*2008 Ill. Wrk. Comp. LEXIS 476, *; 8 IWCC 0410*

CAROL **EMERSON,** PETITIONER, v. **INGALLS** HOSPITAL, RESPONDENT.

NO. 02WC 17279, 02WC 30654

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

2008 Ill. Wrk. Comp. LEXIS 476; 8 IWCC 0410

April 8, 2008

CORE TERMS: arbitrator, temporary total disability, health insurance, carrier, third party, fusion, dog, patient, medical treatment, disputed issues, intensive care, reinjured, accrue, video, nurse, pain, proposed decision, posterolateral, surveillance, posterior, awarding, resigned, amount of compensation, reimbursement claim, partial disability, evidence presented, present condition, physical therapy, returned to work, date of payment

JUDGES: Paul W. Rink; Molly Mason

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, causal connection, permanent partial disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission modifies the Arbitrator's Decision to find Petitioner is entitled to 54 weeks of temporary total disability benefits, commencing September 2, 2002 through September 15, 2003, which was the date Petitioner returned to work. All else is otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 470.96 per week for a period of 54 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 $ 423.87 per week for a period of 175 weeks, as provided in §8(d)2 of the Act, for the reason

that the injuries sustained caused **[*2]** the permanent partial disability to the extent of 35% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 131,015.48 for medical expenses under §8(a) of the Act.

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

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

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

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 Milton Black, Arbitrator of the Commission, in the City of Chicago, on **[*3]** September 26, 2005. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and includes those findings herein.

DISPUTED ISSUES

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

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

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

What amount of compensation is due for temporary total disability?

What is the nature and extent of the injury?

FINDINGS

On October 7, 2001, the respondent **Ingalls** Hospital was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship existed between the petitioner and respondent.

On this date, the petitioner sustained 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 $ 36,735.40; the average weekly wage was $ 706.45.

At the time of injury, the petitioner was 51 years of age, married with no children under the age of 18.

Necessary medical services **[*4]** have not been provided by the respondent.

To date, $ 2823.74 has been paid by the respondent for temporary total disability and/or maintenance benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ACCIDENT

The petitioner was employed as an intensive care registered nurse. She was a code leader and had to respond when needed. On October 7, 2001 a cancer patient began to bleed from the mouth. The petitioner responded by moving the patient forward to prevent the blood from entering the lungs, whereupon the petitioner felt immediate back pain. The petitioner continued to work with worsening pain as the day progressed. She received medical treatment, was placed on temporary total disability status, was given light duty work, and was ultimately returned to full duty work. While working full duty on May 29, 2002, she pulled a patient forward who needed help. In so doing the petitioner reinjured her back. Based upon the petitioner's credible testimony, the sequence of events, the corroborating medical records, and the convincing testimony of treating physicians Drs. Mirkovic and Cybulski, the Arbitrator finds that petitioner sustained an accident on October 7, 2001 and reinjured herself **[*5]** in an accident on May 29, 2002.

CAUSATION

The petitioner had backaches when she began working for the respondent. Nevertheless she was able to perform her job duties without restriction until her injury and reinjury. She received initial medical treatment from Dr. Ibrahim of **Ingalls** employee health service. He sent her for therapy. Subsequently an MRI was performed which showed posterior disc protrusion at L5-S1 slightly parasagital toward the left with degenerative changes of the lower facet joint and spondylolisthesis at L4-L5.

The petitioner was evaluated by the respondent's first Section 12 examiner, Dr. John Shea, a neurosurgeon. After a functional capacity test, physical therapy was prescribed. She was then seen by Dr. Nockels at Dr. Shea's request on March 27, 2002. Dr. Nockels felt petitioner required back fusion at L4-L5 and that her radiographic studies demonstrated significant problems at the L4-L5 interspace with alteration of the sagittal plane on flexion/extension associated with some lateral recess stenosis. His conjoined opinion with Dr. Shea was to undergo a lumbar decompression and fusion from L-3 to L-5. He also discussed with her alternatives to surgery, which **[*6]** included continued nonoperative management inclusive of physical therapy and pain management. He indicated the patient would decide whether she desired surgery (Dr. Nockels note, May 21, 2002 - included in Dr. Skaletsky's deposition exhibits and Dr. Shea's deposition exhibits).

After an initial period of total temporary disability, petitioner worked in a restricted capacity. On May 7, 2002, Dr. Gary Skaletsky, respondent's second section 12 examiner, opined that the current diagnosis was a resolved lumbar strain. Prior to testifying Dr. Skaletsky was provided with materials and letters from respondent's rehabilitation nurse and from respondent's attorney. He stated prognosis for neurologic stability was excellent, that no further treatment was necessary, and that petitioner could return to work without limitation. He also stated that the job requirements of a nurse are no more demanding than the activities demonstrated at a dog show as shown on surveillance video. He stated the radiographic findings were degenerative in nature, asymptomatic and not worsened, accelerated or adversely affected in any way by the injury of October 7, 2001, (May 7, 2001 Skaletsky report - Dep. Exh. # 2A). **[*7]** Based upon Dr. Skaletsky's return to work opinion, petitioner returned to full duty

nursing in the intensive care unit. On May 29, 2002, while lifting a patient, petitioner reinjured her back.

Petitioner saw Dr. Mirkovic, an orthopedic surgeon, who on July 1, 2002 along with Dr. Cybulski, a neurosurgeon, performed a L4-L5 laminectomy, bilateral L5-S1 diskectomy, a posterolateral fusion at L4-L5, L5-S1, with use of an autologus iliac bone graft (as well as morcellized corticocancellous allograft), and hardware.

Based upon the foregoing, the arbitrator finds that the petitioner's pre-existing spinal symptoms were aggravated by the accidents of October 7, 2001 and May 29, 2002.

TEMPORARY TOTAL DISABILITY

The parties agree that temporary total disability is undisputed for the periods of November 15, 2001 through December 3, 2001, and of January 28, 2002 through March 9, 2002. The arbitrator adopts the parties' agreement for the aforesaid time periods. The parties disputed a third period of temporary total disability, but the respondent stipulated to part of the time period (AX1, AX2). The arbitrator finds that the third period of temporary total disability began on May 29, 2002, **[*8]** the day she reinjured herself, and ended on September 1, 2002, the day she voluntarily removed herself from the job market by resigning for financial reasons and to obtain her 401K funds.

MEDICAL EXPENSES

The arbitrator finds that the petitioner has proved a *prima facia* case for the reasonableness of the claimed medical bills of $ 131,015.48, because the bills have been paid. The bills were paid by the petitioner's husband's health insurance carrier. Therefore the respondent may not claim a credit under Section 8(j) of the Act.

The respondent has disputed the necessity of medical treatment. In its proposed decision the respondent indicates that necessary medical services have been provided and leaves blank the amount that it should pay for same. However in its request for hearing forms (AX1, AX2) and the text of its proposed decision the respondent indicates that it should receive a credit for medical payments not made by the respondent and for its negotiation of the health insurance carrier's reimbursement claim. The respondent argues in the text of its proposed decision that the medical bills should therefore be $ 10, 500.00. It appears that respondent is taking both sides **[*9]** of the argument. By way of example, when Dr. Cybulski was deposed the respondent's attorney objected to testimony on this very issue (Cybulski dep pp 14-16). Arguably any amount, other than zero, could trigger a claim of error by the respondent. The respondent has taken an inconsistent position and could benefit from an error which it has created of induced.

The petitioner never authorized the respondent to act as a partner and/or agent with a third party regarding a legal obligation attached to the petitioner. The petitioner's husband's health insurance carrier has made an apparent reimbursement claim, erroneously referred to as a lien. The respondent, without the petitioner's permission, has accepted the "lien" claim as valid and has purported to negotiate a compromise (RX14, RX15). There is no evidence that the third party health insurance carrier would honor the same "agreement" directly with the petitioner. There is no evidence that the third party health insurance carrier would honor the same "agreement" throughout all the possible levels of appeal of this matter. Furthermore the petitioner should have the unencumbered right to investigate and assert any legal defense she might **[*10]** have to the "lien" claim.

The petitioner requests a medical award of $ 131,015.48, based upon reasonable and necessary medical treatment rendered. The respondent requests a medical award of $ 10,500.00 based upon a third party claim of lien. The legal concepts of reasonable and necessary medical and treatment and of lien rights are mutually exclusive.

It is to the petitioner's benefit and to the respondent's detriment to receive the highest amount, $ 131,015.48. It is to the respondent's benefit and to the petitioner's detriment to receive the lowest amount, $ 10,500.00, which is 8% of the petitioner's claim. The parties' rights are in conflict. Absent an agreement the respondent cannot bind the petitioner.

The third party health insurance carrier is not a party to these proceedings, nor can it be. The Act does not confer jurisdiction over a third party health insurance carrier. Accordingly a medical award of $ 10,500.00 based upon an unauthorized negotiation with a nonparty not subject to jurisdiction would invite error.

For all of the above and foregoing reasons the respondent shall pay the petitioner $ 131,015.48 for medical services.

NATURE AND EXTENT

Petitioner had a posterolateral **[*11]** fusion at L4-L5, posterolateral fusion at L5-S1, and autologous iliac crest bone graft, morcellized corticocahallous allograft, posterior fusion L4-S1 and fixation throughout her spine as well as a posterior laminectomy at L4-L5 and L5-S1. Petitioner is able to work as a nurse but not as an intensive care nurse. She complains that after working, her back hurts. She takes Vicodin and Tylenol Four, as needed, for pain. Respondent's surveillance videos of the petitioner show her jogging at a dog show, walking, bending, carrying a cage, and carrying a toddler. Petitioner and her husband breed and show dogs. None of the videos demonstrate that the petitioner could lift or position the weight of an intensive care patient if called upon to do so.

For all of the above and foregoing reasons the Arbitrator finds that petitioner has sustained an injury to the extent of 35% loss of use of the person as a whole.

ORDER

The respondent shall pay the petitioner temporary total disability benefits of $ 470.96 per week for 22 and 2/7 weeks, from November 15, 2001 through December 3, 2001, from January 28, 2002 through March 9, 2002, and from May 29, 2002 through September 1, 2002 which are the **[*12]** periods of temporary total disability for which compensation is payable.

The respondent shall pay the petitioner the sum of $ 423.87 per week for a further period of 175 weeks, as provided in Section 8(d) 2 of the Act, because the injuries sustained caused 35% loss of the person as a whole.

The respondent shall pay the petitioner compensation that has accrued from October 7, 2001 through September 26, 2005, and shall pay the remainder of the award, if any, in weekly payments.

The respondent shall pay the further sum of $ 131,015.48 for necessary medical services, as provided in Section 8(a) of the Act.

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of 4.18% 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

December 5, 2005

Date

ILLINOIS [*13] 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 Milton Black, Arbitrator of the Commission, in the City of Chicago, on September 26, 2005. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and includes those findings herein.

DISPUTED ISSUES

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

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

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

What amount of compensation is due for temporary total disability?

What is the nature and extent of the injury?

FINDINGS

All of the findings of fact and conclusions of law in Case Number 02 WC 17279 are restated herein.

ORDER

Each and every ruling in Case Number 02 WC 17279 is incorporated herein. This decision in this case shall not be construed to duplicate or invalidate any portion of the decision in Case Number 02 WC 17279.

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of 4.18% 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

December 5, 2005

Date

DISSENTBY: NANCY LINDSAY

DISSENT: I respectfully disagree with the Majority's Decision awarding the Petitioner additional temporary total disability benefits for 54 weeks beginning September 2, 2002, through September 15, 2003, and affirming and adopting the Arbitrator's finding that the Petitioner is entitled to medical expenses in the amount of $ 131,015.48.

