2019 IL App (3d) 180251WC-U

FILED January 8, 2019

NO. 3-18-0251WC

IN THE APPELLATE COURT

OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

| | | |
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| CHER SMITH,<br><br>Appellant,<br><br>v.<br>THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Manhattan Park District, Appellee). | ) | Appeal from<br>Circuit Court of<br>Will County<br>No. 17MR2144<br><br>Honorable<br>John C. Anderson,<br>Judge Presiding. |

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Hudson, and Barberis concurred in the judgment.

**ORDER**

¶ 1 *Held*: The Commission's finding that claimant failed to prove that her injury arose out of her employment was against the manifest weight of the evidence and it committed error in denying claimant compensation under the Act.

¶ 2 On March 25, 2011, claimant, Cher Smith, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)). She sought benefits from her employer, Manhattan Park District (Park District), claiming she injured her right knee and right ankle on December 13, 2010, in a work-related accident when she slipped and fell in a Park District owned parking lot on the way to her vehicle at the end of

her work day. Following a hearing, the arbitrator found claimant had proved that the accidental injury she sustained arose out of and in the course of employment. The arbitrator awarded her benefits under the Act. On review, the Illinois Workers' Compensation Commission (Commission) reversed the arbitrator's decision. On judicial review, the Will County circuit court affirmed the Commission's decision, concluding it was not against the manifest weight of the evidence. Claimant appeals, arguing the Commission's decision that she failed to prove her accidental injury arose out of her employment was against the manifest weight of the evidence. We reverse and reinstate the arbitrator's award of benefits.

¶ 3 I. BACKGROUND

¶ 4 On February 8, 2016, the arbitration hearing was conducted. Claimant and her supervisor testified. Claimant said that, in March 2007, she began working for the Park District as a receptionist and was promoted to program coordinator approximately one year prior to the hearing. On December 13, 2010, a "very snowy" day, at approximately 4 p.m. at the end of her work day, claimant walked to her vehicle in the adjacent parking lot. Claimant said the superintendent had removed the snow prior to the start of the work day. She presumed he had salted the area as well. She said she was walking carefully to her car, as it had been snowing all day. As she reached her driver's side door handle, she fell "forward on both knees and then down real hard squishing the legs underneath [her] bottom that way." She hollered out. Vicki Pacewick (a coworker) and Julie Popp (her supervisor) responded. They called an ambulance. Claimant said the paramedics were also sliding around in the parking lot, and they had to brace themselves between cars to get claimant off the ground. The ambulance took her to the emergency room (ER) at Silver Cross Hospital.

¶ 5 Claimant explained that her office, the Park District administrative office, was

housed in an old farmhouse that sat within what was now Gustafson Park. The administrative office was adjacent to a driveway, which had been widened on one end to allow for nine parking spaces. Her supervisor told her to park in one of those spaces. These nine spaces were not designated, as either members of the general public or the eight administrative employees could park in the spaces. The lot was owned and maintained by the Park District. Approximately one block away, there was a 40-space parking lot where people would generally park when going to Gustafson Park or the program center. Parking in either lot was basically first-come, first-served. Claimant parked in one of the nine spots in the adjacent driveway/parking lot on a daily basis.

¶ 6 When she fell, claimant said she immediately felt pain in her right knee and right foot. She thought she had "broke something." X-rays taken at Silver Cross revealed a right knee sprain and a right ankle sprain. The ER physician, Dr. Julie Iandoli, (1) recommended claimant utilize a walker for mobility, (2) prescribed naproxen and Norco, and (3) recommended she follow up with Dr. Bradley Dworsky, an orthopedist. Claimant missed two days of work with no other restrictions or required accommodations.

¶ 7 Claimant followed up with Dr. Dworsky in March 2011. He performed an MRI and recommended arthroscopic surgery to repair the lateral tear in the back of her knee. Dr. Dworsky's official diagnosis was a "medial meniscal tear with preexisting degenerate joint disease of that right knee." Claimant chose not to have surgery. She treated her "off and on" right-knee symptoms with anti-inflammatory medication. She had no further problems with her right ankle. In 2005, she had her left knee replaced, so she continued to follow up with Dr. William Earman, the orthopedic doctor who performed that surgery. At a June 2011 follow-up visit for her left knee, she mentioned the injury to her right knee to Dr. Earman. According to Dr. Earman's notes, her right-knee symptoms had improved. In fact, claimant admitted she had no

recurring consistent problems with her right knee.

¶ 8 Julie Popp, the executive director of the Park District and claimant's supervisor, testified that the snow had been cleared from the driveway that day by Park District staff. She also said the staff generally used salt or another agent to melt the ice. When counsel asked when the staff had cleared the driveway and parking lot, Popp said "probably [in the] morning before we attend[ed] work."

¶ 9 Claimant presented her medical records, medical bills, and photographs of the parking lot as exhibits.

¶ 10 On May 25, 2016 (a corrected decision was filed on June 10, 2016, to correct a scrivener's error), the arbitrator issued her decision in the matter. She found claimant sustained an accident on December 13, 2010, that arose out of and in the course of her employment. In particular, the arbitrator found (1) the Park District owned and maintained the lot where claimant fell, (2) the fall was not precipitated by a natural accumulation of ice and snow as the Park District had plowed and salted the parking lot, (3) claimant was exposed to a risk greater than that of the general public, and (4) claimant suffered a torn lateral meniscus which required arthroscopic surgery that had not been performed. Claimant's condition remained.

¶ 11 The arbitrator ordered the Park District to pay $3,151.93 in claimant's unpaid medical bills and $253 per week for 32.25 weeks for the 15% loss of use of her right leg in permanent partial disability.

¶ 12 On July 21, 2017, the Commission reversed the arbitrator's decision, finding that because the parking lot was open to and used by members of the general public, claimant, as an employee, was not exposed to any greater risk. It further found "the accumulation of snow in the parking lot represented a natural accumulation as there was no evidence that [the Park District]

created or contributed to a hazard." Thus, the Commission found, claimant's injury did not arise out of her employment. On April 5, 2018, the circuit court of Will County confirmed the Commission.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, claimant argues the Commission erred in finding she failed to prove a work-related accident. She maintains she was injured in an accident arising out of and in the course of her employment solely due to the fact her injury occurred on the employer's premises due to a dangerous or hazardous condition.

