoracic back fractures, a lacerated spleen, chemically induced asthma, shoulder pain, persistent cognitive and personality changes. He describes persistent problems with short term memory and episodes of psychosis. He has had both tonic-clonic and partial complex seizures. The last generalized convulsion was a year ago and the partial complex spells are characterized **Keen** by staring, brief unresponsiveness and are more frequent. Overall he is cognitively compromised.

#### DAVID KENNEDY, M.D.

Dr. Kennedy saw petitioner April 1, 2003 on behalf of the Illinois Guaranty Fund. There's a history of the fuel tank exploding and a severe closed head injury. He had assisted ventilation from phenobarbital induced coma. There's rib fractures, spleen laceration and thoracic fractures. There is residual brain damage from a diffuse axonal injury. Review of the 7/17/02 MRI reveals a moderate compression fracture at T8. The bone scan of 12/17/02 reveals uptake at T8 and T11. It's my opinion he has chronic pain following multiple compression fractures. Fusion would probably leave residual pain. A vertebroplasty would not work given the chronicity of the fractures. He is at maximum medical improvement. I would leave him on Dilantin to prevent seizures. With a thoracic injury he could work in a sedentary capacity but is not practical considering his other injuries. Employment is unlikely. I do not think it is likely he is going to be improved with further treatment.

The following issues are in dispute:

- F. Is the petitioner's present condition of ill-being causally **Keen** related to the injury?
- L. What is the nature and extent of the injury?
- K. Amount of compensation due for temporary total disability.

Therefore, the Arbitrator concludes:

- F. Is the petitioner's present condition of ill-being causally related to the injury?

The Arbitrator concludes that all petitioner's present conditions of ill-being are causally related to the injury including post-traumatic brain injury, depression, seizure disorder, memory loss, post-traumatic stress disorder, behavioral changes; a comminuted burst fracture to T8 and compression fractures to T10 and 11; chemically-induced pneumonia, pulmonary contusions and sleep apnea; bilateral shoulder impingements, rib fractures to right side 4, 5, 6 and 7, left side 3, 4, 5 and 6; and a lacerated spleen.

The Arbitrator further finds that numerous doctors have testified about the causal relationship between the incident January 6, 1999 and all the conditions of ill-being. Respondent has not produced any credible evidence to show that any of the conditions are not related.

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

The Arbitrator finds that petitioner has sustained serious permanent injuries causing permanent disability. **Keen** His injuries require ongoing medical treatment and medications which will continue indefinitely into the future.

- K. Compensation due for temporary total disability.

The Arbitrator finds that the Petitioner reached maximum medical improvement on April 1, 2003 based upon Dr. Kennedy's exam on that same date. After that date the Petitioner is entitled to payments under Section 8(f).

#### Legal Topics:

For related research and practice materials, see the following legal topics:

[Workers' Compensation & SSDI > Administrative Proceedings > Claims > Time Limitations > Notice Periods](#)  
[Workers' Compensation & SSDI > Compensability > Course of Employment > General Overview](#)  
[Workers' Compensation & SSDI > Compensability > Injuries > General Overview](#)

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