AN ACT concerning civil law.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Workers' Compensation Act is amended by changing Sections 9, 14, 15a, 19, 19a, and 20 as follows:

(820 ILCS 305/9) (from Ch. 48, par. 138.9)

Sec. 9. Any employer or employee or beneficiary who shall desire to have such compensation, or any unpaid part thereof, paid in a lump sum, may petition the Commission, asking that such compensation be so paid. If, upon proper notice to the interested parties and a proper showing made before such Commission or any member thereof, it appears to the best interest of the parties that such compensation be so paid, the Commission may order the commutation of the compensation to an equivalent lump sum, which commutation shall be an amount which will equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at the maximum rate of interest payable by member banks of the Federal Reserve System on passbook savings deposits as published in Regulation Q or its successor or, if Regulation Q or its successor is repealed, then the rate in effect on the date of repeal. Prior to approval of any pro se Settlement Contract Lump Sum Petition, the Commission or an

Arbitrator thereof shall determine if the unrepresented employee, if present, is able to read and communicate in English. If not, it shall be the responsibility of the Commission to provide a qualified, independent interpreter at

the time such Petition is heard, unless the employee has provided his or her own interpreter.

In cases indicating complete disability no petition for a commutation to a lump sum basis shall be entertained by the Commission until after the expiration of 6 months from the date of the injury.

Where necessary, upon proper application being made, a guardian or administrator, as the case may be, may be appointed for any person under disability who may be entitled to any such compensation and an employer bound by the terms of this Act and liable to pay such compensation, may petition for the appointment of the public administrator, or guardian, where no legal representative has been appointed or is acting for such party or parties so under disability.

The payment of compensation in a lump sum to the employee in his or her lifetime upon order of the Commission, shall extinguish and bar all claims for compensation for death if the compensation paid in a lump sum represents a compromise of a dispute on any question other than the extent of disability.

Subject to the provisions herein above in this paragraph contained, where no dispute exists as to the fact that the accident arose out of and in the course of the employment and

where such accident results in death or in the amputation of any member or in the enucleation of an eye, then and in such case the arbitrator or Commission may, upon the petition of either the employer or the employee, enter an award providing for the payment of compensation for such death or injury in accordance with the provisions of Section 7 or paragraph (e) of Section 8 of this Act.

(Source: P.A. 83-1362.)

(820 ILCS 305/14) (from Ch. 48, par. 138.14)

Sec. 14. The Commission shall appoint a secretary, an assistant secretary, and arbitrators and shall employ such assistants and clerical help as may be necessary. Arbitrators

shall be appointed pursuant to this Section, notwithstanding any provision of the Personnel Code.

Each arbitrator appointed after June 28, 2011 ~~after November 22, 1977~~ shall be required to demonstrate in writing ~~and in accordance with the rules and regulations of the Illinois Department of Central Management Services~~ his or her knowledge of and expertise in the law of and judicial processes of the Workers' Compensation Act and the Occupational Diseases Act.

A formal training program for newly-hired arbitrators shall be implemented. The training program shall include the following:

(a) substantive and procedural aspects of the

arbitrator position;

(b) current issues in workers' compensation law and practice;

(c) medical lectures by specialists in areas such as orthopedics, ophthalmology, psychiatry, rehabilitation counseling;

(d) orientation to each operational unit of the Illinois Workers' Compensation Commission;

(e) observation of experienced arbitrators conducting hearings of cases, combined with the opportunity to discuss evidence presented and rulings made;

(f) the use of hypothetical cases requiring the trainee to issue judgments as a means to evaluating knowledge and writing ability;

(g) writing skills;

(h) professional and ethical standards pursuant to Section 1.1 of this Act;

(i) detection of workers' compensation fraud and reporting obligations of Commission employees and appointees;

(j) standards of evidence-based medical treatment and

amendatory Act of the 97th General Assembly, including any arbitrators on administrative leave, shall terminate at the close of business on July 1, 2011, but the incumbents shall continue to exercise all of their duties until they are reappointed or their successors are appointed.

On and after the effective date of this amendatory Act of the 97th General Assembly, arbitrators shall be appointed to 3-year terms as follows:

(1) All appointments shall be made by the Governor with the advice and consent of the Senate.

(2) For their initial appointments, 12 arbitrators shall be appointed to terms expiring July 1, 2012; 12 arbitrators shall be appointed to terms expiring July 1, 2013; and all additional arbitrators shall be appointed to terms expiring July 1, 2014. Thereafter, all arbitrators shall be appointed to 3-year terms.

Upon the expiration of a term, the Chairman shall evaluate the performance of the arbitrator and may recommend to the Governor that he or she be reappointed to a second or subsequent term by the Governor with the advice and consent of the Senate.

Each arbitrator appointed on or after the effective date of this amendatory Act of the 97th General Assembly and who has not previously served as an arbitrator for the Commission shall be required to be authorized to practice law in this State by the Supreme Court, and to maintain this authorization

throughout his or her term of employment.

The ~~All arbitrators shall be subject to the provisions of the Personnel Code, and the~~ performance of all arbitrators shall be reviewed by the Chairman on an annual basis. ~~The changes made to this Section by this amendatory Act of the 97th General Assembly shall prevail over any conflict with the Personnel Code.~~ The Chairman shall allow input from the

shall perform such other duties as may be prescribed from time to time by the Commission.

(Source: P.A. 97-18, eff. 6-28-11; 97-719, eff. 6-29-12.)

(820 ILCS 305/15a) (from Ch. 48, par. 138.15a)

Sec. 15a. The ~~Beginning January 1, 1981, the~~ Commission shall prepare and publish a handbook in readily understandable language in question and answer form containing all information as to the rights and obligations of employers and employees under the provisions of this Act.

~~Upon receipt of first report of injury, as provided for in~~

~~subsection (b) of Section 6 of this Act, the Commission shall determine that a copy of the handbook has been forwarded to the injured employee or his beneficiary.~~

The handbook shall be made available free of charge to the general public and be maintained on the Commission's Internet website.

The Commission shall provide informational assistance to employers and employees regarding their rights and obligations under this Act and the process and procedure before the Commission.

(Source: P.A. 86-998.)

(820 ILCS 305/19) (from Ch. 48, par. 138.19)

Sec. 19. Any disputed questions of law or fact shall be determined as herein provided.

(a) It shall be the duty of the Commission upon notification that the parties have failed to reach an agreement, to designate an Arbitrator.

1. Whenever any claimant misconceives his remedy and files an application for adjustment of claim under this Act and it is subsequently discovered, at any time before final disposition of such cause, that the claim for disability or death which was the basis for such application should properly have been made under the Workers' Occupational

occurred, shall by summons to the Commission have power to review all questions of law and fact presented by such record.

A proceeding for review shall be commenced within 20 days of the receipt of notice of the decision of the Commission. The summons shall be issued by the clerk of such court upon written request returnable on a designated return day, not less than 10 or more than 60 days from the date of issuance thereof, and the written request shall contain the last known address of other parties in interest and their attorneys of record who are to be served by summons. Service upon any member of the Commission or the Secretary or the Assistant Secretary thereof shall be service upon the Commission, and service upon other parties in interest and their attorneys of record shall be by summons, and such service shall be made upon the Commission and other parties in interest by mailing notices of the

commencement of the proceedings and the return day of the summons to the office of the Commission and to the last known place of residence of other parties in interest or their attorney or attorneys of record. The clerk of the court issuing the summons shall on the day of issue mail notice of the commencement of the proceedings which shall be done by mailing a copy of the summons to the office of the Commission, and a copy of the summons to the other parties in interest or their attorney or attorneys of record and the clerk of the court shall make certificate that he has so sent said notices in pursuance of this Section, which shall be evidence of service on the Commission and other parties in interest.

The Commission shall not be required to certify the record of their proceedings to the Circuit Court, unless the party commencing the proceedings for review in the Circuit Court as above provided, shall file with ~~pay to~~ the

Commission notice of intent to file for review in Circuit Court. ~~the sum of 80¢ per page of testimony taken before the Commission, and 35¢ per page of all other matters contained in such record, except as otherwise provided by Section 20 of this Act. Payment for photostatic copies of exhibit shall be extra.~~ It shall be the duty of the Commission upon such filing of notice of intent to file for review in the Circuit Court ~~payment, or failure to pay as permitted under Section 20 of this Act,~~ to prepare a true

and correct ~~typewritten~~ copy of such testimony and a true and correct copy of all other matters contained in such record and certified to by the Secretary or Assistant Secretary thereof. The changes made to this subdivision (f)(1) by this amendatory Act of the 98th General Assembly apply to any Commission decision entered after the effective date of this amendatory Act of the 98th General Assembly.

No ~~In its decision on review the Commission shall determine in each particular case the amount of the probable cost of the record to be filed as a part of the summons in that case and no~~ request for a summons may be filed and no summons shall issue unless the party seeking to review the decision of the Commission shall exhibit to the clerk of the Circuit Court proof of ~~payment by~~ filing with the Commission of the notice of the intent to file for review in the Circuit Court ~~a receipt showing payment~~ or an affidavit of the attorney setting forth that notice of intent to file for review in the Circuit Court ~~payment~~ has been given in writing ~~made of the sums so determined~~ to the Secretary or Assistant Secretary of the Commission~~, except as otherwise provided by Section 20 of this Act~~.

(2) No such summons shall issue unless the one against whom the Commission shall have rendered an award for the payment of money shall upon the filing of his written

arbitrators, each of whom shall be approved by at least 7 members of the Advisory Board. The chairman shall select 5 persons from such list to serve as arbitrators under this subsection (p). By agreement, the parties shall select one arbitrator from among the 5 persons selected by the chairman

except that if the parties do not agree on an arbitrator from among the 5 persons, the parties may, by agreement, select an arbitrator of the American Arbitration Association, whose fee shall be paid by the State in accordance with rules promulgated by the Commission. Arbitration under this subsection (p) shall be voluntary.

(Source: P.A. 97-18, eff. 6-28-11.)

(820 ILCS 305/19a) (from Ch. 48, par. 138.19b)

Sec. 19a. Money received by the Commission pursuant to subsection (f) of Section 19 of this Act shall be paid into a trust fund outside the State Treasury and shall be held in such fund until completion of the record for which the payment was made. The Secretary of the Commission shall be ex-officio custodian of such trust fund which shall be used only for the purpose specified in this section. Upon completion of the record the Secretary shall pay the amount so held to the person entitled thereto for preparation of the record. Within 60 days after the effective date of this amendatory Act of the 98th General Assembly, the Secretary of the Commission shall transfer all remaining funds to the Injured Workers' Benefit Fund for the purpose of paying claims from injured employees who have received a final award for benefits from the Commission against the employer in Fiscal Year 2013.

(Source: Laws 1967, p. 324.)

(820 ILCS 305/20) (from Ch. 48, par. 138.20)

Sec. 20. If the Commission shall, before or after any hearing, proceeding, or review to any court, be satisfied that the employee is a poor person, and unable to pay the costs and expenses provided for by this Act, the Commission shall permit such poor person to have all the rights and remedies provided by this Act, including the issuance and service of subpoenas; a transcript of testimony and the record of proceedings, including photostatic copies of exhibits, at hearings before an Arbitrator or the Commission; ~~the right to have the record of proceedings certified to the circuit court;~~ the right to the filing of a written request for summons; and the right to the issuance of summons, without the filing of a bond for costs and without the payment of any of the costs provided for by this Act. If an award is granted to such employee, or settlement is made, the costs and expenses chargeable to the employee as provided for by this Act shall be paid by the employer out of the award herein granted, or settlement, before any of the balance of the award or settlement is paid to the employee. (Source: P.A. 86-998.)

Section 10. The Workers' Occupational Diseases Act is amended by changing Sections 19, 19a, and 19.5 as follows:

(820 ILCS 310/19) (from Ch. 48, par. 172.54)

Sec. 19. Any disputed questions of law or fact shall be

determined as herein provided.

(a) It shall be the duty of the Commission upon notification that the parties have failed to reach an agreement to designate an Arbitrator.

(1) The application for adjustment of claim filed with the Commission shall state:

A. The approximate date of the last day of the last exposure and the approximate date of the disablement.

B. The general nature and character of the illness

exposure occurred, shall by summons to the Commission have power to review all questions of law and fact presented by such record.

A proceeding for review shall be commenced within 20 days of the receipt of notice of the decision of the Commission. The summons shall be issued by the clerk of such court upon written request returnable on a designated return day, not less than 10 or more than 60 days from the date of issuance thereof, and the written request shall contain the last known address of other parties in interest and their attorneys of record who are to be served by summons. Service upon any member of the Commission or the Secretary or the Assistant Secretary thereof shall be service upon the Commission, and service upon other parties in interest and their attorneys of record shall be by summons, and such service shall be made upon the Commission and other parties in interest by mailing notices of the commencement of the proceedings and the return day of the summons to the office of the Commission and to the last known place of residence of other parties in interest or their attorney or attorneys of record. The clerk of the court issuing the summons shall on the day of issue mail notice of the commencement of the proceedings which shall be done by mailing a copy of the summons to the office of the Commission, and a copy of the summons to the other

parties in interest or their attorney or attorneys of record and the clerk of the court shall make certificate that he has so sent such notices in pursuance of this Section, which shall be evidence of service on the Commission and other parties in interest.

The Commission shall not be required to certify the record of their proceedings in the Circuit Court unless the party commencing the proceedings for review in the Circuit Court as above provided, shall file with the Commission

notice of intent to file for review in Circuit Court. ~~pay to the Commission the sum of 80 cents per page of testimony taken before the Commission, and 35 cents per page of all other matters contained in such record, except as otherwise provided by Section 20 of this Act. Payment for photostatic copies of exhibit shall be extra.~~ It shall be the duty of the Commission upon such filing of notice of intent to file for review in Circuit Court ~~payment, or failure to pay as permitted under Section 20 of this Act,~~ to prepare a true and correct ~~typewritten~~ copy of such testimony and a true and correct copy of all other matters contained in such record and certified to by the Secretary or Assistant Secretary thereof. The changes made to this subdivision (f)(1) by this amendatory Act of the 98th General Assembly apply to any Commission decision entered after the effective date of this amendatory Act of the 98th General Assembly.

No ~~In its decision on review the Commission shall determine in each particular case the amount of the probable cost of the record to be filed as a return to the summons in that case and no~~ request for a summons may be filed and no summons shall issue unless the party seeking to review the decision of the Commission shall exhibit to the clerk of the Circuit Court proof of ~~payment by~~ filing with the Commission of the notice of the intent to file for review in the Circuit Court ~~a receipt showing payment~~ or an affidavit of the attorney setting forth that notice of intent to file for review in Circuit Court ~~payment~~ has been given in writing ~~made of the sums so determined~~ to the Secretary or Assistant Secretary of the Commission.

(2) No such summons shall issue unless the one against whom the Commission shall have rendered an award for the payment of money shall upon the filing of his written request for such summons file with the clerk of the court a

arbitrator and shall have the power to recall the original award on arbitration, and issue in lieu thereof such corrected award. The decision of the arbitrator under this subsection (m) shall be considered the decision of the Commission and proceedings for review of questions of law arising from the decision may be commenced by either party pursuant to subsection (f) of Section 19. The Advisory Board established under Section 13.1 of the Workers' Compensation Act shall compile a list of certified Commission arbitrators, each of whom shall be approved by at least 7 members of the Advisory Board. The chairman shall select 5 persons from such list to serve as arbitrators under this subsection (m). By agreement, the parties shall select one arbitrator from among the 5 persons selected by the chairman except, that if the parties do not agree on an arbitrator from among the 5 persons, the parties may, by agreement, select an arbitrator of the American Arbitration Association, whose fee shall be paid by the State in accordance with rules promulgated by the Commission. Arbitration under this subsection (m) shall be voluntary. (Source: P.A. 93-721, eff. 1-1-05; 94-277, eff. 7-20-05.)