¶ 16 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). "The 'arising out of' component is primarily concerned with causal connection" and is satisfied if the claimant shows "the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id.* A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his or her duties. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989).

¶ 17 However, a risk-analysis is unnecessary if the injury occurred on premises due to an unsafe or hazardous condition. Our supreme court has held that accidental injuries sustained on the employer's premises within a reasonable time before or after work arise " 'in the course of' " employment. *Archer Daniels Midland Co. v. Industrial Comm'n*, 91 Ill. 2d 210, 215 (1990) (quoting *Rogers v. Industrial Comm'n*, 83 Ill. 2d 221, 223 (1980)). Further, where the injury was

due to the dangerous condition of the employer's premises, courts have consistently approved an award of compensation. *Id.* at 216. See also *Hiram Walker & Sons, Inc. v. Industrial Comm'n*, 41 Ill. 2d 429 (1968) (holding that claimant's fall in employer's ice-covered parking lot was compensable); *Carr v. Industrial Comm'n*, 26 Ill. 2d 347 (1962) (same); *De Hoyos v. Industrial Commission*, 26 Ill. 2d 110 (1962) (same); *Caterpillar Tractor Co v. Industrial Comm'n*, 129 Ill. 2d 52, 62 (1989) (suggesting that an injury is causally related to the employment if the injury occurs "as a direct result of a hazardous condition on the employer's premises"); *Mores-Harvey v. Industrial Comm'n*, 345 Ill. App. 3d 1034, 1040 (2004) ("The presence of a hazardous condition on the employer's premises that causes a claimant's injury supports the finding of a compensable claim."); *Suter v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 130049WC, ¶ 40 (where the claimant slipped on ice in a parking lot furnished by her employer shortly after she arrived at work, the claimant was entitled to benefits under the Act "as a matter of law").

¶ 18 In other words, the fact that this parking lot was also used by the general public is immaterial to the issue of compensability because claimant's injury was caused by a hazardous condition on the employer's premises. (It was undisputed during the hearing that the driveway/parking lot where claimant fell was owned and maintained by the employer.) As we noted in *Mores-Harvey*, 345 Ill. App. 3d at 1040:

> "[w]hether a parking lot is used primarily by employees or by the general public, the proper inquiry is whether the employer maintains and provides the lot for its employees' use. If this is the case, then the lot constitutes part of the employer's premises. *The presence of a hazardous condition on the employer's premises that causes a claimant's injury supports the finding of a compensable claim.*" (Emphasis added.)

See also *Chicago Tribune Co. v. Industrial Comm'n*, 136 Ill. App. 3d 260, 264 (1985) (affirming award of benefits for claimant who was injured while walking through a gallery owned by the employer which claimant was required to traverse in order to get to her work station even though the gallery was open to the general public, and stating that "[i]t is difficult to see how the [employer] can escape liability by exposing the public to the same risks encountered by its employees").

¶ 19 The same reasoning applies here. If the employer allows both its employees and members of the general public to use the parking lot, and contemplates that its employees will traverse the parking lot, a hazardous condition on the parking lot that causes a claimant's injury is compensable, regardless of whether the employer restricts or dictates its employees' use of the lot. *Archer Daniels Midland*, 91 Ill. 2d at 216; *Mores-Harvey*, 345 Ill. App. 3d at 1040; *Suter*, 2013 IL App (4th) 130049WC, ¶ 40. The hazardous condition of the employer's premises renders the risk of injury incidental to employment without having to prove that she was exposed to the risk of that hazard to a greater extent than are members of the general public. *Archer Daniels Midland*, 91 Ill. 2d at 216; *Mores-Harvey*, 345 Ill. App. 3d at 1040; *Suter*, 2013 IL App (4th) 130049WC, ¶ 40.

¶ 20 The key factors that guide our decision in this case are as follows: (1) claimant's injury occurred on the employer's premises, and (2) the injury was due to or caused by a dangerous condition or defect on the employer's premises, namely ice and snow. No consideration is given as to whether claimant's risk was any greater than that of the general public.

¶ 21 The Park District relies on *Wal-Mart Stores, Inc. v. Industrial Comm'n*, 326 Ill. App. 3d 438 (2001), for support in its position that injuries sustained by an employee in an ice-covered parking lot were not compensable because the lot was used by both employees and the

general public. Because both groups were equally exposed to the hazard, the court concluded the injury did not arise out of employment. *Wal-Mart Stores*, 326 Ill. App. 3d at 445-46. We decline to follow *Wal-Mart Stores* here, finding it distinguishable. In that case, the claimant was not walking to or from her parked car, but was being picked up by a friend. There was no evidence that anyone had asked the claimant's friend to park where she did. Thus, the claimant was, in a sense, not acting under the employer's control or restrictions when she left the store to go on break and so could not have faced any risks to a greater extent than those of the general public.

¶ 22 As cited and quoted above, there is solid precedential authority among Illinois courts supporting the opposite conclusion. And, given this plentiful authority, we believe the distinguishing factors set forth in the *Wal-Mart Stores* case are critical. We therefore decline to follow *Wal-Mart Stores*. The presence of a hazardous condition on the Park District's premises that caused claimant's fall and resulting injury supports a finding of a compensable claim. As such, we reverse the decisions of the Commission and the circuit court denying claimant benefits and reinstate that portion of the arbitrator's decision awarding benefits.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we reverse the judgment of the circuit court of Will County confirming the Commission's decision, reverse the Commission's decision, and reinstate the Arbitrator's decision in part.

¶ 25 Circuit court reversed; Commission reversed; Arbitrator's decision reinstated in part.

STATE OF ILLINOIS )
) SS.
COUNTY OF McLean )

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jeremy Reynolds,
Petitioner,

vs.