The Arbitrator correctly terminated temporary total disability benefits as of September 1, 2002, when Petitioner voluntarily resigned her employment from Respondent in order to access her 401(k) plan. Petitioner was receiving temporary total disability benefits when she voluntarily **[*15]** resigned. Further, the evidence showed that Petitioner was involved in a dog breeding business and was showing her dogs during this time. Whether viewed as a hobby or a business, Petitioner testified that she incurred $ 25,000.00 in related expenses annually. In light of the timing of the resignation, her ongoing involvement with breeding and showing dogs, and credibility questions stemming from the video surveillance and Petitioner's manner in answering questions concerning the dog activities, one may reasonably infer any monies she needed were for that activity and that Petitioner may have been far more active than she was letting on. Certainly her treating doctor, Dr. Mirkovic, was counseling her regarding that issue even prior to her resignation. Furthermore, there is simply a lack of evidence supporting Petitioner's ongoing entitlement to temporary total disability benefits through July 23, 2003, when she was released to full duty work. Petitioner further failed to prove entitlement to TTD or maintenance between July 23, 2003 and September 15, 2003 when she found full-time employment. Had she not resigned she could have returned to work for Respondent.

The Majority has erred **[*16]** in awarding the full amount of the medical bills incurred by Petitioner rather than awarding the amount actually paid on Petitioner's behalf. Petitioner was billed for medical expenses in the amount of $ 131,015.48; however, her husband's health insurance carrier actually paid the sum of $ 75,794.10, with the balances being written off. Petitioner should have been awarded medical expenses in the lesser amount ($ 75,794.10). That amount, together with Respondent's stipulation to hold Petitioner harmless on the bills, fully protects Petitioner under the Act. The Majority's Decision results in a substantial windfall to the Petitioner in the amount of $ 55,221.38. For these reasons, I dissent.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDI > Administrative Proceedings > Claims > Filing Requirements

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

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

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Terms: **emerson and ingalls** (Edit Search | Suggest Terms for My Search)
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Date/Time: Tuesday, February 22, 2011 - 8:01 AM EST

In

*8 IWCC 641; 2008 Ill. Wrk. Comp. LEXIS 778, **

ALTA ARLENE BUSH, PETITIONER, v. CHARLES MCDUFFEE COMPANY, INC., RESPONDENT.

NO. 04WC 22141

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF KANE

8 IWCC 641; 2008 Ill. Wrk. Comp. LEXIS 778

June 3, 2008

CORE TERMS: right knee, knee, medial, tear, arbitrator, replacement, arthritis, meniscus, chair, meniscal, surgery, degenerative, causal connection, cortisone, injection, symptoms, meniscectomy, preexisting, aggravated, arthritic, doctor, desk, temporary total disability, right leg, causally, arthroscopic surgery, physical therapy, x-rays, patellofemoral, chondromalacia

JUDGES: Barbara A. Sherman; Yolaine Dauphin; Kevin W. Lamborn

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice having been given to all parties, the Commission, after having considered the issues of whether Petitioner sustained an accident arising out of and in the course of her employment with Respondent, whether Petitioner's condition is causally connected to the accident, whether Petitioner is entitled to medical expenses, the nature and extent of Petitioner's injuries, and whether penalties and attorneys' fees are warranted, and having been advised of the facts and law, hereby modifies the Arbitrator's decision as stated below and otherwise affirms and adopts the Arbitrator's decision, which is attached hereto and made a part hereof.

The Commission modifies the Arbitrator's decision with respect to the amount of medical expenses awarded. The Arbitrator awarded medical expenses in the sum of $ 102,147.69. In the Arbitrator's decision, she indicated that she awarded medical expenses in the sum of $ 4,695.00 under Petitioner's Exhibit 9, which were the medical bills from Provena Mercy Center ("Provena"). In Provena's bill for a service date of February 5, 2004, Petitioner had **[*2]** an MRI for her left and right knees. While on the face of the bill, the cost of Petitioner's left knee

MRI was crossed out, the Arbitrator actually awarded the full amount of the bill. We find that the medical bills submitted under Petitioner's Exhibit 9 that are related to Petitioner's right knee total $ 3,015.00 and not $ 4,695.00. The amount of medical expenses awarded is reduced by the cost of Petitioner's left knee MRI, which is $ 1,680.00.

After the Arbitrator issued her decision, Petitioner filed a petition for penalties and attorneys' fees on May 18, 2007. The Commission denies Petitioner's petition for penalties and attorneys' fees. In so denying Petitioner's petition, we rely on Petitioner's medical records, which show significant arthritis in both of Petitioner's knees. Dr. Cannestra's records from November 12, 2003, reflect that Petitioner had a cortisone injection in her right knee and received substantial improvement, about 80% improvement, of her right knee symptoms. The medical records after November 12, 2003, reflect that the condition in both of Petitioner's knees deteriorated, and reveal that Petitioner treated for both knees consistently as of December 3, 2004, **[*3]** which is only about one and a half months after the accident. Additionally, Petitioner's need for total knee replacements in both knees arose in fairly close temporal proximity. The first time that discussion of a left knee arthroplasty was mentioned in the records was in Dr. Cannestra's records dated September 15, 2004, which is less than two months after Petitioner's right knee arthroplasty was performed. The Commission concludes that Respondent's dispute as to causal connection is not so unreasonable as to warrant the imposition of penalties and attorneys' fees.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision, filed on March 29, 2007, is hereby modified with respect to the amount of medical expenses awarded. We conclude that Petitioner is entitled to medical expenses in the sum of $ 100,467.69, which excludes the cost of Petitioner's MRI of her left knee.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 100,467.69 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 586.66 per week for a period of 3-5/7 weeks, that having been the period **[*4]** 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 $ 528.00 per week for a period of 100 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused a 50% loss of use of Petitioner's right leg.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 75,000.00. The probable cost of the record to be filed as return to Summons is the sum of $ 35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

ATTACHMENT

ILLINOIS WORKERS' COMPENSATION COMMISSION 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 **[*5]** heard by the Honorable **J. Kinnaman,** arbitrator of the Commission, in the city of **Geneva. IL,** on **March 12, 2007.** After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and attaches those

findings to this document.

DISPUTED ISSUES

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 condition of ill-being causally related to the injury?

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 **Oct. 16, 2003,** the respondent **Charles McDuffee, Co. *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 **[*6]** the injury, the petitioner earned $ **45,760.00;** the average weekly wage was $ **880.00.**

. At the time of injury, the petitioner was **56** years of age, ***married*** with **0** children under 18.

. Necessary medical services ***have not*** been provided by the respondent.

. To date, $ **0** has been paid by the respondent for TTD and/or maintenance benefits.

ORDER

. The respondent shall pay the petitioner temporary total disability benefits of $ **586.66**/week for **3-5/7** weeks, from **7/24/04** through **8/18/04.** which is the period of temporary total disability for which compensation is payable.

. The respondent shall pay the petitioner the sum of $ **528.00**/week for a further period of **100** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **50% loss of use of the right leg.**

. The respondent shall pay the petitioner compensation that has accrued from **10/16/03** through **3/12/07,** and shall pay the remainder of the award, if any, in weekly payments.

. The respondent shall pay the further sum of $ **102.147.69** for necessary medical services, **[*7]** as provided in Section 8(a) of the Act.

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

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

. The respondent shall pay $ **0** in attorneys' fees, as provided in Section 16 of the Act.

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of 4.87% 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

March 28, 2007

Date

Dr. Fister did surgery on Petitioner's right knee in 1991. She continued to see him and other doctors for the knee through Jan. 14, 1997. On Oct. 16, 2003 she was Respondent's office manager. She was working full time without a brace or other restriction on her right knee.

Petitioner **[*8]** worked in a small office off Respondent's shop. Its concrete floor had a small dip to it. She worked at a desk and used a 5-wheeled office chair. On Oct. 16, 2003 she was doing payroll. She stood up to reach the hutch above her desk. As she turned to sit down, her desk chair rolled. She reached for it and fell into the chair. She felt a loud pop in her right knee. She reported the incident to Respondent and went to Provena Mercy Center where Respondent sent its injured employees.

Dr. Woodward's notes of Oct. 16, 2003 show Petitioner reported she went to sit in her chair when she missed it and fell backwards into the chair, twisting her right knee; she heard a popping. He noted her history of arthritis in both knees. He found tenderness throughout the right knee. His diagnosis was right knee strain/bursitis. He prescribed icing and elevating the leg, an ace bandage, Vicodin and no work. She was doing better on Oct.20, 2003 so Dr. Woodward released her to sedentary work and noted that she was to follow up with her orthopedist. PX1.

On Oct. 22, 2003, Petitioner told Dr. Cannestra that her chair slid out from underneath her and she twisted her right knee trying to regain her balance. **[*9]** He thought she had a sprain of the right knee with patellofemoral arthritis. He gave her a cortisone injection and prescribed Darvocet. When she returned on Nov. 12, 2003 she said she was 80% better. Her symptoms recurred after she did some mall shopping and she was given another cortisone injection on Dec. 3, 2003. MRI scans of both knees were done Feb. 5, 2004. The MRIs showed joint effusion and a Baker's cyst in both knees. The right knee MRI also showed a complex tear of the posterior horn of the medial meniscus with some displacement into the intercondylar notch and some attenuation of the ACL. There was evidence of degenerative arthritic changes in the medial compartment as well as chondromalacia of the patella. There were degenerative changes of the posterior horn of left medial meniscus but no evidence of a meniscal tear. She also had arthritic changes of the medial compartment and chondromalacia of the left patella. A right knee arthroscopy was done Feb. 26, 2004 with a partial medial meniscectomy, debridement of fraying of the lateral meniscus, chondroplasty for the arthritic changes and patellofemoral plica resection. PX2. Dr. Cannestra testified there was a causal connection **[*10]** between the injury of Oct. 16, 2003 and this surgery based on the temporal relationship and the medial meniscus tear seen on the MRI. PX3. Post-operatively, Petitioner complained that physical therapy aggravated her bilateral knee symptoms. Another cortisone shot and a series of three Synvisc injections were administered to the right knee. Because her symptoms continued, a right knee replacement was done July 21, 2004 and Petitioner underwent the usual post-operative therapy. X-rays on Aug. 3, 2005 showed a well-aligned,

well-fixed knee replacement. Petitioner last saw Dr. Cannestra for her right knee on Feb. 15, 2006 and reported some episodes of giving out of the right knee. The doctor found some slight laxity with stressing of the knee, but its stability was otherwise good. Regarding causal connection, the doctor testified that Petitioner's medial meniscal tear aggravated her preexisting arthritis to the point that she required a right knee replacement. He explained his opinion by noting that she had no evidence of a medial meniscal tear at the time of her right knee surgery in 1991 and no treatment between 1997 until her acute injury on Oct. 16, 2003 which was diagnosed as a medial **[*11]** meniscal tear and preexisting arthritis. That medial meniscus tear was treated with a partial medial meniscectomy during her first surgery which, in turn, predisposed Petitioner to progression of the arthritis in her right knee and ultimately, the knee replacement. He thought the meniscal tear seen on his arthroscopy pictures was not consistent with a degenerative tear.PX3.

At Respondent's request, Dr. Levin reviewed the records of Petitioner's treatment. In his report of Sept 13, 2005 he provided a summary of her right knee treatment from 1991-1997. He also reviewed the records of Dr. Woodward and Cannestra regarding treatment to her right knee on and after Oct. 16, 2003. However, those records did not include the MRI of Feb. 5, 2004 or the operative report of the arthroscopic surgery Feb. 26, 2004. Dr. Levin opined Petitioner sustained a right knee sprain on Oct. 16, 2003 which was 80% resolved by Nov. 12, 2003 and that she reached MMI for the injury within a few weeks thereafter. He thought the accident neither aggravated nor accelerated her underlying right knee arthritis. His opinion was based, in part, on his belief that Dr. Cannestra took Petitioner straight to the total knee **[*12]** replacement which was a result of arthritis and not a meniscus tear. RX1.

Petitioner still has a lot of stiffness and pain in her right knee. It gives out from time to time. She can't kneel or squat so doing housework is a problem. She has trouble going up or down stairs. Petitioner claims TTD from July 24, 2004 through Aug. 18, 2004. Respondent agreed to this period of lost time, but disputed liability. ARBX1.