(820 ILCS 310/19a) (from Ch. 48, par. 172.54b)

Sec. 19a. Money received by the Commission pursuant to subsection (f) of Section 19 of this Act shall be paid into a trust fund outside the State Treasury and shall be held in such fund until completion of the record for which the payment was made. The Secretary of the Commission shall be ex-officio custodian of such trust fund which shall be used only for the purpose specified in this section. Upon completion of the record the Secretary shall pay the amount so held to the person entitled thereto for preparation of the record. Within 60 days after the effective date of this amendatory Act of the 98th General Assembly, the Secretary of the Commission shall transfer all remaining funds to the Injured Workers' Benefit Fund for the purpose of paying claims from injured employees

who have received a final award for benefits from the Commission against the employer in Fiscal Year 2013.

(Source: Laws 1967, p. 325.)

(820 ILCS 310/19.5) (from Ch. 48, par. 172.54-1)

Sec. 19.5. If the Commission shall, before or after any hearing, proceeding, or review to any court, be satisfied that the employee is a poor person, and unable to pay the costs and expenses provided for by this Act, the Commission shall permit such poor person to have all the rights and remedies provided by this Act, including the issuance and service of subpoenas; a transcript of testimony and the record of proceedings,

including photostatic copies of exhibits, at hearings before an Arbitrator or the Commission; ~~the right to have the record of proceedings certified to the circuit court;~~ the right to the filing of a written request for summons; and the right to the issuance of summons, without the filing of a bond for costs and without the payment of any of the costs provided for by this Act. If an award is granted to such employee, or settlement is made, the costs and expenses chargeable to the employee as provided for by this Act shall be paid by the employer out of the award herein granted, or settlement, before any of the balance of the award or settlement is paid to the employee.

(Source: P.A. 86-998; 87-895.)

Section 99. Effective date. This Act takes effect upon becoming law.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Frederick Williams,

Petitioner,

vs.

NO: 11WC 46390

13IWCC0557

Flexible Staffing, Inc.,

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 nature and extent, Section 8.1(b), Section 19(e) 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 Arbitrator's Decision, decreasing Petitioner's partial disability award from 30% to 25% loss of use of the right arm pursuant to Section 8(e) of the Act. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $435.27 per week for a period of 23.14 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 $391.75 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 petitioner a 25% loss of use of his right arm.

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

13IWCC0557

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 $24,900.00. The probable cost of the record to be filed as return to Summons is the sum of $35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: MAY 2 9 2013

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CJD/jrc
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Charles J. DeVriendt

Daniel R. Donohoo

Ruth White

13IWCC0557

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

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

FREDERICK WILLIAMS
Employee/Petitioner

v.

FLEXIBLE STAFFING, Inc.
Employer/Respondent

Case # **11** WC **46390**

Consolidated cases: **N/A**

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

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

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

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

Timely notice of this accident was given to Respondent.

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

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

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

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

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

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

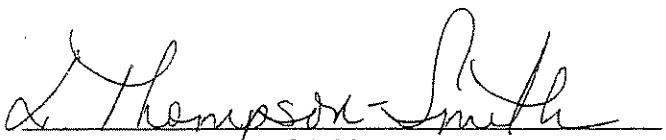
Respondent shall pay Petitioner temporary total disability from October 7, 2011 through March 7, 2012, for 23 & 1/7th weeks, in the amount of $435.27 per week pursuant to Sections 8(b) of the Act.

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

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

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

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



Signature of Arbitrator

November 20, 2012

NOV 20 2012

FREDERICK WILLIAMS
11WC 46390

FINDINGS OF FACT

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

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

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

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

Medical records from Southland Orthopaedic Associates, Ltd. ("Southland") show that petitioner's first visit with Dr. Arabindi took place on October 12, 2011. The petitioner complained of right arm and right elbow pain and the doctor immediately diagnosed a probable right distal biceps tendon rupture. Dr. Arabindi discussed a surgery to repair the tendon rupture at the completion of that first visit. The Southland records confirm that Dr. Arabindi kept the petitioner off work from that first visit through March 8, 2012. The doctor wrote that he was awaiting approval of the surgery during both office visits in October of 2011. Dr. Arabindi eventually performed the surgery at the Ingalls Same Day Surgery on November 17, 2011. The doctor performed a repair of the petitioner's right elbow distal biceps tendon rupture. Under a general anesthesia, the surgeon drilled two holes into the petitioner's right radius and used K-wire and metal anchors to pull and secure the tendon into place. The petitioner began attending physical therapy ("PT") at Southland on November 28, 2011. He continued to attend PT, at Dr. Arabindi's direction, through February 8, 2012. At the time of the last office visit on March 7, 2012, the doctor declared the petitioner to be at maximum medical improvement (:MMI") but noted that he still lacked approximately five to ten (5-10) degrees of full supination in his right forearm. *See,* PX1.

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

indicated that he also experienced pain when he tried to fully pronate and supinate the right forearm. The petitioner told Dr. Levin that he did not believe that he had full extension of his right elbow and that he experienced constant numbness over the ulnar aspect of that elbow. The petitioner stated that he was experiencing pain two or three times per week and that he was still taking narcotic pain medication, i.e. Norco, approximately two or three times a week because of pain in his elbow. Following his examination, Dr. Levin also noted that the petitioner lacked full extension with both pronation and supination of his right arm and then listed an AMA disability rating of 4% of a whole person or 6% loss of the right arm. *See,* RX1.

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

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

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

13IWCC0557

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

(i) the reported level of impairment;

(ii) the occupation of the injured employee;

(iii) the age of the employee at the time of injury;

(iv) the employee's future earning capacity; and

(v) evidence of disability corroborated by medical records.

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

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

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

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

With regards to (iii) of Section 8.1(b) of the Act:
the age of the petitioner at the time of the injury was 45 years old. The Arbitrator considers the petitioner to be a somewhat younger individual and concludes that Petitioner's permanent partial disability will be more extensive than that of an older individual because he will have to live with the permanent partial disability longer.

With regards to (iv) of Section 8.1(b) of the Act:
the petitioner's future earning capacity, at the present time, appears to be undiminished as a result of his injuries, because he has medically been returned to his full-time duties. However, when he attempted to return to work, he was told that he no longer had a job. The Arbitrator concludes that this may negatively affect Petitioner's future earning capacity.

With regards to (v) of Section 8.1(b) of the Act:
the petitioner has demonstrated evidence of disability corroborated by his treating medical records. The petitioner has credibly testified that he currently experiences pain, numbness, tingling and loss of range of motion. The petitioner's complaints regarding his right arm are corroborated in the treating medical records of Dr. Arabindi, including but not limited to the diagnosis of distal biceps tendon rupture and the necessity of the subsequent surgery and course of treatment. The doctor also noted that the petitioner has disability of a permanent nature as, on Petitioner's last visit, he noted that Petitioner's condition was as good as it was going to get and that he still lacked approximately five to ten (5-10) degrees of full supination in his right forearm. The petitioner's complaints, supported by medical records, evidences a disability as indicated by Commission decisions regarded as precedents pursuant to Section 19(e).

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

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

SPRINGFIELD URBAN LEAGUE, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION et al. (Cass Kohlrus, Appellee).

NO. 4-12-0219WC

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

2013 IL App (4th) 120219WC-U; 2013 Ill. App. Unpub. LEXIS 839

April 23, 2013, Filed

NOTICE: THIS ORDER WAS FILED UNDER *SUPREME COURT RULE 23* AND MAY NOT BE CITED AS PRECEDENT BY ANY PARTY EXCEPT IN THE LIMITED CIRCUMSTANCES ALLOWED UNDER *RULE 23(e)(1)*.

PRIOR HISTORY: [**1]

Appeal from Circuit Court of Sangamon County. No. 11MR113. Honorable John Schmidt Judge Presiding.

JUDGES: JUSTICE HARRIS delivered the judgment of the court. Presiding Justice Holdridge and Justices Hoffman, Hudson and Stewart concurred in the judgment.

OPINION BY: HARRIS

OPINION

ORDER

[*P1] Held: The Commission's finding that claimant suffered an accident on January 2, 2008, arising out of her employment with the employer was not against the manifest weight of the evidence.

[*P2] On February 22, 2008, claimant, Cass Kohlrus, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (*820 ILCS 305/1 to 30* (West 2006)), seeking benefits from the employer, Springfield Urban League, for injuries suffered to her left leg on January 2, 2008. Following a hearing, an arbitrator found claimant suffered a "left knee injury and left distal fracture" on January 2, 2008, arising out of and in the course of her employment with the employer. Further, the arbitrator found "the accident of January 2, 2008[,] caused an aggravation to a pre-existing left knee degenerative arthritis and that a combination of the Petitioner's accident of January 2, 2008[,] and her pre-existing left knee degenerative arthritis combined [**2] to cause her need for a left knee total replacement." The arbitrator awarded claimant temporary total disability (TTD) benefits of $214.60 per week for 10-5/7 weeks; permanent partial disability (PPD) benefits of $193.14 per week for 86 weeks, representing 40% loss of use of the left leg (see *820 ILCS 305/8(e)(10)* (West 2006)); and $50,328.90 for medical services.

[*P3] The employer filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On review, the Commission modified the arbitrator's decision finding claimant failed to prove a causal connection between her work accident on January 2, 2008, and her "knee injury (and prospective total knee replacement) and aggravation of her pre-existing degenerative arthritis." The Commission otherwise affirmed and adopted the arbitrator's decision.

[*P4] Thereafter, the employer filed a petition seeking judicial review in the circuit court of Sangamon County and the court confirmed the Commission's decision.

[*P5] Employer appeals, arguing (1) the Commission's finding that claimant suffered an accident on January 2, 2008, arising out of her employment with the employer is against the manifest weight [**3] of the evidence and (2) this court must remand to the Commission for a determination of a dollar amount owed to claimant pursuant to the medical fee schedule. We affirm.

[*P6] I. BACKGROUND

[*P7] The following factual recitation is taken from the evidence presented at the arbitration hearing on March 2, 2010. The 77-year-old claimant testified she had been employed by the employer as a bus driver for approximately 10 years. On January 2, 2008, claimant attended a mandatory meeting of the employer's employees at St. Cabrini School in Springfield, Illinois. Approximately 200 employees attended the meeting. The meeting began at 8:30 a.m. and was scheduled to end at approximately 3:30 in the afternoon.

[*P8] Claimant testified that at 3:25 p.m., the meeting ended and claimant walked toward the door leading to the parking lot. Claimant described a ten to twelve foot carpeted mat edged with rubber placed in front of the door leading to the parking lot. Claimant stated the mat became bunched up midway along its length causing her to trip and fall forward. According to claimant, she fell to the floor and broke her left knee.

[*P9] Claimant testified that the photographs offered by the employer of the area where she fell [**4] did not accurately depict the position of the mat that became bunched and caused claimant to fall. In the photographs, there were two mats of similar size near the exit and placed in an "L" shape. On the day of the meeting, the mats were placed in a straight line leading into the gym where the meeting was held. Claimant testified she fell on the first mat after leaving the gym.

[*P10] Kathy Laschansky testified that she worked as a bus driver for the employer on January 2, 2008, and attended the meeting at the school. Laschansky walked behind claimant with a couple of people between herself and claimant. Laschansky testified she saw claimant fall forward and she noticed the mat was kinked in the middle. Both Laschansky and claimant testified there were numerous people heading for the exits. Laschansky testified the mat leading to the exit was much longer than was depicted in the photographs. The mats were not placed on the floor in an "L" shape.

[*P11] The employer offered the testimony of three employees: Norita Glover, Debra Lahey, and Tami McKittrick. Glover testified that she was walking directly behind claimant and talking to another employee. She was approximately three feet behind claimant [**5] and looking straight ahead. Glover did not look down to see the mat on which she and claimant walked although she stated it looked like claimant just fell forward and both of her feet were caught on the mat. Glover testified the photographs accurately depicted the position of the mats on the day of the accident. She testified claimant fell between the two mats.

[*P12] Glover gave a recorded statement to the employer on September 11, 2008. Glover stated she looked at the mat after claimant fell and the mat was not curled or raised that she could recall.

[*P13] Lahey testified that she was walking in a different direction than claimant and as claimant exited, claimant passed in front of Lahey. Lahey saw claimant go down through her peripheral vision but did not have any viewpoint of claimant's feet or the condition of the mat when claimant fell. Lahey testified the photographs accurately depicted the position of the mats on the day of the accident, placed in an "L" shape. She testified claimant fell between the two mats. Lahey did not notice anything unusual about the mats.

[*P14] Lahey gave a recorded statement to the employer on May 30, 2008, stating employees placed two mats at the door on January 2, 2008, [**6] "because it was wet outside." "We put both [] the one standard mat that's always in front of the door and then we placed a larger mat [] just past it so that way the floor *** was not wet and slippery." Lahey did not recall any separation between the mats, "maybe an inch tops between the two rubber seals." She recalled claimant's feet stopped at the beginning of the mat and she fell forward. According to Lahey, the mat appeared flat and level.

[*P15] McKittrick testified that she was ahead of claimant exiting the same doorway and did not see claimant's feet or the condition of the mat when claimant

fell. According to McKittrick, the photographs accurately depicted the position of the mats on the day of the accident, placed in an "L" shape. McKittrick testified that the mat was flat when she walked over it and when she observed the mat after claimant fell.

[*P16] In her recorded statement, McKittrick stated that after coming to claimant's aid, claimant told McKittrick "that the rug got caught up. I don't know her exact words but she said that it was like it buckled." McKittrick did not recall looking at the floor to see if the mat was buckled as she was "just worried about [claimant] and then there [**7] were other people standing around."

[*P17] Claimant testified that after falling, she experienced left leg pain and specifically, pain at the left kneecap. Claimant drove but could not get out of the car because she was in pain. Claimant contacted friends who took her to the emergency room. Claimant advised emergency room staff of her fall and that she landed on her left knee. X-rays and a clinical evaluation showed claimant suffered a left distal femur fracture with intra-articular extension. On January 3, 2008, Dr. Joseph Williams performed surgical repair of claimant's femoral fracture. On March 19, 2008, Dr. Williams returned claimant to work with a restriction of no lifting greater than twenty pounds and frequent changes of position.

[*P18] Claimant testified she was terminated from her position in September 2009. McKittrick testified that all bus drivers are laid off in May of every year and claimant was laid off in May 2009. McKittrick testified claimant was not rehired because of safety concerns.

[*P19] Following the hearing, the arbitrator found claimant suffered a "left knee injury and left distal fracture" on January 2, 2008, arising out of and in the course of her employment with the employer. [**8] The arbitrator found the testimony of claimant and Laschansky to be the more credible testimony. Both claimant and Laschansky testified the mat became bunched or kinked causing claimant to fall.

[*P20] Further, the arbitrator found the accident aggravated claimant's preexisting left knee degenerative joint disease necessitating total knee arthroplasty. The arbitrator awarded claimant TTD benefits, PPD benefits, and medical expenses.