NO: 13WC 40126

Multibrand,
Respondent,

18IWCC0197

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 27, 2016, is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 2 - 2018

Charles J. DeVriendt

Joshua D. Luskin

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CJD/rlc
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DISSENT

Pursuant to Section 11 of the Illinois Workers' Compensation Act, a rebuttable presumption exists which finds an employee was intoxicated and such intoxication was the proximate cause of his injury "if there is any evidence of impairment due to the unlawful use or unauthorized use of ...(1) cannabis as defined in the Cannabis Control Act...The employee may overcome the rebuttable presumption by the preponderance of the admissible evidence that the intoxication was not the sole proximate cause or proximate cause of the accidental injuries." *820 ILCS 305/11* (West 2013). I believe the evidence does not support a finding of unlawful or unauthorized use of cannabis nor does it support a finding of impairment. Therefore, I respectfully dissent.

Petitioner testified he neither smoked nor ingested marijuana prior to the accident. T. 29. Petitioner testified he was exposed to second-hand smoke while preforming his work as an installer. T. 30. Petitioner admitted he did not advise Respondent of this exposure but explained it was his understanding Respondent left it to the discretion of the installer to perform the work if such conditions were present. *Id.* On cross-examination, the only testimony elicited regarding Petitioner's marijuana use is as follows: "Q. As I understand it, shortly after this accident occurred, you were notified that the drug test you took was positive and that you were terminated, correct? A. Correct." T. 38.

Certainly, the Arbitrator and/or the Commission majority is not required to accept unrebutted testimony, but such rejection of testimony cannot be arbitrary. *Sorenson v. The Industrial Commission*, 281 Ill. App. 3d 373, 666 N.E.2d 713 (1996). The Arbitrator and thereby the Commission in rejecting Petitioner's testimony as to exposure based the same on Petitioner's failure to provide specifics as to where and when the exposure occurred. Petitioner testified unequivocally he was exposed to second-hand smoke while performing installations. As Petitioner was never questioned regarding the specifics of the exposure, finding that his failure to provide answers renders him not credible would appear arbitrary. I do not find there is evidence of unlawful or unauthorized use.

Further, for the rebuttable presumption to apply, evidence of impairment must be presented. The only evidence in the record regarding Petitioner's marijuana use is RX1 evidencing positive marijuana metabolites at an initial test level of 50 ng/mL. There is simply no evidence prior to Petitioner's accident that he was impaired. Section 11 of the Act specifically defines intoxication for alcohol to equal "0.08% or more by weight of alcohol in the employee's blood, breath, or urine..." *820 ILCS 305/11* (West 2013). The statute does not define intoxication by specific amounts as it relates to marijuana use given the state of the present medical science but instead requires a showing of impairment. Therefore, a positive test result does not presuppose impairment.

18IWCC0197

Immediately following the accident, the Illinois State Police investigated the accident. An Illinois Traffic Crash Report (PX1) evidences no citations were issued. Petitioner was seen at St. Joseph Medical Center approximately one hour following the accident. PX2. The records evidence Petitioner "is alert and oriented to person, place, and time. No cranial nerve deficit. He exhibits normal muscle tone. Coordination normal…He has a normal mood and affect." PX2.

Based on the evidence before me, I would find Petitioner proved he sustained an accident arising out of and in the course of his employment. Accordingly, I dissent.

L. Elizabeth Coppoletti

L. Elizabeth Coppoletti

18IWCC0197

STATE OF ILLINOIS )
)SS.
COUNTY OF MC LEAN )

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

# ILLINOIS WORKERS' COMPENSATION COMMISSION
# ARBITRATION DECISION

Jeremy D. Reynolds
Employee/Petitioner

v.

Multiband
Employer/Respondent

Case # 13 WC 40126

Consolidated cases: n/a

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Bloomington, on June 29, 2016. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On November 14, 2013, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did exist between Petitioner and Respondent.

On this date, Petitioner did not sustain an accident that arose out of and in the course of employment.

Petitioner's current condition of ill-being is not causally related to the accident.

In the year preceding the injury, Petitioner earned $44,138.12; the average weekly wage was $848.81.

On the date of accident, Petitioner was 29 years of age, single with 2 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

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

Respondent is entitled to a credit of $0.00 under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's Conclusions of Law attached hereto, claim for compensation is denied.

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

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

William R. Gallagher, Arbitrator

July 24, 2016
Date



JUL 27 2016

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on November 14, 2013. According to the Application, Petitioner sustained an accident while "driving on the job" and sustained injuries to the "Head, neck, back and associated body parts" (Arbitrator's Exhibit 2). There was no dispute that Petitioner sustained an accident; however, Respondent disputed liability pursuant to Section 11 of the Act. Petitioner claimed that he was entitled to payment of temporary total and permanent partial disability benefits, medical bills as well as Section 19(k) and Section 19(l) penalties and Section 16 attorneys' fees (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a cable/satellite installer and he worked through the central Illinois area. He drove a company van that he kept at his residence. On November 14, 2013, Petitioner was scheduled to attend a meeting at 7:00 AM in Bloomington where various business things would be discussed with other installers. Petitioner would also drop off and pick up equipment and supplies.

Petitioner testified that while he was driving the van from his residence to the meeting, the van experienced brake failure. Petitioner lost control of the vehicle which caused it to roll. Petitioner's recollection of the specific details of the accident was unclear.

According to the police report, the brakes failed in the vehicle driven by Petitioner. Petitioner was unable to stop the vehicle at an intersection which caused it to strike another vehicle. Afterward, the vehicle driven by Petitioner went into a ditch and rolled over before coming to rest on its wheels (Petitioner's Exhibit 1).

Following the accident, Petitioner was seen in the ER of St. Joseph Medical Center. At that time, Petitioner stated that when he stepped on the brake pedal, it went to the floor and the van did not stop. Petitioner had abrasions on his left hand, left ear and head and also had complaints of pain in his right elbow (Petitioner's Exhibit 2).