Petitioner submitted the following medical bills: PX8, the $ 47,007.00 bill of Dr. Cannestra, of which Petitioner claims $ 25,857.00 is related to his treatment of her right knee (ARBX1); PX9, the Provena Mercy Center bill of $ 4,695.00 for x-rays, the 2/5/04 MRI and post-arthroscopy physical therapy; PX10, the bill of Valley Ambulatory Surgery Center which the parties stipulated should be $ 6,213.49 (ARBX1; RX2); PX11, the $ 4,677.00 bill of Delnor Community Hospital; PX12, the $ 59,629.20 bill of Provena St Joseph; and PX13, the $ 1,076.00 bill of Riverwest Anesthesiologists which represent the discounted amount paid by Blue Cross/Blue Shield for services related to the right knee replacement surgery. The total of the bills submitted is $ 102,147.69. However, Petitioner **[*13]** did not include PX9 from Provena Mercy Center, in its list of claimed bills attached to ARBX1. The charges shown on PX9 are not shown on PX12, the larger Provena St Joseph bill. At trial, Respondent objected to the bills on the basis of liability. Petitioner testified, and the bills show, that her bills were mostly paid by Blue Cross/Blue Shield, her husband's non-occupational insurance. She signed a subrogation agreement with her husband's union.

The Arbitrator concludes:

> 1. Petitioner sustained a compensable accident on Oct. 16, 2003. Her description of the accident was credible, supported by the medical records and unrebutted. She was performing her assigned duties. The combination of the wheeled office chair and the concrete floor created an increased risk that the chair would roll away when she got up. By grabbing the chair, she prevented a fall, but twisted and injured her right knee. These facts are very similar to those found compensable in Linda Gossett v. Hoopeston Memorial Hospital, 05 IWCC 0257, 2005 Ill.Wk.Comp.LEXIS 306(4/5/05).
> 2. Petitioner's right knee condition, including the medial meniscus tear and aggravation of her preexisting arthritis, is causally connected **[*14]** to the Oct. 16, 2003 accident. Dr. Cannestra's explanation that the accident caused the acute

medial meniscus tear and that the medial meniscectomy necessary to treat that tear predisposed Petitioner to a progression of her arthritis culminating in the right total knee replacement is supported by the events documented in the medical records. His opinion is essentially unrebutted because for some reason Dr. Levin was provided with all of Dr. Cannestra's records except those showing the findings of the MRI and the arthroscopic surgery. Without those records, Dr. Levin was left to draw the erroneous conclusion that there was no medial meniscus tear, only degenerative changes. His opinion was rendered worthless by three questions from Petitioner's counsel at the deposition.
3. Petitioner was temporarily totally disabled from July 24, 2004 through Aug. 18, 2004, the period immediately following her right total knee replacement, which is the only period claimed by Petitioner.
4. Petitioner is entitled to medical expenses of $ 102,147.69 comprised of PX8 (limited to $ 25,857.00), PX9 ($ 4,695.00), PX10($ 6,213.49 by agreement), PX11 ($ 4,677.00), PX12($ 59,629.20) and PX13($ 1,076.00). Respondent **[*15]** is liable for these bills based on the causal connection between Petitioner's accident on Oct. 16, 2003 and her need for treatment as established by Dr. Cannestra. Although PX8 shows other, unrelated charges, Petitioner claimed, and is awarded, only amounts related to her right knee condition. With that exception, Respondent is liable for the amounts billed, not the amounts paid by Petitioner's husband's union insurance. Arthur v. **Catour,** 216 Ill.2d 72, 833, N.E.2d 847, 2005 Ill.LEXIS 958 (Ill.S.Ct. 2005). The charges in PX9 are not listed on ARBX1, but the exhibit was properly admitted. The charges are for services supported by the medical records and Dr. Cannestra's testimony,
5. Petitioner has permanently lost 50% of the use of her right leg. She has had a total right knee replacement as a result of her work injury. She physically cannot kneel or squat. She has giving way of the right knee and Dr. Cannestra documented some laxity. She has difficulty with stairs and everyday activities such as housekeeping.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDI > Administrative Proceedings > Claims > Filing Requirements

Workers' Compensation & SSDI > Compensability > Course of Employment > General Overview

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

Source: **Legal > States Legal - U.S. > Illinois > Find Statutes, Regulations, Administrative Materials & Court Rules > IL Workers' Compensation Decisions**
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Date/Time: Monday, February 21, 2011 - 9:32 AM EST

*2009 Ill. Wrk. Comp. LEXIS 279, **

ANGEL OTERO, PETITIONER, v. KHATIB FINANCIAL SERVICES, INC., RESPONDENT.

NO: 05WC 47396

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

2009 Ill. Wrk. Comp. LEXIS 279

March 6, 2009

CORE TERMS: arbitrator, wrist, hip, pain, elbow, fracture, mary, employer-employee, right knee, underwent, bulbs, loss of use, right leg, followed-up, distal, x-ray, knee, van, cartilage, articular, femur, space, workers' compensation, independent contractor, physical therapy, right arm, assigned, reasonable value, temporary total disability, installing

JUDGES: Barbara A. Sherman; Yolaine Dauphin

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by both Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of whether an employment relationship existed between Petitioner and Respondent; the reasonableness or necessity of medical, surgical or hospital bills or services; and whether penalties should be imposed upon Respondent, 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 hereby modifies the Arbitrator's decision with respect to whether penalties should be imposed upon Respondent. The Commission finds that Respondent's dispute as to the existence of an employer-employee relationship existed was not in good faith. When determining whether an employer-employee relationship exists, the Commission considers a number of factors as set forth by the Illinois Supreme Court in Bauer v. Indus. Comm'n, 51 Ill. 2d 169,282 N.E.2d 448 (1972), including "the right to control the manner in which the **[*2]** work is done, the method of payment, the right to discharge, the skill required in the work to

be done, and the furnishing of tools, materials or equipment." Bauer v. Indus. Comm'n, 51 Ill. 2d 169, 171, 282 N.E.2d 448, 450 (1972). As noted by the Court, although no one factor is determinative, the right to control is the most important factor "inasmuch as an employee is at all times subject to the control and supervision of his employer, whereas an independent contractor represents the will of the owner only as to the result and not as to the means by which it was accomplished." Id. at 172, 450.

Here, Petitioner was clearly an employee. Respondent exercised control over the manner in which Petitioner performed his job duties. Petitioner's supervisor, Christopher Paredes, would instruct and train Petitioner on the method by which Respondent wanted Petitioner to perform a job duty. After Petitioner completed a job, Respondent would inspect Petitioner's work. Because Petitioner started working for Respondent when Petitioner was fifteen years old and had very little previous job experience, the **[*3]** Commission finds it unlikely that Petitioner had sufficient experience to complete his assigned tasks without instruction from Respondent. Petitioner represented the will of Respondent as to both the result of his job assignments and the means by which he accomplished those assignments. In addition to exerting control over Petitioner's work methods, Respondent also provided Petitioner with the supplies and the tools necessary to complete his assigned tasks. The only factor in Respondent's favor is that Respondent paid Petitioner through its accounting department, rather than its payroll department. The presence of this one factor, in light of the extent to which Respondent controlled the manner in which Petitioner performed work, is insufficient basis for a reasonable dispute. The fact that Petitioner never filled out a job application is irrelevant to the analysis of the employer-employee relationship.

Based on the foregoing, the Commission finds it to be clear that Petitioner was an employee, rather than an independent contractor. The Commission further finds that Respondent had no reasonable basis to believe otherwise. The Commission therefore finds that because of Respondent's **[*4]** unreasonable delay of payment, penalties under §§19(k) and 19(l) and attorneys' fees under § 16 are appropriate here. The Commission therefore finds that Petitioner is entitled to $ 69,481.07, an amount equal to 50% of all benefits payable to Petitioner, in penalties under §19(k); $ 2,500.00 in penalties under §19(l); and $ 27,792.43 in attorneys' fees under §16.

As we are unaware of any Illinois Appellate or Supreme Court decisions addressing the issue in the context of the Workers' Compensation Act, a reasonable dispute might exist under current case law as to whether Respondent is liable for the full amount of Petitioner's medical expenses, or only for the amount paid by the Illinois Department of Public Aid. However, the Commission finds that the Arbitrator's award of medical expenses was consistent with previous Commission decisions and the public policy underlying the Illinois Workers' Compensation Act. As we stated in Ellis v. Top Notch Kennels, 07 IWCC 0866, "if we were to adopt Respondent's argument that its liability is limited to the amount that the IDPA paid, our holding could provide employers with an incentive to deny claims and to refuse to pay medical bills with **[*5]** the prospect that claimants will seek to have the IDPA pay for their medical expenses, and, if the employers are found liable at a later time, the employers will be obligated to pay only the reduced amount that the IDPA paid. A fundamental public policy principle underlying workers' compensation laws is that the cost of industrial injuries should be borne by the industries giving rise to such injuries and not by the general public. An adoption of Respondent's argument would thwart the underlying policy of workers' compensation."

The Commission is also persuaded by the Illinois Supreme Court's holding in Willis v. Foster, 229 Ill. 2d 393 (Ill. 2008). Respondent initially relied on the Appellate Court's decision in Willis v. Foster, 372 Ill. App. 3d 670 (4th Dist. 2007), which states that "an individual is not entitled to recover for the value of services that he has obtained without expense, obligation, or liability." Id. at 674 (citing Peterson v. Lou Bachrodt Chevrolet Co., 76 Ill. 2d 353, 361 (Ill. 1979)). The Plaintiff in Willis v. Foster appealed, and **[*6]** the Supreme Court issued its decision reversing the Appellate Court's judgment twenty-one days after Respondent filed its final brief in the instant case. On appeal, the Supreme Court declared its intent of following the

"reasonable value approach" to the collateral source rule when determining whether an award of medical expenses should be reduced from the amount charged by medical providers to the amount paid by Medicaid and Medicare. Willis v. Foster, 229 Ill. 2d 393, 395 (Ill. 2008). Under the "reasonable value approach," a plaintiff is entitled to "recovery for value even if there is no liability or expense to the injured person." Id. at 410. The Court clarified that the reasonable value approach "provides that benefits conferred on the injured party from other source are not credited against the tortfeasor's liability," regardless of the nature of benefits, "so long as [the benefits] did not come from the defendant or a person acting for him." Id. at 411. The injured plaintiff's recovery therefore is "not confined to the net loss that the injured party receives." Id. The Court specifically **[*7]** noted that the reasonable value approach to the collateral source rule applies when medical expenses are reduced by government benefits rather than private insurance companies, stating that, "all plaintiffs are entitled to seek to recover the full reasonable value of their medical expenses." Id. at 418-9.

In its brief, Respondent also cites Colborn v. Wal-Mart, 01 ICC 0787, in which the Commission reduced the Arbitrator's award of medical expenses because the Arbitrator "failed to take into consideration negotiated adjustments or discounts." Id. The Commission's reasoning in Colborn v. Walmart is similar to that of the Illinois Supreme Court in Peterson v. Lou Bachrodt Chevrolet Co., 76 Ill. 2d 353 (Ill. 1979). The Peterson Court held that "[a]n individual is not entitled to recover for the value of services that he has obtained without expense, obligation, or liability." Peterson v. Lou Bachrodt Chevrolet Co., 76 Ill. 2d 353, 361 (Ill. 1979). The holding in Peterson v. Lou Bachrodt Chevrolet Co. conflicts with the Illinois Supreme Court's subsequent **[*8]** holding in Arthur v. **Catour**, 216 Ill. 2d 72 (Ill. 2005). The Arthur Court held that the reasonable value of medical services, rather than the amount paid by a claimant's insurance carrier, determines the amount of medical expenses for which a defendant is liable. Arthur v. **Catour**, 216 Ill. 2d 72, 82 (Ill. 2005). The Illinois Supreme Court addressed these conflicting holdings in Willis v. Foster, 229 Ill. 2d 393 (Ill. 2008), by explicitly overturning Peterson v. Lou Bachrodt Chevrolet Co., and upholding Arthur v. **Catour**. We therefore find Respondent's reliance on Colborn v. Walmart to be unpersuasive in light of the public policy principle underlying workers' compensation laws and the Supreme Court's holding in Willis v. Foster, 229 Ill. 2d 393 (Ill. 2008).