[*P21] The employer filed a petition for review of the arbitrator's decision before the Commission. On review, the Commission modified the arbitrator's decision, finding claimant failed to prove a causal connection between her work accident on January 2, 2008, and her "knee injury (and prospective total knee replacement) and aggravation of her pre-existing degenerative arthritis." The Commission otherwise affirmed and adopted the arbitrator's decision.

[*P22] Thereafter, the employer filed a petition seeking judicial review in the circuit court of Sangamon County. On February 15, 2012, the court confirmed the Commission's decision. This appeal followed.

[*P23] II. ANALYSIS

[*P24] The employer argues the Commission's finding that claimant's injuries arose out of her employment is against the manifest [**9] weight of the evidence. We disagree.

[*P25] In a workers' compensation case, the claimant has the burden of establishing by a preponderance of the evidence that her injury arose out of and in the course of her employment. *O'Dette v. Industrial Comm'n, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 223, 38 Ill. Dec. 133 (1980)*. The determination of whether an injury arose out of and in the course of a claimant's employment is a question of fact for the Commission to resolve and its finding in that regard will not be set aside on review unless it is against the manifest weight of the evidence. *Litchfield Healthcare Center v. Industrial Comm'n, 349 Ill. App. 3d 486, 489, 812 N.E.2d 401, 404, 285 Ill. Dec. 581 (2004)*. 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, 896, 169 Ill. Dec. 390 (1992)*.

[*P26] An employee's injury is compensable under the Act only if it arises out of and in the course of the employment. *820 ILCS 305/2* (West 2006). Both elements must be present at the time of the claimant's injury in order to justify compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n, 131 Ill. 2d 478, 483, 546 N.E.2d 603, 605, 137 Ill. Dec. 658 (1989)*. [**10] In the course of the employment refers to the time, place, and circumstances under which the claimant is injured. *Scheffler Greenhouses, Inc. v. Industrial Comm'n, 66 Ill. 2d 361, 366-67, 362 N.E.2d 325, 327, 5 Ill. Dec. 854 (1977)*. "A compensable injury occurs in the course of

employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment." *Wise v. Industrial Comm'n, 54 Ill. 2d 138, 142, 295 N.E.2d 459, 461 (1973).* The employer does not dispute claimant was in the course of her employment at the time of her injury. The employer's focus is on the question of whether claimant's injuries arose out of her employment.

[*P27] Arising out of the employment refers to the origin or cause of the claimant's injury. *Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 672, 278 Ill. Dec. 70 (2003).* An accident arises out of one's employment if its origin is in some risk connected with or incidental to the employment so as to create a causal connection between the employment and the accidental injury. *Caterpillar Tractor Co. v. Industrial Comm'n, 129 Ill. 2d 52, 58, 541 N.E.2d 665, 667, 133 Ill. Dec. 454 (1989).* "Typically, an injury arises out of one's employment [**11] if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties." *Caterpillar Tractor, 129 Ill. 2d at 58, 541 N.E.2d at 667.* A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties. *Caterpillar Tractor, 129 Ill. 2d at 58, 541 N.E.2d at 667.*

[*P28] There are three categories of risk to which an employee may be exposed: (1) risks distinctly associated with her employment; (2) personal risks; and (3) neutral risks which have no particular employment or personal characteristics. *Illinois Institute of Technology Research Institute v. Industrial Comm'n, 314 Ill. App. 3d 149, 162, 731 N.E.2d 795, 806, 247 Ill. Dec. 22 (2000).* Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public. *Illinois Institute of Technology, 314 Ill. App. 3d at 163, 731 N.E.2d at 806-07.* Such an increased risk [**12] may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public. *Potenzo v. Illinois Workers' Compensation Comm'n, 378 Ill. App. 3d 113, 117, 881 N.E.2d 523, 527, 317 Ill. Dec. 355 (2007).*

[*P29] In this case, claimant was leaving a mandatory meeting for approximately 200 employees of employer when she fell on a bunched or kinked mat. Claimant proved that she was required to be in the place where the accident occurred, and that she was injured in a place controlled by her employer or while performing tasks that were mandated by her job.

[*P30] Contrary to employer's argument, this case does not merely involve the risks inherent in walking on a mat which confront all members of the public. The accident occurred at an area used by the employer's employees to ingress and egress its facility. The evidence establishes claimant tripped on a kinked or bunched section of the floor mat as she was leaving the building.

[*P31] The employer argues "[t]here is no evidence *** supporting the Commission's finding that the rug in question was defective." The Commission did not find the mat defective. [**13] Claimant testified that she fell on an area of the mat where it had bunched or kinked. The Commission found the bunched or kinked mat presented a "dangerous condition of the premises." The Commission's finding of a "dangerous condition" was not against the manifest weight of the evidence. "When, as in this case, an injury to an employee takes place in an area which is the usual route to the employer's premises, and the route is attendant with a special risk or hazard, the hazard becomes part of the employment." *Litchfield, 349 Ill. App. 3d at 491, 812 N.E.2d at 406.* Special hazards or risks encountered as a result of using a usual access route satisfy the arising out of requirement of the Act. *Litchfield, 349 Ill. App. 3d at 491, 812 N.E.2d at 406.*

[*P32] We disagree with the employer's interpretation of *Tinley Park Hotel and Convention Center v. Industrial Comm'n, 356 Ill. App. 3d 833, 826 N.E.2d 1043, 292 Ill. Dec. 607 (2005).* In *Tinley Park Hotel*, the Commission's decision did not rest "on the frequency in which [the claimant] was required to face the risk in question," as the employer suggests. Instead, the Commission found credible the evidence suggesting that the *condition* of the newly installed carpet [**14] increased the risk of a fall. *Tinley Park Hotel, 356 Ill. App. 3d at 842, 826 N.E.2d at 1050-51.* Further, in *Litchfield*, this court's opinion reversing the Commission's denial of benefits did not rest solely on the claimant's regular use of a specific parking lot but also, that the sidewalk involved in the claimant's injury was uneven and defective. *Litchfield, 349 Ill. App. 3d at 491,*

812 N.E.2d at 406. Likewise, here, claimant established sufficient proof of a special risk or hazard through testimony describing the kinked or bunched condition of the mat.

[*P33] Based on the foregoing evidence, we conclude that claimant proved that her injury arose out of her employment.

[*P34] The employer next argues that this court must remand to the Commission for a determination of a dollar amount owed to claimant pursuant to the medical fee schedule. We disagree.

[*P35] At page two of his decision, the arbitrator ordered in part:

> "The respondent shall pay $50,328.90 for medical services, as provided in *Section 8(a)* of the Act. Respondent is to hold Petitioner harmless for any claims for reimbursement from any health insurance provider and shall provide payment information to Petitioner relative to any credit due. Respondent [**15] is to pay unpaid balances with regard to said medical expenses directly to Peti tioner. Respondent shall pay any unpaid, related medical expenses according to the fee schedule and shall provide documentation with regard to said fee schedule payment calculations to Petitioner."

[*P36] On February 28, 2011, the Commission modified the arbitrator's decision "with respect to causal connection to Petitioner's knee condition and degenerative arthritis, and affirms all else," including the employer's liability "for medical expenses related to Petitioner's injury pursuant to the medical fee schedule."

[*P37] The employer does not argue claimant failed to establish that her medical bills were necessary and causally connected to her work injury. The employer did not object to the introduction of claimant's medical bills. The employer argues it cannot be ordered to pay medical expenses according to the fee schedule "when the fee schedule amount is unknown."

[*P38] Medical expenses are governed by *section 8(a)* of the Act (*820 ILCS 305/8(a)* (West 2006)). That provision states in relevant part:

> "The employer shall provide and pay the negotiated rate, if applicable, or the lesser of the health care provider's actual charges [**16] or according to a fee schedule, subject to *Section 8.2*, in effect at the time the service was rendered for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury." *820 ILCS 305/8(a)* (West 2006).

[*P39] Pursuant to the Act, the employer must adjust the medical bills to conform to the fee schedule of *section 8.2* of the Act. *820 ILCS 305/8.2* (West 2006). We note in response to the employer's concerns regarding coding and bundling that the fee schedule requires that services be reported with the Current Procedural Terminology (CPT) codes and in accordance with the HCPCS Level II, U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244 (2006), no later dates or editions. See *50 Ill. Adm. Code 7110.90* (2012). "If the claim does not contain substantially all the required data elements necessary to adjudicate the bill, or the claim is denied for any other reason, in whole or in part, the employer or insurer shall provide [**17] written notification, explaining the basis for the denial and describing any additional necessary data elements, to the provider within 30 days of receipt of the bill." *820 ILCS 305/8.2(d)(2)* (West 2006).

[*P40] The Commission's decision ordering the employer to "pay any unpaid, related medical expenses according to the fee schedule and *** provide documentation with regard to said fee schedule payment calculations to Petitioner," complies with the statutorily mandated procedures set forth in the Act. Therefore, we need not remand to the Commission for a determination of a dollar amount owed to claimant pursuant to the medical fee schedule.

[*P41] III. CONCLUSION

[*P42] For the reasons stated, we affirm the circuit court's judgment confirming the Commission's decision.

1 of 1 DOCUMENT

CASS KOHLRUS, PETITIONER, v. SPRINGFIELD URBAN LEAGUE, RESPONDENT.

NO. 08WC 07979

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF SANGAMON

2011 Ill. Wrk. Comp. LEXIS 219; 11IWCC 0205

February 28, 2011

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

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, causal connection, medical expenses, prospective medical expenses, temporary total disability, wage rate and permanent disability with regards to trauma to the left leg, 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. Petitioner was a 77 year old Bus Driver for Respondent. Prior to her accident, she had never had any knee problems, but had undergone hip replacements in both 1998 (right) and 2001 (left). Petitioner did suffer from pre-existing degenerative arthritis prior to the accident as well.

2. On January 2, 2008, Petitioner attended a mandatory meeting for work at St. Cabrini School and Church. After adjournment, she approached a set of exit doors. There were weather rugs along the way, and Petitioner's foot got caught on one after someone in front of her [*2] had kicked the rug, causing it to bunch up in the middle. Petitioner tripped, fell forward and landed on her left knee.

3. Petitioner was x-rayed at the hospital emergency room and admitted by Dr. Williams. She was diagnosed with a left knee injury and left distal fracture. The following day, she underwent surgery and had screws and a steel plate placed in her left knee. Petitioner was released to light duty March 19, 2008. Eventually, she was released to full duty. She never received any workers' compensation benefits.

4. Throughout his treatment of Petitioner, Dr. Williams contemplated recommending total knee replacement for Petitioner.

5. Petitioner still complains of pain at the top of her knee, walks with a limp and uses pain medication, a walking cane and elastic band on occasion.

6. Another bus driver, Katy Laschansky, testified that she attended the same meeting as Petitioner on the date in question. Upon adjournment, Ms. Laschansky was 2 or 3 people behind Petitioner, and witnessed her trip over a kinked up portion of a weather mat.

7. Tami McKittrick, a Transportation Coordinator Assistant at the time of accident, gave a statement on May 30, 2008, and maintained that [*3] after Petitioner fell, she did not look at the condition of the mat, as she was only concerned with Petitioner.

8. At trial, Ms. McKittrick testified that there was nothing wrong with the mats when Petitioner's injury occurred.

9. On August 19, 2008 Dr. Williams noted in a medical record that Petitioner's degenerative condition has likely been made worse by the fracture, and that she may be a candidate for total knee arthroplasty at a later date.

The Commission affirms the Arbitrator's finding of accident. This is a clear case of credibility, as Petitioner and Respondent give contradicting stories on the condition of the mats at the time of accident. Accordingly, as the Arbitrator was in the best position to observe the witness' testimony and attach proper weight to the same, he is in the best position to determine credibility. Arbitrator Tobin clearly found the testimony of Petitioner, and a corroborating witness, Ms. Laschansky more credible than that of Respondent's witnesses, including Ms. McKittrick. The Commission defers to the Arbitrator's impression of credibility, and finds that a defective condition was present at the time of Petitioner's trip and fall. Therefore, Petitioner [*4] has met her burden of proof for accident.

The Commission also affirms the Arbitrator's award of medical expenses.

The Commission also affirms the Arbitrator's award of 40% loss of use of the left leg. Medical records reveal that Petitioner's surgically repaired fractured femur healed with very good placement. Petitioner still complains of pain at the top of her knee, walks with a limp and uses pain medication, a walking cane and elastic band on occasion.

The Commission, however, modifies the Arbitrator's ruling in regard to causal connection to Petitioner's knee condition and degenerative arthritis. The Arbitrator incorrectly found that Petitioner's knee injury (and prospective total knee replacement) and aggravation of her pre-existing degenerative arthritis were caused by her accident. Petitioner suffered from pre-existing degenerative arthritis prior to the accident, but there is no evidence showing how the accident aggravated said condition. Dr. Williams' statement that the accident "likely" made her condition worse does not rise to the level of a causal connection. Likewise, there is no causal connection opinion relating Petitioner's left knee injury and the need for total [*5] knee replacement. Again, Dr. Williams simply stated that Petitioner may be a candidate for left knee replacement at a later date. This is not a recommendation, but simply a course of action that may or may not be recommended by Dr. Williams in the future. The Commission cannot find causal connection to a medical procedure that has not been recommended by a treating physician.

Accordingly, based on the above, the Commission modifies the Decision of the Arbitrator with respect to causal connection to Petitioner's knee condition and degenerative arthritis, and affirms all else.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner suffered an accident arising out of and in the course of her employment with Respondent on January 2, 2008.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's condition of ill-being related to her surgically repaired femur fracture is causally related to her accident, but that her prospective total knee replacement and alleged aggravation of her pre-existing degenerative arthritis are not so related.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is liable for medical expenses related to Petitioner's injury pursuant to the medical fee [*6] schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is entitled to a permanent partial disability award of 40% loss of use of the left leg.

Bond for removal of this cause to the Circuit Court by Petitioner is hereby fixed at the sum of $ 69,300.00. The probable cost of the record to be filed as return to Summons is the sum of 35.00 payable to the Industrial Commission of Illinois in the form of cash, check or money order therefore deposited with the Office of the Secretary of the Commission.

ATTACHMENT

ILLINOIS WORKERS' COMPENSATION COMMISSION 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 **Jeffery Tobin,** arbitrator of the Commission, in the city of **Springfield,** on **March 2, 2010.** 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

C. Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?

F. Is the petitioner's present [*7] condition of ill-being causally related to the injury?

G. What were the petitioner's earnings?

J. Were the medical services that were provided to petitioner reasonable and necessary?

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

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

FINDINGS

. On **January 2, 2008,** the respondent **Springfield Urban League was** 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.

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

. In the year preceding the injury, the petitioner earned $ **13,243.89;** the average weekly wage was $ **321.90.**

. At the time of injury, the petitioner was 77 years of age, single with **0** children under **18.**

. Necessary medical services have been provided.

. To date, $ **0.00** has been paid by the respondent for TTD and/or maintenance benefits.

ORDER

. The respondent shall pay the petitioner temporary total [*8] disability benefits of $ **214.60**/week for **10 5/7** weeks, from **January 3, 2008** through **March 19, 2008,** which is the period of temporary total disability for which compensation is payable.

. The respondent shall pay the petitioner the sum of $ **193.14**/week for a further period of **86** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **40% loss of use of the left leg.**

. The respondent shall pay the petitioner compensation that has accrued from **January 2, 2008** through **March 2, 2010,** and shall pay the remainder of the award, if any, in weekly payments.