When seen in the ER, a urine sample was obtained and Petitioner was tested for drugs. The test was positive for marijuana (Petitioner's Exhibit 2; Respondent's Exhibit 1). Petitioner testified that he was fired by Respondent because of the fact that he tested positive for marijuana.

In regard to the medical treatment, Petitioner was treated at Carle Occupational Medicine from November 18, 2013, through March 10, 2014, for neck/back symptoms and post-concussive syndrome (Petitioner's Exhibit 3). Petitioner also received physical therapy from December 13, 2013, through January 26, 2014 (Petitioner's Exhibit 5).

At trial, Petitioner testified that he had ongoing complaints of neck/back pain, sleep disruption and memory issues. Petitioner stated that he takes over-the-counter medications on an as needed basis.

Cathy Reynolds, Petitioner's mother, testified on his behalf at trial. Reynolds' testimony was consistent with the testimony of Petitioner and she stated that she has noted that Petitioner now

has sleep and memory issues that he did not have prior to the accident. She also stated that she has observed Petitioner with neck/back pain.

At the direction of Respondent, the vehicle that was driven by Petitioner was inspected by Clifford Bigelow, an engineer. The primary focus of Bigelow's inspection of the vehicle was to determine if there was, in fact, a brake failure at the time of the accident. Bigelow inspected the vehicle on May 2, 2014, and, in connection with his inspection of the vehicle, various photographs of it were obtained. Bigelow concluded that there was no indication of any problems with the braking system that would have prevented the brakes from functioning at the time of the accident (Respondent's Exhibit 3; Deposition Exhibit 2).

Clifford Bigelow was deposed on March 25, 2016, and his deposition testimony was received into evidence at trial. Bigelow's testimony was consistent with his report and he reaffirmed the opinions contained therein. Specifically, Bigelow stated that the brake pads and rotors were in very good condition and showed very little wear. He also did not find any defects or condition in the hydraulic systems which would have caused brake failure (Respondent's Exhibit 3; pp 13-16).

Daniel Beale testified on behalf of the Respondent when this case was tried. Beale is Respondent's general manager and was Respondent's operations manager at the time of the accident. Beale identified the service records of the vehicle that Petitioner drove and stated that there was no record of any work having been performed on the vehicle because of brake issues (Respondent's Exhibit 2).

At trial, Petitioner denied having smoked marijuana any time prior to the accident. He opined that the positive finding was due to his exposure to "second-hand smoke." When Petitioner was questioned about whether he had been around individuals who smoked marijuana, he said that it was not uncommon for various customers of Respondent that he visited to smoke marijuana. He was not specific about any times or places when he was exposed to marijuana under these circumstances. Petitioner also stated that he was not under any obligation to report such an occurrence to the company.

Conclusions of Law

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

The Arbitrator concludes that Petitioner did not sustain an accidental injury arising out of and in the course of his employment for Respondent on November 14, 2013.

In support of this conclusion the Arbitrator notes the following:

The Arbitrator finds that Petitioner's claim is barred by Section 11 of the Act. Shortly after the accident a urine test was performed which was positive for marijuana.

Petitioner denied having used marijuana prior to the accident and stated that he had been exposed to "second-hand smoke" from individuals who were customers of Respondent. Petitioner did not

provide any specifics at all as to when or where he was purportedly exposed to this "second-hand smoke." The Arbitrator finds that this testimony is not credible.

Petitioner's testimony that the accident was caused by a failure of the vehicle's brake system is also questionable. Respondent tendered service records of the vehicle which contained no reference to any brake work as having been performed on the vehicle. Further, Clifford Bigelow, an engineer, inspected the vehicle and concluded that there was no evidence of brake failure.

In regard to disputed issues (F), (J), (K), (L) and (M) the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrator's conclusion of law in disputed issue (C).

William R. Gallagher, Arbitrator

STATE OF ILLINOIS )
) SS.
COUNTY OF COOK )

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stephen Harris,

Petitioner,

18IWCC0206

vs.

NO: 16 WC 05763

Northwestern University,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, and the nature and extent of the disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Petitioner, a 46-year-old animal care technician, filed an Application for Adjustment of Claim alleging repetitive trauma injuries to both hands manifesting on September 22, 2012. To treat his work-related injury, Petitioner underwent two bilateral carpal tunnel release surgeries. Respondent disputed the medical necessity of a third round of bilateral carpal tunnel releases, and Petitioner sought an award of the requested treatment and medical expenses pursuant to §8(a) and §19(b). In the alternative, Petitioner sought an award of permanent partial disability benefits.

The Arbitrator denied Petitioner's request for a third carpal tunnel surgery, finding that Petitioner failed to prove that the prospective treatment was medically necessary. The Arbitrator awarded permanent partial disability benefits representing the loss of use of 15% of each hand. After considering all the evidence, we affirm the Decision of the Arbitrator on the issue of prospective medical care for the reasons set forth by the Arbitrator. We hereby modify the Decision of the Arbitrator on the issue of the nature and extent of the injury.

18IWCC0206

In considering permanent partial disability, the Arbitrator weighed the §8.1(b) factors: 1) There is no impairment rating in evidence; 2) Petitioner is currently working full duty in his pre-injury job and based on Petitioner's testimony the job duties are repetitive and hand-intensive; 3) Petitioner was 46-years-old at the time of the injury and the Arbitrator noted he has relatively fewer years of work-life expectancy than a younger individual; 4) Petitioner's earning capacity has not been affected; and 5) The evidence of disability corroborated by the treatment records shows that two rounds of surgeries failed to improve Petitioner's work-related condition.