The Commission also notes that in this particular case, had Respondent not unreasonably refused to pay Petitioner's medical expenses, Petitioner would never have required the Illinois Department of Public Aid to pay a portion of his medical expenses, and the question never would have arisen. **[*9]** The Commission therefore finds that the Arbitrator correctly found Respondent to be liable for the full amount of Petitioner's medical expenses, and not just the amount paid by Illinois Department of Public Aid.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 118.98 per week for a period of 41 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 $ 107.08 per week for a period of 172.75 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of use of 45% of the right leg, the loss of use of 25% of the right hand, and the loss of use of 15% of the right ann.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 106,435.02 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 9,150.86 for medical expenses under §8.2 of the Act.

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

IT IS FURTHER ORDERED BY THE **[*10]** COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 75,000.00. The 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: MAR 6 2009

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 **Maureen H. Pulia**, arbitrator of the Commission, in the city of **Chicago**, on **November 16, 2007, December 18, 2007 and December 28, 2007**. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES
B. Was there an employee-employer relationship?
C. Did an accident occur that arose out **[*11]** of and in the course of the petitioner's employment by the respondent?
F. Is the petitioner's present condition of ill-being causally related to the injury?
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?
M. Should penalties or fees be imposed upon the respondent?

FINDINGS

. On **October 3, 2005**, the respondent **Khatib Financial Services, Inc.** ***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 $ **9,280.50**; the average weekly wage was $ **178.47**.

. At the time of injury, the petitioner was **18** years of age, ***single*** with **no** children under 18.

. Necessary medical services ***have not*** been provided by the respondent.

. To date, $ **00.00 [*12]** has been paid by the respondent for TTD and/or maintenance benefits.

ORDER

. The respondent shall pay the petitioner temporary total disability benefits of $ **118.98**/week for **41** weeks, from **October 4, 2005** through **July 13, 2006**, which is the period of temporary total disability for which compensation is payable.

. The respondent shall pay the petitioner the sum of $ **107.08**/week for a further period of **172.75** weeks, as provided in Sections **8(d) and 8(e)** of the Act, because the injuries sustained caused **petitioner a 45% loss of use of his right leg, 25% loss of use of his left hand and 15% loss of use of his right arm**.

. The respondent shall pay the petitioner compensation that has accrued from **October 3, 2005** through **November 16, 2007** and shall pay the remainder of the award, if any, in weekly payments.

. The respondent shall pay the further sum of $ **106,435.02** for necessary medical services, as provided in Section 8(a) of the Act. The respondent may chose to satisfy its obligation under this award by paying $ 25,105.28, the amount owed IDPA, directly to IDPA, and paying petitioner the balance of $ 81,329.75.

. The respondent shall **[*13]** pay the further sum of $ **9.150.86** for necessary medical services, as provided in Section 8.2 of the Act.

. The respondent shall have credit for all amounts paid, if any, to or on behalf of petitioner on account of said accidental injury.

. The respondent shall pay $ **00.00** in penalties, as provided in Section 19(k) of the Act.

. The respondent shall pay $ **00.00** in penalties, as provided in Section 19(l) of the Act.

. The respondent shall pay $ **00.00** in attorneys' fees, as provided in Section 16 of the Act.

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of 3.39% shall accrue from the date listed below to the day before the date of payment; however, if an employee's appe results in either no change or a decrease in this award, interest shall of accrue.

Signature of arbitrator

January 2, 2008

Date

JAN 03 2008

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner **[*14]** alleges he sustained an accidental injury that arose out of and in the course of his employment by respondent on October 3, 2005. First and foremost, respondent disputes that petitioner and respondent Were operating under the Illinois Workers' Compensation Act and that their relationship was one of employee and employer. Respondent is a franchisee of Jackson-Hewitt Tax Service. Daniel Khatib is owner of the franchise. Christopher Paredes is the general manager. Respondent has about 23 offices in the Chicagoland area.

Petitioner testified that he was the neighbor and friend of Paredes. Petitioner testified that

Paredes was a father figure to him. Petitioner stated that in 2001, when he was 15 years old, Paredes asked him if was interested in performing some work for respondent. Petitioner testified that when he began performing work for respondent, he was a student in high school and also a commanding officer in the United States Naval Sea Cadet Corp youth program. Petitioner stated that he was paid $ 6.00 an hour for the work he performed. He testified that he was paid only $ 6.00 an hour because he was underage. In 2005 his hourly rate was increased to $ 7.00 an hour. Petitioner **[*15]** testified that he was not paid by the job, but rather by the hour for the work he performed. He also testified that he was paid by company check, and that no social security or federal income taxes were withheld. Petitioner denied every being asked by Paredes or Khatib if he wanted to be an employee.

Petitioner's duties for respondent varied and all the work he performed for respondent was arranged by Paredes. Petitioner stated that he never called Paredes looking for work. He stated that he would only work for respondent when Paredes called him and offered him work. Petitioner would work on computers as well as perform general maintenance work. Petitioner initially stated that he did not have a set schedule and would only work when Paredes called and offered work. However, on redirect examination petitioner offered contradictory testimony stating that he reported for work every Monday through Friday when he got off school at approximately 10:30 am. Petitioner only went to school three hours a day.

Petitioner's specific duties included installing software updates, changing light bulbs on store marquees, cleaning the stores, painting, patching holes on walls, changing pipes, fixing **[*16]** toilets, and installing phone lines in the stores. All work petitioner performed was assigned by Paredes. Paredes testified that petitioner declined work only once or twice in the four years he worked for him due to a scheduling conflict or the fact that he did not know how to perform the requested work. Paredes testified that he would often pick petitioner up and take him to the location he was to work. On other occasions petitioner would meet Paredes at the home office. Paredes testified that he would assist or direct petitioner on jobs that were difficult, such as changing pipe and installing phone lines. Once completed, Paredes was also responsible for inspecting petitioner's work. Paredes assisted petitioner with other jobs such as changing the bulbs in the store front marquees.

Petitioner used none of his own materials or tools. All materials and tools needed to perform a specific job were provided by respondent. Petitioner testified that there was a supply closet at the main location where he got all the materials and tools. Petitioner got to the various store locations via the company van. Sometimes Paredes would drive the van and at other times petitioner would drive the van. **[*17]** Petitioner had a master key that allowed him access to all the stores. In addition to performing some of his duties with Paredes, petitioner testified that he performed other duties with co-workers Muhammed Abdul, Lucy Pagan and Anna Lopez.

Petitioner would keep track of the job duties performed and the time needed to complete each task. He would log this information on a time sheet and submit it to Paredes on a weekly basis. Both petitioner and Paredes signed the time sheet. The time sheet was then sent by Paredes to respondent's accountant who would then issue a company check to petitioner. Petitioner never completed an employment application for respondent, and no taxes, social security, or other deductions were taken out of petitioner's check. Petitioner testified that he has never filed any tax return or paid any taxes on the money he received from respondent.

On October 3, 2005, petitioner started work at approximately 10:00 a.m. Petitioner testified that his duties that day included changing the light bulbs in the store marquee and changing the locks at the store located at North Avenue and Western. Petitioner testified that he was picked up in the company van by Paredes. He **[*18]** further stated that the materials needed to complete the job were loaded into the van the night before. Tools needed to complete the job were provided by respondent and included a screwdriver, drill, light bulbs, and a ladder.

When petitioner arrived at the store, he removed the ladder from the van and leaned it against the store front just below the sign. The sign petitioner needed to access was approximately 14

feet above the ground. Petitioner ascended the ladder and removed the shield over the sign. Petitioner began removing and replacing light bulbs with the assistance of Paredes. While Paredes was in the store, the ladder slipped out from underneath petitioner and he fell to the ground landing on his left wrist and right knee.

Petitioner was taken by ambulance to the emergency room at St. Mary of Nazareth Hospital (St. Mary) by the Chicago Fire Department. Petitioner complained of left wrist and right knee pain. Petitioner gave a consistent history of the accident to the paramedics. At St. Mary petitioner was evaluated and diagnosed with a comminuted fracture of the acetabulum of the right hip; comminuted Colles' fracture of the left wrist; and, an oblique fracture of the right **[*19]** elbow. On October 7, 2005, petitioner underwent an insertion of a large Steinmann pin through the right distal femur for skeletal traction. On November 3, 2005, petitioner underwent cast application. On November 7, 2005, petitioner underwent internal fixation of the femur. On November 15, 2005, petitioner underwent removal of a traction pin from the right femur. On November 19, 2005, petitioner was discharged from the hospital with instructions on his medications and daily activity. He was instructed to follow-up with Dr. Treister and Dr. Delfin.

On December 15, 2005, petitioner followed-up with Dr. Treister. He stated that he had not followed-up before that day due to the pain in his right hip and his inability to bend his right knee to get in the car. Petitioner reported that his left wrist was still bothering him with certain movements of the hand and fingers. He reported that his right elbow and right hip felt much better. Petitioner stated that he had no current problems with his right knee, but was still walking on crutches. Dr. Treister examined petitioner and was of the opinion he would benefit from outpatient physical therapy. Petitioner underwent the initial physical therapy **[*20]** evaluation on December 22, 2005.

Petitioner followed-up with Dr. Treister on January 19, 2006 and March 2, 2006. On March 2, 2006, petitioner stated that he was not taking any medications. His left wrist and elbow had nearly full range of motion and his strength was good. Petitioner complained of right hip pain with standing and walking. He also complained of right knee pain, stiffness and swelling. An x-ray of the right hip revealed what appeared to be some bone coining inferiorly off of the posterior acetabular margin and while the articular cartilage space was preserved there were three areas of sclerosis on the acetabular side, one supero-lateral, one medial inferior, and one directly superior. The x-ray of the knee revealed no evidence of acute or chronic bone pathology in the knee. Dr. Treister's impression was early arthritic changes in the right hip with synovitis. He was of the opinion that this condition would progress with time. Dr. Treister was also of the opinion that the right knee may have post traumatic loose body. Dr. Treister prescribed Motrin.

On March 31, 2006, petitioner underwent an MRI of his right knee. On April 25, 2006, petitioner followed-up with Dr. Treister. **[*21]** Petitioner stated that his right knee was getting better. Petitioner also reported to Dr. Treister that he discontinued physical therapy on his own. After reviewing the results of the MRI, Dr. Treister was of the opinion that the knee MRI did not show any indication for arthroscopic surgery. He was also of the opinion petitioner might be able to do some sedentary work. On May 18, 2006, petitioner presented to Dr. Treister. He stated that his left wrist was still bothering him a lot. He stated that the right femur and right elbow were fine. Petitioner stated that his hip hurts with weather change and a lot of walking. He stated that his knee aches when he squats or bends way over, and after a lot of walking or going up and down stairs. X-rays of the wrist revealed a substantial loss of articular cartilage space between the scaphoid and the distal radius. Range of Motion of the left wrist was not too bad. Dr. Treister was of the opinion that petitioner's left wrist joint was deteriorating. Additional physical therapy was offered. Petitioner was prescribed Naprosyn.

On June 13, 2006, petitioner followed-up with Dr. Treister. He stated that his right femur and right elbow were fine, but **[*22]** he continued to have pain in his left wrist. Petitioner stated that he found therapy helpful and was no longer taking any medications. Range of motion of the left wrist was good. Dr. Treister discontinued physical therapy.

On July 13, 2006, petitioner last followed-up with Dr. Treister. Petitioner reported that his right hip and right elbow were much better. He stated that he had no problem with them. He also reported that his left wrist was better. He stated that he had no problems with it. Petitioner's range of motion of the left wrist was much improved. An x-ray of the right hip revealed some articular cartilage space narrowing superior on AP view and anterior on lateral view. X-rays of the left wrist showed a fracture line healed, distal radial fragment demineralized as compared to the remainder of the wrist, and a loss of articular cartilage space between the distal radius and the scaphoid bone right adjacent to the fracture line. Some residual atrophy was noted in the right thigh and right calf Restrictions in motion in the left wrist and right hip were determined to be permanent and progressive degenerative conditions. Dr. Treister released petitioner to full duty work without **[*23]** restrictions. Respondent did not offer petitioner any employment, and petitioner did not look for any alternate employment.