. The respondent shall pay $ **50,328.90** for medical services, as provided in Section 8(a) of the Act. Respondent is to hold Petitioner harmless for any claims for reimbursement from any health insurance provider and shall provide payment information to Petitioner relative to any credit due. Respondent is to pay unpaid balances with regard to said medical expenses directly to Petitioner. Respondent shall pay any unpaid, related medical expenses according to the fee schedule and shall provide documentation with regard to said [*9] fee schedule payment calculations to Petitioner.

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

4/22/10

Date

The Arbitrator finds the following facts regarding all disputed issues:

Petitioner was employed by the Respondent as a bus driver and had been so employed for the previous ten years. Petitioner was employed part-time, working five days a week, five hours a day. Petitioner's earnings were in dispute. Petitioner claimed that she was guaranteed a minimum of five days a week five hours a day of pay at the pay rate of $ 12.84 per hour. Petitioner did not work during the summer. Petitioner's earnings records were [*10] introduced for the periods ending between January 12, 2007 and December 28, 2007. (R. X. 8) The payment records indicate the Petitioner was paid bi-monthly. The Petitioner did not receive pay from June 16, 2007 through September 1, 2007, a period of 10 and 6/7 weeks. For the remaining 41 and 1/7 weeks the Petitioner earned gross earnings of $ 13,243.89. The Petitioner's average weekly wage was $ 321.90 ($ 13,243.89/41.1426 weeks=$ 321.90).

Petitioner at the time of her injury was 77 years old and had undergone bilateral hip replacements in 1998 on the right and 2001 on the left. Petitioner testified that prior to January 2, 2008 she never had any problems with respect to her left leg as it pertained to her left knee.

On January 2, 2008, the Petitioner was attending a mandatory meeting of Respondent's employees at the St. Cabrini School in Springfield, Illinois. The meeting was attended by approximately two hundred of Respondent's employees from Springfield, Jacksonville and Riverton, Illinois. The meeting began at 8:30 a.m. and ended at approximately 3:30 in the afternoon.

Petitioner testified that at 3:25 p.m. the meeting adjourned, she left the meeting, and proceeded to walk to [*11] the door leading to the parking lot. There was a ten to twelve foot rubber mat placed in front of the door leading to the parking lot which Petitioner described as being carpeted and edged with rubber. Petitioner stated the rubber mat became bunched up midway along its length causing her to trip and fall forward. Petitioner fell to the floor and landed on her left leg. Kathy Laschansky, another bus driver for the Respondent, who now works for Laidlaw Transportation as a bus driver, was walking behind the Petitioner with a couple of people between herself and the Petitioner. Ms. Laschansky testified she saw the Petitioner fall forward and she noticed the carpet was kinked in the middle. Both Ms Laschansky and the Petitioner testified there were numerous people heading for the exits.

The Respondent offered the testimony of three witnesses, Ms. Norita Glover, a teacher with the Respondent, who was still employed by the Respondent; Debra Leahy who at the time of the accident was the site manager, or director, of St. Cabrini School and continues to be employed by the Respondent; and, Tami McKittrick, who at the time of the ac-

cident was the Assistant Transportation, but who since that time [*12] had been promoted to Transportation Coordinator.

Ms. Glover testified she was walking directly behind the Petitioner and talking to another employee who was leaving at the same time. Ms. Glover said she was approximately two feet behind the Petitioner and looking straight ahead. Ms. Glover did not look down to see the carpet on which she and the Petitioner were walking, although she stated it looked like the Petitioner just fell forward and both of her feet were caught on the rug. Ms. Glover gave a recorded statement to the Respondent which was offered as Respondent's Exhibit 7 in which she stated she looked at the rug after the Petitioner fell and that the rug was not curled or raised that she could recall.

Ms. Leahy testified she was walking in a different direction than the Petitioner and as the Petitioner was exiting the Petitioner passed in front of Ms. Leahy. Photographs of the scene were offered by the Respondent as Respondent's Exhibit 3 and Ms. Leahy testified she was coming from the right hand, or east, side of photograph number 2 and heading to the left of the photograph, or west, while the Petitioner, who had crossed in front of Ms. Leahy, was heading northward, or in [*13] the direction of the top of the photograph, towards the door. Ms. Leahy admitted that once the Petitioner passed her, Ms. Leahy's viewpoint and gaze was fixated straight ahead of her, or towards the west, rather than towards the north where the Petitioner was exiting. Ms. Leahy stated she did see the Petitioner go down through her peripheral vision. Ms. Leahy did not have any viewpoint of the Petitioner's feet or the condition of the carpet when Petitioner fell.

Respondent's final witness was Tami McKittrick. Ms. McKittrick stated she was ahead of the Petitioner exiting the same doorway. Ms. McKittrick admitted that as she was walking in front of Petitioner she was looking straight ahead and away from the Petitioner. Ms. McKittrick admitted the rug was not fixed with any device but held down by its own weight. Ms. McKittrick stated she did not see Petitioner's feet or the condition of the rug when the Petitioner fell. Ms. McKittrick also gave a recorded statement which was offered as Respondent's Exhibit 5 in which she admitted that, after coming to the Petitioner's aid, the Petitioner did explain to Ms. McKittrick why she fell and that "she said that the rug got caught up. I don't [*14] know her exact words but she said that it was like it buckled". (R.X.5, p.5) Ms. McKittrick was asked about the state of the rug in the recorded statement and Ms. McKittrick replied that she did not recall looking at the floor to see if the mat was up or anything as she was "just worried about her (Petitioner) and then there were other people standing around". (R.X.5, p.6)

After her fall, the Petitioner noticed that her leg around her left kneecap hurt and she did attempt to drive home. Petitioner noticed when she got home she could not move her left leg and her knee pain was worse. Petitioner was taken to the Memorial Medical Center emergency room. The January 2, 2008 emergency room consultation report indicates the Petitioner had a history of bilateral total knee arthroplasties; however the Petitioner testified and the past medical history in the same Memorial Medical Center records show that her prior surgeries were for bilateral total hip arthroplasties performed by Dr. David Mack. (P.X.2) The Petitioner advised the Emergency Room staff of her fall at work on January 2, 2008 and that she landed on her left knee. X-ray and clinical evaluation revealed the Petitioner to have a left [*15] distal femur fracture with intra-articular extension and this was the diagnosis. (P.X.2) Petitioner was admitted to the hospital and advised to have surgical treatment of the fracture and was placed on the schedule for surgery the following day, January 3, 2008, with Dr. Michael Bova to provide medical clearance. (P.X.2)

The Respondent offered medical records from Memorial Medical Center dated November 23, 2007 in which the Petitioner complained of bilateral leg and hip pain and did not have any recent falls or injuries. (R.X.1) The Arbitrator notes the Petitioner complained of bilateral leg and hip pain with soreness to the back of the legs extending from the buttocks to the knees. (R.X.1) X-rays of the right hip and pelvis were negative but the Petitioner did have severe degenerative changes about the L4/5 spine. (R.X.2) Petitioner testified she sought treatment for back pain and was seeking treatment for an injection into her back. (R.X.4) There is no mention of any pathology with respect to the left knee in the November 23, 2007 Memorial Medical Center note. (R.X.1)

The Respondent also offered medical records from Dr. David Mack for a visit of November 30, 2007 in which the Petitioner [*16] noted pain extending down both the legs that was chronic and Dr. Mack diagnosed the Petitioner with spinal stenosis, "with symptoms", and injected the Petitioner's lower back with a combination of Xylocaine and Aristocort. There was no treatment referable to the Petitioner's left knee on this visit (R.X.2) Respondent also offered the medical records of Dr. Michael Bova dated November 26, 2007 at which time the Petitioner had sought treatment for bilateral hip pain and pain radiating from the buttocks down to the knees bilaterally. Dr. Bova diagnosed the Petitioner with a lumbar spine condition. (R.X.4) The Respondent offered no evidence connecting these complaints of radiating back pain to the Petitioner's condition of the left intra-articular fracture which was diagnosed on January 2, 2008,

nor did the Respondent offer any circumstantial, or direct evidence which might establish that the Petitioner's lumbar back condition and leg pain contributed to her fall.

On January 3, 2008, Dr. Joseph Williams performed surgical repair of the Petitioner's femoral fracture. A Synthes locking, distal femoral plate was placed along the shaft of the femur and locking cortical screws, and cortical [*17] locking screws, were implanted. (P.X.2) Petitioner recovered in the hospital from January 3, 2008 through January 9, 2008, and then through January 19, 2008 at Memorial Medical Center's assisted living facility. (P.X.2)

Petitioner received follow up care from Dr. Joseph Williams at the Orthopedic Center of Illinois after her release from Memorial Medical Center. On January 15, 2008 Dr. Williams noted the Petitioner was still in the nursing facility participating with physical therapy but that the Petitioner wanted to be advanced in physical therapy and released to return home. Dr. Williams changed a knee immobilizer boot to a hinged knee immobilizer that the Petitioner could lock in extension when weight bearing, and unlock when performing passive range of motion exercises. (P.X.3) On January 29, 2008, the Petitioner presented without complaint of pain and was instructed to discontinue use of the brace and advance with weight bearing. (P.X.3)

On February 19, 2008, Dr. Williams noted the Petitioner was complaining of occasional pain in the anterior aspect of the knee but that x-rays showed the left distal femur fracture and the hardware to be in good position. (P.X.3) Dr. Williams [*18] advised the Petitioner to begin outpatient physical therapy but continue weight bearing as tolerated and discontinue the cane when she could. (P.X.3)

On March 19, 2008, the Petitioner advised Dr. Williams that she was experiencing occasional popping in the anterior aspect of the knee. (P.X.3) Petitioner requested a release to return to driving a school bus and Dr. Williams allowed her to return to driving a school bus as long as she did not drive while taking medication. (P.X.3) Petitioner returned to work on March 19, 2008 with a restriction of no lifting greater than twenty pounds and frequent changes of position. A letter from Midwest Insurance Company dated May 13, 2008 acknowledged that Dr. Joseph Williams, M.D. of the Orthopedic Center had submitted his bills to Midwest Insurance Company under the Springfield Urban League's workers' compensation policy but that the claim had been denied, as the Respondent was claiming the injury did not arise out of the employment. (P.X.3)

On May 14, 2008, the Petitioner returned to Dr. Williams complaining of pain in the posterior thigh, specifically from the buttock down into the thigh to behind the knee, but denied significant pain in the [*19] anterior aspect of the knee. (P.X.3) Dr. Williams diagnosed the Petitioner with left lower extremity pain consistent with radiculopathy and a lumbar spondylosis. (P.X.3) On May 15, 2008, Petitioner saw Dr. David Mack for her lower back pain which radiated out into the legs and was sciatic in nature and "goes to the knees". Dr. Mack injected the Petitioner's lumbar spine again. (P.X.3) The Arbitrator notes that this pain appears to be similar to the pain the Petitioner was experiencing prior the accident of January 2, 2008 and around the time of her treatment at Memorial Medical Center clinic on November 27, 2007.

On May 22, 2008 the Petitioner returned to Dr. Mack noting she had some "grating" in the left knee. (P.X.3) Dr. Mack also treated the Petitioner's lower back pain and injected the back and left knee. (P.X.3) Dr. Mack continued the Petitioner with a diagnosis of degenerative disc disease in the lumbar spine and left knee pain. (P.X.3)

On July 8, 2008, the Petitioner was seen by Dr. Joseph Williams for the left knee noting the Petitioner had pain in the anterior aspect of the left knee at the patella and pain with weight bearing. (P.X.3) Dr. Williams also noted crepitation with [*20] passive range of motion of the knee at the patellofemoral joint. (P.X.3) Dr. Williams concluded the Petitioner was likely suffering from degenerative joint disease of the knee and a healed fracture. (P.X.3) Dr. Williams recommended a cortisone injection into the knee and a return to physical therapy and to continue with non-steroidal anti-inflammatory medication. Dr. Williams injected the left knee with a combination of Betadene and Aristocort mixed with Lidocaine. (P.X.3) The Petitioner sought further treatment regarding her pre-existing degenerative arthritis of the low back from Dr. David Mack and continued treatment regarding her fractured left knee from Dr. Joseph Williams. (P.X.3)

On August 19, 2008, Dr. Williams noted the Petitioner had crepitation of the patellofemoral joint and degenerative changes within all three compartments of the knee and that he felt Petitioner had a component of arthritis within the knee. (P.X.3)

Dr. Williams was of the opinion that Petitioner's arthritis had "likely been made worse with the fracture". (P.X.3)

Also on August 19, 2008, Dr. Williams recommended continued activity modifications and continued non-steroidal anti-inflammatory medications [*21] and that the Petitioner may be a candidate for a total knee arthroplasty at a later date. (P.X.3)

On October 22, 2008, the Petitioner was seen by Dr. Williams complaining of continued pain in the left knee and in the left hip and had a limp with walking. Petitioner testified that prior to the accident she had no limp. X-rays of the Petitioner's left distal femur showed the hardware to be in good position, and degenerative changes within the joint in all three compartments, most severe in the medial compartment (P.X.3) Dr. Williams diagnosed the Petitioner with a left distal femur fracture which was healed and left knee degenerative joint disease which was mild to moderate in severity. (P.X. 3)

Dr. Williams felt that some of the pain within the knee was likely explained by the degenerative joint disease, noted that Petitioner had injections and was no longer a candidate for cortisone injections, but did provide her with a brace for the knee. (P.X.3)

On November 4, 2008, Dr. Williams noted the Petitioner reported tremendous difficulty walking any distance and complained of a catching and popping in the left knee. (P.X.3) Dr. Williams examined the Petitioner and noted mild to moderate [*22] crepitation at the patellofemoral joint with passive range of motion but that the knee was stable to a varus and valgus stress. Dr. Williams felt that the Petitioner was not capable of walking any long distance. (P.X.3) Dr. Williams did not restrict the Petitioner from driving a bus. (P.X.3)

On January 14, 2009 the Petitioner was seen by Dr. Williams in follow up of her left knee pain and left distal femur fracture which was noted to have been treated with an open reduction, internal fixation. (P.X. 3) Dr. Williams noted Petitioner had a continued complaint of pain in the anterior aspect of the knee and reported difficulty with walking and was using a cane. (P.X.3) Dr. Williams recommended a left knee CT scan to further evaluate the fracture fragments and whether complete healing had occurred. (P.X.3)

On January 28, 2009, Petitioner returned to Dr. Williams after having a CT of the left knee. (P.X. 3) On physical examination, Dr. Williams noted the Petitioner had pain with loading of the patella, with passive range of motion of the patellofemoral joint, and crepitation was palpable. Dr. Williams reviewed the CT scan and noted there appeared to be some sclerosing within the trochlea [*23] of the femur and this was in a position consistent with the patellofemoral joint. (P.X.3)

Dr. Williams was of the opinion that, at that point, the Petitioner had failed to get any significant relief of symptoms with time, activity modifications, physical therapy and the one intra-articular injection that was performed and that the only option surgically would be a total knee arthroplasty with removal of the hardware. (P.X.3) Dr. Williams, however, felt that the Petitioner's symptoms would need to worsen before that would be recommended. (P.X.3)

On May 27, 2009, the Petitioner returned to Dr. Williams for follow up of her left knee pain at which time Dr. Williams related the history of the Petitioner's distal peri-articular fracture and locking plate surgery in January of 2008. (P.X.3) Dr. Williams noted the Petitioner continued to complain of pain to the left knee and in the medial joint line and distal over the medial tibial plateau. Dr. Williams recommended another injection and the Petitioner agreed.