Pursuant to the 2011 amendments to the Act, a claimant must present clear and convincing evidence to support any award above 15% of a hand for carpal tunnel syndrome due to repetitive trauma. We find that despite two rounds of bilateral surgeries to address his carpal tunnel syndrome, Petitioner consistently reports high pain levels. He underwent additional treatment in the form of a right wrist injection by Dr. Vender and a left wrist injection by Dr. Xia, but reportedly received no benefit. Petitioner's scars are noted to be "thick and prominent" and Petitioner consistently reports that they interfere with his day-to-day functions, although he is working full duty. After considering all the evidence of permanent partial disability, we modify the Arbitrator's award and find that Petitioner is entitled to 20% loss of use of his dominant right hand and 15% loss of use of his left hand.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,231.00, subject to §8(a) and the medical fee schedule of §8.2 of the Act, for treatment related to Petitioner's carpal tunnel syndrome and incurred on or before October 4, 2016.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $455.99 per week for a period of 66.5 weeks, as provided in §8(e)9 of the Act, because the injuries sustained caused 15% loss of use of the left hand and 20% loss of use of the right hand.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $31,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 5 - 2018
DLS/plv
o-3/22/18
46

Deborah L. Simpson

David L. Gore

Stephen J. Mathis

18IWCC0206

STATE OF ILLINOIS )
)SS.
COUNTY OF COOK )

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

# ILLINOIS WORKERS' COMPENSATION COMMISSION
## ARBITRATION DECISION
19(b)

Stephen S. Harris
Employee/Petitioner

v.

Northwestern University
Employer/Respondent

Case # 16 WC 5763

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Glaub**, Arbitrator of the Commission, in the city of **Chicago**, on **7/26/17**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Nature and extent of disability if further medical treatment not awarded.**

FINDINGS

On the date of accident, 9/8/2012, 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 $759.99; the average weekly wage was $39,519.48.

On the date of accident, Petitioner was 46 years of age, *married* with 3 dependent children.

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

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

Respondent is entitled to a credit of $0.00 under Section 8(j) of the Act.

ORDER

**The arbitrator finds that the petitioner's carpal tunnel syndrome is causally related to his September 8, 2012.**

**The petitioner is awarded and the respondent is order to pay reasonable and necessary medical expenses in the amount of $1,231.00, subject to Section 8(a) and the medical fee schedule of Section 8.2 of the Act, for treatment related to his carpal tunnel syndrome and incurred on or before October 4, 2016.**

**The petitioner's request for authorization of his third bilateral carpel tunnel release surgeries is denied as the proposed surgeries are not medically necessary.**

**The respondent shall pay the petitioner permanent partial disability benefits of $455.99 per week for 57 weeks because the injuries sustained caused 15% loss of use of the left hand and 15% loss of use of the right hand as provided in Section 8(e)9 of the Act. Any accrued benefits are to be paid in a lump sum.**

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

10/13/17
Date

ICArbDec19(b)

OCT 13 2017

Stephen Harris v. Northwestern University

No. 16 WC 5763

## FINDINGS OF FACT

The petitioner has worked as an animal care technician for the respondent since 1996 or 1997. In this position his job responsibilities included changing out animal cages for mice and feeding primates, rabbits, dogs, pigs and gerbils. Feeding would involve opening and closing cage doors and putting the feed into the cage. The petitioner estimated that, at most, he handled 2,700 mouse cages on one day. On weekends he would come and do health checks where he would check out approximately 3,000 to 4,000 cages in the weekend.

In September of 2012 the petitioner began to experience numbness and tingling in both of his hands and sought medical treatment with Dr. Ellis Nam on September 8, 2012. He provided a history of bilateral hand numbness, right possibly worse than left, for approximately one year. He also complained of pain over his second MCP joint to his right hand over the past several months, but did not recall any acute trauma. Physical examination revealed signs consistent with bilateral probable carpal tunnel syndrome and possible right MCP joint sprain of the second digit of the right hand. At a follow up with Dr. Nam on September 29, 2012, it was recommended that the petitioner undergo an EMG study of the bilateral upper extremities to rule out carpal tunnel versus cubital tunnel. On October 6, 2012 the petitioner saw Dr. Nam, who reviewed an EMG study from October 1, 2012 that demonstrated evidence of mild bilateral carpal tunnel syndrome. Dr. Nam performed a Cortisone injection into the right carpal tunnel on this date. When the petitioner followed up with Dr. Nam on October 13, 2012 it was recommended he undergo surgical intervention for his carpal tunnel syndrome.

The petitioner also sought medical treatment with Dr. Michel Malek for both his carpal tunnel syndrome and an unrelated back condition. The earliest dated medical record from Dr. Malek is September 10, 2012. There are various diagnoses contained in this record pertaining to the petitioner's lumbar spine, but there is a recommendation for evaluation of the bilateral hands.

The petitioner followed up with Dr. Malek on October 8, 2012 following an EMG/NCV study of the upper extremities. Dr. Malek noted this showed moderate bilateral carpal tunnel syndrome with possible cervical radiculopathy. With respect to the carpal tunnel syndrome Dr. Malek provided bilateral wrist splints then recommended continued physical therapy. It was noted that Dr. Nam did an injection to the wrist for the carpal tunnel syndrome. Eventually, conservative medical treatment failed and Dr. Malek performed bilateral carpal tunnel release surgeries, the first occurring on February 8, 2013 and the second occurring on March 15, 2013. The procedures performed on both surgeries were open carpal tunnel release and external neurolysis. Postoperatively the petitioner stated he was doing well following his bilateral carpal tunnel releases and underwent physical therapy beginning around May of 2013.

The petitioner underwent an IME with Dr. Thomas Wiedrich on May 1, 2013. The petitioner was seen for his bilateral hands and it was noted that he had had recent bilateral carpal tunnel releases in February and March of 2013. He states that he was not sure that the surgeries had helped him as he had still had pain in his arm and he notices some numbness and stiffness when he wakes up in the morning. It was also noted he had not been enrolled in physical therapy, and thought his doctor was going to prescribe some. Dr. Wiedrich noted the petitioner was status post bilateral carpal tunnel releases and he had not reached maximum medical

improvement but would do so in six to eight weeks. The petitioner could return to work with restrictions and noted that there was no impairment rating at the time, but typically after a carpal tunnel release surgery there is no permanent impairment unless a significant surgical complication occurred. Dr. Wiedrich recommended additional physical therapy.