On November 21, 2006, petitioner was readmitted to St. Mary complaining of severe right hip pain. Petitioner was evaluated and various tests were performed. On November 22, 2006, petitioner's pain had resolved. He was discharged with a diagnosis of possible muscle strain. Petitioner was instructed to ambulate with crutches and be non-weight bearing on his right leg.

On November 30, 2006, petitioner returned to Dr. Treister. Petitioner discussed his emergency room visit with Dr. Treister. He stated that his right hip was not hurting any more. Dr. Treister was of the opinion that the right hip pain was probably a muscle spasm related to the prior acetabular fracture.

In March of 2007; petitioner worked one day for a CTA Private Contractor putting up barb wire or razor wire fences. He stated that due to the pain in his wrists while lifting boxes to perform this job, he did not return to work the next day. Petitioner did not seek any medical treatment for his complaints.

On August 3, 2007, petitioner presented to St. Mary emergency room feeling generalized weakness **[*24]** and tingling that started while he was shopping. He also complained of right hip pain. ACT scan of the brain revealed essentially normal computed axial tomography of the brain. Petitioner was diagnosed with anxiety and hip pain. Petitioner was discharged on August 4, 2007.

On November 9, 2007, Dr. Treister drafted a letter to Mr. Bobber, petitioner's, attorney. He opined that the medical charges were usual, customary, and reasonable for like medical services. He further opined that the medical services petitioner received were medically necessary and medically required for the treatment of the conditions of ill-being which he diagnosed.

Petitioner denied any new injuries to his right hip, right elbow, right arm, right leg/knee or left wrist since October 3, 2005. Petitioner had current complaints of sharp pains in his right hip when he wants to run, minor pain when performing pushups or turning door knobs, a popping sound in his right knee when he sits or stands up, and pain in his right elbow when he lifts something weighing in excess of 50 pounds. Petitioner also testified that sit-ups cause pain in his pelvis and pull-ups can cause pain in his wrist and elbow. To relieve his pain **[*25]** petitioner takes Aleve 2-3 times a month. Petitioner stated that he has difficulty completing the physical requirements of the United States Naval Sea Cadet Corp youth program. Since the October 3, 2005, petitioner has made no attempt to return to work for respondent.

Daniel Khatib, the owner of Khatib Financial Services, Inc., testified that he is a franchisee of Jackson-Hewitt. Khatib testified that he was made aware of the work petitioner was doing through Paredes. Khatib testified that petitioner would submit a work summary listing the hours he worked and the jobs he performed. Petitioner was then paid with a company check for the hours he worked. Kahtib testified that petitioner did not receive a payroll check that the other employees received who logged into and out of the computer to log their hours. Khatib testified

that petitioner never completed a job application, and no employment file on petitioner was ever kept. He further testified that none of the monies paid petitioner was reported to workers' compensation for insurance purposes. Khatib testified that petitioner was not considered an employee for workers' compensation purposes. Khatib testified that petitioner there **[*26]** were no ramifications if petitioner refused to perform any work that he was offered due to time and/or skill requirements.

On cross-examination, Khatib stated that he was not sure of petitioner was issued a W-2 or 1099 form. He stated that respondent has three other employees like petitioner. Khatib stated that petitioner could not perform tax preparation, reception work or electrical work.

Christopher Paredes, respondent's general manager, is responsible for overseeing the day to day operations of the franchise. His primary job is working on the Information Technology Systems. Paredes agreed he was a neighbor of petitioner's, but denied he knew petitioner was underage when he started working for respondent. Paredes testified that he was the one who initially approached petitioner about doing some work for respondent. He testified that he told petitioner he needed some help. Petitioner agreed. Paredes also stated that petitioner never completed any employment application. Paredes testified that if he had a project that he needed help with he would ask petitioner. He further testified that petitioner was not required to be at respondent's place at any set time. Paredes would call or **[*27]** meet petitioner and made arrangements if petitioner was available to work. Paredes stated that petitioner could refuse work. He further testified that petitioner was paid any hourly rate for the work he performed. Paredes testified that petitioner was not provided with any benefits through respondent. Paredes testified that he would identify for petitioner the jobs that needed to be done; provide petitioner would some instruction on any handiwork that he needed to perform; check the job when petitioner was done; and if needed, give petitioner a ride home. Paredes testified that petitioner only refused work once or twice due to personal conflict. In those instances petitioner would do the job at a later date. On occasion, Paredes would perform the job with petitioner. Paredes testified that respondent provided petitioner with all the supplies and tools needed to perform the jobs.

B. WAS THERE AN EMPLOYEE-EMPLOYER RELATIONSHIP?

Respondent denies an employee-employer relationship existed between petitioner and itself. Respondent claims petitioner was an independent contractor. In general, an "employee" is defined as any person under a contract of hire to another. However, the determination **[*28]** of the legal relationship between the parties under the Act has been broadened by prior case law. Thus, it is necessary in each case to look at the facts and then to apply the applicable law in determining whether an employment relationship exists or whether the relationship is, in fact, one involving an independent contractor.

In Bauer v. Industrial Commission, 51 Ill.2d 169, 282 N.E.2d 448 (1972), the Illinois Supreme Court defined the criteria for determining whether an employment relationship exists or whether the relationship is, in fact, one involving an independent contractor. The court held that:

> **"No single facet of the relationship between the parties is determinative, but any factors, such as the right to control the manner in which the work is done, the method of payment, the right to discharge, the skill required in the work to be done, and the furnishing of tools, materials or equipment have evidentiary value and must be considered ... Of these factors, the right to control the work is perhaps the most important single factor in determining the relation ... inasmuch as an employee is at all times subject to the control [*29] and supervision of his employer, whereas an independent contractor represents the will of the owner only as to the result and not as to the means by which it was accomplished.** [Citations omitted] 282 N.E.2d at 450, quoting *Coontz v. Industrial Commission*, 19 Ill.2d

574, 169 N.E.2d 94, 96 (1960)

In the case at bar it is unrebutted that petitioner was initially asked to work for respondent by Paredes, respondent's general manager, who is responsible for overseeing the day to day operations of the franchise. Paredes testified that he was the one who initially approached petitioner about doing some work for respondent. He testified that he told petitioner he needed some help and petitioner agreed. Paredes stated that although petitioner never completed an employment application, if he had a job that needed to be completed or a job he needed help with he would ask petitioner. Paredes testified that he would call or meet petitioner and made arrangements if petitioner was available to work. Paredes stated that petitioner could refuse work. Paredes testified that petitioner was paid an hourly rate **[*30]** for the work he performed. Petitioner would submit a work summary listing the hours he worked and the jobs he performed. Petitioner was then paid with a company check.

As to the work petitioner performed for respondent, Paredes would identify for petitioner the jobs that needed to be done; provide petitioner would some instruction on any handiwork that he needed to perform; check the job when petitioner was done; and if needed, give petitioner a ride to or from the job. Paredes testified that petitioner only refused work once or twice due to personal conflict. In those instances petitioner did the job at a later date. On occasion, Paredes would perform the job with petitioner. Paredes testified that respondent provided petitioner with all the supplies and tools needed to perform the jobs.

Petitioner testified that the work he performed for respondent varied. His specific duties included installing software updates, changing light bulbs on store marquees, cleaning stores, painting, patching holes on walls, changing pipes, fixing toilets, and installing phone lines in the stores. All work petitioner performed was assigned by Paredes. Petitioner testified that he would only work for respondent **[*31]** if Paredes called him and requested that he perform a specific task. Petitioner stated that he never called Paredes looking for work. Often Paredes would pick petitioner up in the company van and take him to the location where he would perform the assigned work. If petitioner ever drove to a location he would use the company van. Petitioner also stated that all tools and materials he used were provided by respondent. Once petitioner completed a job, Paredes inspected petitioner's work. Petitioner testified that Paredes would also assist him with tasks that were more difficult, such as changing pipe arid installing phone lines.

With respect to payment, petitioner was paid by company check. No social security or federal income taxes were withheld. Petitioner was paid a flat hourly rate of $ 6.00 that was increased to $ 7.00 an hour in 2005. Petitioner has never filed any tax returns or paid any taxes on the money he received from respondent. When petitioner initially began working for respondent in 2001 he was 15 years old, and a student.

In applying the criteria defined by the Supreme Court in Bauer to the facts of this case, the arbitrator finds an employer-employee relationship **[*32]** existed between the petitioner and respondent on October 3, 2005. The arbitrator finds the respondent had control over the petitioner's activities. All work petitioner performed on any given day was assigned by Paredes. Often Paredes would pick petitioner up in the company van and take him to the location where he was going to work Paredes would often show petitioner how the work should be performed, and if the task was difficult he may even assist petitioner with the task. Once a task was performed, Paredes would inspect it. Petitioner never worked for respondent unless contacted by Paredes.

In addition to respondent having total control over the petitioner's activities, the arbitrator finds that all tools and materials needed by petitioner to complete any task were provided by respondent. These tools and materials included screwdrivers, drills, light bulbs and ladders. Petitioner would retrieve all necessary materials from the supply closet or the required

materials would be at the location where he was going to work. Petitioner was not paid by the job, but rather for the time it took to complete each task.

Paredes noted that petitioner did not possess the skills necessary to perform **[*33]** all jobs. When a job needed to be completed that petitioner did not possess the skills to perform, Paredes would instruct petitioner on how to perform the task, or assist petitioner with the task.

Based on the above, the arbitrator finds an employee-employer relationship exists between the petitioner and the respondent. The arbitrator finds petitioner was at all times subject to the control and supervision of respondent. In order to find petitioner was an independent contractor the respondent must prove by a preponderance of the credible evidence that petitioner merely represented the will of the respondent only as to the result and not as to the means by which it was accomplished. In this case, the arbitrator finds this was clearly not the case.

C. DID AN ACCIDENT ARISE THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENTBY THE RESPONDENT?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issue of employer-employee and incorporates them herein by this reference. Petitioner presented unrebutted testimony that while working for respondent on October 3, 2005, replacing light bulbs on the store marquee with the help **[*34]** of Paredes, and at the direction of Paredes, he fell off the ladder landing on the sidewalk. The arbitrator finds the petitioner was assigned the job of replacing the light bulbs by Paredes and was provided with the materials to perform this job by respondent. As such the arbitrator finds the task of changing the light bulbs in the marquee was a risk distinctly associated with the employment.

Based on the above, the arbitrator finds the petitioner sustained an accidental injury that arose out of and in the course of his employment be respondent.

F. IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issue of employer-employee and incorporates them herein by this reference.

As a result of the accident on October 3, 2005, petitioner sustained a comminuted fracture of the acetabulum of the right hip, comminuted Cole's fracture of the left wrist, and an oblique fracture of the right elbow. For these injuries petitioner underwent multiple surgeries and underwent follow-up treatment with Dr. Treister through July 13, 2006, when he was released to full **[*35]** duty work without restrictions. Petitioner followed-up with Dr. Treister through November 30, 2006. Thereafter he had had two brief admissions to the emergency room for severe right hip pain that were determined to be muscle spasms.

Petitioner denied any problems with his right hip, right elbow, right arm, right leg/knee or left wrist before October 3, 2005. He also denied any new injuries to these body parts after October 3, 2005. Based on the credible medical records the arbitrator finds all treatment petitioner received for his right hip, right elbow, right arm, right leg/knee or left wrist were as a result of the accident on October 3, 2005.

Based on the above, the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that his current condition of ill-being is causally connected to the accident petitioner sustained while working for respondent on October 3, 2005.

J. WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect

to the issues of employer-employee and causal connection and incorporates them herein by this reference. **[*36]**

Petitioner offered into evidence unpaid bills from St. Mary for the period 10/3/05 - 11/19/05, 11/21/06, 11/22/06, 8/3/07 and 8/4/07; from Bucktown Open MRI on 3/31/06 and 11/22/06; from Treister Orthopedics from 10/3/05 - 1/31/06, 2/2/06, 2/10/06, 2/16/06, 2/23/06, 3/2/06, 4/5/06, 5/18/06, 5/23/06-5/25/06, 5/30/06, 5/31/06, 6/6/06, 6/6/06, 6/7/06, 6/13/06, 7/13/06 and 11/30/06. In reviewing the credible medical records offered into evidence the arbitrator finds these dates of services and services performed on these dates relate to treatment petitioner received for his right hip, right elbow, right arm, right leg/knee and left wrist injuries as a result of the accident he sustained while working for respondent on October 3, 2005. Additionally the arbitrator notes that on November 9, 2007, Dr. Treister opined that the medical charges were usual, customary, and reasonable for like medical services. He further opined that the medical services petitioner received were medically necessary and medically required for the treatment of the conditions of ill-being which he diagnosed. Respondent offered no evidence to rebut this opinion. Based on the above, as well as the credible medical evidence **[*37]** the arbitrator finds these services were reasonable and necessary to cure or relieve petitioner from the effects of his injuries.

Respondent offered into evidence an itemized bill from St. Mary showing the original hospital bill from petitioner's October 2005 hospitalization was paid in full by the Illinois Department of Public Aid (IDPA) and reduced to $ 25,105.28 which was accepted as full payment by the hospital for the $ 82,964.25 petitioner was originally billed. Respondent claims that should the arbitrator find the petitioner is entitled to an award of medical expenses that the amount for petitioner's stay at St. Mary from 10/3/05 through 11/19/05 should be limited to the amount that the IDPA paid on behalf of petitioner, that being $ 25,105.28.

The arbitrator finds the respondent has failed to offer any case law in support of its position that its. responsibility should be reduced by the amount the IDPA has paid. the Arbitrator finds that if she was to adopt respondent's argument that its liability is limited to the amount that the IDPA paid, such finding could provide employers with an incentive to deny claims and to refuse to pay medical bills with the prospect that claimants **[*38]** will seek to have the IDPA pay for their medical expense, and, if the employers are found liable at a later time, the employers will be obligated to only pay the reduced amount that the IDPA paid.

A fundamental public policy principle underlying workers' compensation laws is that the cost of industrial injuries should be borne by the industries giving rise to such injuries and not by the general public. To adopt respondent's argument would thwart the underlying policy of workers' compensation. As such, the arbitrator finds the petitioner is entitled to $ 82,964.25 in reasonable and necessary medical expenses for his stay at St. Mary from 10/2/05 through 11/19/05, from which respondent may chose to satisfy its obligation under this award by paying $ 25,105.28, the amount owed to IDPA directly to IDPA and paying the remaining balance of $ 57,858.97 directly to the petitioner.

With respect to the bill from Bucktown Open MRI for service dates of 3/31/06 and 11/22/06, the arbitrator finds the petitioner is entitled to $ 1,932.70 pursuant to Section 8.2 of the Act. With respect to the bill from St. Mary for service dates of 8/3/07-8/4/07, the arbitrator finds the petitioner is entitled **[*39]** to $ 2,148.23 pursuant to Section 8.2 of the Act. With respect to the bill from Treister Orthopaedic Services, Ltd. for service dates of 10/3/05-1/31/06, 2/2/06, 2/10/06, 2/16/06, 2/23/06, 3/2/06, 4/25/06, 5/18/06, 5/23/06, 5/24/06, 5/25/06, 5/30/06, 5/31/06, 6/1/06, 6/6/06, 6/7/06, 6/13/06, 7/13/06, and 11/30/06, the arbitrator finds the petitioner is entitled to $ 14,319.92 pursuant to Section 8(a) of the Act and $ 2,656.96 pursuant to Section 8.2 of the Act With respect to the bill from St. Mary for service dates of 11/21/06-11/22/06, the arbitrator finds the petitioner is entitled to $ 2,412.97 pursuant to Section 8.2 of the Act.

Based on the above, the arbitrator fords the petitioner's entitled to $ 106,435.03 in medical

expenses pursuant to Section 8(a) of the Act, and $ 9,150.86 in medical expenses pursuant to Section 8.2 of the Act. With respect to the $ 106,435.03 petitioner is owed pursuant to Section 8(a) of the Act, the arbitrator find the respondent may chose to satisfy its obligation under this award by paying $ 25,105.28, the amount owed IDPA, directly to IDPA, and paying petitioner the balance of $ 81,329.75.

K. WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL [*40] DISABILITY?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issues of employer-employee, causal connection and medical expense and incorporates them herein by this reference.

Having found the petitioner's current condition of ill-being causally related to the accident he sustained on October 3, 2005, and the fact the treatment he received from St. Mary, Dr. Treister and Bucktown Open MRI was reasonable and necessary to cure or relieve petitioner from the effects of his injuries, the arbitrator next looks at the issue of temporary total disability..

Following the accident on October 3, 2005, petitioner was authorized off work and remained under an off work authorization until July 13, 2006. During this period petitioner underwent multiple surgeries, post-operative treatment, and physical therapy. On July 13, 2006, petitioner reported that his right hip and right elbow were much better. He stated that he had no problem with them. He also reported that his left wrist was better. He stated that he had no problems with it. Petitioner's range of motion of the left wrist was much improved. X-ray of the right hip revealed some articular **[*41]** cartilage space narrowing superior on AP view and anterior on lateral view. X-rays of the left wrist showed a fracture line healed, distal radial fragment demineralized as compared to the remainder of the wrist, and a loss of articular cartilage space between the distal radius and the scaphoid bone right adjacent to the fracture line. Some residual atrophy was noted in the right thigh and right calf. Restrictions in motion in the left wrist and right hip were determined to be permanent and progressive degenerative conditions. Dr. Treister released petitioner to full duty work without restrictions. Respondent did not offer petitioner any employment, and petitioner did not look for any alternate employment.

Based on the above, the arbitrator finds petitioner was temporarily totally disabled from October 4, 2005 through July 13, 2006, a period of 41 weeks.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issues of employer-employee, causal connection, medical expense and temporary total disability and incorporates them herein by this reference.

As a result of the accident on October **[*42]** 3, 2005, petitioner sustained a comminuted fracture of the acetabulum of the right hip, comminuted Cole's fracture of the left wrist, and an oblique fracture of the right elbow. For these injuries petitioner underwent an insertion of a large Steinmann pin through the right distal femur for skeletal traction; a cast application, an internal fixation of the femur, and a removal of a traction pin from the right femur. On November 19, 2005, petitioner was discharged from the hospital. Petitioner followed-up post-operatively with Dr. Treister through July 13, 2006. This treatment included physical therapy.

When petitioner was discharged to full duty work without restrictions on July 13, 2006 with instructions on his medications and daily activity, petitioner was instructed to follow-up with Dr. Treister and Dr. Delfin. Petitioner followed-up with Dr. Treister through November 30, 2006. Thereafter he had had two brief admissions to the emergency room for severe right hip pain that were determined to be muscle spasms. At that time petitioner reported that his right hip and right elbow were much better. He stated that he had no problem with them. He also

reported that his left wrist was better. **[*43]** He stated that he had no problems with it. Petitioner's range of motion of the left wrist was much improved. X-ray of the right hip revealed some articular cartilage space narrowing superior on AP view and anterior on lateral view. X-rays of the left wrist showed a fracture line healed, distal radial fragment demineralized as compared to the remainder of the wrist, and a loss of articular cartilage space between the distal radius and the scaphoid bone right adjacent to the fracture line. Some residual atrophy was noted in the right thigh and right calf. Restrictions in motion in the left wrist and right hip were determined to be permanent and progressive degenerative conditions.

At trial petitioner denied any new injuries to his right hip, right elbow, right arm, right leg/knee or left wrist since October 3, 2005. Petitioner had current complaints of sharp pains in his right hip when he wants to run, minor pain when performing pushups or turning door knobs, a popping sound in his right knee when he sits or stands up, and pain in his right elbow when he lifts something weighing in excess of 50 pounds. Petitioner also testified that sit-ups cause pain in his pelvis and pull-ups can **[*44]** cause pain in his wrist and elbow. To relieve his pain petitioner takes Aleve 2-3 times a month. Petitioner stated that he has difficulty completing the physical requirements of the United States Naval Sea Cadet Corp youth program.

Based on the above, the arbitrator finds the petitioner sustained a 45% loss of use of the right leg; a 25% loss of use of the left hand, and a 15% loss of use of the right arm.

M. SHOULD PENALTIES OR FEES BE IMPOSED UPON THE RESPONDENT?

The petitioner has filed a petition for penalties and fees. Penalties and fees are appropriate in cases where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation. In the case at bar the threshold issue was whether or not an employer-employee relationship exists between the petitioner and the respondent. Although the arbitrator has found that such a relationship exists, the arbitrator finds the respondent's reliance on its position that no such relationship exists was neither unreasonable nor vexatious.

The arbitrator finds respondent's reliance on the fact that petitioner never completed an employment application, was not paid any benefits, had no taxes or social **[*45]** security deducted from his paycheck, and did not work any set hours or perform set tasks in making its determination that petitioner was not entitled to compensation was not unreasonable or vexatious. The arbitrator finds respondent had a good faith basis for its denial of benefits pending on hearing on the merits of the case.

Based on the above, the arbitrator denies petitioner's motion for penalties and fees.

DISSENTBY: KEVIN W. LAMBORN

DISSENT: I respectfully dissent from the decision of the majority. I would affirm Arbitrator Pulia's well reasoned decision in its entirety and without modification.

Legal Topics:

For related research and practice materials, see the following legal topics:
Education Law > Faculty & Staff > Compensation > General Overview

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

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

Source: **Legal > States Legal - U.S. > Illinois > Find Statutes, Regulations, Administrative Materials & Court Rules > IL Workers' Compensation Decisions**
Terms: **catour** (Edit Search | Suggest Terms for My Search)

View: Full
Date/Time: Monday, February 21, 2011 - 9:30 AM EST

In

*2009 Ill. Wrk. Comp. LEXIS 862, **

DONNA ECHOLS, PETITIONER, v. METHODIST MEDICAL CENTER, RESPONDENT,

NO: 05WC 15243

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF PEORIA

2009 Ill. Wrk. Comp. LEXIS 862

August 6, 2009

CORE TERMS: arbitrator, cleaning, temporary total disability, loss of use, causally, tunnel, symptoms, accrue, cubital, carpal tunnel syndrome, disputed issues, timely notice, emergency-room, syndrome, video, amount of compensation, left hand, depicted, patient, notice, arm, average weekly wage, evidence presented, present condition, date of payment, right hand, right arm, additionally, videotape, bilateral

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

OPINION: [*1]

DECISION AND OPINION ON REVIEW

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

The Commission modifies the Arbitrator's Decision, decreasing Petitioner's loss of use of the right hand from 15% to 12.5%, loss of use of the left hand from 15% to 12.5%, loss of use of the right arm from 15% to 12.5%, and loss of use left arm from 15% to 12.5% 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 $ 274.40 per week for a period of 10 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 $ 246.96 per week for a period of 106.26 weeks, as **[*2]** provided in § 8(e) of the Act, for the reason that the injuries sustained caused the 12.5% loss of use of the right hand (23.75), 12% loss of the left hand (23.75), and 12% loss of use of the right arm (29.38), 12% loss of use left arm (29.38).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 34,059.33 for medical expenses under § 8(a) of the Act.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 63,000.00. 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 s the Secretary of the Commission.

DATE AUG 6 2009

ATTACHMENT:

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

An *Application for Adjustment of Claim* was filed **[*3]** in this matter, and a *Notice of Hearing* was mailed to each party.

The matter was heard by the Honorable **Neva Neal**, arbitrator of the Commission, in the city of **Peoria, IL**, on **February 20, 2008**. 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?
E. Was timely notice of the accident given to the respondent?
F. Is the petitioner's present condition of ill-being causally related to the injury?
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?
N. Is the respondent due any credit?

FINDINGS

. On **Oct. 28, 2004**, the respondent **Methodist Medical Center *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*** **[*4]** 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 $ **21,403.20**; the average weekly wage was $ **411.60**.

. At the time of injury, the petitioner was **41** years of age, ***married*** with **1** children under 18.

. Necessary medical services ***have not*** been provided by the respondent.