Also on May 27, 2009, Dr. Williams discussed the possibility of undergoing a total knee arthroplasty down the road. (P.X.3) Dr. Williams offered to perform a hardware removal, noting [*24] that the hardware would have to come out anyway if a knee replacement was done. The Petitioner was to consider the hardware removal but the Petitioner testified it has not been performed. Petitioner did undergo an injection into her left knee on May 27, 2009. (P.X.3)

On June 30, 2009, Dr. Williams again noted the Petitioner had a left distal femur fracture with open reduction and internal fixation and left knee degenerative joint disease and chronic left knee pain. (P.X.3) Dr. Williams concluded the Petitioner's problems were a "post-traumatic arthritis" and the Petitioner should follow up prn. (P.X.3)

Petitioner saw Dr. Williams on August 18, 2009 and he noted she had difficulty walking up the stairs at work and requested a refill of Vicodin. (P.X.3) On examination, Dr. Williams continued to note the crepitation with passive range motion of the patellofemoral joint and mild to moderate effusion. (P.X.3) Dr. Williams provided the Petitioner with a refill of her hydrocodone in the form of Norco and restricted the Petitioner in her work from climbing any significant stairs or any significant distance walking. (P.X. 3)

Petitioner testified she was terminated from her position in the [*25] Fall of 2009. Tami McKittrick testified that all bus drivers are laid off in May of every year and the Petitioner was laid off in May of 2009. Tami McKittrick testi-

fied that it was her position the Petitioner not be re-hired and the Petitioner was not re-hired in the fall of 2009 because Tami McKittrick felt there was a safety issue with respect to the Petitioner.

Petitioner submitted her medical bills as Petitioner's Exhibit 6, totaling $ 50,328.90.

Memorial Medical Center, 1/2/08-1/9/08	$ 32956.50
Memorial Medical Center, 1/19/09	$ 1564.00
Midwest Rehabilitation, 2/20/08-3/13/08	$ 496.08
Midwest ER Physicians, 1/2/08	$ 555.00
Clinical Radiologists, 1/2/08	$ 316.50
Clinical Radiologists, 1/19/09	$ 300.00
Orthopedic Center of IL, 1/3/08-6/30/09	$ 11402.00
Clinical Pathologists, 1/2/08-1/8/08	$ 170.20
Memorial Home Services	$ 309.12
R Squared Transport	$ 214.50
Orthopedic Center of IL, 7/14/09	$ 69.00
Orthopedic Center of IL, 8/18/09	$ 152.00
Associated Anesthesiologists, 1/3/08	$ 1620.00
Walgreens Pharmacy, 10/14/08-1/6/10	$ 194.05
CVS Pharmacy, 7/9/08	$ 9.95
TOTAL:	$ 50,328.90

The Arbitrator finds that the Petitioner's lumbar disc disease pre-existed her accident of January [*26] 2, 2008 and continued thereafter, accounting for some of the visits with Dr. David Mack. (P.X.3, P.X.6)

The Arbitrator concludes as follows:

1. Petitioner sustained an accident on January 2, 2008 which arose out of and in the course of her employment by the Respondent. The Arbitrator finds the testimony of Petitioner and Kathy Laschansky to be the more credible testimony concerning the occurrence at issue and of the condition of the carpet. The Arbitrator notes that none of the Respondent's witnesses were actually looking at the Petitioner's feet or the carpet at the time of the Petitioner's fall. Both the Petitioner and Ms. Laschansky testified credibly that the carpet was bunched up and that the kinking or bunching of the carpet is what caused the Petitioner to fall forward. The fact that the Petitioner's fall occurred at an exit used by the general public and the Respondent, is not a bar to compensation as Petitioner's injury was the result of a dangerous condition of the premises.
2. The Arbitrator finds the Petitioner's left knee injury and left distal fracture were caused by the January 2, 2008 accident. The Arbitrator further finds that the accident of January 2, 2008 caused [*27] an aggravation to a pre-existing left knee degenerative arthritis and that a combination of the Petitioner's accident of January 2, 2008 and her pre-existing left knee degenerative arthritis combined to cause her need for a left knee total replacement.
3. Petitioner was temporarily and totally disabled from January 3, 2008 through March 19, 2008, a period of 10 and 5/7 weeks. Petitioner's average weekly wage for purposes of this claim is $ 321.90. *Washington District 50 Schools v. Illinois Workers' Compensation Commission, 394 Ill.App.3d 1087, 917 N.E.2d 586 (2009).*
4. The Arbitrator orders that the Respondent shall pay to the Petitioner directly the medical expenses according to the fee schedule. There have been no 8(j) health insurance payments made on any of the related medical expenses and Respondent is not entitled to any credit.
5. The Petitioner has sustained 40% loss of use of the left leg.
6. The issue of attorney's fees for Petitioner's prior attorney Lamarca was reserved for later hearing.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDIAdministrative ProceedingsClaimsTime LimitationsNotice PeriodsWorkers' Compensation & SSDIBenefit DeterminationsPermanent Partial DisabilitiesWorkers' Compensation & SSDICompensabilityInjuriesGeneral Overview

2013 IL App (1st) 122219WC-U

FILED: JUNE 10, 2013

NO. 1-12-2219WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

AIR FREIGHT EXPRESS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Cook County
THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Eric Akuetteh, Appellee).	)	No. 11L51376
	)	
	)	Honorable
	)	Daniel T. Gillespie,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Hudson, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The parties' settlement contract coupled with the Commission's factual findings regarding medical expenses established the employer's liability to pay claimant compensation under the Act and the Commission did not err as a matter of law by imposing section 19(k) penalties and section 16 attorney fees.

¶ 2 In November 1985, claimant, Eric Akuetteh, was injured while working for the employer, Air Freight Express. In May 1989, the Workers' Compensation Commission (Commission) approved a settlement contract between the parties which included the requirement that the employer continue to provide and pay for all reasonable and necessary medical expenses

stemming from claimant's work-related injury. In April 2010, claimant filed a petition for payment of medical expenses under section 8(a) of the Workers' Compensation Act (Act) (820 ILCS 305/8(a) (West 2008)) and for penalties and attorney fees pursuant to sections 19(k), 19(l), and 16 of the Act (820 ILCS 305/19(k), 19(l), and 16 (West 2008)). Following hearings over six different dates, the Commission determined the employer failed to make payment of medical expenses totaling $131,493.27, and its failure was not in good faith. The Commission ordered the employer to pay penalties pursuant to section 19(k) in the amount of $65,746.64, and attorney fees pursuant to section 16 in the amount of $13,152.93.

¶ 3 On judicial review, the circuit court of Cook County confirmed the Commission's decision. The employer appeals, arguing the Commission failed to enter an award of compensation and, therefore, erred as a matter of law in awarding penalties and attorney fees. We modify the amount of penalties and fees the Commission awarded and affirm the circuit court's judgment, confirming the Commission's decision as modified.

¶ 4 I. BACKGROUND

¶ 5 Claimant worked for the employer as an over-the-road truck driver. On November 27, 1985, he and a coworker were involved in a motor vehicle accident. The coworker was killed and claimant sustained severe injuries, including a broken left hip and left pelvis, multiple fractures in his left leg and foot, spine injuries, and a ruptured spleen. He was hospitalized for several months and underwent multiple surgeries, including a partial amputation of his left foot.

¶ 6 On January 23, 1986, claimant filed an application for adjustment of claim under the Act, seeking benefits from the employer. On May 2, 1989, the Commission approved a

settlement contract between the parties. Pursuant to that contract, claimant agreed to accept a lump sum payment of $125,000, based upon an 85.8% loss of use of the person as a whole. The parties further agreed as follows:

> "[T]he [employer] shall continue to provide an[d] pay for all necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services reasonably required to cure or relieve the [claimant] from the effects of the accidental injury. The employer also agrees to pay for treatment necessary for the physical and mental rehabilitation of the [claimant] including required institutional care all pursuant to section 8(a) of the *** Act."

¶ 7 Claimant filed petitions for medical expenses before the Commission on July 20, 1992; October 25, 2004; and January 19, 2007. The record reflects denial of his first petition but unknown dispositions as to the October 2004 and January 2007 petitions. On April 22, 2010, claimant filed another petition, seeking payment of section 8(a) medical expenses and penalties and attorneys fees under sections 19(k), 19(l), and 16. On June 11, 2010, he provided the employer with copies of approximately 1,500 pages of medical records, a letter summarizing his treatment, and a spreadsheet setting forth outstanding medical bills. Hearings in the matter were held before the Commission on July 15, 2010; February 14, 2011; March 15, 2011; April 6, 2011; May 17, 2011; and July 13, 2011.

¶ 8 At the July 15, 2010, hearing, the employer's attorney represented to the Commis-

sion that, after receiving claimant's January 2007 petition for medical expenses, he contacted claimant's attorney every six months to learn what the petition was about but received no response. The employer's attorney asserted the information claimant provided to the employer in June 2010, was the first time the employer had been given an overview of what was going on with claimant's case.

¶ 9 At the February 14, 2011, hearing, the parties appeared before Commissioner James Demuno. Claimant testified and described his continuing medical services, including procedures for a left knee replacement, further amputation of his foot, left hip replacement, and care associated with those procedures. He received bills for those services and stated some of his medical expenses remained unpaid while others were paid through the health insurance he received through his current employment. Claimant testified his health insurance paid medical bills totaling $214,205.07, but he had to sign paperwork agreeing to reimburse the insurer. Claimant also reported he had unpaid medical bills totaling $50,391.97. Further, he identified various medical providers from which he received services in connection with his left toe, knee, and hip conditions of ill-being.

¶ 10 Claimant also submitted the deposition of Dr. Saul Haskell, a specialist in orthopedic surgery, taken November 15, 2010. Dr. Haskell testified regarding his treatment of claimant from 2001 to 2009. He noted claimant's ongoing difficulty with the partial amputation of his left big toe, his ankle, his left hip, and his left knee. Dr. Haskell opined those conditions of ill-being were caused by claimant's November 1985 motor vehicle accident. Further, he described medical care claimant needed and received to treat those ongoing conditions of ill-

being, including multiple surgical procedures. Specifically, claimant underwent knee replacement surgery on November 24, 2004, with rehabilitation follow-up; left knee manipulations in April and May 2005, with follow-up therapy; lysis adhesion removal on the left knee on January 26, 2006; knee surgery in 2008; and left hip replacement on November 5, 2009, with follow up rehabilitation. Dr. Haskell testified claimant's medical treatment was causally connected to his 1985 accident.

¶ 11 Also at the February 2011 hearing, claimant submitted medical bills and records for treatment he received between 2001 and 2009. He offered a spreadsheet, setting forth his various medical providers; dates of service; charges for those services; amounts paid toward his medical bills by the employer, claimant's group insurer, or claimant; adjustments; and outstanding balances. The spreadsheet showed, between 2001 and 2009, claimant had medical expenses totaling $345,909.90, and adjustments made toward those expenses totaling $76,226.20. Additionally, payments for those expenses were made by the employer in the amount of $5,078.16; by claimant's group insurer in the amount of $214,205.07; and by claimant in the amount of $8.50. The balance of claimant's unpaid medical expenses was $50,391.97.

¶ 12 Finally, claimant submitted correspondence between his attorney and the employer's attorney from June and November 2010. That correspondence included letters from claimant's representative describing claimant's ongoing medical treatment and spreadsheets regarding dates and types of services, charges, amounts paid, and outstanding balances. In correspondence dated November 22, 2010, claimant's attorney provided the employer's attorney with a letter and spreadsheet that identified medical services and bills attributable to claimant's

left knee, left hip, and toe amputation. He asserted claimant's group provider had paid a total of $214,619.32, and outstanding balances totaled $51,986.92. Claimant's attorney demanded that the employer pay $266,606.24 ($214,619.32 + 51,986.92) at that time.

¶ 13 The employer presented no evidence at the February 2011 hearing. However, its attorney objected to the closing of proofs and sought a continuance to review claimant's testimony and confer with his client. Over claimant's objection, the matter was continued.

¶ 14 On March 15, 2011, a further hearing was conducted in the matter before Commissioner Demuno. Claimant's attorney reported claimant had not received payment from the employer and reasserted that claimant requested payment in the amount of $214,205.07, for payments made by claimant's group health insurance provider, and $50,391.97, for unpaid medical expenses. Commissioner Demuno suggested the employer make at least a partial payment "to show good faith." The employer's attorney asserted he had gone through information provided by claimant and matched the medical bills to claimant's treatment records as well as he could. However, he complained he did not have "copies of the exhibits that were tendered last time that were bills." Commissioner Demuno pointed out that the information was in the record. The employer's attorney asserted he was going to ask for a copy of the record from the February 2011 hearing. Also, he asserted that "[w]hatever matches up, I will submit that for payment and direct it to be sent to counsel at his office." The matter was continued for further hearing.

¶ 15 On April 6, 2011, the parties appeared before Commissioner Demuno. Again, no payment for medical expenses had been made by the employer; however, the employer's attorney

asserted a check was issued the previous day with respect to expenses the employer agreed it owed. The employer's attorney argued remaining amounts involved treatment claimant received after the Act's fee schedule provision had been put into effect. See (820 ILCS 305/8.2 (West 2006)). He argued, as a result, the employer's liability could be limited as the employer was "only liable for payments up to the fee schedule." The parties disputed who had the duty of providing fee schedule assessments and whether the employer had received all of the available information regarding medical expenses. Commissioner Demuno stated both parties had a duty to submit fee schedule assessments and directed the employer to submit a written statement of what information the employer needed. The employer's counsel submitted an accounting he prepared which identified bills and records the employer claimed not to have. Commissioner Demuno reasserted that the employer needed to make at least a partial payment to show good faith. The matter was continued for further hearing.

¶ 16 On April 26, 2011, the employer made a payment to claimant in the amount of $135,112.97. On May 17, 2011, a further hearing was conducted before Commissioner Demuno. Claimant's counsel submitted a letter he prepared to respond to the employer's complaints regarding incomplete records. The letter identified the location of bills and records among the information claimant previously submitted and noted the records for one provider, Midwest Orthopaedics, would be submitted as an additional exhibit before the closing of proofs. Following the parties' arguments, the commissioner directed the employer to provide claimant with an itemization as to what bills were to be paid through its $135,112.97, partial payment. He also ordered claimant to compile "a list of the bills that are owed and due."

¶ 17 On July 13, 2011, a final hearing was conducted in the matter before Commissioner Demuno. Claimant offered records from Midwest Orthopaedics and submitted a list of unpaid medical bills, totaling $131,426.22, and toward which he asserted the employer had paid $4,695.30. Proofs were closed and the matter was taken under advisement.

¶ 18 On November 8, 2011, the Commission issued its decision. It found the parties had a settlement contract that required the employer to continue to pay for reasonable and necessary medical expenses related to claimant's November 1985, work accident and, thereafter, claimant underwent extensive medical care. His treatment included multiple surgical procedures to his left leg, knee, and left hip, which Dr. Haskell testified were directly caused by claimant's work accident. The Commission found claimant's medical treatment resulted in extensive medical bills that were either paid by collateral insurance or remained unpaid. Specifically, it noted claimant testified and alleged $214,619.32 in medical expenses were paid by a collateral insurer, and $51,986.92 remained unpaid. The Commission found the employer paid claimant $135,112.97, but "[t]he rest of the amount was not paid" because the employer asserted it did not possess adequate medical records to determine liability and because it was entitled to fee schedule reductions for medical charges incurred after February 2006.