A July 24, 2013 report from Dr. Malek states that the petitioner had returned to work and was doing excellent prior to his return to work, but after three or four hours of repetitive work his back and hands began to bother him significantly. Dr. Malek stated the petitioner had no pressure on his nerves and that the problem was nerve damage itself. Dr. Malek recommended medications as his physical examination did not show a focal deficit.

The petitioner sought medical treatment at Northwestern Medicine on May 22, 2013. He complained of bilateral hand numbness and pain left greater than the right. The petitioner stated that his left hand was worse than if was before his surgery, and it was noted that he had had carpal tunnel releases on the right and the left. It was noted that he had recently returned to work light duty, but prior to going back to work he had some pain in both hands and tingling of the fingers that had recently worsened. It was also noted he had started physical therapy and ha two sessions. The petitioner was given restrictions and he was referred to Dr. Michael Vender for further evaluation.

The petitioner was seen by Dr. Vender on May 31, 2013. He complained of bilateral hand pain and numbness and tingling in all of the hands and digits of each hand. It was noted that the petitioner had a prior carpal tunnel release in February, 2013 and again in March of 2013 for the right and left hands respectively. Since that time he stated he overall felt worse and his symptoms were very similar to prior to the carpal tunnel releases, though he thought the numbness may be worse. He stated he ha more significant pain mostly in the surgical areas. Dr. Vender noted that the petitioner underwent electrodiagnostic studies on May 31, 2013 with Lakeshore Neurology and an EMG report. The radiologist's impression was moderate left sided residual carpal tunnel syndrome and mild to moderate residual right carpal tunnel syndrome. Dr. Vender stated that it was not unusual to experience some degree of abnormality even after a successful carpal tunnel release and recommended additional time for healing.

At a follow up appointment with Dr. Vender on June 28, 2013, the petitioner continued to experience pain with numbness and tingling in his hands that he though could be worse than his preoperative condition. He stated that during certain activities his hands would go numb and feel heavy. Dr. Vender sated that it was reasonable to proceed with a repeat carpal tunnel release surgery. On July 30, 2013 Dr. Vender performed a repeat carpal tunnel release with flexor synovectomy, neurolysis of the median nerve, flexor tenolysis, flexor tendons to index and flexor pollicis longus. On September 10, 2013 Dr. Vender performed a repeat right carpal tunnel release with synovectomy, neurolysis of the median nerve, tenolysis of flexor digitorum profundus and superficialis of the middle, ring and small fingers.

Postoperatively the petitioner was progressing more slowly than with a routine carpal tunnel release, though Dr. Vender stated this was consistent with a revision surgery involving more extensive release and neurolysis. Post-operatively the petitioner underwent significant postoperative physical therapy through Dr. Vender's office. On November 13, 2013 Dr. Vender noted that the petitioner had done very well in physical therapy. The petitioner's strength was good but he was concerned about returning to work. There was a discussion about the need to attempt to return to work though that could cause some change in symptoms. Dr. Vender recommended that he return to normal work activities though he had a limit on the number of cages he could clean per day. On December 18, 2013 the petitioner stated he was concerned about his ongoing complaints. Dr. Vender noted he was reaching a point of maximum medical improvement and expected the petitioner to continue to improve over time. It was noted that he could continue to have some degree of residual complaints and that his hands

may never feel the same as he previously perceived them. That being said, Dr. Vender did not anticipate a significant impairment or need for restriction.

The petitioner followed up with Dr. Vender on March 12, 2014 with concerns regarding residual discomfort in the palm and the nature of the scars from his carpal tunnel surgeries. Dr. Vender noted the discomfort was not unexpected after undergoing two surgeries, though it was possible that he continued to improve with time. Dr. Vender indicated he would not try to revise the scar in palm of the left side and the right sided palm scar was not a problem. Consideration could be given to revising the portion of the scar in the dorsal forearms, though recurrent thickening or keloid scar formation could occur. Dr. Vender would not recommend it until at least after a year following his prior surgery. At another follow up visit on July 30, 2014 it was noted that a prior steroid injection into the left first extensor compartment did not help. The petitioner related multiple complaints of both hands and noted that at times his fingers will twitch and there is a significant feeling of weakness. There was some tenderness of both first extensor compartments but definitely not indicative of DeQuervain's disease. The petitioner continue to discuss the possibility of scar revisions in the distal volar forearm.

Dr. Vender generated a letter dated January 12, 2015 that, among other things, noted the petitioner had undergone bilateral carpal tunnel revision surgeries and had experienced an excellent clinical response. While the petitioner had some degree of complaints after the surgery, these were not necessarily indicative of an ongoing nerve problem. The petitioner focused for many months on the nature of his scar without any neurological complaints. Later he presented with complaints still referable to his scars but also with other non-specific complaints, and for a long time he did not have any indications of an ongoing neurological problem. Therefore, there was no reason to suspect that he was redeveloping neurological problems. Dr. Vender stated the petitioner would never be completely free of symptoms based upon the nature of his ongoing complaints but those complaints were not of clinical significance. Dr. Vender believed that further surgery would be contra indicated for the petitioner.

The petitioner also sought medical treatment with Dr. Renlin Xia from October 24, 2014 through May 17, 2017. Dr. Xia's medical records mostly involve treatment for the petitioner's lower back condition, which is not the subject of this case. In regards of the bilateral hand conditions it was noted that the petitioner was treating with a hand surgeon for these conditions.

The petitioner then saw Dr. Jeffrey Wienzweig on October 30, 2014 for bilateral carpal tunnel syndrome on referral from Dr. Xia. It was noted the petitioner had bilateral carpal tunnel release recently performed by Dr. Vender approximately one year prior with minimal release and that he was scheduled to undergo an additional release with Dr. Vender. Dr. Wienzweig wanted to obtain additional medical records and diagnostics studies and follow up with the petitioner regarding medical treatment. In the interim, the petitioner continued working his full duty job.

On November 5, 2014 a repeat EMG study was performed of the bilateral upper extremities at Norwegian American Hospital. The interpretation was moderate carpal tunnel syndrome of the right and mild carpal tunnel syndrome on the left with underlying axonal sensory neuropathy.