. 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 disability benefits of $ **274.40**/week for **10** weeks, from **Nov. 8, 2005 to Dec. 5. 05** through **Jan. 17, 06 to Feb. 27, 2006**, which is the period of temporary total disability for which compensation is payable.

. The respondent shall pay the petitioner the sum of $ **246.96**/week for a further period of **127.5** weeks, as provided in Section **8(d)** of the Act, because the injuries sustained caused **15% loss of use of the right hand(28.5), 15% loss of use of the left hand(28.5), and 15% loss of use of the right arm(35.25), 15% loss of use left arm(35.25)**.

. The **[*5]** respondent shall pay the petitioner compensation that has accrued from **Nov. 8, 2005** through **Feb. 27, 2006**, and shall pay the remainder of the award, if any, in weekly payments.

. The respondent shall pay the further sum of $ **34,059.33** for necessary medical services, as provided in Section 8(a) of the Act.

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

. The respondent shall pay $ in penalties, as provided in Section 19(l) of the Act.

. The respondent shall pay $ in attorneys' fees, as provided in Section 16 of the Act.

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of 1.81% 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.

2/4/08

MAR 6 2008

Applications for adjustment of claim were **[*6]** filed in this matter, and Notice of Hearing was mailed to each party. The matter was heard by the Honorable Neva Neal, arbitrator of the Workers' Compensation Commission, in the city of Peoria, on February 20, 2008. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues circled below, and attaches those findings to this document.

IN SUPPORT OF THE ARBITRATOR'S MEMORANDUM OF DECISION, THE ARBITRATOR FINDS THE FOLLOWING:

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

- (E.) Was timely notice of the accident given to the respondent?

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

- (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 injury?

- (N.) Is the respondent do any credit?

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

Petitioner was employed by Methodist Medical Center during the relevant period **[*7]** as a housekeeper in the environmental services department.

Petitioner testified that she began experiencing symptoms in her right hand and arm on or about October 28, 2004. Petitioner also testified that she began experiencing symptoms in her left hand on or about December 30, 2004. Petitioner additionally testified that she was not diagnosed with carpal tunnel syndrome and cubital tunnel syndrome in a right extremity and carpal tunnel syndrome in the left-hand until January, 2005.

Dr. Ronald Palmer, M.D., petitioner's treating surgeon, testified that the symptoms of the petitioner were aggravated by work activities and brought her to need medical treatment. His opinion was based upon the history given to him by petitioner.

Dr. Robert R. Schenck, M.D., respondent's medical examiner, testified that petitioner had clinical symptoms consistent with bilateral cubital tunnel syndrome and medial epicondylitis. Dr. Schenck testified that the petitioner's symptoms were not related to her work activities. Dr. Schenck testified that the basis of his opinion was "her work duties as described and observed in the video job analysis...."

At trial, Petitioner testified that the video that Dr. Schenck **[*8]** relied upon did not depict her job at the time her symptoms arose. Specifically, petitioner testified that she had been performing emergency-room cleaning tasks from approximately February 2004 until approximately January 2005. The video depicted the cleaning tasks of a person cleaning patient rooms and waiting areas.

Respondent presented as evidence the testimony of Robert Folck, manager of environmental services of the respondent that confirmed that the video in question did not depict cleaning of emergency rooms. Mr. Folck testified that cleaning of patient rooms and emergency rooms were both general cleaning. When asked whether emergency-room cleaning entailed more hard-surface scrubbing, Mr. Folck answered that the emergency-room cleaning job was general cleaning.

Petitioner testified that emergency-room cleaning entailed more circular movement of the upper extremities for scrubbing of hard services.

The Arbitrator finds the testimony of Dr. Palmer more persuasive than Dr Schenck. The

Arbitrator also finds that the testimony of Robert Folck was too general and vague to dispute the specific testimony of the petitioner regarding her job activities in emergency-room cleaning.

Accordingly, **[*9]** the Arbitrator finds that the petitioner's injuries did arise out of and in the course of petitioner's employment by the respondent.

(E.) Was timely notice of the accident given to the respondent?

Respondent disputes that it was given notice of the accident for the claim arising out of complaints occurring on or about December 30, 2004.

Petitioner testified that in early January 2005 she gave notice to Joe Vanderheid, the second shift supervisor.

Robert Folck, manager of environment services of the respondent, testified that he had no recollection of notice of the December 2004 complaints of the petitioner. However, on cross examination, Mr. Folck did recall being told several times by Joe Vanderheid of petitioner's complaints.

The Arbitrator finds that timely notice of the injury was given to the respondent.

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

Conflicting medical evidence was presented by the petitioner and respondent as to causation.

Specifically, Dr. Ronald Palmer, petitioner's treating physician, testified that it was his opinion to reasonable degree of medical certainty, that petitioner's condition was causally related to her **[*10]** work for the respondent. The basis of Dr. Palmer's opinion is petitioner's history, including his understanding that activities as a housekeeper caused her to do "continuous circular type motions."

Several times during her testimony, petitioner described the nature of her work when she cleaned emergency rooms and gestured circular motions when talking about scrubbing hard surfaces -- which she described as being the key difference between the work she actually performed and the work depicted in a videotape of a housekeeper cleaning patient rooms.

Dr. Robert R. Schenck, respondent's medical examiner, testified it was his opinion to reasonable degree of medical certainty, that petitioner's condition was not causally related to her work for the respondent. In testimony, Dr. Schenck, stated in response to a question on the basis of his opinions on the aggravation and cause of petitioner's complaints: "the work duties as described and observed in the video job analysis included a variety of housekeeping tasks that involve general hand and arm movements. It did not involve repeated or forceful elbow flexion and extension of resisted movements of forearm pronation or supination. And I concluded **[*11]** from this that her conditions of cubital tunnel syndrome and medial epicondylitis... are not related to her work duties, either causally or aggravation wise".

As stated in the earlier subsection of this decision, the video job analysis did not depict petitioner's job at the time her complaints arose. Dr. Schenck, therefore, had based his opinion upon a depiction of petitioner's work responsibilities and activities that do not relate to her actual work activities.

Further support of the Arbitrator's finding is the testimony of respondent's witness, Robert Folck, who testified that cleaning patient rooms entailed more variety of activity than the emergency-room cleaning job. Robert Folck also admitted that the videotape did not show the complete cleaning of a patient room, but rather 'depicted various motions involved in the job.

Petitioner additionally testified that the work as depicted in the videotape was not complete.

The Arbitrator, after reviewing the videotape entered into evidence, also finds that the work as depicted does not show completion of repetitive type work activities such as hard-surface cleaning and scrubbing.

Accordingly, the Arbitrator finds that the petitioner's **[*12]** condition of ill being was causally related to her work injury.

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

Petitioner's Exhibit 1 shows that the Respondent's group health plan paid $ 30,318.23 of $ 34,059.33 total medical bills, the remainder of which was petitioner's co-pay. Paid medical bills are *prima facie* reasonable. Arthur v. **Catour**, 216 Ill.2d 72, 82, 833 N.E.2d 847, 853 (2005) (citing Flynn v. Cusentino 59 Ill.App.3d 262, 266 375 N.E.2d 433, 436 (1978)). Additionally, Dr. Ronald Palmer testified that the course of treatment rendered was the course of treatment he recommended, thereby establishing necessity of treatment. Respondent presented no evidence countering the *prima fade* reasonableness off the medical bills. Accordingly, the Arbitrator finds that the medical bills in question are both reasonable and necessary.

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

Petitioner testified that she was off work from November 8, 2005 to February 27, 2006, a period of 16 weeks.

Dr. Ronald Palmer, petitioner's **[*13]** surgeon, testified that the Petitioner could work light duty from Dec. 5, 2005 till her second surgeries on Jan. 17, 2006. The Respondent has light duty.

The Arbitrator finds that petitioner is owed 10 weeks of temporary total disability. Petitioner's average weekly wage for the relevant period is $ 411.60. The temporary total disability rate from this average weekly wage is $ 274.40.

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

Dr. Ronald Palmer, petitioner's treating surgeon, diagnosed the petitioner's symptoms as bilateral carpal and cubital tunnel syndrome. His basis for the diagnosis, were his findings of a positive Phalen's sign, a positive Tinel's sign at the cubital tunnel and a positive flexion sign. Dr. Palmer also testified underwent EMG testing with findings consistent with carpal tunnel syndrome. On November 8, 2005, Dr. Palmer performed a right endoscopic carpal tunnel release and the right anterior transposition of the ulnar nerve at the elbow. On January 18, 2006, Dr. Palmer performed a endoscopic carpal tunnel release on petitioner's left-hand. Dr. Palmer testified that he released the petitioner from care on April 11, 2006.

At trial, petitioner testified **[*14]** that the procedures performed by Dr. Palmer relieved her of her complaints that arose in October of 2004 and December 2004. Petitioner also testified that, except for the surgical scars, she currently feels as good in her upper extremities as she did before her complaints arose in 2004.

Dr. Robert It Schenck, respondent's medical examiner, diagnosed the petitioner as having clinical symptoms consistent with bilateral cubital tunnel syndrome and medial epicondylitis. He also testified there was a "mild motor delay across the median nerve" consistent with carpal tunnel syndrome. He did not diagnose the petitioner as having carpal tunnel syndrome in the left hand.

Additionally, the Arbitrator has earlier found that the petitioner's injuries were causally related to her work for the Respondent and the respondent is now found liable for the same.

The Arbitrator finds that the nature and extent of petitioner's injury was bilateral carpal tunnel syndrome and cubital tunnel syndrome in the right arm, conditions that were successfully treated by procedures performed by Dr. Palmer.

(M.) Is the respondent due any credit?

Respondent claims that it paid nonoccupational disability benefits **[*15]** that appear in Respondent's Exhibit 2. Respondent also claims that it paid out medical bills through its group medical plan.

Petitioner does not challenge that the respondent is entitled to a credit under Section 8 (j) of the Workers' Compensation Act.

RULES REGARDING APPEALS

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

STATEMENT OF INTEREST RATE

If this award is reviewed by the Commission, interest of % shall accrue from the date listed below to the clay before the date of payment; however, if an employee's appeal results in either no change or decrease in this award, interest shall not accrue.

NEVA NEAL
Arbitrator

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 **Neva Neal**, arbitrator of the Commission, in the city of **Peoria, IL**, on **February 20. 2008**. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and **[*16]** 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?
E. Was timely notice of the accident given to the respondent?
F. Is the petitioner's present condition of ill-being causally related to the injury?
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?
N. Is the respondent due any credit?

FINDINGS

. On **Dec. 30, 2004**; the respondent **Methodist Medical Center *was*** operating under and subject to the provision 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 $ **21,403.20**; the average weekly wage was $ **411.60**.

. At the time of injury, the petitioner was **41** years of age, ***married*** **[*17]** with **1** children under 18. Necessary medical services have not been provided by the respondent.

. 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 disability benefits of $ /week for weeks, from through , which is the period of temporary total disability for which compensation is payable.

. The respondent shall pay the petitioner the sum of $ /week for a further period of weeks, as provided in Section of the Act, because the injuries sustained caused .

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

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

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

. The respondent shall pay $ in penalties, as provided in Section 19(l) of the Act.

. The respondent shall pay $ in attorneys' fees, as provided in Section **[*18]** 16 of the Act.

See companion case 05 WC 15243 for Arbitrator's findings and order, covering both injuries.

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of 1.81% shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of arbitrator

3/4/08

Date

MAR 6 2008

Applications for adjustment of claim were filed in this matter, and Notice of Hearing was mailed to each party. The matter was heard by the Honorable Neva Neal, arbitrator of the Workers' Compensation Commission, in the city of Peoria, on February 20, 2008. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues circled below, and attaches those findings to this document.

IN SUPPORT OF THE ARBITRATOR'S MEMORANDUM OF DECISION, THE ARBITRATOR FINDS **[*19]** THE FOLLOWING:

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

- (E.) Was timely notice of the accident given to the respondent?

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

- (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 injury?

- (N.) Is the respondent do any credit?

See companion case 05 WC 15243 for Arbitrator's findings and order, covering both injuries.