¶ 19 The Commission determined the employer's payment of $135,112.97, was made in good faith, noting it had been over 20 years since the settlement contract was approved and it had a right to question claimant regarding his recent treatment and to receive a report from Dr. Haskell that causally connected claimant's current condition to his work accident. However, the Commission also stated as follows:

> "[T]he Commission further finds that [the employer's] failure to make payment of the additional amount of $131,493.27 was not in good faith. If [the employer] feels it is entitled to a fee schedule reduction for medical charges, the burden is on them to calculate those reductions. They cannot in good conscience refuse to make a payment because the fee schedule reduction was not calculated for them. [The employer] also refused payment of that amount because they allegedly did not have medical records to justify payment. [Claimant] presented [the employer] all the medical records they had in their possession in June 2010. [The employer] also had [claimant's] testimony on February 11, 2011. The Commission notes that [the employer] has not issued a single subpoena in this matter and has not made a single request to a provider of medical service for medical records."

The Commission then ordered the employer to pay $65,746.64 in penalties under section 19(k) and $13,152.93 in attorneys fees pursuant to section 16. On June 20, 2012, the circuit court of Cook County confirmed the Commission.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, the employer argues the Commission erred as a matter of law in awarding penalties and attorneys fees under sections 19(k) and 16 of the Act. It contends those

sections of the Act "presuppose[] an underlying award of compensation" and, in the present case, the Commission awarded no compensation. Specifically, the employer argues the Commission issued no award regarding what, if any, medical bills were due and owing. Conversely, claimant maintains the parties settlement agreement has the effect of a legal award and that the Commission implicitly determined the amount of medical expenses the employer owed was $131,493.27. He notes the Commission's factual findings and its ultimate determination that the employer refused, in bad faith, to pay claimant $131,493.27.

¶ 23 Section 19(k) of the Act provides as follows:

> "In case [*sic*] where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award." 820 ILCS 305/19(k) (West 2010).

Under section 19(k), the imposition of penalties is discretionary and "intended to address situations where there is not only a delay [in payment], but the delay is deliberate or the result of bad faith or improper purpose." *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515, 702 N.E.2d 545, 553 (1998). Section 16, regarding the imposition of attorney fees, uses identical language to section 19(k) and was intended to apply in the same circumstances. *McMahan*, 183

Ill. 2d at 515, 702 N.E.2d at 553; 820 ILCS 305/16 (West 2010).

¶ 24 Penalties and fees may be imposed based upon conduct either following entry of an award in favor of the claimant or where the employer's delay in payment occurred prior to the entry of any award. *McMahan*, 183 Ill. 2d at 507-08, 702 N.E.2d at 549. Further, under section 19(k), the Commission is "authorized to assess penalties following approval of a settlement contract" as a "settlement contract has the same legal effect as an award." *Flynn v. Industrial Comm'n*, 94 Ill. App. 3d 844, 850, 419 N.E.2d 526, 530 (1981).

¶ 25 Generally, the imposition of penalties and attorney fees involves questions of fact and the Commission's decision is subject to a manifest-weight-of-the-evidence standard of review. *Dye v. Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 15, 981 N.E.2d 1193. However, statutory construction issues involve questions of law and are subject to *de novo* review. *Hollywood Casino-Aurora, Inc. v. Workers' Compensation Comm'n*, 2012 IL App (2d) 110426WC, ¶ 13, 967 N.E.2d 848. "The cardinal rule of statutory construction is to ascertain and give effect to the true intent and meaning of the legislature" and where "the language of the statute is clear and unambiguous, courts must interpret the statute according to its terms without resorting to aids of construction." *Hollywood Casino-Aurora*, 2012 IL App (2d) 110426WC, ¶ 16, 967 N.E.2d 848.

¶ 26 As stated, the employer argues sections 19(k) and 16 require an underlying award of compensation. Claimant does not dispute this contention and we agree. Clearly, the imposition of additional compensation under section 19(k) and fees under section 16 must be based upon the employer's liability to pay compensation under the Act in the first place. Without an

ultimate finding by the Commission that the employer had an obligation to pay, there can be no improper delay in payment or underpayment. While penalties and fees may be based upon conduct that occurs either prior to or after an award of compensation, there must, nevertheless, be an ultimate award of compensation to claimant.

¶ 27 Although we agree that sections 19(k) and 16 require an award of compensation to claimant and an obligation of the employer to pay that award, we disagree with the employer's contention that this case does not present such circumstances. Here, the employer complains the Commission failed to issue an "award *** regarding what, if any, medical bills [were] due and owing to" claimant. However, as claimant argues, a settlement contract has the same legal effect as an award for section 19(k) purposes and, in this case, the parties' settlement contract provided that the employer would be liable for all reasonable and necessary medical expenses associated with claimant's work-related accident. The employer's continued obligation to pay for medical treatment for claimant's work-related injuries stemmed from that settlement contract. Moreover, the Commission made findings regarding the precise dollar amount of medical expenses that the employer owed but failed to pay, $131,493.27. That amount served as the basis for its calculation of penalties.

¶ 28 The employer's challenge to the Commission's imposition of penalties and fees appears to be that the Commission did not use certain express language in its decision when setting forth the employer's medical expenses obligation. Specifically, in its briefs, the employer argues that "[t]o date, no such determination has been made by the Commission as to reasonable and necessary medical expenses" or "what, if any, medical bills are due and owing." The record

does not support its position.

¶ 29 Although the Commission did not use the precise language referenced by the employer, its decision clearly shows it found the employer owed claimant $131,493.27 in medical expenses but, acting in bad faith, refused to pay that amount. Its finding came after multiple hearings on the issue of medical expenses, during which claimant presented specific evidence regarding his ongoing medical treatment, submitted medical bills, and offered medical opinion testimony that causally connected to his treatment to his work-related injuries. By finding the employer failed, in good faith, to pay $131,493.27, the Commission implicitly found that amount "due and owing" to claimant and established its reliance on claimant's evidence regarding the reasonableness and necessity of medical expenses.

¶ 30 Here, the parties' settlement contract coupled with the Commission's factual findings regarding medical expenses established the employer's liability to pay claimant compensation under the Act. The Commission did not err as a matter of law by imposing section 19(k) penalties and section 16 attorney fees.

¶ 31 Finally, although the employer does not challenge the Commission's decision as being against the manifest weight of the evidence, it does argue there was no basis in the record for the Commission to find the employer owed an outstanding amount of $131,493.27 in medical expenses. That amount was based upon evidence that claimant's medical expenses totaled $266,606.24 ($214,619.32 paid by claimant's collateral health insurer which required reimbursement + $51,986.92 in unpaid medical expenses) and the employer paid $135,112.97 toward that total ($266,606.24 - $135,112.97 = $131,493.27). The record reflects these figures and calcula-

tions were contained in a spreadsheet claimant provided to the employer in November 2010, and submitted as part of an exhibit at the February 2011 hearing. Thus, the record does contain a basis for the Commission's calculations.

¶ 32 However, at the final hearing before the Commission in July 2011, claimant submitted a list of unpaid medical bills and asserted the employer owed him a total of $126,730.92 in medical expenses. Because the most recent information claimant provided to the Commission showed unpaid medical expenses totaling only $126,730.92, we modify the Commission's decision to show that figure as the amount of compensation the employer failed to pay in good faith. As section 19(k) provides that the Commission may award additional compensation "equal to 50% of the amount payable at the time of" the penalties award (820 ILCS 305/19(k) (West 2010)), we modify the Commission's decision to reflect that the employer owes penalties in the amount of $63,365.46. Additionally, we modify the Commission's decision to reflect an award of attorney fees in the amount of $12,673.09. See *McMahan*, 183 Ill. 2d at 510, 702 N.E.2d at 550 ("Under the *** Act, attorney fees are normally limited to 20% of the amount recovered by the claimant").

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the circuit court's judgment, confirming the Commission's decision as modified.

¶ 35 Affirmed as modified.

86 IL.W.C. 02951 (Ill.Indus.Com'n), 2011 WL 6286120 (Ill.Indus.Com'n)

Illinois Workers' Compensation Commission

State of Illinois

County of Cook

ERIC AKUETTEH, Petitioner
v.
AIR FREIGHT EXPRESS, Respondent

No. 86 W.C. 02951
November 8, 2011

ORDER

*1 Respondent's Motion to Recall Order Pursuant to Section 19(f) of the Act was filed October 31, 2011.

The Commission having been fully advised in the premises, finds that the Commission's Order dated September 19, 2011 should be recalled for the correction of a clerical error and that a bond of $75,000.00 should be included in the Commission's Order.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission Order dated September 19, 2011 is hereby recalled. The parties should return their original Orders to Commissioner Michael P. Latz.

IT FURTHER ORDERED BY THE COMMISSION that a Corrected Order shall be issued simultaneously with this Order.

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.

CORRECTED ORDER

This cause coming to be heard on Petitioner's Motion for Penalties and Attorneys' Fees for failure to comply with the terms of the approved settlement contracts and due notice having been given; this cause came on for hearing before Commissioner James DeMunno on April 6, 2011, May 17, 2011 and July 13, 2011 in Chicago, Illinois, The Commission having jurisdiction over the persons and subject matter and being advised in the premises finds:

That Petitioner sustained a work injury on November 27, 1985 and filed a workers' compensation case 86 WC 2951. This case was settled and approved by the Commission on May 2, 1989 and specifically states in the terms that "Petitioner and Respondent agree that Respondent shall continue to provide and pay for all necessary first aid, medical and surgical services, and all necessary medical, surgical, and hospital services reasonably required to cure or relieve the Petitioner from the effects of the accidental injury. The employer also agrees to pay for treatment necessary for the physical and mental rehabilitation of the employee including institutional care ..." (Petitioner Exhibit 1)

Since the date of approval Petitioner has undergone extensive medical care including but not limited to multiple surgeries of the left leg, knee and left hip. Dr. Haskell testified on November 15, 2010 that this medical care was directly caused by the accident on November, 27 1985. (Petitioner Exhibit 2)

Petitioner's medical treatment resulted in extensive medical bills that have either been paid by collateral insurance or remain unpaid. (Petitioner Exhibits 3-26)

On February 15, 2007 Petitioner filed this motion for penalties. Respondent on July 15, 2010 informed Commissioner Sherman that he has attempted to contact Petitioner's attorney every 6 months since receiving that motion but received no response to his attempts. It was not until he received Petitioner's attorney's June 10, 2010 letter, or approximately 21 years

since approval of the settlement contracts, that he had been given an overview of what exactly was going on in Petitioner's case. (Petitioner Exhibit 27)

*2 The Petitioner's testimony was taken on February 11, 2011 and the deposition of Dr. Haskell, which was taken on November 15, 2010, was offered and accepted into evidence. Petitioner is alleging that $214, 619.32 were paid by a collateral health insurer and that he continues to be liable for bills in the amount of $51,986.92.

Respondent tendered payment to the Petitioner in the amount of $135,112.97 on April 25, 2011. The rest of the amount was not paid because Respondent contended that they were not in possession of adequate medical records that are necessary before they could make any payment. They also contend that they are entitled to fee schedule reductions for medical charges incurred after February 1, 2006.

The Commission finds that Respondent's payment of $135,112.97 was made in good faith. It had been over twenty years since the Petitioner's contracts were approved and they had a right to question the Petitioner in regard to the additional treatment twenty years later and most importantly they had the right a report from Dr. Haskell causally connecting his condition to the November 27, 1985 accident.

However, the Commission further finds that Respondents failure to make payment of the additional amount of $131,493.27 was not in good faith. If Respondent feels it is entitled to a fee schedule reduction for medical charges, the burden is on them to calculate those reductions. They cannot in good conscience refuse to make a payment because the fee schedule reduction was not calculated for them. Respondent also refused payment of that amount because they allegedly did not have medical records to justify payment. Petitioner presented Respondent all the medical records they had in their possession in June of 2010. Respondent also had Petitioner's testimony on February 11, 2011. The Commission notes that Respondent has not issued a single subpoena in this matter and has not made a single request to a provider of medical service for medical records.

IT IS THEREFORE ORDERED BY THE COMMISSION that 19(k) penalties in the amount of $65, 746.64 be paid by the Respondent to the Petitioner.

IT IS FURTHER ORDERED BY THE COMMISSION that the sum of $13,152.93 be paid by Respondent to Petitioner's attorneys pursuant to Section 16 of the Act.

Bond for the 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 the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

Michael P. Latz
David L. Gore
Mario Basurto

SPECIAL CONCURRING OPINION

This case was scheduled for Oral Arguments on August 25, 2011 before a three-member panel of the Commission including members James F. DeMunno, Mario Basurto and David L. Gore, at which time Oral Arguments were either heard, waived or denied. Subsequent to Oral Arguments and prior to the departure of James F. DeMunno on October 17, 2011, a majority of the panel members had reached agreement as to the results set forth in this decision and opinion, as evidenced by the internal Decision worksheet initialed by the entire three member panel, but no formal written decision was signed and issued prior to Commissioner DeMunno's departure.

Although I was not a member of the panel in question at the time Oral Arguments were heard, waived or denied, and I did not participate in the agreement reached by the majority in this case, I have reviewed the Decision worksheet showing how Commissioner DeMunno voted in this case, as well as the provisions of the Supreme Court in Zeigler v. Industrial Commission, 51 Ill.2d 137, 281 N.E.2d 342 (1972), which authorizes signature of a Decision by a member of the Commission who did not participate in the Decision. Accordingly, I am signing this Decision in order that it may issue.

Michael P. Latz

*13 IWCC 225; 2013 Ill. Wrk. Comp. LEXIS 336, **

JOSEPH **SCHURINGA,** PETITIONER, v. CITY OF OAK FOREST, RESPONDENT.

NO. 10WC 32097, 10WC 32098

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

13 IWCC 225; 2013 Ill. Wrk. Comp. LEXIS 336

March 7, 2013

CORE TERMS: right knee, knee, pain, surgery, medial, arthroscopy, recommended, patient, replacement, prescribed, doctor, condyle, allograft, causally, partial, tenderness, patellofemoral, femoral, mild, tear, temporary total disability, injection, effusion, swelling, surgical, symptoms, lateral, temporary, cortisone, causality

JUDGES: Yolaine Dauphin; Charles J. DeVriendt; Ruth W. White

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petitions for Review under § 19(b) having been filed by Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, temporary total disability and "errors in medical award," and being advised of the facts and law, corrects and modifies the decisions of the Arbitrator as stated below and otherwise affirms and adopts the decisions of the Arbitrator, which are attached hereto and made a part hereof. The Commission remands the cases to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

Correction in Case No. 10WC032098

The Commission corrects the Arbitrator's temporary total disability benefits award to a period from May 27, 2010, through August 28, 2010.

Corrections in Case No. 10WC032097

The Commission corrects the Arbitrator's temporary total disability **[*2]** benefits award to a

period from January 15, 2009, through February 9, 2009.

The Commission corrects the Arbitrator's award of medical expenses to state that they shall be paid to Petitioner, instead of the medical providers.

The Commission corrects the seventh sentence in the second full paragraph on page three to state "September 27, 2010," instead of "September 26, 2010."

The Commission corrects the second full paragraph on page six to state "October 21, 2011," instead of "October 21, 2012."

The Commission corrects section J on page eleven to state:

> "The medical, surgical and hospital bills contained in Petitioner's Group Exhibit No. 10 were reasonable, necessary and causally related to Petitioner's work injuries. Accordingly, Respondent is liable for and shall pay Petitioner $ 10,348.64, as provided in Section 8(a) of the Act and subject to the statutory medical fee schedule in effect on the dates of treatment, if applicable."