Dr. Wienzweig again saw the petitioner on November 25, 2014 for further evaluation of his carpal tunnel syndrome, left greater than right with axonal neuropathy. Dr. Wienzweig explained at length that this would be his third carpal tunnel release procedure and there was no guaranty that there would be any improvement of his symptoms due to significant injury to the median nerves at this point. It was noted the petitioner would also need neurolysis as well as the carpal tunnel release. In the interim the petitioner continued to work full duty while awaiting authorization for the carpal tunnel release.

A Utilization Review report was prepared by Prium on July 27, 2016 and was directed to Dr. Wienzweig. It noted medical records had been reviewed and noted that Dr. Wienzweig's registered nurse called the utilization reviewer to discuss the clinical details and the guidelines. The reviewer, Dr. David Trotter, determined that Dr. Wienzweig's proposed third bilateral carpal tunnel release surgery was not medically necessary. In his opinion, the clinical information did not establish the medical necessity of the proposed surgeries. Dr. Trotter noted there was no documentation of sensory examination or carpal tunnel provocative testing nor was there documentation of a positive diagnostic injection for the more recent treatment.

The petitioner was seen by Dr. John Fernandez for an independent medical examination on August 25, 2016. The petitioner related his history of symptoms while working for the respondent as an animal care technician. He was currently complaining of bilateral hand and wrist complaints that were somewhat globally distributed and not very focal. He described numbness in the hands, but it was more consistent with pain complaints rather than true neurologic symptoms. Dr. Fernandez noted he was very specific with him and took time trying to distinguish his complain of neurological symptoms such as numbness or tingling away from pain complaints. The pain complaints were again somewhat vague and global along the volar and dorsal wrist. He also complains of weakness relating this and rated his complaints of pain at 8/10 at rest and 9/10 with moderate to heavier activities. Despite all that he continued to work essentially in a full capacity. After review of medical records and a job description and conduction of an examination, Dr. Fernandez indicated he would not recommend any further carpal tunnel surgery. The petitioner had already had two surgical procedures and a third surgical procedure for carpal tunnel release is not medically indicated. There would be significant risk with little function to return. Dr. Fernandez noted there was no irritability or percussion or compression over the median nerve at the wrist and a 2-point discrimination test was normal with no atrophy of the thenar muscles. Although EMG studies may show abnormalities in the median nerve, this did not mean there was active disease present. He did not have significant subjective complaints supporting a diagnosis of active median nerve neuropathy. Dr. Fernandez stated the petitioner could continue working full duty despite his subjective complaints of pain. There would be further medical treatment for work up for arthritis to his wrist, and this would be separate from his workers' compensation claim. While the petitioner had some keloid formation for scarring at the risk, there were no deficits involving the median nerve itself. Other than the scars he has the petitioner had only subjective complaints of pain or discomfort, which appeared to be emanating from his wrist joints themselves as seen in the radiographic findings. X-rays of both hands and wrists revealed degenerative changes and possible widening of the scapholunate interval indicative of possible carpal instability or carpal degeneration. There do not appear to be any neurologic losses from an objective basis on physical examination and his symptoms did not correlate with the EMG findings.

The petitioner testified that he continued to experience numbness, sharp pains, and swelling in his hands when he wakes up. He would experience dropping things and possibly experiencing anxiety. He also continued to experience on and off tingling in his fingers and thumbs. When further questioned, the petitioner stated that he experiences tingling and numbness in all of his fingers in both hands. The petitioner testified that he wants to undergo the third surgery recommended by Dr. Wienzweig due to his pain. The petitioner has had two surgeries and has continued to work his full duty job in the same position for the respondent since he was hired. He testified that, of his four prior surgeries (two on the left and two on the right) for carpal tunnel syndrome, none provided any meaningful relief and possibly made his hands worse.

## CONCLUSIONS OF LAW

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

The medical records are replete with information establishing the petitioner suffers from bilateral carpal tunnel syndrome and has undergone two surgeries in an attempt to cure or alleviate the effects of this medical condition. The petitioner has received care from multiple doctors including specialists in the treatment of hand and wrist related conditions. While the Arbitrator notes that medical records do not contain a specific statement causally relating the petitioner's bilateral carpal tunnel syndrome to the performance of his job duties for the respondent other than Dr. Cullen's note of May 29, 2014 that petitioner had "Bilateral CTS: Work related overuse". The Arbitrator also notes that there is no medical opinion that petitioner's carpal tunnel syndrome is unrelated to the performance of his job duties. That Arbitrator notes that the petitioner provided histories to his physicians of repetitively using his hands in the performance of his job duties for the respondent. The petitioner testified that he may have to handle upwards of 2,700 mouse cages every day and perform wellness checks on between 3,000 to 4,000 cages on the weekends, which involves opening and closing cage doors and potentially moving cages for smaller animals. The petitioner testified that he has been employed for the respondent since 1996 or 1997.

Based on the above, the Arbitrator finds that the petitioner's bilateral carpal tunnel syndrome is causally related to his repetitive work duties for the respondent, Northwestern University.

**K. Is the petitioner entitled to prospective medical care?**

The petitioner is seeking authorization and payment for a proposed carpal tunnel release for both hands. This would be the third such surgery performed on both of his hands.