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 this award is reviewed by the Commission, interest of % 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 decrease in this award, interest shall not accrue.

NEVA NEAL
Arbitrator

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDI > Administrative Proceedings > Claims > Filing Requirements

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

Workers' Compensation & SSDI > Compensability > Course of Employment > General Overview

Source: **Legal > States Legal - U.S. > Illinois > Find Statutes, Regulations, Administrative Materials & Court Rules > IL Workers' Compensation Decisions**
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*2010 Ill. Wrk. Comp. LEXIS 981, **

MICHAEL LEADY, PETITIONER, v. MILLENNIUM RAIL, RESPONDENT.

No. 08WC 009978

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF MADISON

2010 Ill. Wrk. Comp. LEXIS 981

September 30, 2010

CORE TERMS: provider, arbitrator, right shoulder, shoulder, discount, negotiated, pain, temporary total disability, services rendered, group health plan, fee schedule, amounts paid, right arm, injection, contusion, harmless, group insurance policy, entitled to credit, reasonable charge, medical provider, subacromial, compensable, causally, overhead, bursitis, surgery, Workers' Compensation Act, medical treatment, disputed issues, plain language

JUDGES: Yolaine Dauphin; Kevin W. Lamborn

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 temporary total disability, permanent partial disability, medical expenses, and credit, 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.

We begin by making changes stipulated to by the parties in their briefs. First, we eliminate the Blue Cross Blue Shield lien amount from the medical expenses award, which already included the full amount of the medical bills. Second we modify the award of Dr. Dusek's total bill to $ 13,467.00 from $ 12,933.00.

Finally, we award a credit of $ 23,342.00 to Respondent under section 8(j) of the Act, for all amounts paid by Blue Cross Blue Shield, as well as all PPO discounts. The Blue Cross Blue Shield group health insurance plan was provided to Petitioner by Respondent. Respondent shall

hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit **[*2]** under this order.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 381.45 per week for a period of 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 $ 343.31 per week for a period of 50 4/7 weeks, as provided in § 8(e) of the Act, for the reason that the injuries sustained caused the 20 percent loss of use of Petitioner's right arm.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 30,188.41 for medical expenses under § 8(a) of the Act.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent is entitled to a credit in the amount of $ 23,342.00 under § 8(j) of the Act; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 25,600.00. The probable **[*3]** cost of the record to be filed as return to Summons is the sum of $ 35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

ATTACHMENT:

ILLINOIS WORKERS' COMPENSATION COMMISSION 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 **Andrew Nalefski**, arbitrator of the Commission, in the city of **Collinsville**, on **2/27/09**. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES
F. Is the petitioner's present condition of ill-being causally related to the injury?
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?
N. Is the respondent due any credit?

FINDINGS

. On **2/25/08**, the respondent **Millennium Rail, Inc.** ***was*** operating **[*4]** 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 $ **29,753.36**; the average weekly wage was $ **572.18**.

. At the time of injury, the petitioner was **32** years of age, ***single*** with **0** children under 18.

. Necessary medical services ***have not*** been provided by the respondent.

. To date, $ **0** has been paid by the respondent for TTD and/or maintenance benefits.

ORDER

. The respondent shall pay the petitioner temporary total disability benefits of $ **381.45**/week for **14** weeks, from **6/10/08** through **9/14/08**, which is the period of temporary total disability for which compensation is payable.

. The respondent shall pay the petitioner the sum of $ **343.31**/week for a further period of **50.6** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **20% loss of the [*5] right arm**.

. The respondent shall pay the petitioner compensation that has accrued from **2/25/08** through **2/29/09**, and shall pay the remainder of the award, if any, in weekly payments.

. The respondent shall pay the further sum of $ **29,654.41** for necessary medical services, as provided in Section 8(a) of the Act.

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

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

. The respondent shall pay $ **0** in attorneys' fees, as provided in Section 16 of the Act.

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest 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. **[*6]**

Signature of arbitrator

3/16/09

Date

MAR 19 2009

The Arbitrator finds the following facts:

Petitioner has worked for Respondent as a welder/car man since May 2007. Respondent is in the business of repairing railroad cars. On 2/25/08 Petitioner was climbing out from under a railroad car when he struck his right shoulder on a bracket while standing up. He felt immediate pain, numbness, and tingling around the side of shoulder and down his arm. Petitioner took a lunch break and after returning to work he noticed that he was unable to pick up his welding tools with his right arm. He reported the incident.

Petitioner was sent by Respondent to the company physicians at Midwest Occupational Medicine (MOM). Muscle spasms were noted. Physical therapy was ordered: Petitioner followed up with MOM on 3 more occasions. Petitioner's shoulder was not getting better - it was getting worse. Petitioner was working light duty with a restriction of no overhead work.

On 3/1/08 Petitioner saw Dr. Dennis Dusek, an orthopedic surgeon, upon referral of his attorney. Dr. Dusek diagnosed a right shoulder contusion. A right shoulder MRI of 3/17/08 showed evidence of a soft tissue in jry and contusion. On **[*7]** 3/20/08 Dr. Dusek continued the work restrictions of no overhead lifting. On 5/12/08 Petitioner continued to have positive impingement signs and shoulder pain. Dr. Dusek administered a subacromial injection to the right shoulder and continued work restrictions of no work above shoulder level. On 6/2/08 Petitioner reported that the injection helped for a couple of days. Dr. Dusek opined that the Petitioner had subacromial bursitis caused by the contusion injury. Dr. Dusek recommended arthroscopic surgery.

On 6/10/08 Dr. Dusek performed surgery consisting of a right shoulder arthroscopic subacromial decompression. Dr. Dusek testified that he found a substantial amount of bursitis, which explained why the injection did not alleviate Petitioner's symptoms.

Dr. Dusek held Petitioner off of work from 6/10/08 through 7/14/08. Petitioner was released to one arm work on 7/15/08. Respondent was unable to accommodate the restriction and Petitioner remained off work. On 9/15/08 Petitioner was released to full duty work. After working for approximately one month, Petitioner continued to experienced right shoulder pain. On 10/17/08 Dr. Dusek administered another injection in the shoulder. Petitioner **[*8]** last saw Dr. Dusek on 11/24/08. Dr. Dusek opined that Petitioner's condition was aggravated by the 2/25/08 workplace injury and that the injury caused the need for surgery.

Dr. Kia Swan-Moore, an occupational medicine physician employed at MOM, testified that Petitioner's condition and surgery were not related to the work injury. She agreed that her chart indicated that Petitioner had no pre-accident injuries or complaints to his right shoulder and that the MRI showed objective evidence of a shoulder contusion. She could not rule out an aggravation of his bursitis.

Petitioner testified that he continues to have pain into his shoulder while working overhead. The pain interferes with his activities at work and home. He has been laid off due to a reduction in workforce.

The Arbitrator finds the following:

1. Petitioner's condition of ill-being is causally connected to his 2/25/08 injury. This is based upon the testimony of Petitioner, Dr. Dusek, and the medical exhibits. The opinions of the specialist, Dr. Dusek, are more persuasive than those of the company physician.

2. Respondent shall pay the reasonable and necessary medical bills submitted of $ 29,654.41, pursuant to the **[*9]** medical fee schedule;

The Surgery Center $ 5,275.00
South County Anesthesia $ 728.00
Dr. Dennis Dusek $ 12,933.00
ABF-ROM Care Health Services $ 800.00
Blue Cross Blue Shield $ 4,681.41
Rosewood Physical Therapy $ 5,237.00

3. Petitioner is entitled to TTD benefits from 6/10/08 through 9/14/08, a period of 14 weeks.

4. As a result of his injury Petitioner has sustained the loss of 20% of the right arm.

5. Respondent is entitled to a Section 8(j) credit for the amount of medical bills actually paid by its group medical plan.

CONCURBY: BARBARA A. SHERMAN

DISSENTBY: BARBARA A. SHERMAN

DISSENT: PARTIAL CONCURRENCE AND DISSENTING OPINION

In concur in the majority's corrections to the award of medical expenses in accordance with the stipulation of the parties. I further agree with the majority that Respondent is entitled to credit under Section 8(j) for all amounts paid by BlueCross Blue Shield. However, I dissent from the majority's conclusion that Respondent is also entitled to credit pursuant to Section 8(j) for "all PPO discounts" and that "Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order. **[*10]**

There is nothing in the plain language of Section 8(j) that creates a right to a credit to an employer for discounts of medical expenses negotiated under a group health insurance policy. Rather, the plain language of Section 8(j) limits the credit to the amounts paid. On that basis alone, I would limit Respondent's Section 8(j) credit to the amount paid by Blue Cross Blue Shield, and would not extend said credit to discounts negotiated under said plan.

Moreover, I am uncertain as to the effect and meaning of giving an employer credit for a PPO discount in terms of the rights and remedies of the medical provider against the employee. I am also uncertain as to the extent of Respondent's obligation to hold Petitioner's harmless from claims by any providers provided by the majority's decision. Whatever the majority's intent may be, to allow such a credit clearly would seem to require an analysis of Section 8.2(e) and 8.2(e-20) of the Act, an analysis lacking from the majority's opinion. Section 8.2(e) provides, in pertinent part:

> The provisions of subsections (e-5), (e-10), (e-15), and (e-20) shall not apply if an employee provides information to the provider regarding participation **[*11]** in a group health plan. If the employee participates in a group health plan, the provider may submit a claim for services to the group health plan. If the claim for service is covered by the group health plan, eht employee's responsibility shall be limited to applicable deductibles, co-payments, or co-insurance. Except as provided under subsections (e-5), (e-10), (e-15), and (e-20), a provider shall not bill or otherwise attempt to recover from the employee the difference between the provider's charge and the amount paid by the employer or insurer on a compensable injury.

Section 8.2(e-20) provides:

> Upon a final award or judgment by an Arbitrator or the Commission, or a settlement agreed to my the employer and the employee, a provider may resume any and all efforts to collect payment from the employee for the services rendered to the employee and the employee shall be responsible for payment of any

> outstanding bills...as well as interest awarded under subsection (d) of this Section. In the case of a procedure, treatment, or service deemed compensable, the provider shall not require a payment rate, excluding the interest provisions under subsection (d), greater than the lesser **[*12]** of the actual charge or the payment level set by the Commission in the fee schedule established in this Section...

Section 8(j) was not changed when Section 8.2 was enacted in 2005, to be effective February 1, 2006. Prior to February 1, 2006, it was well settled and generally accepted that where a case is compensable under the Act, medical providers were entitled to the reasonable charge for services rendered, and the claimant was not required to bear any expense for necessary and causally related medical treatment. It is also generally recognized that a reasonable charge prior to February 1, 2006, the fee schedule allowable charge under the Workers' Compensation Act, a **negotiated rate** by a workers' compensation insurance carrier, and a **negotiated rate** under a group insurance policy that is not intended to cover expenses incurred under and subject to the Act, may be and almost always are different amounts. Stated differently, medical providers were entitled to be paid different amounts if their services were covered by the Act than if they were not covered by the Act. Generally speaking, the **negotiated rate** under a group insurance policy is less than either the reasonable charges **[*13]** prior to the 2005 amendments, or the amount allowed under the Workers' Compensation Commission's fee schedule. Prior to the amendments, it was clear that if bills were paid under a group insurance policy contributed to by the employer, and the services underlying those bills were later found to be compensable under the Workers' Compensation Act, the employer was entitled to credit in accordance with Section 8(j) for the amounts paid under the group policy, and remained liable to pay to the employee the reasonable charge under the Act for the services rendered, and the employee remained liable to pay that amount to the medical provider. It is unclear to me from the majority's opinion if they believe that, for medical services rendered after February 1, 2006, once group insurance has paid a medical provider for services which are subsequently determined to be covered by the Act, the provider has no recourse recover the charge allowed under the Act, and the employee has no recourse to recover co-pays, deductibles, and co-insurance payments, expenses that the employee would not incur for medical treatment under the Act.

For all of the foregoing reasons, I dissent from that part of the **[*14]** majority's opinion that includes PPO discounts in the credits to which Respondent is entitled pursuant to Section 8(j).

DATED: SEP 30 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

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