The Commission strikes everything after the first paragraph in section K on pages eleven through twelve.

Modifications

In the decision for case No. 10WC032097, the Arbitrator found that Petitioner's January 10, 2009, and April 30, 2010, accidents **[*3]** are causally related to Petitioner's current condition of ill-being, and Petitioner requires arthroscopic surgery. The Commission agrees that Petitioner's right knee condition is causally related to the January 10, 2009, and April 30, 2010, accidents.

The Commission finds further that Petitioner's left knee condition is causally related to the work related accidents. Petitioner testified that in April or May of 2011, he began to experience left knee pain, which he had not experienced since his left knee surgeries in 2001 or 2002. Medical records show that on May 2, 2011, Petitioner had moderate-sized effusion in his left knee, requiring Dr. Branovacki to aspirate 40 cc of clear, yellow fluid from the left knee. Dr. Branovacki recommended that Petitioner undergo physical therapy for both knees and noted that "his left knee is likely affected by the right knee problems." During Dr. Neal's section 12 examination on May 26, 2011, Petitioner complained of left knee pain and told Dr. Neal that he took Naproxen for pain in both knees. On June 6, 2011, Petitioner reported discomfort in both knees but Dr. Branovacki only performed a cortisone injection in Petitioner's right knee. On July 28, **[*4]** 2011, Petitioner complained of left knee pain rated two out of ten. On March 9, 2012, Dr. Branovacki recommended that Petitioner undergo X-rays of both knees.

Based on the record, Petitioner sustained an overcompensation injury to his left knee in May of 2011. Although Petitioner had left knee surgeries in 2001 and 2002, he did not experience left knee pain again until 2011. Petitioner's left knee pain has continued since May of 2011, however, his medical treatment has been focused on the right knee. Dr. Branovacki's opinion and the medical records support a causal connection finding with respect to the left knee. The Commission awards Petitioner additional prospective medical care in the form of diagnostic tests for the left knee as recommended by Dr. Branovacki.

IT IS THEREFORE ORDERED BY THE COMMISSION that the decisions of the Arbitrator filed on May 25, 2012, are hereby corrected and modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $ 918.73 per week for a period of 3-5/7 weeks from January 15, 2009, through February 9, 2009, with respect to case No. 10WC032097; and a period **[*5]** of 13-3/7 weeks from May 27, 2010, through August 28, 2010, with respect to case No. 10WC032098, these being the periods of temporary total incapacity for work under § 8(b), and that as provided in § 19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner all reasonable and necessary medical expenses in the sum of $ 10,348.64 under § 8(a) of the Act and subject to the medical fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for prospective medical care in the form of a total right knee replacement surgery or cartilage restoration surgery, including physical therapy and diagnostic tests, as well as diagnostic tests for the left knee as recommended by Dr. Branovacki.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this decision, but only after the latter of expiration of the time for filing a written request for Summons to the circuit court **[*6]** has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

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:

ARBITRATION DECISION

19(b)

JOESEPH SCHURINGA
Employee/Petitioner

v.

CITY OF OAK FOREST
Employer/Respondent

Case # **10** WC **32097**

Consolidated cases: **10 WC 32098**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of Chicago, on March 23, 2012. After reviewing all of **[*7]** the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

with this surgery.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.
RULES REGARDING APPEALS: Unless a party files a Petition for Review within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

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

In no instance shall this award be a bar to subsequent hearing and determination **[*10]** of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

May 25, 2012

FINDINGS OF FACT

The disputed issues in 10 WC 32097 are: 1) medical bills; 2) prospective medical treatment; and causal connection. *See*, AX1.

10 WC 32097; date of accident January 10, 2009

Petitioner, JOSEPH **SCHURINGA** is a 43-year old firefighter/paramedic employed by the City of Oak Forest for some fourteen years. His job duties involved responding to fire and emergency medical calls. In the course of his work, he was required to carry patients unable to walk, **[*11]** extricate people out of cars, crawl, climb, and maneuver through windows. He carried tools weighing up to 100 pounds and lifted hoses weighing between seventy and eighty pounds. His protective gear weighed between forty and 45 pounds, plus a breathing apparatus weighing about twenty pounds. Mr. **Schuringa's** past medical history includes fusion surgeries to both great toes and three surgical procedures to his left knee in 1990. He last saw a doctor for his left knee in approximately 2002. He had no injuries medical problems or treatment involving his right knee prior to January 10, 2009.

On January 10, 2009, while adjusting an exhaust system on a fire truck, a bar slipped out, causing Petitioner to lose his balance and slip, resulting in a twisting injury to his right knee. He notified his Lieutenant, Tom Stotts, of the incident. He presented at South Suburban Hospital, where he was seen in the emergency room. Plain X-rays revealed no bony abnormality. He was given Vicodin and a knee immobilizer and returned to work at his next scheduled shift.
On January 15, 2009, he came under the care of Dr. George Branovacki, an orthopedic surgeon. The petitioner complained of right knee stiffness **[*12]** with tenderness over the medial meniscus. His McMurray sign was mildly positive. Dr. Branovacki ordered an MRI of the right knee, which was grossly normal. The doctor instructed Petitioner to cease working at that time. He prescribed a course of physical therapy ("PT"), which took place at AthletiCo. On

DISPUTED ISSUES
F. [X] Is Petitioner's current condition of ill-being causally related to the injury?
J. [X] 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. [X] Is Petitioner entitled to any prospective medical care?

FINDINGS

On the date of accident, **1/10/2009**, 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 $ **71,660.93**; the average weekly wage was $ 1,378.10.

On the date of accident, Petitioner was **43** years of age, **married** with **3** dependent **[*8]** children.

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

Respondent shall be given a credit of $ **15,618.41** for TTD, $ **0.00** for TPD, $ **0.00** for maintenance, and $ **0.00** for other benefits, for a total credit of $ **15,618.71.**

Respondent is entitled to a credit of $ **249.00** under Section 8(j) of the Act.

ORDER:

Respondent shall be given a credit of $ **15,618.41** for payment of TTD

Respondent shall be given a credit of $ 249.00 for payments pursuant to Section 8(j) of the Act and Respondent shall hold petitioner harmless from any claims by providers of the services for which Respondent is receiving this credit.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $ 918.73 /week for 17 weeks, commencing January 15, 2009 through February 9, 2009 and from May 27, 2010 through August 28, 2010, as provided in Section 8(b) of the Act.

Medical benefits

Respondent shall pay reasonable and necessary medical services of $ 10,348.64, to medical providers as set forth in this decision and as provided in Section 8(a) of the Act, subject **[*9]** to the statutory fee schedule, if applicable.

Respondent shall authorize and pay for the surgery prescribed by Dr. Branovacki, consisting of arthroscopy with partial meniscetomy and staging for possible allograft OATS procedure to the medial femoral condyle. And shall provide all reasonable and necessary rehabilitation connected

January 19, 2009, the physical therapist noted decreased ankle dorsiflexion, hip internal rotation flexibility, decreased lower extremity strength and signs of meniscal involvement, with decreased weight-bearing time and decreased push-off with the right low extremity. Localized swelling was present below the right kneecap, with tenderness at the patellar tendon near the attachment site. By February 9, 2009, after nine PT visits, the patient's right knee had improved. Dr. Branovacki released him to return to work at full duty, effective February 10, 2009 (PX 2).

10 WC 32098; date of accident April 30, 2010

The disputed issues in 10 WC 32097 are: 1) medical bills; 2) prospective medical treatment; and causal connection. *See*, AX2.

Petitioner returned to work as a firefighter/paramedic for Respondent beginning February 10, 2009. Over the ensuing fourteen months, he noticed **[*13]** occasional tightness and slight pain in his right knee but sought no medical treatment and lost no time from work. Then on April 30, 2010, during a search and rescue drill, Mr. **Schuringa** was crawling on his knees on a concrete floor for approximately two hours in full gear. The result was re-injury to his right knee as he began to experience renewed pain and swelling in the knee.
On May 3, 2010, he notified Jack Janozik, his Lieutenant, of the incident. He continued working during May 2010. Throughout this period he noticed increased swelling, pain and stiffness in his right knee. On May 21, 2010, his Chief, Terry Lipinski, referred him to Advocate One Health, where he was seen by Dr. Mark Veldman, who noted grinding in the right knee and an antalgic gait. The patient rated his right knee pain at six on a scale often during prolonged flexion. Examination of the right knee revealed tenderness along the posterolateral space and at the anteromedial space. Apprehension test was positive. Dr. Veldman diagnosed a right knee strain with patellofemoral pain syndrome. The doctor suggested that Petitioner's kneeling activities might have aggravated the chondral surfaces of the patella and femoral **[*14]** condyles, thereby precipitating some swelling of the right knee. He prescribed Naprosyn, ice, a knee wrap and home exercise and instructed Mr. **Schuringa** to follow up with his treating orthopedic surgeon (PX 3).

Dr. Branovacki saw the petitioner on May 27, 2010. He complained of right knee pain after crawling on his knees during a training exercise approximately one month earlier. By now he noticed a lump on the outer aspect of the knee with a popping sensation. He had some low back discomfort and was walking with a limp. Pain and crepitus were present on motion of the knee. Medial joint line discomfort was observed on palpation. McMurray sign was mildly positive while x-rays were normal. Dr. Branovacki injected the right knee with cortisone, prescribed Mobic anti-inflammatories and ordered a repeat MRI, which took place on June 2, 2010 at Future Diagnostics Group. The nuclear radiologist diagnosed fraying of the free edge of the posterior horn of the medial meniscus; a subacute, intermediate-grade partial thickness tear of the anterior cruciate ligament; mild to moderate degenerative changes at the medial tibiofemoral compartment; and a probable bone island within the proximal tibial **[*15]** diaphysis.
On June 21, 2010, Dr. Branovacki noted minimal effusion and crepitus on range of motion. The doctor diagnosed v Petitioner as having very small meniscus tears and a small amount of arthritis in the right knee. He prescribed a new round of PT, which took place at Flexeon Physical Therapy, and instructed Petitioner to remain off work for another month (PX 2; PX 4; PX 5).
Dr. Branovacki next saw Petitioner on July 19, 2010, by which time he was complaining of popping, catching, clicking, and "pseudo-locking-like" symptoms in the right knee. Pain was present over the medial joint line with palpation and a mildly positive McMurray sign. Mild peripatellar tenderness was present. Dr. Branovacki recommended a right knee arthroscopy with chondroplasty, partial meniscectomy, and a repeat steroid injection (PX 2).
Petitioner underwent surgery on July 30, 2010 by Dr. Branovacki at Christ Hospital; consisting of right knee arthroscopy with chondroplasty of the patellofemoral joint and medial femoral condyle and injection of steroid. Postoperatively, he remained under the care of Dr. Branovacki,

who instructed him to resume PT and remain off work. In light of recurrent right knee symptoms, **[*16]** a Doppler study was ordered on August 15, 2010 at Palos Community Hospital to rule out deep venous thrombosis. On August 16, 2010, the knee was draining joint fluid. Dr. Branovacki sutured the medial portal and prescribed antibiotics. On August 26, 2010, the doctor observed continued mild quad weakness in the right lower extremity despite improving strength. He released Petitioner to return to modified duty work effective August 29, 2010. On September 26, 2010, Mr. **Schuringa** was still complaining of right knee pain but stated he could live with it. Mild effusion was still present, with minimal tenderness to palpation. Dr. Branovacki released the patient to return to work, full duty, effective September 27, 2010; and instructed him to return as needed (PX 2; PX 6).

Following his return to work, Mr. **Schuringa** noticed increased, worsening pain in his right knee with renewed stiffness and swelling. He returned to Dr. Branovacki, who injected the knee with cortisone on January 24, 2011. On March 7, 2011, the doctor prescribed a series of four Orthovisc injections, which took place in March 2011 but this treatment only achieved temporary symptomatic improvement. On May 2, 2011, Dr. Branovacki **[*17]** noted stiffness in Petitioner's right knee with pain behind the knee on full extension. A moderate-sized effusion was noted about the left knee. Dr. Branovacki opined that the left knee was now likely affected by the right knee problems. He aspirated 40 cc of fluid from the left knee, changed the patient's anti-inflammatory medication to Relafen, and prescribed PT for both knees; which took place at ATI Physical Therapy through July 14, 2011 (PX 2; PX 8).

On June 6, 2011, Mr. **Schuringa** complained of discomfort in both knees, despite the Orthovisc treatments, PT and anti-inflammatory medication. Dr. Branovacki drained 20 cc's of fluid from the right knee and injected the knee with cortisone. The doctor prescribed Ultram, a stronger anti-inflammatory, narcotics for pain, and a repeat MRI of the right knee. MRI was performed on July 12, 2011 at Excellent Healthcare Services. The reported findings were:

(1) Partial vs. complete tear, right anterior cruciate ligament;
(2) Severe intra-substance mucoid degeneration vs. Grade III tear, posterior horn, right medial meniscus;
(3) Intra-substance mucoid degeneration, anterior horn, right medial meniscus;
(4) Intra-substance mucoid degeneration, **[*18]** right lateral meniscus;
(5) Bone bruise, lateral tibial condyle;
(6) Chronic tear, right quadriceps tendon;
(7) Mild to moderate arthritis with joint effusion, right knee; and
(8) Bone island, proximal right tibia.

The nuclear radiologist, Dr. Amjad Safvi, recommended a diagnostic arthroscopy for further evaluation (PX 2).

On May 26, 2011, Dr. M. Bryan Neal examined Petitioner at Respondent's request. Upon physical examination, Dr. Bryan observed "mild but obvious effusion" about the right knee. The patellofemoral joint was tender to side-by-side manipulation. The lateral edge of the patella was tender to palpation. The right knee had slightly abnormal valgus alignment when compared to the left. Range of motion of the right knee was diminished on both flexion and extension, with pain and cracking on flexion. Medially, localized right knee pain was found on maximum extension during varus stress testing of the lateral collateral ligament. Anterior joint line tenderness was present on palpation. Standing x-rays showed slight tenting of the tibial spines with mild but diminished medial joint space, consistent with early radiographic arthritis. Dr Neal concluded that in his opinion, **[*19]** Petitioner sustained a work injury on January to, 2009, but that no new injury occurred on April 30, 2010. Dr. Neal incorrectly stated that Petitioner did not report a new injury following the events of April 30, 2010, as the parties stipulated that Mr. **Schuringa** did in fact notify his Lieutenant, Jack Janozik of the incident just four days later, on May 3, 2010. Dr. Neal opined that there is no current work-related diagnosis or condition, and that Petitioner's right knee symptoms were related solely to non-work related osteoarthritis and not to a work accident. Dr. Neal opined that Petitioner's condition is genetic based on family history and stated that Petitioner's right knee pain and symptoms would eventually worsen and

interfere with his ability to perform his duties as a firefighter. And that he would eventually require a total right knee arthroplasty. Nonetheless, Dr. Neal recommended only conservative treatment for the time being and he did not recommend diagnostic arthroscopy (RX 1). There is no evidence that Dr. Neal reviewed the July 12, 2011 repeat MRJ of Petitioner's right knee, which revealed tears to the anterior cruciate ligament, medial meniscus and quadriceps tendon **[*20]** in addition to the arthritic changes he identified. (PX 2 & RX 1).
On July 28, 2011, Dr. Branovacki recommended a repeat arthroscopy with partial right medial meniscetomy and staging for a possible allograft osteo-articular transfer system ("OATS"); a procedure to the medial femoral condyle. The purpose of the OATS procedure would be to save the knee from future joint replacement surgery, which will otherwise become necessary (PX 2).