In support of the claim of medical necessity for the third bilateral carpal tunnel release surgeries, the petitioner relies upon the opinions of Dr. Weinzweig. However, in Dr. Weinzweig's report of November 25, 2014 he states "there is no guarantee that there will be improvement of his symptoms due to significant injury to the median nerves at this point." (Px 11). The petitioner's second treating physician, Dr. Vender, noted that it was not unusual for a patient to show permanent changes on electrodiagnostic studies, but they do not necessarily have any clinical significance. To this extent, a diagnosis of carpal tunnel syndrome needed to be correlated with a clinical presentation. Dr. Vender noted that the petitioner had an excellent clinical presentation after his repeat carpal tunnel release surgeries, and while he may always have some degree of complaints they were not necessarily indicative of an ongoing nerve problem. Dr. Vender believed the petitioner's ongoing complaints were not of clinical significance and further surgery for the petitioner for this condition would be contra-indicated. (Px 8). Dr. Fernandez examined the petitioner and opined that a third carpal tunnel release for both hands would not be medically indicated. He stated there would be significant added risk with little functional return. Dr. Fernandez also noted that there were no physical examination findings or subjective complaints supportive of a diagnosis of active median nerve neuropathy. (Rx 4). Finally, Dr. Trotter in his UR report opined that the proposed third carpal tunnel release surgery for both hands was not medically necessary, which is consistent with the opinions of Dr. Vender and Dr. Fernandez. (Rx 3).

While it is noted the petitioner continues to tender subjective symptoms including pain, numbness and tingling in both of his hands, Dr. Vender noted that it would not be unusual for some residual electrical diagnostic evidence and other symptoms to be present following the second carpal tunnel release. Even Dr.

Malek, the surgeon performing the first carpal tunnel release, noted the petitioner may have a degree of permanent nerve damage. Dr. Fernandez did not find any evidence of active carpal tunnel symptoms and opined that a third carpal tunnel release surgery for both hands would be unnecessary and not medically indicated. Even Dr. Weinzweig, the petitioner's treating physician, stated that there would be no guarantee of improvement of his symptoms due to significant injury to the median nerves. Though a neurolysis was also proposed in addition to the carpal tunnel release surgery, the Arbitrator notes that both prior surgeries involved neurolysis and provided no benefit. The petitioner had testified that neither of the prior two bilateral carpal tunnel release surgeries provided any significant relief to his symptoms Dr. Weinzweig does not appear to be proposing anything different than what was performed in the four prior surgeries and which offered no relief according to the petitioner. As a result, the evidence in its totality suggests that the third surgery will also not offer any benefit to the petitioner, and as such it cannot be said that the third proposed carpal tunnel release surgeries are medically necessary to cure the petitioner's symptoms. It appears unlikely that the third carpal tunnel release surgery would improve the petitioner's symptoms at all. Finally, the arbitrator notes that the respondent's denial of the third surgery is based (in part) upon a utilization review report consistent with Section 8.7 of the Act.

Based upon all of the above, the Arbitrator finds the petitioner failed to prove he is entitled to prospective medical care in the form of the surgeries proposed by Dr. Weinzweig.

**J. Were the medical services that were provided to the petitioner reasonable and necessary? Has the respondent paid all appropriate charges for all reasonable and necessary medical services?**

At issue appears to be treatment for the petitioner's carpal tunnel syndrome condition after his discharge from care by Dr. Vender, and it includes the medical bills of Dr. Wienzweig. Based on the foregoing evidence, the Arbitrator awards medical expenses and orders the respondent to pay medical bills incurred on or before October 4, 2016, the date of the final treatment in the medical bill of Dr. Weinzweig.

Based upon all of the above, the Arbitrator finds that the treatment of Dr. Weinzweig was medically necessary and that the respondent is responsible for those medical charges (which are listed at $1,231.00) for dates of treatment listed on the medical bill as October 28, 2014 through October 4, 2016 (Px 12) pursuant to the Illinois Medical Fee Schedule. The parties agreed that the balance of the medical bills submitted into evidence had already been paid. (T 5).

**O. Other: Nature and Extent of Disability**

The parties stipulated at hearing that, if the Arbitrator did not award further medical treatment in the form of a third carpal tunnel release surgery for both hands, the Arbitrator would render an award for permanent partial disability benefits. Since the third carpal tunnel release surgery for both hands is being denied as detailed above, the following is the Arbitrator's permanency award.

Section 8.1(b) of the Illinois Workers' Compensation Act provides that, for accidental injuries occurring after September 1, 2011, permanent partial disability is established using the following criteria:

1. The reported level of impairment using an AMA impairment rating; The parties did not introduce an impairment rating consistent with the AMA Guides to the Evaluation of Permanent Impairment as contemplated

in 8.1(a) of the Act. As such, the Arbitrator gives this factor no weight in determining permanent partial disability.

2. The occupation of the injured employee; In terms of the occupation of the injured employee, the Arbitrator notes that the petitioner is an animal care technician and is currently working full duty in that position. Based on the petitioner's testimony, the Arbitrator notes that this is a repetitive job and appears to involve intensive use of hands in the course of performing the job duties. As such, the Arbitrator gives this factor greater weight

3. The age of the employee at the time of the injury; The third factor, the age of the employee at the time of the injury, provides that the petitioner was forty-six years old at the time of his accidental injury. This means that the petitioner is now over half way through his expected work-life expectancy and has less years of work ahead of him as compared to other individuals in the labor market. As such, the Arbitrator gives this factor the appropriate weight.

4. The employee's future earning capacity; The fourth factor is the employee's future earning capacity. At trial the petitioner testified that he has suffered no loss of earning capacity as a result of his work related injury. The petitioner has testified that he continued to work full duty in the same position for the respondent following both of his surgeries. As such, the Arbitrator gives this factor lesser weight.

5. Evidence of disability corroborated by the treating records;
The fifth factor is evidence of disability corroborated by the treating medical records. The medical records establish that the petitioner did not have a good result from his two carpel tunnel release surgeries. He has subjective complaints of pain, numbness and tingling in both of his hands and all of his fingers. Electrodiagnostic studies showed the petitioner did have bilateral carpal tunnel syndrome, but both Dr. Vender and Dr. Fernandez stated that a positive EMG is not necessarily indicative of an active disease process. Moreover, Dr. Fernandez stated that the petitioner's subjective complaints were not consistent with active and ongoing carpal tunnel syndrome. Therefore, the Arbitrator gives this factor greater weight.

No single enumerated factor is the sole determiner of disability when determining permanent partial disability.

Based on all of the above evidence and weighing the factors described above, the Arbitrator awards 15% loss of use of the right hand and 15% loss of use of the left hand under Section 8(e) of the Act.