Dr. Branovacki emphatically disagreed with the opinions of Dr. Neal regarding both causality and the need for further right knee surgery. Dr. Branovacki stated as follows:

> I read [Dr. Neal's] report thoroughly. I disagree with the assessment that there is no causality between his current knee condition and his work re-injury. [Dr. Neal] does indicate that the prognosis is poor and [Petitioner] is probably going to need a right knee replacement. [Dr. Neal] doesn't think he will need it for years [,] however I think he will be sooner than later[] if we do nothing. [Dr. Neal] mentioned that because I spoke to the patient's wife after surgery and told her he had some arthritis in his knee and he might need a knee replacement down the road perhaps in five **[*21]** years[,] then that obviously meant that he has some arthritis in his knee and might need a knee replacement down the road. Perhaps in five years that obviously means he had arthritis and it was degenerative in nature and not from an injury. I disagree. I think his injury have exacerbated his symptoms and actually caused him this chondral damage. He does not have the typical symptoms findings on arthroscopy or the imaging studies. It is not from degeneration but more from an impact. In any event I think treatment is warranted with causality to his original injury. We will do a repeat arthroscopic with meniscectomy and staging for an allograft OATS procedure if it is possible at this point. He is [amenable] to that plan. (PX 2).

Petitioner sought authorization from Respondent for the surgical procedure recommended by Dr. Branovacki however, Respondent refused to authorize the surgery. He remained under Dr. Branovacki's care.
On September 8, 2011, the doctor explained that the purpose of the arthroscopic surgery with chondroplasty was to determine whether the allograft would be preferable to a partial knee replacement procedure. By now Mr. **Schuringa** was really "uncomfortable and suffering." **[*22]** He was unable to walk very far, could not squat and had recurrent swelling in the affected knee, with tenderness over the medial femoral condyle. Cortisone injections, viscous implantation and oral antiinflammatories had all been tried and failed. Dr. Branovacki stated that the lesion may be too extensive for autograft and even allograft OATS, but if there is a chance to avoid knee replacement at Petitioner's relatively young age, it would be to his benefit. Allograft vs. knee replacement cannot be scheduled in one surgery, because the allograft needs to be ordered fresh and is not returnable. It would be a waste of resources to pay for the allograft and then perform a partial knee replacement instead. Therefore, the patient would be better served with a diagnostic arthroscopy and chondroplasty, with a decision made at that time as to future surgery (PX 2).
By October 21, 2012, Mr. **Schuringa** had continued pain over the medial aspect of the right knee and was ambulating with a limp. Dr. Branovacki again stated his disagreement with Dr. Neal regarding causality. Dr. Branovacki explained that the current knee condition was not "mostly degenerative in nature," as claimed by Dr. Neal. **[*23]** Rather, the right knee pathology began with the original work injury and subsequent arthroscopy. The patient's condition did improve, but his pain returned soon after. Dr. Branovacki again recommended an allograft OATS procedure to the femoral condyle to prevent the arthritis from advancing to a point where a right total knee replacement would become necessary. The doctor suggested a

second surgical opinion, for which he recommended Dr. Kevin Luke, Dr. Nirav Shah or Dr. Brian Cole. Meanwhile, he prescribed narcotic pain medication (PX 2).
Dr. Shah examined Petitioner on November 2, 2011 for a second surgical opinion regarding the proposed revision arthroscopy and possible OATS procedure as recommended by Dr. Branovacki. Petitioner complained of recurrent swelling in the right knee with worsening pain, especially while descending stairs. Physical examination of the right knee revealed trace effusion with active flexion to only 120 degrees. Passive flexion was performed to 135 degrees, but with pain and popping over the superolateral aspect of the patellofemoral joint on hyperflexion, with tightness anterolaterally. There was scarring of the patellofemoral joint with decreased mobility **[*24]** laterally as well as medially compared to the contra-lateral side. Minimal lateral joint line tenderness and posteromedial joint line tenderness were reported. X-rays demonstrated chondromalacia with mild loss of joint space. Review of Petitioner's MRI found that it was significant for chronic ACL sprain, degeneration of the medial and lateral menisci, bone bruising at the lateral tibial condyle, and degeneration with posteromedial meniscal tear and partial ACL tear (PX 7).
Dr. Shah's diagnosis was that Petitioner exhibited right knee pain that initially did well after arthroscopy in July 2010 from a work injury. He was able to return to work 3 months afterwards, but after returning back to work he had worsening pain and has pain with everyday activities, with work activities, and with hyperflexion. Dr. Shah recommended a revision arthroscopy, evaluation of the patellofemoral joint, release of any scar tissue that may be present on the patellofemoral joint or on the undersurface of the quad that has adhered to the distal anterior aspect of the distal femur, evaluation of the cartilage lesions, and possible OATS procedure, to be determined at the time of revision arthroscopy. He advised **[*25]** the patient that Dr. Branovacki would have a better idea of what the knee looks like, after performing the initial arthroscopy. However, while the July 2011 MRI was of poor quality due to patient artifact, Dr. Shah stated that the articular cartilage lesions on the medial lateral condyles are more involved than the medial femoral condyle where prior chondroplasty was performed; and that here is a full-thickness chondral defect. Based upon the arthroscopy films, Dr. Shah found a full-thickness chondral defect and surrounding areas of chondromalacia. He referred the patient back to Dr. Branovacki with a recommendation for a revision right knee arthroscopy, removal of scar tissue on the undersurface of the quad and patellofemoral joint; and possible OATS procedure depending on the operative findings. Dr. Shah opined that Petitioner is not a good candidate for either a right total knee or unicompartmental knee replacement, in light of his relatively young age, heavy duty occupation and the patellofemoral degenerative changes. The goal of the surgery, whether it was a revision knee arthroscopy or arthroscopy plus OATS procedure, would be to achieve pain relief or improvement in pain status **[*26]** (PX 7).
Dr. Shah opined that "the work injury is the cause of the patient's symptoms." The doctor's opinion was based upon the patient's history of injury, the short-term symptomatic improvement following the initial arthroscopy, the recurrent chondromalacia and chondral defect, and the clinical findings on examination and during arthroscopy (PX 7).
Petitioner returned to Dr. Branovacki on November 18, 2011. Now he was taking Tramadol for pain and inflammation. Range of motion of the right knee had diminished and minimal swelling was present. The doctor noted slight varus and valgus laxity secondary to medial-sided joint space wear and point tenderness over the medial joint line with palpation. A mildly positive McMurray sign was present. On a second review of the July 2011 MRI, Dr. Branovacki stated that the new right medial meniscal tear is related to the roughness of the cartilage and is "more than likely causally related to his work injury." The doctor recommended right knee arthroscopy and partial meniscectomy with staging for cartilage restoration procedure. He opined that Mr. **Schuringa** may yet require a right total knee replacement in future (PX 2).
Dr. Branovacki last saw **[*27]** the patient on March 9, 2012. The patient complained of stiffness and worsening pain in the right knee, with his last cortisone injection having worn off. Pain was present over the medial joint line on palpation, with mild effusion and crepitus. Mr. **Schuringa** rated his pain at six or seven on a scale often. Dr. Branovacki again suggested a cartilage restoration procedure as an alternative to "knee replacement of some sort." New x-rays were ordered with an eye towards staging the patient for surgery (PX 2).
At the present time, Petitioner notices pain and stiffness in his right knee into his right calf and thigh, especially when he is unable to take breaks. He also notices grinding, cracking and

occasional pain in his left knee. He takes Tramadol and Naprosyn for pain and inflammation. He would wish to undergo the surgery recommended by Dr. Branovacki if surgical authorization could be obtained. He is currently working.
The following unpaid or unreimbursed medical expenses were admitted in evidence:

Provider	Service Date(s)	Amount
ATI Physical Therapy	05-11-11 to 07-14-11	$ 5,306.65
Illinois Physicians Network	07-12-11	2,842.99
Midwest Orthopedic Consultants, S.C.	01-15-09 to 03-09-12	1,788.00 *
Parkview Orthopedic Group	01-05-11	106.00
TOTAL MEDICAL CLAIMED:	$ 10,597.64 *	

[*28] The $ 1,788.00 unpaid balance on the Midwest Orthopedic Consultants bill includes a $ 249.00 payment by Respondent's group health carrier, for which Petitioner agreed on the Request for Hearing that Respondent is entitled to receive credit under § 8(j) of the Act. After accounting for Respondent's agreed $ 249.00 credit under § 8(j), the net balance claimed on the Midwest Orthopedic Consultants bill is $ 1,539.00, and the net amount of medical claimed by Petitioner is $ 10,348.64 (PX 9; PX Group 10).
Respondent has also paid temporary total disability benefits ("TTD") from January 15 through February 9, 2009 and from May 27 through August 28, 2010, representing seventeen weeks of TTD.

CONCLUSIONS OF LAW:

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

For an employee's workplace injury to be compensable under the Workers' Compensation Act, he must establish the fact that the injury is due to a cause connected with the employment such that it arose out of said employment. *See, Hansel & Gretel Day Care Center v. Industrial Comm'n*, 215 Ill.App.3d 284, 574 N.E.2d 1244 (1991). It is not enough that **[*29]** Petitioner is working when accidental injuries are realized; Petitioner must show that the injury was due to some cause connected with employment. *See, Board of Trustees of the University of Illinois v. Industrial Comm'n*, 44 Ill.2d 207 at 214, 254 N.E.2d 522, (1969).
Causal connection can be inferred. Proof of an employee's state of good health prior to the time of injury and the change immediately following the injury is competent as tending to establish that the impaired condition was due to the injury. *See, Westinghouse Electric Co. v. Industrial Comm'n*, 64 Ill. 2d 244, 356 N.E.2d 28 (1976). Furthermore, a causal connection between work duties and a condition may be established by a chain of events including Petitioner's ability to perform the duties before the date of the accident and inability to perform the same duties following that date. *See, Darling v. Industrial Commission*, 176 Ill.App.3d 186, 193 (1986).
The surgery prescribed by Dr. Branovacki, consisting of arthroscopy with partial meniscectomy and staging for possible allograft OATS procedure to **[*30]** the medial femoral condyle, is reasonably necessary to cure or relieve the effects of the injuries sustained by Petitioner on January 10, 2009 and April 30, 2010, and that a causal connection exists between those injuries and the condition of ill-being that gave rise to the need for surgery. This decision is based upon the opinions of Drs. Branovacki and Shah regarding causality and the need for surgery; the failure of conservative measures such as medication, physical therapy, cortisone injections and Orthovisc injections to relieve Petitioner's right knee symptoms; and the unrebutted testimony of the Petitioner.

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?

I find that the following medical, surgical and hospital bills contained in Petitioner's Group Exhibit No. 10 were reasonable, necessary and causally related to Petitioner's work injuries. Accordingly, Respondent is liable for and shall pay the following amounts to each vendor as

provided in Section 8(a) of the Act and subject to the statutory medical fee schedule in effect on the date(s) **[*31]** of treatment, if applicable.

K. Is the Petitioner entitled to any prospective medical care?

I rely of the opinions of Petitioner's treating physician, Dr. Branovacki, rather than the opinion of Respondent's doctor, Dr. Neal. Dr. Branovacki has treated Petitioner's work injury for over three years. He is in the best position to ascertain causality and the necessary course of treatment based upon the patient's condition and course of treatment, including his clinical improvement or lack thereof. Furthermore, Dr. Shah, who saw Petitioner for a second surgical opinion, fully corroborated the opinions of Dr. Branovacki regarding both causality and the necessity for surgery. In contrast, Dr. Neal examined Petitioner on but one occasion and did not appear to have examined all of the petitioner's medical records. Although Dr. Neal disagreed with both Drs. Branovacki and Shah regarding causation and surgical necessity, I find that their opinions are supported by Petitioner's medical records..

Finally, the Petitioner argues that our General Assembly, in enacting Public Act No. 097-0018, has now added § 8.7(i) (3) to the Workers' Compensation Act and that this subsection provides, in **[*32]** pertinent part, as follows:

> "An employer may only deny payment of or refuse to authorize payment of medical services rendered or proposed to be rendered on the grounds that the extent and scope of medical treatment is excessive and unnecessary in compliance with an accredited utilization review program [.]"

And that § 8.7(i) (3) is procedural rather than substantive in nature and that it is presumed to apply to pending claims going forward. See Schweickert v. AG Services of America, Inc., 355 Ill.App.3d 439, 442, 823 N.E.2d 213 (2005). And that Respondent may dispute the necessity of the surgical procedure recommended by Drs. Branovacki and Shaw only if the dispute is predicated upon an accredited program of utilization review, referencing 820 ILCS 8.7(3). And that Respondent lacked the necessary, statutory basis to dispute Petitioner's eligibility for the prescribed surgery because a utilization review was not performed by the Respondent.

While Petitioner makes a compelling argument, this argument was not made at trial nor was evidence produced to support it. And opposing counsel was not given an opportunity to make an argument **[*33]** supporting his position, which offends due process. In relying on its IME report, I do not find that the Respondent lacked the statutory basis to deny authorization for Petitioner's surgery.

ARBITRATION DECISION

19(b)

Joseph Schuringa
Employee/Petitioner

v.

City of Oak Forest
Employer/Respondent

Case # **10** WC **32098**

Consolidated cases: **10 WC 32097**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **March 23, 2012.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES
F. [X] Is Petitioner's current condition of ill-being causally related to the injury?
J. [X] 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. [X] Is Petitioner entitled to any prospective medical care?

FINDINGS

On the date **[*34]** of accident, **April 30, 2010**, 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 $ **71,660.93**; the average weekly wage was $ **1,378.10.**

On the date of accident, Petitioner was **44** years of age, ***married*** with **three** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $ **see case no. 10 WC 32097** for TTD, $ **0.00** for TPD, $ **0.00** for maintenance, and $ **0.00** for other benefits, for a total credit of $ **see case no. 10 WC 32097.**

Respondent is entitled to a credit of $ **see case no. 10 WC 32097** under Section 8(j) of the Act.

ORDER:

Credits

Respondent shall be given **[*35]** a credit of $ **see case no. 10 WC 32097** for TTD, $ **0.00** for TPD, and $ **0.00** for maintenance benefits, for a total credit of $ **see case no. 10 WC 32097.**

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $ **918.73**/week for 13/3/7weeks, commencing May 27, 2010 through August 28, 2010, as provided in Section 8(b) of the Act.

Medical benefits

Respondent shall pay reasonable and necessary medical services of $ **see case no. 10 WC 32097**, as provided in Section 8(a) of the Act, subject to the statutory fee schedule, if applicable. Of this amount, Respondent shall be given a credit of $ **see case no. 10 WC 32097** for medical benefits paid by its group non-occupational health plan, 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 authorize and pay for the surgery prescribed by Dr. Branovacki, consisting of arthroscopy with partial meniscectomy and staging for possible allograft OATS procedure to the medial femoral condyle.

Respondent shall pay for any **[*36]** necessary and reasonable rehabilitative services recommended after surgery.

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

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

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

May 25, 2010

Legal Topics:

For related research and practice materials, see the following legal topics:
Labor & Employment Law > Disability & Unemployment Insurance > Disability Benefits > General Overview

Workers' Compensation & SSDI > Administrative Proceedings > Claims > Time Limitations > Notice Periods

Workers' Compensation & SSDI > Compensability > Injuries > General Overview